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.

September 4, 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)*

3. ***INTRODUCTION*** – Ms. Melanie Coleman, Senior Social Worker Supervisor, and Ms. Darcy Miller, Administrative Secretary, in the Health and Human Services Department will be introduced to the Board.

CONSENT AGENDA **(Approval recommended by the County Administrator)**

COUNTY ADMINISTRATOR

4. ***Emergency Services*** – Request Board continue the local emergency as a result of the Inyo Complex Oak Creek Mud Flows.

5. ***Information Services*** – Request approval to the renewal of the Software Maintenance Agreement between Crest Software Corporation and the County of Inyo for the County's enterprise Property Tax Management System for the period of July 1, 2012 through June 30, 2013, in an amount not to exceed $28,346, contingent upon the Board's adoption of a FY 2012-13 budget; and authorize the Chairperson to sign.

AUDITOR-CONTROLLER

6. Request approval of a resolution accepting the calculations of the appropriation limitation for the County of Inyo for Fiscal Year 2012-13.

7. Request approval of a resolution setting the property tax rates for Fiscal Year 2012-13 per California Government Code §29100.

AGRICULTURAL COMMISSIONER

8. ***Mosquito Abatement Program*** - Request Board approve the purchase of mosquito fogging equipment from Adapco, a sole-source provider of mosquito fogging equipment, in an amount not to exceed $7,700, contingent upon the Board's adoption of a FY 2012-13 budget.

HEALTH AND HUMAN SERVICES

9. ***Inyo First Five*** – Request Board ratify and approve the Contract between the County of Inyo and Altrusa International of the Eastern Sierra for the provision of Child Health & Family Strengthening services for the period of July 1, 2012 through June 30, 2013, in an amount not to exceed $20,000, contingent upon the Board's adoption of a FY 2012-13 budget; and authorize the Chairperson to sign.

10. ***Behavioral Health Services*** – Request Board ratify and approve the Contract between the County of Inyo and Fred Finch Youth Services for the provision of mental health services, for the period of July 1, 2012 through June 30, 2013, in an amount not to exceed $30,000, contingent upon the Board's adoption of a FY 2012-13 budget; and authorize the Chairperson to sign.

11. ***Mental Health Services*** – Request Board ratify and approve the County Mental Health Plan Agreement between the County of Inyo and the State of California, Department of Mental Health and the California Department of Health Care Services, as the MediCal Managed Care Plan for Inyo County for the period beginning April 1, 2012 and ending December 31, 2012, in the amount of not more than $811,607; and authorize the Director of Mental Health services to sign.

PUBLIC WORKS

12. Request Board ratify and approve Amendment No. 2 to the Contract between the County of Inyo and Quincy Engineering, Inc., for the provision of engineering services for the Sabrina Bridge Replacement Project, increasing the total amount of the Contract by $127,850, from a total amount not to exceed of $632,582 to $760,432, contingent upon the Board's adoption of a FY 2012-13 budget; and authorize the Chairperson to sign, contingent upon the appropriate signatures being obtained.

13. Request approval of the resolution accepting the improvements for the Inyo County Energy Efficiency Upgrade Project and authorize the recording of a Notice of Completion for the Project.

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

14. ***PLANNING*** – Request Board review and approve the draft correspondence regarding the Forest Service's Proposed Project-level Predecisional Administrative Review Process and authorize the Chairperson to sign.

15. ***BOARD OF SUPERVISORS – Supervisor Susan Cash – Supervisor Linda Arcularius*** – Request Board provide direction to Supervisors Cash and Arcularius, the Board's representatives to CSAC and RCRC, regarding the Board's position on Proposition 30 – *Temporary Taxes to Fund Education – Guaranteed Local Public Safety Funding.*

16. ***BOARD OF SUPERVISORS – Supervisor Susan Cash – Supervisor Linda Arcularius*** – Request Board provide direction to Supervisors Cash and Arcularius, the Board's representatives to CSAC and RCRC, regarding the Board's position on Proposition 31 – *The Government Performance and Accountability Act.*

17. ***AGRICULTURAL COMMISSIONER*** - Request Board

A) approve the new job series and job descriptions for the Agricultural Biologist/Weights and Measures Inspector I, at Range 60 ($3,271 - $3,973), II at Range 65 ($3,671 - $4,464), and Senior at Range 70 ($4,138 - $5,032);

B) change the authorize strength by adding one Agricultural Biologist/Weights and Measures Inspector series to the Agricultural Commissioners Department; and

C) find that consistent with the adopted Authorized Position Review Policy:

(a) the availability of funding for the position exists as certified by the Agricultural Commissioner and concurred with by the County Administrator and the Auditor-Controller;

(b) where internal candidates meet the qualifications for the position of Agricultural Biologist/Weights and Measures Inspector I, the position could be filled through a closed departmental recruitment;

(c) approve the hiring of one Agricultural Biologist/Weights and Measures Inspector I at Range 60 ($3,271 - $3,973);

(d) change the authorized strength in the Agricultural Commissioner's Department by deleting one position that becomes vacant as a result of the internal recruitment; and

(e) approve all of the changes being contingent upon the Board's adoption of a FY 2012-13 budget.

18. ***HEALTH AND HUMAN SERVICES – Behavioral Health Services*** – Request Board declare September 2012 as National Recovery Month.

19. ***HEALTH AND HUMAN SERVICES – ESAAA*** – Request approval of the Agreement between the County of Inyo and the County of Mono for the provision of Eastern Sierra Area Agency on Aging (ESAAA) services to Mono County resident senior citizens, in the amount of $288,701 for the period of October 1, 2012 through June 30, 2016, contingent upon (a) the Board's adoption of future budgets; and (b) obtaining the appropriate Mono County signatures by September 25, 2012; and authorize the Chairperson to sign.

20. ***PLANNING*** – Request Board review correspondence from the State Mining and Geology Board (SMGB) regarding the County's surface mining operations and the response from other counties to similar correspondence, review draft correspondence from the Planning Director to SMGB in response, provide input, and authorize the Planning Director to sign.

21. ***PLANNING*** – Request Board provide input to staff on the DRAFT Energy Action Plan.

22. ***PLANNING*** - Request Board conduct a workshop regarding code enforcement and special event permit issues related to the Zoning Code Update and provide input.

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

CLOSED SESSION

1:15 p.m. 23. ***PERSONNEL [PURSUANT TO GOVERNMENT CODE §54957]*** - Public Employee Appointment - Title: Director Public Works.

24. ***PERSONNEL [PURSUANT TO GOVERNMENT CODE §54957]*** - Public Employee Performance Evaluation - Title: Interim Director Public Works.

CORRESPONDENCE - ACTION

BOARD MEMBERS AND STAFF REPORTS

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

25. ***PUBLIC COMMENT***

CLOSED SESSION

26. ***CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION [PURSUANT TO GOVERNMENT CODE §54956.9(a)]*** – *Center for Biological Diversity, a non-profit public interest corporation; Public Employees for Environmental Responsibility, a national non-profit alliance of local, state, and federal resource professions, v. Inyo County and Inyo County Board of Supervisors,* Inyo County Superior Court Case No. SICVPT 12-53821.

27. ***CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION [PURSUANT TO GOVERNMENT CODE §54956.9(a)]*** – *City of Los Angeles, Department of Water and Power of the City of Los Angeles v. Inyo County Board of Supervisors, et al.,* Inyo County Superior Court Case No. 12908; Blackrock 94 Dispute Resolution.

28. ***CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION [PURSUANT TO GOVERNMENT CODE §54956.9(c)]*** – Decision whether to initiate litigation (one case).

29. ***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: Labor Relations Administrator Sue Dishion, Information Services Director Brandon Shults, and Planning Director Josh Hart.

30. ***CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code §54957.6]*** - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: Elected Officials Assistants Association (EOAA) - Negotiators: Chief Probation Officer Jeff Thomson and Labor Relations Administrator Sue Dishion.

31. ***CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code §54957.6]*** - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: Inyo County Correctional Officers Association (ICCOA) - Negotiators: Labor Relations Administrator Sue Dishion.

32. ***CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code §54957.6]*** - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: ICEA - Negotiators: Labor Relations Administrator Sue Dishion, Director of Child Support Services Susanne Rizo, Chief Probation Officer Jeff Thomson.

33. ***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.

34. ***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
4

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

FROM: Kevin D. Carunchio, County Administrator

FOR THE BOARD MEETING OF September 4, 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

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 (M*ust 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:_____
(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
5

☒ Consent ☐ Departmental ☐ Correspondence Action ☐ Public Hearing

☐ Scheduled Time for ☐ Closed Session ☐ Informational

FROM: County Administrator – Information Services

FOR THE BOARD MEETING OF: ~~August 14, 2012~~ SEPTEMBER 4, 2012

SUBJECT: Software Maintenance Agreement for the OPTIM property tax management system

DEPARTMENTAL RECOMMENDATION:

A) Request your Board approve the renewal of a Software Maintenance Agreement between Crest Software Corporation and the County of Inyo for the County's enterprise Property Tax Management System for the period July 1, 2012 through June 30, 2013 in an amount not to exceed $28,346 contingent on Board approval of FY 2012-13 budget.

SUMMARY DISCUSSION:

The annual maintenance agreement is to ensure basic software support is available and provided by the vendor throughout the agreement period.

ALTERNATIVES:

Your Board could choose not to approve the software maintenance agreement in which case basic support of the software would have to be negotiated on an as-needed basis and might not be made available by the vendor.

OTHER AGENCY INVOLVEMENT:

The OPTIM property tax management system is used by the Assessor's Office, Auditor's Office and Tax Collector's Office to manage and collect property tax annually.

FINANCING:

The cost of the support service renewal for the period from 07/01/2012 – 06/30/2013 was requested in the Information Services FY 2012-13 budget [011801-5177] (Maint. of Computer Systems).

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: yes Date 8/21/2012
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (*Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)* Leslie L. Chapman Approved: ✓ Date 8/29/12
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 ~~8/29/12~~

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received) Date: 8/29/12

CREST SOFTWARE CORPORATION

1414 Gold Street, Redding, CA 96001
(530) 241-9317

AGREEMENT NO. INYO - SW1

SOFTWARE MAINTENANCE AGREEMENT

CREST SOFTWARE CORPORATION, ("CREST") agrees to provide maintenance and support ("Service") to Buyer for the standard software ("Software") specified on the attached Software Product Sheet in accordance with the terms and conditions stated herein.

This Agreement shall be for an initial term of one (1) year. Upon expiration of the initial term, this Agreement shall automatically continue until terminated by either party with sixty (60) days prior written notice. Annual renewals of this contract shall only be effective upon funding approval of the Inyo County Board of Supervisors.

County of Inyo
Buyer

168 N Edwards Street, Independence, CA 93526
Address

168 N Edwards Street, Independence, CA 93526
System Location

Dell PowerEdge R510 9GPXTQ1
CPU Manufacturer, Model and Machine Identification Number

Initial Term of Agreement: From: 07/01/2012 Thru: 06/30/13

SERVICE CHARGES: (please check one)

___ Monthly $_____ ___ Quarterly $_____

___ Semi-Annually $_____ _X_ Annually $29,223.07

Total Yearly Service Charge Annual SW Maint.$28,597.07 less Ann.Disc(3%)$857.91=$27,739.16
Total Yearly Service Charge dL4 SW Assurance $626.00 less Ann.Disc(3%)$18.78=$607.22

All notices required by this Agreement shall be in writing and sent to the parties designated below. The date notice is received shall be its effective date.

BUYER	CREST SOFTWARE CORPORATION
By (Signature)	By (Signature)
Name (Type or Print)	Russell J. Chatfield
Title	President
Date	8-24-2012
	Date

REV1/1/2009

SOFTWARE MAINTENANCE AGREEMENT TERMS AND CONDITIONS

1.0 DEFINITIONS

1.1 Avoidance Procedure - provides a temporary measure to operationally avoid an identified Software problem.

1.2 Documentation Correction - resolves errors or ambiguities in the supporting documentation of Software.

1.3 Maintenance Release - incorporates validated problem resolutions.

1.4 Revision - contains enhancements, including functional changes, considered by CREST to be advantageous to its customers.

1.5 System - the designated hardware configuration on which the Software is used.

2.0 SERVICES

2.1 CREST shall provide the following Services to Buyer upon payment of the applicable Service Charges:

2.1.1 Software Change Request ("SCR") - Buyer shall be entitled to submit to CREST SCRs that report problems encountered with the Software. CREST shall verify receipt of all reported problems and CREST shall make the corrections, provided that such problems can be recreated with the latest unaltered release of the Software.

2.1.2 Maintenance Releases and Revisions - Maintenance Releases and Revisions shall be installed on Buyer's System.

2.1.3 On-Line Internet Assistance - Assistance that enables the Buyer to send requests for general assistance, obtain answers to specific Software questions, and aid the Buyer in diagnosing suspected Software problems for the Software running on Buyer's System. Assistance shall be provided by CREST during the hours of 9:00a.m. to 5:00p.m. PT, Monday through Friday, exclusive of CREST holidays. On-Line Internet can be sent to Crest 24 hours a day, seven days a week.

2.1.4 On-Site Services - Provide on-site remedial service calls when necessary at Buyer's system location, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding CREST holidays. Buyer shall reimburse CREST for travel and lodging costs plus 5%. If Buyer requests a problem correction and it is determined by CREST that such problem exists in software not covered by this Agreement, Buyer agrees to pay for CREST's time and expenses at CREST's then current prevailing rates.

2.1.5 CREST reserves the right to subcontract Services provided under this Agreement upon written notice to Buyer.

3.0 SERVICE CHARGES

3.1 Service Charges shall be billed as follows:

3.1.1 Annually, Semi-Annually, Quarterly, or monthly: all categories billed in advance. Crest agrees to discount said Service Charge two percent (2%) if paid on Semi-Annual basis and three percent (3%) if paid on an Annual basis. Additional Provisions may apply.

3.1.2 Payment in full shall be made within ten (10) days from the date of invoice for all of the above categories.

3.2 Any charges not included in the Service Charges shall be invoiced by CREST upon completion of the Services and shall be payable by Buyer within ten (10) days from the date of invoice.

3.3 Unpaid balances more than thirty (30) days from the date of invoice shall be subject to an interest charge of one and one-half percent (1-1/2%) per month computed from the due date of each invoice previously issued, or the maximum rate legally permitted, whichever is less.

3.4 Service Charges shall be exclusive of any federal, state, or local taxes. Any taxes levied on CREST pursuant to this Agreement shall be paid by Buyer promptly upon invoice.

3.5 CREST reserves the right to make changes in the Service Charges on each anniversary date of this Agreement.

3.6 If CREST is precluded from actually performing on-site Service under this Agreement by a Buyer strike, riot, or any other labor action, or any other reason beyond CREST's reasonable control Buyer shall pay Service Charges in accordance with this Agreement whether or not on-site Service is actually performed.

4.0 CONDITIONS

4.1 All original material including, but not limited to, Software prepared for or jointly with Buyer pursuant to this Agreement, shall belong to and be the property of CREST.

4.2 Buyer shall use Maintenance Releases and Revisions provided under this Agreement solely in accordance with the terms and conditions specified in Buyer's Software License or other agreement with CREST presently in effect.

4.3 Buyer shall acknowledge receipt of Maintenance Releases and Revisions in writing upon request by CREST.

4.4 CREST may suspend or refuse to provide Service for Software that is used in conjunction with software not approved by CREST, Software that has been modified without CREST's prior written approval, or Software on Buyer's System that is not covered by a valid CREST Software License or other agreement with CREST presently in effect.

4.5 CREST shall provide Service for Software that has been downgraded by CREST to "Obsolete" only until the expiration date of this Agreement. Crest shall notify Buyer within 10 days of Software downgraded by CREST to "Obsolete".

4.6 Buyer shall have executed a Software License Agreement and have the proper ancillary equipment (modem) installed concurrent with the term of this Agreement.

4.7 Buyer shall be responsible for any expense associated with any telephone lines and equipment that are necessary for the use of the modem.

4.8 Buyer shall issue a purchase order or CSA (as provided for under Article 1.1 in Crest Software License Agreement) to reflect any changes in the term and/or Service Charges concurrently with any change or anniversary date of this Agreement. Buyer shall continue to make payments to CREST for Service Charges until such time as this Agreement is terminated.

4.9 Buyer shall provide adequate working space and facilities within the immediate proximity of the Software to be serviced to CREST at no charge.

4.10 Buyer shall not perform or cause to be performed, service or repair to the Software by anyone other than CREST.

4.11 Buyer shall not hire any employee of CREST who has performed work under this Agreement, at any time during the term of this Agreement or for a period of one (1) year after the termination or expiration of this Agreement without the prior written approval of CREST.

5.0 ADDITIONAL SOFTWARE

5.1 Buyer may add additional Software, such as new Software features or programs announced by CREST as extra cost options (which, if requested by Buyer, will be added to this Agreement at an additional Service Charge and, if applicable, License Fee, by CSA according to the provisions under Article 1.1 in Crest Software License Agreement).

6.0 RELOCATION

6.1 Buyer agrees that if the Software is to be relocated with the designated system to an address different from that listed herein, written notification shall be provided to CREST thirty (30) days prior to relocation and the following shall apply:

6.1.1 Buyer shall be responsible for all costs and damages incurred in connection with the relocation of the Software to the new System Location.

6.1.2 Upon relocation, CREST personnel may be requested to reinstall the Software, charges for reinstallation shall be billed to the Buyer at CREST's then current prevailing rates and provisions, including expenses.

7.0 EXCLUSIONS

7.1 CREST shall not be responsible for any delay in the performance of Service beyond the reasonable control of CREST.

7.2 CREST shall not be responsible for any damage that occurs to software, equipment, attachments, or other devices not furnished by CREST that are used in conjunction with the Software serviced by CREST hereunder.

7.3 Service Charges shall not include service calls arising from (i) abuse, misuse, modification, or mishandling of the Software, (ii) loss or damage due to forces external to the Software including, but not limited to Acts of God, flooding, power surges or failures, defective electrical work, transportation, foreign equipment/attachments, communication lines, etc., or (iii) any cause beyond the reasonable control of CREST.

8.0 TERMINATION

8.1 Either party may terminate this Agreement if the other party becomes insolvent, files a Petition in Bankruptcy, ceases doing business, or fails to cure a breach of any term or condition of this Agreement within thirty (30) days written notice specifying such breach.

8.2 In the event Buyer fails to make payment in accordance with Article 3.0, CREST may immediately suspend Service upon written notice.

9.0 WARRANTY

CREST DISCLAIMS ALL WARRANTIES, EXPRESSED OR IMPLIED, WITH REGARD TO THE SERVICES AND MATERIALS PROVIDED HEREUNDER, INCLUDING ALL WARRANTIES OF MERCHANTIBILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT.

10.0 LIMITATION OF LIABILITY

10.1 CREST's total liability for damages under this Agreement, regardless of the form of action, shall be limited to refunding the Service Charge paid by Buyer to CREST under this Agreement.

10.2 IN NO EVENT SHALL CREST BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO LOSS OF DATA, ANTICIPATED PROFITS, OR BUSINESS REPUTATION, EVEN IF CREST HAS BEEN ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

11.0 GENERAL.

11.1 Should any provision of this Agreement be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall not be affected or impaired thereby.

11.2 The failure of either party to enforce any term or condition of this Agreement shall not constitute a waiver of either party's right to enforce each and every term and condition of this Agreement.

11.3 This Agreement shall not be assignable by either party without the prior written consent of the other party. Any attempt to assign any part of this Agreement without such consent shall be void except as allowed in paragraph 2.1.5 under SERVICES.

11.4 This Agreement shall be binding upon and inure to the benefit of the parties' successors, legal representatives, and authorized assigns.

11.5 This Agreement shall be interpreted and governed by the laws of the State of California.

CREST SOFTWARE CORPORATION

2400 Washington Ave., Suite 301, Redding, CA 96001
(916) 241-9317

SOFTWARE MAINTENANCE AGREEMENT

SOFTWARE PRODUCT SHEET

PRODUCT DESCRIPTION	MAINTENANCE RATES
OPTIM(Property Tax System)	600.00/mo.
Auditor/Collector module	

AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
6

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

FROM: Leslie L. Chapman, Auditor-Controller

FOR THE BOARD MEETING OF: September 4, 2012

SUBJECT: 2012-2013 GANN Appropriation Limit for Property Taxes

DEPARTMENTAL RECOMMENDATION:

Request the Board adopt the attached Resolution 2012- , accepting the calculations of the appropriation limitation for the County of Inyo for fiscal year 2012-2013.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

The "appropriation limit" established by Article XIII-B of the State Constitution, effective July 1, 1980, and amended by Proposition 111 as of June 1990 has been calculated by the Auditor-Controller for the 2011-2012 fiscal year. The calculation was performed pursuant to the "Article XIII-B Appropriation Procedure Guidelines for California Counties" written by the Accounting Standards and Procedures Committee, November 1990. The County is well within its appropriation limit using the Prop. 111 alternative indexes. The current "cushion" between the 2012-2013 proposed proceeds of taxes and the calculated 2012-2013 limitation is $ 20,178,871.

On November 6, 1979, the California Electorate approved Proposition 4, also known as the Gann Amendment. At that time, Proposition 4 then became Article XIII-B of the California Constitution. On June of 1990 the voters passed Proposition 111, which updates the States' appropriation limit to allow for new funding for priority State programs, while still providing an overall limit on State and local spending. The Prop. 111 amendment allowed for an alternative index and additional appropriation exemptions.

After reviewing the County's Proposed Budget including estimated tax revenues and associated costs by functional grouping, the Auditor-Controller has determined that the 2012-2013 Proposed Budget is within the "appropriation limit."

Periodic review of actual revenues and expenditures will be made during the year in order to insure that the County remains in compliance with Article XIII-B.

ALTERNATIVES:

Not adopt the resolution accepting the Gann limit calculation. This is not recommended since the Gann limit applies under Article XIII of the California Constitution whether the calculation has been accepted by resolution or not.

OTHER AGENCY INVOLVEMENT:

None

FINANCING:

N/A since Inyo County is below the limit.

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: yes Date 8/23/12
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (*Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)* Approved: yes Date 8/24/12
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.) N/A Approved: Date

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received) Leslie L. Chapman Date: 8/23/11

RESOLUTION 2012-

A RESOLUTION OF THE BOARD OF SUPERVISORS OF
THE COUNTY OF INYO, CALIFORNIA
ESTABLISHING FISCAL YEAR 2012-2013 APPROPRIATION LIMIT UNDER
ARTICLE XIII OF THE CALIFORNIA CONSTITUTION, AND ESTABLISHING
PERIOD FOR CONTESTING SUCH LIMITS FOR THE COUNTY AND BOARD
OF SUPERVISORS GOVERNED SPECIAL DISTRICTS

WHEREAS, Article XIII B of the California Constitution provides that the state and each local government shall be subject to an annual appropriation limit as defined in that Article; and

WHEREAS, Article XIII B Section 8(e)(2) requires the Governing Body to select the Change in Cost of Living methodology each year by recorded vote; and

WHEREAS, the percentage change in California Per Capita Income provides the greatest result rather than using the change in the Local Assessment roll from the preceding year due to the addition of non-residential new construction; and

WHEREAS, the Auditor-Controller of the County of Inyo has computed the appropriations limit for the fiscal year 2012-2013; and

WHEREAS, the Auditor-Controller of the County of Inyo has prepared the applicable Statement showing the calculation and such detail Statement are available for public review during reasonable hours and after reasonable notice in the Auditor-Controller's Office:

NOW THEREFORE, BE IT RESOLVED, that the County of Inyo selects the percentage change in California Per Capita Income and the percentage change in the population of the contiguous counties methodology for use in calculating its appropriation limit for fiscal year 2012-2013 and

NOW THEREFORE, BE IT FURTHER RESOLVED, that the appropriations limit for the County of Inyo for the fiscal year 2012-2013 as shown on Attachment A is hereby established as $ 35,759,371 such appropriations limit may be adjusted at a later date in accordance with Sections 3 and 11 of Article XIII B of the California Constitution; and

BE IT FURTHER RESOLVED that the appropriations limit for the County for the fiscal year 2012-2013 may be adjusted at a later date in the event that revenues which are unanticipated, and classified as proceeds of taxes in accordance with Section 8(c) of Article XIII B of the California Constitution, are received and appropriated.

BE IT FURTHER RESOLVED that any judicial action or proceeding to attach, review, set aside, void or annul the appropriations limits established by this resolution shall be commenced within 45 days from the date of this resolution in accordance with Section 7910 of the Government Code.

PASSED AND ADOPTED by the Board of Supervisors of the County of Inyo, State of California this 4th day of September 2012, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Marty Fortney, Chairperson
Inyo County Board of Supervisors

Attest: Kevin Carunchio
Clerk of the Board

By: _____
Patricia Gunsolley
Assistant Clerk of the Board

GANN Limit Calculation
Based on Projected Revenues
Fiscal Year Ending June 30, 2013

	Projected FY 12-13
Current Secured Taxes - 4001	9,250,000
Current Unsecured Taxes - 4004	1,200,000
Current Unsecured Aircraft Tax - 4005	32,000
SB813 Distributions - 4008	70,000
Sales Tax - 4062 & 4063	1,160,000
Real Property Transfer Tax - 4082	40,000
Transient Occupancy Tax - 4083	2,485,000
Transaction & Use Tax - 4085	1,260,000
Interest on Tax Funds	1,500
Homeowners Property Tax Relief - 4472	82,000
	15,580,500

2011-2012 Limitation (Using Per Capita personal Income % Change)	34,511,989
2012-2013 Population Factor	0.9985
2012-2013 Per Capita Factor	1.0377
2012-2013 Appropriation Limit	35,759,371
2012-2013 Proceeds of Taxes	(15,580,500)
Amount Under Limitation	20,178,871

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 7

FROM: Leslie L. Chapman, Auditor-Controller

FOR THE BOARD MEETING OF: September 4, 2012

SUBJECT: 2012-2013 Property Tax Rates

DEPARTMENTAL RECOMMENDATIONS:

Request the Board adopt Resolution 2012- , setting the property tax rates for 2012-2013, per California Government Code Section 29100.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

Each fiscal year the Auditor-Controller's Office calculates the appropriate tax rate necessary to collect the amount needed for debt service for that year. This is accomplished through use of assessed valuation reports from the Assessor's Office and the State Board of Equalization in conjunction with fund balances available and debt repayment schedules. The tax rates, as calculated by the Auditor-Controller's Office, include the countywide rate of 1.000000%, are on the attached resolution.

ALTERNATIVES:

If your Board did not adopt the tax rates, the tax proceeds for the County would be $0. The estimated amount for FY2012-2013 general fund revenue secured taxes, totals $9,200,000. To not adopt the rates will have a significant negative fiscal impact on many agencies, departments, programs, and special districts.

OTHER AGENCY INVOLVEMENT:

School district and many special districts receive property tax revenues as they are distributed to each tax-receiving agency based on a schedule developed by the Auditor-Controller's Office in accordance with R & T Codes pertaining to property tax.

FINANCING:

As stated above, Inyo County, as well as the affected special districts, derives a significant amount of discretionary revenue from property taxes.

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: yes Date 8/23/12
AUDITOR/CONTROLLER	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor/controller prior to submission to the board clerk.)	Approved: yes Date 8/23/12
PERSONNEL DIRECTOR N/A	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) Leslie L. Chapman Date: 8/23/12

RESOLUTION 2012-

A RESOLUTION OF THE BOARD OF SUPERVISORS OF
THE COUNTY OF INYO, CALIFORNIA
ADOPTING TAX RATES FOR FISCAL YEAR 2012-2013
PURSUANT TO GOVERNMENT CODE SECTION 29100

WHEREAS, Section 29100 of the California Government Code requires that the Board of Supervisors adopt rates of taxes on the secured roll not to exceed the 1-percent limitation specified in Article XIII A of the Constitution of the State of California and Sections 93 and 100 of the Revenue and Taxation Code of the State of California; and

WHEREAS, the Auditor-Controller has caused to be calculated the amount of tax needed to be raised to support the annual debt requirements of voter-approved indebtedness after due allowance for delinquency and other matters, as specified in Government Code Section 29100.

NOW, THEREFORE, BE IT RESOLVED that the Inyo County Board of Supervisors does hereby adopt the tax rates on the Secured Property Tax Roll for the fiscal year 2012-2013 as follows:

County Wide	1.000000%
Big Pine Unified School District - 2005 Debt	.044174%
Bishop Elementary – 2000 Debt and 2007 Refunding	.015772%
Bishop Unified – 2000 Debt and 2007 Refunding	.012511%
Owens Valley Unified School District – 2005 Debt	.042258%
Round Valley Elementary – 1999 Debt	.035803%
Northern Inyo Hospital District – 2005 Debt	.049004%
Unitary & Operating Non-Unitary	.135438%
Northern Inyo Hospital – Gann Limit Refund	(.012893)%

PASSED AND ADOPTED this 4th day of September 2012 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marty Fortney, Chairperson
Inyo County Board of Supervisors

Attest: Kevin Carunchio, Clerk of the Board

By: _____
Patricia Gunsolley, Assistant Clerk of the Board

For Clerk's Use Only:
AGENDA NUMBER

8

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

☒ Consent ☐ Departmental ☐ Correspondence Action ☐ Public Hearing

☐ Scheduled Time for ☐ Closed Session ☐ Informational

FROM: George L. Milovich, Agricultural Commissioner

FOR THE BOARD MEETING OF: ~~August 14, 2012~~ September 4,

SUBJECT: Approve a purchase order for FY 2012/2013

DEPARTMENTAL RECOMMENDATION:

That your Board approve: A) a purchase order to Adapco in the amount of $7,700 for Owens Valley Mosquito Abatement Program Budget Unit 154101, Expense Object Code 5650, for the purchase of mosquito fogging equipment to be effective in Fiscal Year 2012/2013, contingent upon Board approval of the 2012/2013 Board approved budget.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

Owens Valley Mosquito Abatement Program (OVMAP) has a need to equip an off road side by side vehicle with mosquito control equipment to effectively gain access to off road, difficult to reach mosquito breeding sources. The purchase of the ULV and applicator equipment will enable OVMAP to fog for adult mosquitoes off road and create the additional utility to apply granular larvacide to adjacent off road mosquito breeding locations up to 40 feet away from the off road side by side vehicle.
We have received sole source approval from CAO Kevin Carunchio, as Adapco is the exclusive authorized distributor of these products. This was included in our preliminary budget request.

ALTERNATIVES:

Not approving these request, possibly limiting the scope of mosquito abatement treatment, putting public health at risk and preventing the Owens Valley Mosquito Abatement Program from fulfilling contracts with federal, state and local/other agencies.

OTHER AGENCY INVOLVEMENT:

FINANCING:

Owens Valley Mosquito Abatement Program, Budget Unit 154101, is non-general fund department. Funds for the programs are provided through various agreements and contracts. Adequate funds in Expense Object Code 5650 have been allocated in the department's requested fiscal year 2012/2013 budget for this request.

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 (M*ust be reviewed and approved by the auditor-controller prior to submission to the board clerk.)* Amy Shepherd Approved: yes Date 8/9/12
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: 8-13-2012

Sole Source Justification Form

Sole Source: Is awarded for a commodity or services, which can only be purchased from one supplier, usually because of its specific technological requirements, availability or unique patented manufacture. The lack of planning is not an overriding circumstance.

This is a sole source because:

☐ There is only one known source because:

- ☒ This is a sole provider of a licensed, copyrighted, or patented good or service.
- ☐ This is a sole provider of items compatible with existing equipment or systems.
- ☐ This is a sole provider of factory-authorized warranty service.
- ☐ This is a sole provider of goods or services that perform the intended function or meet the specialized needs of the County (Please detail in an attachment).

☐ One source is the only practical way to respond to overriding circumstances that make compliance with competitive procedures under the Authority's policies not in the best interest of the Authority (Please detail in an attachment).

Please attach a memorandum to explain why the goods or services are not available elsewhere, include names and phone numbers of firms contacted.

- Other brands/manufacturers considered
- Other suppliers considered
- Other (i.e., emergency)

Describe the item or service, its function and the total cost estimate (if practical, separate labor and materials) in the space below or in a separate attached label: Description of Item or Service. **See attached paperwork**	
DEPARTMENT CONTACT PERSON & TITLE Chris Wickham, Mosquito Manager	
DEPARTMENT NAME AgComm	PHONE
REQUESTED SUPPLIER/CONSULTANT NAME Adapco	SUPPLIER CONTACT PERSON Dennis Candito
SUPPLIER ADDRESS PO Box 340863 Sacramento, CA 95834-0863	SUPPPIER CONTACT'S PHONE NUMBER 877-875-6353

The County's Purchasing Policy Manual Section III.(E), Exceptions to the Competitive Process/Sole Source and Section IV.(I), Sole Source Requests for Independent Contractors, describe when sole sourcing is permitted. By signing below, Requestor acknowledges that he/she has read and understands the County's policy on sole source procurements.

_____ 7-19-12_____
Signature of Requestor *Date*

_____ 07-23-12
President/CEO Approval *Date*

ARRO-GUN SPRAY SYSTEMS LLC

7575 TAMRA DRIVE

RENO, NV 89506

(775)972-4782

January 1, 2012

SUBJECT: Sole Source Distribution

To Whom it May Concern:

This letter is to certify that **Arro-Gun Spray Systems LLC** is the patent holder and sole manufacturer of the Mozzie product line of specialty application equipment designed for mosquito and vector control. This includes the Arro-Gun Mozzie models:

100 and 550 5.5HP ULV Foggers
200 and 250 Electric ULV Foggers
300 Catch Basin Applicator
400 and 410 Granular Applicators
600 and 610 8HP ULV Foggers
Bullet Hand-held ULV Fogger
Arro-Gun Cannon

ADAPCO, Inc. is the exclusive authorized distributor of these products in the state of California for Arro-Gun Spray Systems.

Best regards,

Dan Ariaz

Dan Ariaz
PRESIDENT
Arro-Gun Spray Systems LLC.
775-972-4782
775-972-8254 Fax
775-843-2647 Cell

Ultra Low Volume (ULV) fogger and Granular Applicator

Sole Source Justification July 2012

Owens Valley Mosquito Abatement Program (OVMAP) has a need to equip an off road side by side vehicle with mosquito control equipment to effectively gain access to off road, difficult to reach mosquito breeding sources. Payload space in this side by side vehicle is a premium. The best use of this limited space is to use equipment that can perform more than one task.

The purchase of the attached described ULV and Applicator equipment will enable OVMAP not only to fog for adult mosquitoes off road, but create the additional utility to apply granular larvicide to adjacent off road mosquito breeding locations up to 40 feet away from the off road side by side vehicle.

The control of adult and immature mosquitoes at the breeding source is good mosquito management and will help prevent adult mosquitoes impacting residential and business communities. The addition of this equipment to the off road vehicle will let staff control both adult and immature stages of mosquitoes in rugged remote locations.

Adapco, Inc. is the sole source distributor for Arro-Gun Spray Systems, LLC. Arrow-Gun Spray Systems, LLC is the only manufacturer that makes this multi-function mosquito control equipment.

ADAPCO
more in control℠

Quotation

ADAPCO, Inc. is pleased to provide the following quotation.

Quotation To: INYO COUNTY
OWENS VALLEY MAP

BISHOP CA
Contact: CHRIS WICKHAM
Phone:
FAX:
email:

Quotation Date: May 30, 2012
Quotation valid until: June 30, 2012
Prepared by: Dennis Candito
Terms: NET 30
Freight: ADDED TO INVOICE
Delivery: 3-4 WEEKS ARO

Item Description	Qty x Unit	Unit Price/ Unit	EXTENDED COST
ARRO GUN MOZZIE MODEL 610, 8HP HO ULV FOGGER	1 EA	$ 7,125.00 EA	$ 7,125.00
ARRO-GUN MOZZIE MODEL 400, GRANULE APPLICATOR	1 EA	$ 1,870.00 EA	$ 1,870.00
SUBTOTAL		0	$ 8,995.00
TAX @ 7.75% BISHOP, INYO COUNTY CA		0	$ 697.12
FREIGHT		0	$300
		TOTAL	$ 9,992.12

Comments or special instructions:
The units quoted above have had extremely minimal use by the manufacturer for exhibit display and demonstration.
These units have been inspected and checked by the manufacturer to guarantee "like new" condition and come with manufacturer's warranty from time of purchase.

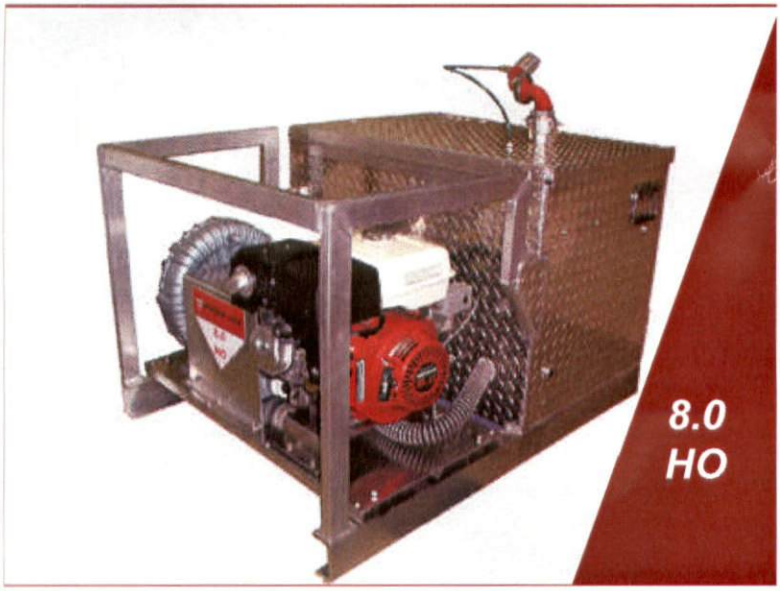
Please contact me with any questions or concerns at 877-875-6353.
Thank you for giving me the opportunity to serve you.
Best regards,

Dennis Candito

Dennis Candito
ADAPCO

550 Aero Lane, Sanford, FL 32771
Phone 800-367-0659 FAX 866-330-9888
www.myadapco.com

ARRO-GUN SPRAY SYSTEMS
MOZZIE FOG 8.0 HO



FEATURES

- Unsurpassed Security
- Quiet Power
- Simple Operation
- All Aluminum/Stainless Construction
- Stackable Storage
- Plug & Play Controls

The Mozzie Fog High Output units provide the power, performance, durability and simplicity to give years of dependable service. From the fully integrated enhanced security system to the sturdy heavy duty frame construction, the HO is designed with the Vector Control professional in mind. The newest addition (available soon) is the dual nozzle design with versatile and fully independent 360° adjustment capability on each nozzle. Each unit is preconfigured to add plug and play larvacide applications when desired, making it truly the most versatile piece of Vector Control equipment available today.

Specifications

	US		Metric	
Dimensions	36" W x 48" L x 43" H		91.5cm W x 122cm L x 109 cm H	
Weight	Net: 318	Gross: 385	Net: 144.5 Kg	Gross: 175 Kg
Engine	8HP Honda OHV, Electric Start			
Blower	Regenerative Centrifugal High Output, Rated 300 CFM			
Chemical Pump	12 VDC FMI Type QB1SSY/1/4 Piston, Fully Enclosed			
Pump Flow Rate	1 - 19 OPM, 1 - 12 OPM Recommended			
Unit Controls	Remote Engine Ignition, Throttle, Pump On-Off			
	Key Starter Switch, Fully Enclosed			
Safety Controls	Low Pressure Cutoff Switch, Pump & Throttle Shutdown			
Chemical Tank	15 Gallon Max Capacity HDPE , Fully Enclosed			
Solvent Tank	2 Qt HDPE, Fully Enclosed			
Nozzle	Dual, Independent 360° Adjustable, Quick Disconnect			
Battery (Included)	Optima 12V Heavy Duty Gel Cell, Fully Enclosed			
Sound Levels	91 Db @ 10 Ft. Max, < 83 Db @ 20 Ft.			

1-888-ARRO-GUN
BIO-RATIONAL VECTOR CONTROL

MOZZIE
GRANULAR APPLICATOR

CONTROL

MODEL 400

FEATURES

- 12 VOLT DC OPERATION
- FULLY ADJUSTABLE FEED RATE
- DISPENSE VECTOLEX & ALTOSID
- GRANULES, PELLETS, & COB
- 40-60 FT RANGE
- CONNECTS TO ALL ARRO-GUN UNITS
- POWDER COAT ALUMINUM CONSTRUCTION
- AVAILABLE CANNON WITH REMOTE

Speed Control

Rate Adjust

Specifications	US	Metric
Length	16.25 "	41 cm
Width	14.25"	36 cm
Height	28.75 "	73 cm
Weight	46 lbs.	21 kg

Arro-Gun Spray Systems, LLC
7575 Tamra Drive
Reno, Nevada 89506
Phone: 775-9782-4782 (Cell 775-843-2647)
1-888-ARRO-GUN

For Clerk's Use Only:
AGENDA NUMBER

9

AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

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

FROM: HEALTH & HUMAN SERVICES – First 5 Inyo County

FOR THE BOARD MEETING OF: September 4, 2012

SUBJECT: Request approval of contract with the Altrusa International of the Eastern Sierra for provision of Child Health & Family Strengthening services.

DEPARTMENTAL RECOMMENDATION:

Request Board of Supervisors ratify the proposed contract between the County of Inyo and Altrusa International of the Eastern Sierra for the provision of Child Health & Family Strengthening services from July 1, 2012, to June 30, 2013, in an amount not to exceed $20,000, contingent upon Board's adoption of FY 2012/2013 Budget, and authorize the Chairperson to sign.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

Routing since May, the Altrusa of the Eastern Sierra Contract returned to us reviewed, approved, and signed on Friday July 13th. It began its final routing for Board preparedness July 17 and is now ready for ratification.

Altrusa helped develop three demonstration gardens at Inyo preschools last year, and this year they propose to expand to five preschool demonstration gardens, helping reinvigorate and develop established sites, as well as adding at least two new sites. More than fifty low-income preschool families and more than four hundred preschool students benefited from workshops on growing, maintaining, picking, and eating fruits & vegetables at home in FY 2011-12. With a waiting list requesting demonstration gardens at five more schools, this project will most likely continue to grow to touch more lives.

Besides the new families and sites served this year, Altrusa is also proposing some extra preschool family workshops that will help families discover easy, delicious recipes children & parents can create together from garden produce that will start with a Fall tomato salsa kick-off at IMACA Head Starts in Bishop and Lone Pine. Their annual Readers Theatre and Fuel for Fun Jamboree projects are a part of this programming too, blending literacy and nutrition & fitness knowledge so that early developmental skills and the ability to recognize and revel in healthy choices is promoted yearlong to Inyo children ages 0 to 5 and their families.

ALTERNATIVES:

Denying this request would result in the loss of child health and family strengthening services to young families countywide. Preschool teachers and students would miss the extra support and resources that Altrusa has traditionally given to encourage family participation in early health and literacy services, and our growing child obesity rates would not benefit from the nutrition and fitness changes this programming inspires.

OTHER AGENCY INVOLVEMENT:

Altrusa is working with Bishop Indian Head Start, IMACA Head Starts in Bishop & Lone Pine, Big Pine State Preschool, Big Pine Learning Center, Mt. Whitney & Warren Hanson preschools in Lone Pine, IMACA's food pantry program, Team Inyo for Healthy Kids, and Inyo and Toiyabe WIC to promote family gardens and nutritious food preparation at home.

FINANCING:

This contract would be funded from designated First 5 Inyo General Budget dollars. This is budgeted in First Five (643000) in Professional Services (5265). 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: yes 8/1/2012 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: yes 8/8/12 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: J 8/15/12 Date:

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received) Jean Turner Date: 8-23-12

ATTACHMENT A

AGREEMENT BETWEEN COUNTY OF INYO
AND Altrusa International of the Eastern Sierra
FOR THE PROVISION OF Child Health & Family Strengthening **SERVICES**

TERM:

FROM: July 1, 2012 **TO:** June 30, 2013

SCOPE OF WORK:

The contractor shall provide Child Health & Family Strengthening services in the County of Inyo as detailed in the attached Scope of Work for Altrusa of the Eastern Sierra 2012-13, and incorporated herein by reference. Contractor shall perform all the tasks listed in this plan by June 30, 2013 including the provision of fiscal reports and any evaluation materials listed in the SOW to the satisfaction of the First 5 Inyo Commission.

All publicity and materials for the public produced pursuant to this agreement shall be submitted to First 5 Inyo County for approval , and shall include "Funded by First 5 Inyo County, a division of Inyo Health & Human Services" & the First 5 Inyo logo.

The major services this contract addresses are:

-Construction & revitalization of at least 5 preschool-center based community show gardens, with touring manuals and parent gardening workshops
-Organizing annual Fuel for Fun literacy & health fair that typically serves between 700 to 1,000 visitors
-Plan Readers Theatre Project to extend gardening & nutrition messages to preschoolers and their families countywide

SCOPE OF WORK FOR Altrusa International of Eastern Sierra 2012-13 CONTRACT

TASKS CONTRACTOR SHALL ACCOMPLISH: *(to the satisfaction & approval of First 5 Inyo Commission)*	MATERIALS CONTRACTOR SHALL PROVIDE: *(all reporting materials are subject to First 5 Director's approval according to State reporting standards & the okay of the First 5 Inyo Commission)*	DUE DATE: *(Late after 7 days from)*
Construct & or revitalize a minimum of 5 preschool community demo gardens over the course of 2012-13 with bilingual manual & family gardening workshops. This includes formalizing produce sharing protocols, offering canning workshops, and possibly cooking classes.	*Yellow Center Intake Form Sign In Sheets from every school and at every workshop with families identifying their 0-5 child, age, & primary language. * Post-participation survey from every family that attends workshops explaining what they learned, benefits to family.	semester invoices & reporting DEC. 30, 2012 JUN.30, 2013
Organize the Fuel for Fun Jamboree with $4,500 less than your budgeted $7,200 by utilizing local volunteers & services. For example, you can save $1,200 by utilizing Case Wstrn University dental studentsfor free oral exams	* Use Click Entrance technology & Book Bucks counts to determine number of total visitors * Invoice First 5 Inyo only up to $2,800 toward Jamboree expenses	semester invoices & reporting DEC. 30, 2012 JUN.30, 2013
Plan Readers Theatre Project to relate to and extend community garden & nutrition information to preschoolers and their families impacting a minimum of 350 families.	*Yellow Center Intake Forms from every preschool that participates *Post Teacher surveys and family comment cards	semester invoices & reporting DEC. 30, 2012
Any outstanding invoices, reciepts, or evaluation materials not previously submitted to first 5 are due.	*Any of the above not yet received	JUN.30, 2013

BONUS FOR FUTURE FUNDING & PARTNERSHIPS:

First 5 Inyo rewards partners who help create synergy to distribute messages and materials the Commission deems valuable, with bonus points toward future projects. Resources you can help distribute include:

New & Used books from the Reading Railroad	Elmo Nutrition & Fitness DVD
Early Childhood Newsletters	Developmental Play at Home booklet
Early Oral Health education & supplies	

ATTACHMENT B

AGREEMENT BETWEEN COUNTY OF INYO

AND Altrusa International of the Eastern Sierra

FOR THE PROVISION OF Child Health & Family Strengthening **SERVICES**

TERM:

FROM: July 1, 2012 **TO:** June 30, 2013

SCHEDULE OF FEES:

For services satisfactorily rendered, and upon receipt & approval of semester invoices as required, the County agrees to compensate the Contractor for expenditures incurred from July 1, 2012 to June 30, 2013 in an amount not to exceed $20,000.

Notwithstanding paragraph 3.E. Billing & Payment, actual program and equipment costs are to be invoiced to the First 5 Inyo County after service delivery on a semester basis. Invoices with attached expenditure spreadsheets, and related evaluation materials should be received by First 5 Inyo no later than 7 days past the semester due dates of Dec. 30, 2012 and Jun. 30, 2013. In the event that invoices or evaluation materials are not forthcoming in that time period, the First 5 Inyo County commission retains the right to withhold further payment until satisfactory receipt and review of those materials has taken place.

Indirect costs shall not exceed 15% of the total contracted amount.

Expenditures should not deviate from the attached invoicing chart by more than $1,000 approved by the First 5 Inyo Commission on May 10, 2012 without express written permission from the Commission.

Also, contractors should be aware that the terms of this contract are contingent on continued state funding, and if state level cuts were to occur to our revenues the County may cancel this contract at will at any time upon 30 days written notice of intent to cancel.

Semester Invoices Due:	Late After:
DEC. 30, 2012	JAN. 7, 2013
JUN. 30, 2013	JULY 7, 2013

2012-13 Altrusa Projects Monthly Invoice Chart

GENERAL	BUDGET	JULY	AUGUST	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MARCH	APRIL	MAY	JUNE	TOTALS
PERSONNEL	1,200													
Translator	500													
JAM Petting Zoo Facilitators	200													
CG garden mentor outreach	500													
SUPPLIES	15,000													
JAM Oral exam supplies	200													
JAM Fairgrounds faciilty	533													
JAM 0-5 book bucks	750													
JAM Carnival Games	200													
JAM Wash stations	200													
RT books	1,000													
RT activity boxes	900													
RT vegetable coupons	300													
RT garden lesson supplies	400													
RT FFA garden starters	1,000													
CG Demonsration gardens	6,100													
CG Bilingual garden guide	300													
CG participant supplies	1,000													
CG BIHS 3 sisters activity	600													
CG demo garden wrkshops	800													
Promotions	1,200													
JAM Radio Ads	600													
CG Print & Radio Ads	600													
INDIRECT (not to exceed 15%)	2,600													
Administration														
Invoicing														
TOTALS	20,000													

Use this chart to keep a running total for FY 2012-13. Attach G/L documentation along with each semester's reporting checklist and eval materials for prompt reimbursement.

Invoice summary, copy of chart, reporting chekclist, and all bold type blue and red evaluation materials due by the 7th of each new month.

AGREEMENT BETWEEN COUNTY OF INYO
AND Altrusa international of the Eastern Sierra
FOR THE PROVISION OF Child Health & Family Strengthening **SERVICES**

INTRODUCTION

WHEREAS, the County of Inyo (hereinafter referred to as "County") may have the need for the Child Health & Family Strength services of Altrusa International of E. Sierra 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, upon its request, those services and work set forth in Attachment **A**, attached hereto and by reference incorporated herein. Requests by the County to the Contractor to perform under this Agreement will be made by Jean Turner, whose title is: Director of Inyo HHS. Requests to the Contractor for work or services to be performed under this Agreement will be based upon the County's need for such services. The County makes no guarantee or warranty, of any nature, that any minimum level or amount of services or work will be requested of the Contractor by the County under this Agreement. County by this Agreement incurs no obligation or requirement to request from Contractor the performance of any services or work at all, even if County should have some need for such services or work during the term of this Agreement.

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, county, 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 July 1, 2012 to June 30, 2013 unless sooner terminated as provided below.

3. CONSIDERATION.

A. Compensation. County shall pay to Contractor in accordance with the Schedule of Fees (set forth as Attachment **B**) for the services and work described in Attachment A which are performed by Contractor at the County's request.

B. Travel and per diem. Contractor will not be paid or reimbursed for travel expenses or per diem which Contractor incurs in providing services and work requested by County 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 $20,000 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 described in attachment A, which were done at the County's request. 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 **C**, 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, 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 **D** 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 any and 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, or the failure of Contractor, or Contractor's agents, officers, or employees to comply with any of its obligations contained in this Agreement. 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, county, municipal, 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
First 5 Inyo County, a Division of Inyo HHS — Department
568 W. Line Street — Street
Bishop, CA 93514 — City and State

Contractor:
Altrusa International of the Eastern Sierra — Name
P.O. Box 1795 — 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.

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AGREEMENT BETWEEN COUNTY OF INYO
AND Altrusa International of the Eastern Sierra
FOR THE PROVISION OF Child Health & Family Strengthening **SERVICES**

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

COUNTY OF INYO

By: _____

Dated: _____

CONTRACTOR

By: Patricia Schlichting
Signature

Patricia Schlichting
Print or Type

Dated: 7/12/12

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 C

AGREEMENT BETWEEN COUNTY OF INYO
AND Altrusa International of the Eastern Sierra
FOR THE PROVISION OF Child Health & Family Strengthening **SERVICES**

TERM:

FROM: July 1, 2012 **TO:** June 30, 2013

Form W-9

Request for Taxpayer
Identification Number and Certification
(Please submit W-9 form with Contract, available on-line or by County)

ATTACHMENT D

AGREEMENT BETWEEN COUNTY OF INYO
AND Altrusa International of the Eastern Sierra
FOR THE PROVISION OF Child Health & Family Strengthening **SERVICES**

TERM:

FROM: July 1, 2012 **TO:** June 30, 2013

SEE ATTACHED INSURANCE PROVISIONS

Specifications 1

Insurance Requirements for Most Contracts

(Not for Professional Services or Construction Contracts)

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL)**: Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than **$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **$500,000** per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **$1,000,000** per accident for bodily injury or disease.

If the contractor maintains higher limits than the minimums shown above, the Entity requires and shall be entitled to coverage for the higher limits maintained by the contractor.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

Primary Coverage

For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Entity.

Waiver of Subrogation

Contractor hereby grants to Entity a waiver of any right to subrogation which any insurer of said Contractor may acquire against the Entity by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the Entity. The Entity may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.

Verification of Coverage

Contractor shall furnish the Entity with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

For Clerk's Use Only:
AGENDA NUMBER

10

AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

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

FROM: HEALTH & HUMAN SERVICES – Behavioral Health

FOR THE BOARD MEETING OF: September 4, 2012

SUBJECT: Approve the Contract between County of Inyo and Fred Finch Youth Services.

DEPARTMENTAL RECOMMENDATION: Request Board ratify the contract between the County of Inyo and Fred Finch Youth Services for the provision of mental health services in an amount not to exceed $30,000.00 for the period of July 1, 2012 to June 30, 2013, contingent upon Board's adoption of FY 2012/2013 Budget, and authorize the Chairperson to sign.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:
This contract is coming to you late due the complicated process of securing this placement and obtaining the necessary contract elements for mental health services in a high level placement. This contract is for intensive mental health services for an Inyo County youth. The multidisciplinary team, including behavioral health, probation, schools, Kern Regional Center, child welfare and the parents, has spent a lengthy period of time assessing the needs of the youth and obtaining this placement. This youth has been placed in this high-level residential treatment facility after he has had an extended period of time in the Juvenile Center, as well as several prior placements. This youth is also in need of a "non-public school" setting to meet his educational needs. These services as well as intensive mental health services are provided in the residential setting. Fred Finch has been an Organizational Provider of mental health services for Inyo County in the past and provides an Intensive Day Treatment Program, Day Rehabilitation, and Medication Monitoring in addition to the residential program. The Organizational Provider status allows us to maximize Medi-Cal reimbursement. County staff members authorize treatment and review all documentation for compliance with Med-iCal standards. The county staff members also maintain very close contact with the youth, family and the placement facilities to ensure care and placement in the least restrictive setting.

ALTERNATIVES:
Your Board could choose not to ratify this contract. This would result in a loss of access to a placement for this youth and could lead to a prolonged hospitalization or extended stay in a Juvenile Detention Facility.

OTHER AGENCY INVOLVEMENT:
Child Welfare, Juvenile Probation, Schools, Kern Regional Center

FINANCING:

Mental Health Realignment and reimbursement will again be pursued for MediCal eligible services provided by the group home. This expense is budgeted in Mental Health (045200) in Support and Care (5508). Reimbursement as appropriate will also be pursued from the Educationally-Related Mental Health Services funds administered by the schools. 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: yes 8/7/2012 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: 8/22/12 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: ✓ 8/24/12 Date:

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received) Date: 8-24-12

AGREEMENT BETWEEN COUNTY OF INYO
AND Fred Finch Youth Services
FOR THE PROVISION OF MENTAL HEALTH SERVICES

INTRODUCTION

WHEREAS, the County of Inyo (hereinafter referred to as "County") may have the need for the Mental Health services of Fred Finch Youth Services (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, upon its request, those services and work set forth in Attachment **A**, attached hereto and by reference incorporated herein. Requests by the County to the Contractor to perform under this Agreement will be made by Gail Zwier, Ph.D., whose title is: Behavioral Health Director. Requests to the Contractor for work or services to be performed under this Agreement will be based upon the County's need for such services. The County makes no guarantee or warranty, of any nature, that any minimum level or amount of services or work will be requested of the Contractor by the County under this Agreement. County by this Agreement incurs no obligation or requirement to request from Contractor the performance of any services or work at all, even if County should have some need for such services or work during the term of this Agreement.

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 July 1, 2012 to June 30, 2013, unless sooner terminated as provided below.

3. CONSIDERATION.

A. Compensation. County shall pay to Contractor in accordance with the Schedule of Fees (set forth as Attachment **B**) for the services and work described in Attachment **A** which are performed by Contractor at the County's request.

B. Travel and per diem. Contractor will not be paid or reimbursed for travel expenses or per diem which Contractor incurs in providing services and work requested by County 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 $30,000.00 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 described in Attachment **A**, which were done at the County's request. 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 **D**, 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, 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.

B. 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.

C. 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 Workers' 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 **E** 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 anyone 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, county, municipal, ordinances, regulations, and directions. Contractor shall maintain these records for a minimum of seven (7) years from the termination or completion

of this Agreement unless otherwise provided in Attachment A. 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.

C. Document Standards for Client Records. Contractor shall maintain client records in the manner described in Attachment C.

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, color, religion, ancestry, gender, sexual orientation, age, national origin, or mental or physical handicap. 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	
Behavioral Health	Department
162 J Grove Street	Address
Bishop, CA 93514	City and State
Contractor:	
Fred Finch Youth Services	Name
3800 Coolidge Avenue	Address
Oakland, CA 94602	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 Fred Finch Youth Services

FOR THE PROVISION OF MENTAL HEALTH SERVICES

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

COUNTY OF INYO

By: _____

Dated: _____

CONTRACTOR

By: _____
Signature

Kathie Jacobson, Interim President & CEO
Print or Type Name

Dated: 7/16/12

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 Fred Finch youth Services

FOR THE PROVISION OF MENTAL HEALTH SERVICES

TERM:

FROM: July 1, 2012 **TO:** June 30, 2013

SCOPE OF WORK

1. Contractor Is: (Check One)

☒ An "Organizational Provider" as that term is defined in this paragraph. The term "Organizational Provider" means a provider of specialty mental health services, other than psychiatric inpatient hospital services or psychiatric nursing facility services. An Organizational Provider provides mental health services to beneficiaries through employees or by contracting with licensed mental health or registered professionals and other staff, unless such staff is legally entitled to a waiver. An Organizational Provider shall be certified as meeting Short Doyle/Medi-Cal Provisions by County Behavioral Health Services Program (BHS) or State Department of Mental Health.

☐ A "Group Provider" as that term is defined in this paragraph. The term "Group Provider" means an organization that provides specialty mental health services through two or more individual providers. Group providers include entities such as independent practice associations, hospital outpatient departments, health care service plans, and clinics.

☐ An "Individual Provider" as that term is defined in this paragraph. The term "Individual Provider" means a licensed mental health professional whose scope of practice permits the practice of psychotherapy without supervision who provides specialty mental health services directly to beneficiaries. Individual Providers include licensed physicians; licensed social workers; licensed marriage, family, and child counselors; and registered nurses certified in psychiatric nursing by the Board of Registered Nursing. Individual provider does not include licensed mental health professionals when they are acting as employees of any organizational provider or independent contractors of organizational providers other than the CONTRACTOR.

2. Service to be Provided.

a. Contractor shall provide mental health services to patients referred in writing to Contractor by County. In the referral, County shall state the specific services to be provided to the patient and the time period over which those services are authorized. Such services may include assessment, individual or family therapy, group therapy, collateral services, and pharmacological management. Contractor is authorized to provide only those services authorized by County and County shall be under no obligation to pay for services other than those authorized by County.

b. Referred patients shall be entitled to a limited number of services within a specified time frame per referral. Contractor understands that in the event a patient has committed through

appointment to seek beyond the maximum number or time frame of approved services, no payment for those additional services will be granted by County, unless the additional services are specifically authorized by County.

c. Payment shall be at the rates specified in Attachment B. The maximum time spent per contact with the patient shall be as specified in Attachment B and payment shall be limited to the time specified therein. Time spent by Contractor to write in a patient's file, prepare necessary reports, or to otherwise prepare written documentation arising out of services performed under this contract shall be included within the service time limitations specified in Attachment B. The rate specified in Attachment B shall be considered to be payment in full for the services provided. Contractor shall at no time seek compensation from patients. Contractor shall hold harmless the State of California and patients in the event County cannot or will not pay for services rendered by the Contractor pursuant to the terms of this Agreement.

d. Contractor agrees to accept at least three referrals for each contract year. Contractor agrees to schedule initial appointments within ten (10) working days of referrals.

e. Nothing expressed or implied herein shall require the Contractor to provide to the patient, or order on behalf of the patient, services which, in the professional opinion of the Contractor, are not required.

3. Qualifications.

a. Requirements applying to Individual, Group, and Organizational Providers:

i. Be certified and in good standing to provide services under the California Medi-Cal Program including those requirements contained in Article 3, Chapter 3, Subdivision 1, Division 3, of Title 22 of the California Code of Regulations; and

ii. Be a provider that complies and adheres to Title XIX of the Social Security Act and conform to all applicable Federal and State statutes and regulations.

b. Terms applying to Organizational Providers: It is the duty of the Organizational Provider to ensure that all licensed staff possess the proper and valid credentials, and comply with the provisions in (b)(i) and (b)(ii) below.

i. Therapeutic Behavioral Services (TBS)/Case Management Services (CMS) Provider. TBS/CMS may be provided to patients referred to an Organizational Provider hereunder provided TBS/CMS is provided under the direction of a Clinical Head of Service which includes Physicians, Psychologists, Licensed Clinical Social Workers, Marriage and Family Therapist, or a Registered Nurse with a Masters degree in Psychiatric Nursing.

ii. Intern in Marriage and Family Therapy or Associate Social Worker.

1. Organizational Providers approved by BHS may use Interns and/or Associates (I/A) to administer services to patients provided the following requirements are met:

i. The Organizational Provider must maintain malpractice insurance for an I/A under its supervision and maintain an employer-employee relationship.

ii. Organizational Providers must, prior to assigning authorized services, submit to BHS the I/A's application, resume, photocopy of I/A's and Supervisor's license, Responsibility Statement for Supervisors, and proof of insurance coverage along with a description of the I/A's training program.

2. Every I/A must meet the following criteria:

i. Individual must be post-masters and be certified by the Board of Behavioral Science for internship or associate status.

ii. Documented clinical supervision must take place in accordance with current Board of Behavioral Science requirements for Interns and Associates.

iii. Individual supervision will be augmented by two (2) documented hours of weekly multi-disciplinary group supervision. This supervision will be required for the first six months of experience and may be required for up to one year.

3. Supervisors must meet regularly to review intern's performance, develop and schedule training seminar topics, and monitor services provided.

4. Documentation of required supervision shall be provided to BHS upon request.

4. Discrimination Prohibited.

Consistent with the requirements of applicable federal or state law, Contractor will not engage in any unlawful discriminatory practices in the admission of beneficiaries, assignments of accommodations, treatment, evaluation, employment of personnel, or in any other respect on the basis of race, color, gender, religion, marital status, national origin, age, sexual preference or mental or physical handicap. Patients referred under this contract shall receive the same level of care as provided to all other patients served by Contractor.

5. Medical Records.

Contractor shall maintain for each patient who has received services, a legible medical record either typewritten or written in ink, kept in detail and in a standard consistent with appropriate medical and professional practice licensing and certification requirements, which permits effective internal professional review, external medical audit process, and which facilitates an adequate system for follow-up treatment. Patient health records of discharged patients shall be completed and filed within 30 days after termination of each episode of treatment and such records shall be kept for a minimum of 7 years, except for minors whose records shall be kept at least until one (1) year after the minor has reached the age of 19, but in no case less than seven (7) years consistent with California Code of Regulations, Title 22 Section 75054. Psychologists are required to maintain patient records for seven (7) years from the patient's discharge date, or in the case of a minor, seven years after the minor reaches 18 years of age consistent with California Business and Professions Code Section 2919. Contractor shall forward original entries to BHS within 24 hours of service provision for incorporation into client's current chart, if requested by BHS. Notwithstanding paragraph 7(B.) (Terms and Conditions), working notes and test protocols used in preparation of medical records and reports remain the property of the Contractor.

6. Inspection Rights.

Contractor shall make all books and records pertaining to the goods and services furnished under the terms of this Agreement available for inspection, examination, fiscal audits, program compliance and beneficiary complaints review, or copying:

a. By BHS, the State Department of Mental Health, the State Department of Health Services, the United States Department of Health and Human Services, the Controller General of the United States, and other authorized federal and state agencies or their duly authorized representatives.

b. At all reasonable times at the Provider's normal place of business or at such other mutually agreeable location in California.

d. In a form maintained in accordance with the general standards and BHS standards applicable to such book or record keeping.

c. For the term and duration consistent with paragraph 5 above.

7. Confidentiality of Beneficiary Information.

With respect to any identifiable information concerning a patient under this Agreement that is obtained by the Contractor, the Contractor shall: (a) not use any information for any purpose other than carrying out the express terms of the Agreement; (b) promptly transmit to BHS all requests for disclosure of such information; (c) not disclose, except as otherwise specifically permitted by the Agreement, any such information to any party other than BHS, the U.S. Department of Health and Human Services, the State Department of Health Services, or the State Department of Mental Health without BHS's prior written authorization specifying that the information is releasable under Title 42, CFR, Section 431.300 et seq., Section 14100.2, Welfare and Institutions Code, and regulations adopted thereunder; (d) at the expiration or termination of the Agreement, return all such information to BHS or maintain such information according to written procedures sent BHS by the State Department of Health Services for this purpose.

8. Patients' Rights.

Contractor shall comply with applicable patients' rights provisions in W&I Division 5, Part I; Title 9, California Code of Regulations, Subchapter 4; and other applicable law in the provision of services to patients hereunder. Contractor shall adopt and post in a conspicuous place a written policy on patient rights in accordance with Section 70707 of Title 22 of the California Code of Regulations and Section 5325.1 of the Welfare and Institutions Code. Complaints by patients and/or beneficiaries with regard to substandard conditions may be investigated by the County's Patients' Right Advocate, County or State Department of Mental Health, or by the Joint Commission on Accreditation of Healthcare Organization, or such other agency, as required by law or regulation. Contractor is responsible for posting information on grievance and appeal processes at all facilities and accessible to individuals and their beneficiaries receiving services at the facility. Contractor shall make available for use by patients or beneficiaries at Contractor sites, without requiring either written or verbal request, both grievance and appeal forms and Inyo County Mental Health self-addressed envelopes.

9. Compliance with Applicable Law.

Contractor agrees to comply with all applicable provisions of statutes, regulations, and other applicable law, and, to the extent consistent with applicable law, with all applicable State of California and Federal policies, including, without limitation:

(a) W&I, Divisions 5, 6, and 9;
(b) California Code of Regulations, Title 9;
(c) California Code of Regulations, Title 22;
(d) Bronzan-McCorquodale Act, Short-Doyle and Short-Doyle/Medi-Cal policies, including without limitation, such policies as set forth in applicable DMH Letters and applicable Cost Reporting/Data Collection ("CR/DC") Manual, and as reflected in County's contract with the State Department of Mental Health for the provision of Medi-Cal funds.

10. Financial Records and Reports.

Contractor shall prepare and maintain accurate and complete appropriate financial records regarding the costs and charges for services rendered to patients hereunder. Contractor shall retain such records for each patient until the latest of the date which is (a) at least seven (7) years from the last date of service to which the records pertain or (b) the date on which all relevant State of California and Federal audit findings are resolved. The provisions of this section are in addition to the other provisions regarding record keeping which are set forth in this Agreement. Contractor shall provide to BHS such financial and other reports regarding Indigent Patient Services and other services provided to Patients as BHS shall reasonably request in writing related to BHS's fulfillment of its BMA or Short-Doyle/Medi-Cal reporting obligations.

ATTACHMENT B

AGREEMENT BETWEEN COUNTY OF INYO
AND Fred Finch Youth Services
FOR THE PROVISION OF MENTAL HEALTH SERVICES

TERM:

FROM: July 1, 2012 **TO:** June 30, 2013

SCHEDULE OF FEES:

Fred Finch Youth Center
Published Rates
FY11-12

The Board of Directors, on _____, does hereby establish the following published rates:

	Service Function Code	Time Base	Published Rate*
DAY SERVICES CR/DC Code 10 SD/MC Claiming Code 12,18			
Day Treatment Intensive Full Day	85-89	Client Full Day	$202.43
Day Treatment Rehabilitation Full Day	95-99	Client Full Day	$131.24
OUTPATIENT SERVICES CR/DC Code 15 SD/MC Claiming Code 12,18			
Case Management, Brokerage	01-09	Staff Minutes	$2.02
Mental Health Services, including Therapeutic Behavioral Services	10-19, 30-59	Staff Minutes	$2.61
Medication Support	60-69	Staff Minutes	$4.82
Crisis Intervention	70-79	Staff Minutes	$3.88

ATTACHMENT C

AGREEMENT BETWEEN COUNTY OF INYO

AND Fred Finch Youth Services

FOR THE PROVISION OF MENTAL HEALTH SERVICES

FROM: July 1, 2012 **TO:** June 30, 2013

STATE DEPARTMENT OF MENTAL HEALTH
DOCUMENTATION STANDARDS FOR CLIENT RECORDS (ATTACHED)

Documentation Standards for Client Records

The documentation standards are described below under key topics related to client care. All standards shall be addressed in the client record; however, there is no requirement that the record have a specific document or section addressing these topics.

A. Assessments

1. **The following areas shall be included as appropriate as a part of a comprehensive client record:**

   a. **Relevant physical health conditions reported by the client shall be prominently identified and updated as appropriate.**

   b. **Presenting problems and relevant conditions affecting the client's physical health and mental health status shall be documented, for example: living situation, daily activities, and social support.**

   c. **Documentation shall describe client strengths in achieving client plan goals.**

   d. **Special status situations that present a risk to client or others shall be prominently documented and updated as appropriate.**

   e. **Documentation shall include medications that have been prescribed by mental health plan physicians, dosages of each medication, dates of initial prescriptions and refills, and documentation of informed consent for medications.**

   f. **Client self report of allergies and adverse reactions to medications, or lack of known allergies/sensitivities shall be clearly documented.**

   g. **A mental health history shall be documented, including: previous treatment dates, providers, therapeutic interventions and responses, sources of clinical data, relevant family information and relevant results of relevant lab tests and consultation reports.**

   h. **For children and adolescents, pre-natal and perinatal events and complete developmental history shall be documented.**

   i. **Documentation shall include past and present use of tobacco, alcohol, and caffeine, as well as illicit, prescribed and over the counter drugs.**

j. A relevant mental status examination shall be documented.

k. A five axis diagnosis from the most current DSM, or a diagnosis from the most current ICD, shall be documented, consistent with the presenting problems, history, mental status evaluation and/or other assessment data.

2. Timeliness/Frequency Standard for Assessment

The MHP shall establish standards for timeliness and frequency for the above-mentioned elements.

B. Client Plans

1. Client Plans Shall:

a. Have specific observable and/or specific quantifiable goals.

b. Identify the proposed type(s) of intervention.

c. Have a proposed duration of intervention(s).

d. Be signed (or electronic equivalent) by:

i. The person providing the service(s), or

ii. A person representing a team or program providing services, or

iii. A person representing the MHP providing services.

e. When the client plan is used to establish that services are provided under the direction of an approved category of staff, and if the above staff are not of the approved category,

i. A physician

ii. A licensed/ "waivered" psychologist

iii. A licensed/registered/waivered social worker

iv. A licensed/registered/waivered marriage and family therapist or

v. A registered nurse

f. **Be consistent with the diagnoses, and the focus of intervention shall be consistent with the client plan goals, and there shall be documentation of the client's participation in and agreement with the plan. Examples of documentation include, but are not limited to, reference to the client's participation and agreement in the body of the plan, client signature on the plan, or a description of the client's participation and agreement in progress notes.**

i. **Client signature on the plan shall be used as the means by which the MHP documents the participation of the client,**

1) **When the client is a long term client as defined by the MHP, and**

2) **The Client is receiving more than one type of service from the MHP.**

ii. **When the client's signature is required on the client plan and the client refuses or is unavailable for signature, the client plan shall include a written explanation of the refusal or unavailability.**

iii. **The MHP shall give a copy of the client plan to the client on request.**

2. **Timeliness/Frequency of Client Plan**

a. **Shall be updated at least annually.**

b. **The MHP shall establish standards for timeliness and frequency for the individual elements of the client plan described in item 1.**

C. Progress Notes

1. **Items that shall be contained in the client record related to the client's progress in treatment include:**

a. **The client record shall provide timely documentation of relevant aspects of client care.**

b. **Mental Health staff/practitioners shall use client records to document client encounters, including relevant clinical decisions and interventions.**

c. All entries in the client record shall include the signature of the person providing the service (or electronic equivalent); the person's professional degree, licensure or job title; and the relevant identification number, if applicable

d. All entries shall include the date services were provided.

e. The record shall be legible.

f. The client record shall document referrals to community resources and other agencies, when appropriate.

g. The client record shall document follow-up care, or as appropriate, a discharge summary.

2. Timeliness/Frequency of Progress Notes

Progress notes shall be documented at the frequency by type of service indicated below:

a. Every Service Contact

   i. Mental Health Services

   ii. Medical Support Services

   iii. Crisis Intervention

b. Daily

   i. Crisis Residential

   ii. Crisis Stabilization (1 x / 23hr)

   iii. Day Treatment intensive

c. Weekly

   i. Day Treatment Intensive: a clinical summary reviewed and signed by a physician, a licensed/waivered/registered psychologist, clinical social worker, or marriage and family therapist; or a registered nurse who is either staff to the day treatment intensive program or the person directing the service.

ii. **Day Rehabilitation**

iii. **Adult Residential**

d. **Other**

i. **Psychiatric health facility services: notes on each shift.**

ii. **Targeted Case Management: every service contact, daily or weekly summary.**

iii. **As determined by the MHP for other services.**

ATTACHMENT D

AGREEMENT BETWEEN COUNTY OF INYO

AND Fred Finch Youth Services

FOR THE PROVISION OF MENTAL HEALTH SERVICES

TERM:

FROM: July 1, 2012 **TO:** June 30, 2013

Form W-9

Request for Taxpayer
Identification Number and Certification
(Please submit W-9 form with Contract, available on-line or by County)

ATTACHMENT E

AGREEMENT BETWEEN COUNTY OF INYO

AND Fred Finch Youth Services

FOR THE PROVISION OF MENTAL HEALTH SERVICES

TERM:

FROM: July 1, 2012 **TO:** June 30, 2013

SEE ATTACHED INSURANCE PROVISIONS

Specifications 2
Insurance Requirements for Professional Services

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with limits no less than **$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **$500,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **$1,000,000** per accident for bodily injury or disease.

(Not required if consultant provides written verification it has no employees)

1. **Professional Liability** (Errors and Omissions) Insurance appropriates to the Consultant's profession, with limit no less than **$1,000,000** per occurrence or claim.

If the Consultant maintains higher limits than the minimums shown above, the Entity requires and shall be entitled to coverage for the higher limits maintained by the contractor.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds on the auto policy with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Consultant; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the **Consultant's insurance coverage shall be primary** insurance as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the Entity.**

Waiver of Subrogation

Consultant hereby grants to Entity a waiver of any right to subrogation which any insurer of said Consultant may acquire against the Entity by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the Entity. The Entity may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.

Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not ***replaced with another claims-made policy form with a Retroactive Dat***e prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of ***five (5)*** years after completion of contract work.

Verification of Coverage

Consultant shall furnish the Entity with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

Special Risks or Circumstances

Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
11

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

FROM: HEALTH & HUMAN SERVICES - Community Mental Health

FOR THE BOARD MEETING OF: September 4, 2012

SUBJECT: Ratify the Standard Agreement (#11-73015-000) between Inyo County Mental Health and the California Department of Mental Health and Department of Health Care Services for the Mental Health managed care allocation.

DEPARTMENTAL RECOMMENDATION:

Request Board ratify the County Mental Health Plan Agreement between Inyo County Mental Health and the State of California Department of Mental Health (DMH) and the California Department of Health Care Services (DHCS) as the MediCal Managed Care Plan for Inyo County for the period beginning April 1, 2012 and ending December 31, 2012 in the amount of not more than $811,607, and authorize the Mental Health Director to sign.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

This contract is late due to the delay in receipt from the DHCS until after the contract period had begun.

This is a three party contract with DMH (now the Department of State Hospitals) and DHCS to cover the transition period where the mental health plan oversight at the state level moved from DMH to DHCS. DHCS became the responsible party as July 1, 2012 but there is still FY 2011-2012 business to conduct through the contract with what had been DMH. Much of the language in the contract is the standard form for the provision of Specialty Mental Health Services as the MediCal Managed Care Plan for Inyo County. The MediCal managed care requirements are in statute and have been in place over several contract periods. The contract continues to spell out the regulations and provisions in place in order to fulfill the requirements to be the MediCal Mental Health Plan and access funds in the approved areas of service provision. The Behavioral Health Division will not receive any Federal Financial Participation (FFP) for services performed until this contract is in place. As the Mental Health Plan, Inyo Mental Health is reviewed on a triennial basis and audited to the standards set forth in this contract.

The amount of $811,607 is the amount of managed care funds allocated to Inyo County Mental Health Plan in the provision of managed care services for our targeted population of MediCal-eligible residents. The contract thoroughly describes the payment provisions and contingencies. While there is a maximum amount reflected in the contract, FFP cannot be limited for services delivered.

We expect DHCS to initiate a new managed care contract this fall that will go into effect as of January 1, 2013.

ALTERNATIVES:

Your Board could deny approval of the contract. DHCS will not release FFP until the agreement is in place and Inyo County Mental Health would not be the MediCal Mental Health Managed Care Plan.

OTHER AGENCY INVOLVEMENT:

Mental Health is a division of HHS and is blended with the Substance Use Disorders Services as Behavioral Health.

FINANCING:

100% State and Federal funds. This revenue will be brought into the Mental Health Budget (045200) into Mental Health MediCal (4748). 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: yes Date: 8/6/2012
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: 8/23/12
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: 8/24/12

DEPARTMENT HEAD SIGNATURE: Jean Turner Date: 8-24-12

(Not to be signed until all approvals are received)

STATE OF CALIFORNIA
STANDARD AGREEMENT
STD 213 (Rev 06/03)

AGREEMENT NUMBER	
11-73015-000	
REGISTRATION NUMBER	

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

STATE AGENCY'S NAME
California Department of Mental Health AND California Department of Health Care Services

CONTRACTOR'S NAME
Inyo County Mental Health

2. The term of this Agreement is: April 1, 2012, through December 31, 2012

3. The maximum amount of this Agreement is: $811,607

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

Exhibit A – Scope of Work	Pages 3-7
Exhibit A1 – Service Delivery, Administrative and Operational Requirements	Pages 9-66
Exhibit B - Payment Provisions	Pages 67-73
Exhibit C* – General Terms and Conditions	GTC-610
Exhibit D – Special Provisions	Pages 75-79
Exhibit E – Additional Provisions	Pages 81-84
Exhibit F – HIPAA Business Associate Addendum	Pages 85-100
Attachment A – Business Associate Data Security Requirements	Pages 101-105

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this Agreement as if attached hereto.
These documents can be viewed at www.ols.dgs.ca.gov/Standard+Language

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.)*
Inyo County Mental Health

BY *(Authorized Signature)* | DATE SIGNED *(Do not type)*

PRINTED NAME AND TITLE OF PERSON SIGNING
Gail Zwier, PhD, Mental Health Director

ADDRESS
162 J Grove Street
Bishop, CA 93514

STATE OF CALIFORNIA

AGENCY NAME
See Page 2 for Official Signatures

BY *(Authorized Signature)* | DATE SIGNED *(Do not type)*

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

California Department of General Services Use Only

☐ Exempt per:

DMH USE ONLY

☐ State Master ☐ Contractor ☐ Contract Manager ☐ Accounting ☐ State Controller

California Department of Mental Health – Contract Number 11-73015-000

Kathryn Radtkey-Gaither, Chief Deputy Director — Date
1600 9th Street, Room 101, Sacramento, CA 95814

California Department of Health Care Services

Jayna Querin, Chief, Contract Management Unit — Date
P.O. Box 997413, 1501 Capitol Avenue, Suite 71.5195, MS 1403
Sacramento, CA 95899-7413

Pursuant to the passage of AB 102, the California Department of Mental Health (DMH) will become the Department of State Hospitals on July 1, 2012. Welfare & Institutions Code, Sections 5775-5783 establish managed mental health care plans for the counties of California, administered by DMH. In accordance with the realignment of State Agency responsibility directed in AB 102 this function and many others currently performed by DMH will be transferred to the Department of Health Care Services (DHCS) effective July 1, 2012. This contract is established by DMH, but will be transferred to DHCS in accordance with this process. In order to facilitate a smooth transition, this Agreement is being issued as a three-party Agreement.

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EXHIBIT A

1. **Term of Contract.**

April 1, 2012 – December 31, 2012

It is the intent of the parties that this contract remain in effect only until the earlier of the date that DHCS and the MHP execute a successor MHP contract or December 31, 2012, in accordance with paragraph 4.

2. **Scope of Work.**

A. The Contractor agrees to provide to the Department the services described herein: Provide or arrange for the provision of specialty mental health services to Medi-Cal beneficiaries of Inyo County within the scope of services defined in this contract.

B. The services shall be performed at appropriate sites as described in this contract.

C. The services shall be provided at the times required by this contract.

D. The project representatives during the term of this agreement will be.

Department

County Technical Assistance:

http://dmh.ca.gov/Services_and_Programs/Community_Programs/County_Technical_Assistance.asp

916-654-2147 (Phone)
916-654-5591 (Fax)

Contractor

Inyo County Mental Health
Gail Zwier, PhD, Mental Health Director
Phone: 760-873-6533
Fax: 760-873-3277

Direct all inquiries to:

Department

County Technical Assistance
1600 9th Street, Room 100
Sacramento, CA 95814

Contractor

Inyo County Mental Health
Gail Zwier, PhD, Mental Health Director
162 J Grove Street
Bishop, CA 93514

Either party may make changes to the information above by giving written notice to the other party. Said changes shall not require an amendment to this contract.

E. See Exhibits B, C, D, E, and F which are made part of this contract, for a detailed description of the work to be performed.

3. General Authority.

This contract is entered into in accordance with the provisions of Part 2.5 (commencing with Section 5775) of Division 5 of the Welfare and Institutions (W&I) Code. Part 2.5 (commencing with Section 5775) of Division 5 of the W&I Code directs the California Department of Mental Health to implement and administer Managed Mental Health Care for Medi-Cal eligible residents of this state; and Inyo County Mental Health agrees to operate the Mental Health Plan (MHP) for Inyo County. No provision of this contract is intended to obviate or waive any requirements of applicable law or regulation, in particular, the provisions noted above. In the event a provision of this contract is open to varying interpretations, the contract provision shall be interpreted in a manner that is consistent with applicable law and regulation.

4. Successor.

Effective July 1, 2012, the Department of Health Care Services (DHCS) shall assume the contract obligations specified in this contract on behalf of the state. On and after July 1, 2012, all references to the "Department" shall refer to DHCS. It is the intent of the parties that this contract remain in effect only until the earlier of the date that DHCS and the MHP execute a successor MHP contract or December 31, 2012.

5. Definitions.

The definitions contained in Title 9, Section 1810, shall apply in this contract.

A. "Beneficiary" means a Medi-Cal recipient who is currently receiving services from the Contractor.

B. "Contractor" means .

C. "Covered Mental Health Services" means mental health services, medication support services, day treatment intensive, day rehabilitation, crisis intervention, crisis stabilization, adult residential treatment services, crisis residential services, psychiatric health facility services, and targeted case management as defined in Title 9, CCR, Section 1810.247, to the extent described in Title 9, CCR, Section 1810.345, and in California's Medicaid State Plan Sections Supplement 3 to Attachment 3.1-A, Supplement 2 to Attachment 3.1-B and Supplement 1 to Attachment 3.1-A. Covered mental health services also includes, psychiatric inpatient hospital services as defined in Title 9, CCR, Section 1810.238, and Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Supplemental Specialty Mental Health Services as defined in 1810.215. Psychiatric nursing facility services are not included.

D. "Department" means the California Department of Mental Health through June 30, 2012. On and after July 1, 2012, "Department" means the California Department of Health Care Services (DHCS).

E. "DHCS" means the California Department of Health Care Services.

F. "Director" means the Director of the California Department of Mental Health through June 30, 2012. On and after July 1, 2012, "Director" means the Director of DHCS.

G. "HHS" means the United States Department of Health and Human Services.

H. "MCO" means Managed Care Organization.

I. "PAHP" means Prepaid Ambulatory Health Plan as defined in Title 42, Code of Federal Regulations (CFR), Section 438.2.

J. "PIHP" means Prepaid Inpatient Health Plan as described in Title 42 CFR Section 438.2. A PIHP is an entity that:

1) Provides medical services to beneficiaries under contract with the Department, and on the basis of prepaid capitation payments, or other payment arrangement that does not use state plan rates;

2) Provides, arranges for, or otherwise has responsibility for the provision of any inpatient hospital or institutional services for its beneficiaries; and

3) Does not have a comprehensive risk contract.

K. "Subcontract" means an agreement entered into by the Contractor with any of the following:

1) A provider of specialty mental health services who agrees to furnish covered services to beneficiaries.

2) Any other organization or person who agrees to perform any administrative function or service for the Contractor specifically related to securing or fulfilling the Contractor's obligations to the Department under the terms of this contract.

6. State and Federal Law Governing this Contract.

A. Contractor agrees to comply with all applicable federal and state law, particularly the statutes and regulations incorporated by reference below, in its provision of services as the Mental Health Plan. The Department will endeavor to notify Contractor of any changes to these statutes and regulations. Contractor agrees to comply with any changes to these statutes and regulations that may occur during the contract period, but either the Department or Contractor may request consultation and discussion of such changes, including whether contract amendments may be necessary.

B. Federal Law:

1) Title 42, United States Code;

2) Title 42, Code of Federal Regulations (CFR), to the extent that these requirements are applicable;

3) Title 42, CFR; Part 438 – Managed Care, limited to those provisions that apply to Prepaid Inpatient Health Plans (PIHP);

4) Title 45, CFR, Parts 160 and 164, Subparts A and E, to the extent that these requirements are applicable;

5) Title VI of the Civil Rights Act of 1964;

6) Title IX of the Education Amendments of 1972;

7) Age Discrimination Act of 1975;

8) Rehabilitation Act of 1973;

9) Titles II and III of the Americans with Disabilities Act;

10) Deficit Reduction Act of 2005;

11) Balanced Budget Act of 1997.

C. State Law:

1) Division 5, W&I Code;

2) Part 2 (commencing with Section 5718, Chapter 3, W&I Code;

3) Part 2.5 (commencing with Section 5775), Chapter 4, Division 5, W&I Code;

4) Article 5 (Sections 14680-14685), Chapter 8.8, Division 9, W&I Code;

5) Title 9, CCR, Chapter 11 (commencing with Section 1810.100) – Medi-Cal Specialty Mental Health Services.

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EXHIBIT A1

Service Delivery, Administrative and Operational Requirements

1. Provision of Services.

A. The Contractor shall provide, or arrange and pay for, all medically necessary Covered Mental Health Services to beneficiaries, as defined for the purposes of this contract, of Inyo County.

B. The Contractor shall ensure that all medically necessary Covered Mental Health Services are sufficient in amount, duration, or scope to reasonably be expected to achieve the purpose for which the services are furnished. The Contractor shall not arbitrarily deny or reduce the amount, duration, or scope of a medically necessary Covered Mental Health Service solely because of diagnosis, type of illness, or condition of the beneficiary except as specifically provided in the medical necessity criteria applicable to the situation as provided in Title 9, California Code of Regulations (CCR), Sections 1820.205, 1830.205, and 1830.210.

C. The Contractor shall make all medically necessary Covered Mental Health Services available in accordance with Title 9, CCR, Sections 1810.345 and 1810.405 and Title 42 CFR, 438.210 and shall ensure:

1) The availability of services to address beneficiaries' emergency psychiatric conditions 24 hours a day, 7 days a week.

2) The availability of services to address beneficiaries' urgent conditions as defined in Title 9, CCR, Section 1810.253, 24 hours a day, 7 days a week.

3) Timely access to routine services determined by the Contractor to be required to meet beneficiaries' needs.

D. The Contractor shall provide second opinions in accordance with Title 9, CCR, Section 1810.405.

E. The Contractor shall provide out-of-plan services in accordance with Title 9, CCR, Section 1830.220 and Section 1810.365. The timeliness standards specified in Title 9 CCR, Section 1810.405 apply to out-of-plan services as well as in-plan services.

F. The Contractor shall provide a beneficiary's choice of the person providing services to the extent feasible in accordance with Title 9, CCR, Section 1830.225.

G. In determining whether a service is covered under this contract based on the diagnosis of the beneficiary, the Contractor shall not exclude a beneficiary solely on the ground that the provider making the diagnosis has used the International Classification of Diseases (ICD) diagnosis system rather than the system contained in the Diagnostic and Statistical Manual (DSM) of the American Psychiatric Association.

H. For services provided pursuant to Section 3 of this Exhibit, the Contractor shall consider the following ICD-9 diagnoses codes as included. For any other service, the Contractor may consider these codes as included or may require the provider to use DSM IV coding.

Table 1 - Included ICD-9 Diagnoses - All Places of Services except Hospital Inpatient

295.00 – 298.9	302.8 - 302.9	311 - 313.82
299.1 – 300.89	307.1	313.89 – 314.9
301.0 – 301.6	307.3	332.1 – 333.99*
301.8 – 301.9	307.5 - 307.89	787.6
302.1 – 302.6	308.0 - 309.9	

*Note: Treatment of diagnoses 332.1 - 333.99, Medication Induced Movement Disorders, is a covered service only when the Medication Induced Movement Disorder is related to one or more included diagnoses.

Table 2 - Included ICD-9 Diagnoses - Hospital Inpatient Place of Service

290.12 – 290.21	299.10 - 300.15	308.0 – 309.9
290.42 – 290.43	300.2 - 300.89	311 – 312.23
291.3	301.0 - 301.5	312.33 - 312.35
291.5 - 291.89	301.59 - 301.9	312.4 – 313.23
292.1 - 292.12	307.1	313.8 – 313.82
292.84 – 292.89	307.20 - 307.3	313.89 - 314.9
295.00 – 299.00	307.5 - 307.89	787.6

2. Availability and Accessibility of Service.

A. The Contractor shall ensure the availability and accessibility of adequate numbers and types of providers of medically necessary services. At a minimum, the Contractor shall ensure an adequate number of providers and appropriate types of providers by considering:

1) The anticipated number of Medi-Cal eligible clients.

2) The expected utilization of services, taking into account the characteristics and mental health needs of beneficiaries pursuant to Title 42, CFR, 438.207(b).

3) The expected number and types of providers in terms of training and experience needed to meet expected utilization.

4) The geographic location of providers and their accessibility to beneficiaries, considering distance, travel time, means of transportation ordinarily used by Medi-Cal beneficiaries, and physical access for disabled beneficiaries.

B. The Contractor shall ensure that treatment for urgent conditions is authorized within one hour of the request per Title 9, CCR, Section 1810.405(c).

C. Pursuant to Title 42 CFR, Section 438.206(c)(1)(ii), if a subcontract provider also serves individuals who are not Medi-Cal beneficiaries, the Contractor shall require that the hours of operation during which services are provided to Medi-Cal beneficiaries are no less than the hours of operation during which the provider offers services to non-Medi-Cal beneficiaries. If the provider only serves Medi-Cal beneficiaries, the Contractor shall require that hours of operation are comparable to the hours the provider makes available for Medi-Cal services that are not covered by the Contractor, or another Mental Health Plan.

D. Pursuant to ,Title 42, CFR, 438.207, whenever there is a change in the Contractor's operation that would cause a decrease of 25 percent or more in services or providers available to beneficiaries, the Contractor shall report this to the Department, including details regarding the change and plans to maintain adequate services and providers available to beneficiaries.

E. Access Standards (Title 42, CFR Section 438.206)

1) Out-of-Network Providers. Pursuant to Title 42, CFR, Section 438.206(b)(4), and to the extent required by CCR Title 9, Section 1830.220 for inpatient services, if the Contractor is unable to provide necessary medical services covered under the contract to a particular beneficiary, the entity must adequately and timely cover these services out of network for the beneficiary, for as long as the entity is unable to provide them.

2) Out-of-Network Providers. Pursuant to Title 42, CFR, Section 438.206(b)(5) and consistent with CCR, Title 9, Section 1830.220, the Contractor shall ensure that out-of-network providers coordinate

authorization and payment with the Contractor. The Contractor must ensure that cost to the beneficiary for services provided out of network pursuant to an authorization is no greater than it would be if the services were furnished within the Contractor's network, consistent with CCR, Title 9, Section 1810.365.

3) Timely Access. Pursuant to Title 42, CFR, Section 438.206(c)(1)(i), the Contractor must meet and require its providers to meet Department standards for timely access to care and services, taking into account the urgency of need for services.

4) Timely Access. Pursuant to Title 42, CFR, Section 438.206(c)(1)(iii), services must be available to beneficiaries 24 hours a day, 7 days a week, when medically necessary.

5) Timely Access Monitoring. Pursuant to Title 42, CFR, Section 438.206(c)(1)(iv), (v) and (vi), the Contractor must:

a) Establish mechanisms to ensure that network providers comply with the timely access requirements;

b) Monitor regularly to determine compliance;

c) Take corrective action if there is a failure to comply.

F. Documentation of adequate capacity and services. Pursuant to Title 42, CFR, Section 438.207(b), the Contractor must, if requested by the Department, submit documentation to the Department, in a format specified by the Department, and after receiving reasonable advance notice of its obligation to demonstrate that the Contractor:

1) Offers an appropriate range of specialty mental health services that is adequate for the anticipated number of beneficiaries for the service area.

2) Maintains a network of providers that is sufficient in number, mix, and geographic distribution to meet the needs of the anticipated number of beneficiaries in the service area.

G. Primary care and coordination of health care services. The Contractor must implement procedures to:

1) Coordinate the services the Contractor furnishes or arranges to be furnished to the beneficiary with the services the beneficiary receives from any other MCO, PIHP, or PAHP.

2) Share with other MCOs, PIHPs, and PAHPs serving the beneficiary the results of its identification and assessment of any beneficiary with special health care needs (defined as adults who have a serious mental disorder and children with a serious emotional disturbance as defined in Welfare and Institutions Code Section 5600.3) so that those activities need not be duplicated.

3) Ensure that, in the course of coordinating care, each beneficiary's privacy is protected in accordance with Title 45, CFR Parts 160 and 164 to the extent that such provisions are applicable.

4) The Contractor shall enter into a Memorandum of Understanding (MOU) with any Medi-Cal managed care plan serving the Contractor's beneficiaries in accordance with Title 9, CCR, Section 1810.370. The Contractor shall notify the Department in writing if the Contractor is unable to enter into an MOU or if an MOU is terminated, providing a description of the Contractor's good faith efforts to enter into or maintain the MOU.

(a) The MHP shall monitor the effectiveness of its MOU with Physical Health Care Plans.

3. Emergency Psychiatric Condition Reimbursement.

A. The Contractor shall pay for services for emergency psychiatric conditions received by a beneficiary from providers, whether or not the provider has a subcontract with the Contractor. Such services shall not be subject to prior authorization.

B. "Post-stabilization care services" means covered services related to an emergency medical condition that are provided after a beneficiary is stabilized in order to maintain the stabilized condition.

C. The Contractor shall comply with Title 42, CFR, Section 438.114, regarding emergency, post stabilization services. For purposes of this section, emergency and post stabilization services includes acute psychiatric inpatient hospital professional services (as defined in Title 9, CCR, Section 1810.237.1) which are related to an emergency medical condition or post-stabilization care. The Contractor shall apply the definitions contained in Title 42, CFR, Section 438.114. To the extent that there is a conflict between the definitions in Title 42, CFR, Section 438.114, and the Contractor's obligations as described in this section, the federal regulation shall prevail.

1) If an emergency room provider, hospital or fiscal agent of a provider or hospital does not notify the Contractor of the beneficiary's

screening and treatment, the Contractor must allow a minimum of ten calendar days after the beneficiary presents for emergency services or acute psychiatric inpatient hospital professional services before refusing to cover emergency services or acute psychiatric inpatient hospital professional services for this reason.

2) A beneficiary who has an emergency medical condition may not be held liable for payment of subsequent screening and treatment needed to diagnose the specific condition or stabilize the patient.

3) The attending emergency physician, or the provider actually treating the beneficiary, is responsible for determining when the beneficiary is sufficiently stabilized for transfer or discharge, and that determination is binding on the entities identified in Title 42, CFR, 438.114(b), as responsible for coverage and payment.

D. The Contractor shall comply with Title 42, CFR, 438.114(d)(ii) and Title 9, CCR, Section 1820.225, regarding prior payment authorization for an emergency admission, whether voluntary or involuntary.

E. The Contractor shall comply with Title 9, CCR, Section 1830.215, regarding payment authorizations.

4. Provider Selection and Certification.

A. The Contractor shall comply with Title 9, CCR, Section 1810.435, in the selection of providers and shall review its providers for continued compliance with standards at least once every three years.

B. The Contractor shall comply with the provisions of Title 42, CFR, 455.104; Title 42, CFR, 455.105; Title 42, CFR, 1002.203; and Title 42, CFR, 1002.3, which relate to the provision of information about provider business transactions and provider ownership and control, prior to entering into a contract and during certification or re-certification of the provider.

C. "Satellite site" means a site owned, leased or operated by an organizational provider at which specialty mental health services are delivered to beneficiaries less than 20 hours per week, or, if located at a multiagency site at which specialty mental health services are delivered by no more than two employees or contractors of the provider.

D. Pursuant to Title 42, CFR, Section 438.12(a)(1), and Title 42, CFR, 438.214(c), the Contractor may not discriminate in the selection, reimbursement, or indemnification of any provider who is acting within the scope of his or her license or certification under applicable state law, solely on the basis of that license or certification.

E. The Contractor shall give practitioners or groups of practitioners who apply to be MHP contract providers and with whom the MHP decides not to contract written notice of the reason for a decision not to contract;

F. As required by Title 42, CFR, 438.214(c), the Contractor shall not discriminate against particular providers that serve high-risk populations or specialize in conditions that require costly treatment.

G. Structure and operational standards.

1) Pursuant to Title 42, CFR, Section 438.12(a) and 438.214, and Title 9, CCR, Section 1810.435, the Contractor must have written policies and procedures for selection, retention, and nondiscrimination of providers.

2) The Contractor must follow the Department's policies for credentialing and recredentialing providers of service. Further, pursuant to Title 42, CFR, Section 438.206(b)(6), the Contractor must demonstrate that its providers are credentialed.

H. The Contractor shall certify the organizational providers that subcontract with the Contractor to provide covered services in accordance with Title 9, CCR, Section 1810.435, and the requirements specified prior to the date on which the provider begins to deliver services under the contract, and once every three years after that date. The on-site review required by Title 9, CCR, Section 1810.435(d), as a part of the certification process, shall be made of any site owned, leased, or operated by the provider and used to deliver covered services to beneficiaries, except that on-site review is not required for public school or satellite sites.

I. The Contractor may allow an organizational provider to begin delivering covered services to beneficiaries at a site subject to on-site review prior to the date of the on-site review, provided the site is operational and has any required fire clearances. The earliest date the provider may begin delivering covered services at a site subject to on-site review is the latest of these three (3) dates: 1) the date the provider's request for certification is received by the Department in accordance with the Contractor's certification procedures; 2) the date the site was operational and 3) the date a required fire clearance was obtained. The Contractor shall complete any required on-site review of a provider's sites within six months of the date the provider begins delivering covered services to beneficiaries at the site.

J. The Contractor may allow an organizational provider to continue delivering covered services to beneficiaries at a site subject to on-site review as part of the recertification process prior to the date of the on-site review,

provided the site is operational and has any required fire clearances. The Contractor shall complete any required on-site review of a provider's sites within six months of the date the recertification of the provider is due.

K. The Contractor and/or the Department shall each verify through an on-site review that:

1) The organizational provider possesses the necessary license to operate, if applicable, and any required certification.

2) The space owned, leased or operated by the provider and used for services or staff meets local fire codes.

3) The physical plant of any site owned, leased, or operated by the provider and used for services or staff is clean, sanitary, and in good repair.

4) The organizational provider establishes and implements maintenance policies for any site owned, leased, or operated by the provider and used for services or staff to ensure the safety and well being of beneficiaries and staff.

5) The organizational provider has a current administrative manual which includes: personnel policies and procedures, general operating procedures, service delivery policies, any required state or federal notices (DRA), and procedures for reporting unusual occurrences relating to health and safety issues.

6) The organizational provider maintains client records in a manner that meets the requirements of the Contractor, the requirements of Section 15 of this Exhibit, and applicable state and federal standards.

7) The organizational provider has sufficient staff to allow the Contractor to claim federal financial (FFP) participation for the services the organizational provider delivers to beneficiaries, as described in Title 9, CCR, Section 1840, when applicable.

8) The organizational provider has written procedures for referring individuals to a psychiatrist when necessary, or to a physician, if a psychiatrist is not available.

9) The organizational provider's head of service, as defined in Title 9, CCR, Sections 622 through 630, is a licensed mental health professional or other appropriate individual as described in these sections.

10) For organizational providers that provide or store medications, the provider stores and dispenses medications in compliance with all pertinent state and federal standards. In particular:

a) All drugs obtained by prescription are labeled in compliance with federal and state laws. Prescription labels are altered only by persons legally authorized to do so.

b) Drugs intended for external use only and food stuffs are stored separately from drugs intended for internal use.

c) All drugs are stored at proper temperatures: room temperature drugs at 59-86 degrees Fahrenheit and refrigerated drugs at 36-46 degrees Fahrenheit.

d) Drugs are stored in a locked area with access limited to those medical personnel authorized to prescribe, dispense or administer medication.

e) Drugs are not retained after the expiration date. Intramuscular multi-dose vials are dated and initialed when opened.

f) A drug log is maintained to ensure the provider disposes of expired, contaminated, deteriorated and abandoned drugs in a manner consistent with state and federal laws.

g) Policies and procedures are in place for dispensing, administering and storing medications.

L. For organizational providers that provide day treatment intensive or day rehabilitation, the provider has a written description of the day treatment intensive and/or day rehabilitation program that complies with Exhibit A1, Section 8.

M. When an on-site review of an organizational provider would not otherwise be required and the provider offers day treatment intensive and/or day rehabilitation, the Contractor or the Department, as applicable, shall, at a minimum, review the provider's written program description for compliance with the requirements of Exhibit A1, Section 8.

N. On-site review is not required for hospital outpatient departments which are operating under the license of the hospital. Services provided by hospital outpatient departments may be provided either on the premises or off site.

O. On-site review is not required for primary care and psychological clinics, as defined in section 1204.1 of the Health and Safety Code and licensed under Division 2, Chapter 1 of the Health and Safety Code. Services provided by the clinics may be provided on the premises in accordance with the conditions of the clinic's license.

P. When on-site review of an organizational provider is required, the Contractor or the Department, as applicable, shall conduct an on-site review at least once every three years. Additional certification reviews of organizational providers may be conducted by the Contractor or Department, as applicable, at its discretion, if:

1) The provider makes major staffing changes.

2) The provider makes organizational and/or corporate structure changes (example: conversion to non-profit status).

3) The provider adds day treatment or medication support services when medications are administered or dispensed from the provider site.

4) There are significant changes in the physical plant of the provider site (some physical plant changes could require a new fire clearance).

5) There is a change of ownership or location.

6) There are complaints regarding the provider.

7) There are unusual events, accidents, or injuries requiring medical treatment for clients, staff or members of the community.

Q. The Contractor shall monitor the performance of its subcontractors on an ongoing basis for compliance with the terms of this contract and shall subject the subcontractors' performance to periodic formal review, at a minimum in accordance with the recertification requirements. If the Contractor identifies deficiencies or areas for improvement, the Contractor and the subcontractor shall take corrective action.

5. Recovery from Other Sources or Providers.

A. The Contractor shall recover the value of covered services rendered to beneficiaries whenever the beneficiaries are covered for the same services, either fully or partially, under any other state or federal medical care program or under other contractual or legal entitlement including, but not limited to, a private group or indemnification program, but excluding instances of the tort liability of a third party or casualty liability insurance.

B. The monies recovered are retained by the Contractor; however, Contractor's claims for federal financial participation for services provided to beneficiaries under this contract shall be reduced by the amount recovered.

C. The Contractor shall maintain accurate records of monies recovered from other sources.

D. Nothing in this section supersedes the Contractor's obligation to follow federal requirements for claiming federal financial participation for services provided to beneficiaries with other coverage under this contract.

6. Subrogation.

In the event a beneficiary is injured by the act or omission of a third party, or has a potential or existing claim for a workers' compensation award, or a claim/recovery through uninsured motorist coverage, the right to pursue subrogation and the receipt of payments shall be as follows:

A. Contractor may submit to the Department claims for Medi-Cal covered services rendered, but Contractor shall not make claims to or attempt to recoup the value of these services from the above-referenced entities.

B. Contractor shall notify the California Department of Health Care Services within 10 days of discovery of all cases that could reasonably result in recovery by the beneficiary of funds from a third party, third party insurance carrier, workers' compensation award, and/or uninsured motorist coverage.

C. If the Contractor receives any requests by subpoena from attorneys, insurers, or beneficiaries for copies of bills, the Contractor shall provide the Department of Health Care Services with a copy of any document released as a result of such request. Additionally, the Contractor shall provide the name, address and telephone number of the requesting party.

D. The Contractor also agrees to assist the Department of Health Care Services, upon request, to provide within thirty (30) days, payment information and copies of paid invoices/claims for covered services.

E. The value of the covered services shall be calculated as the usual, customary and reasonable charge made to the general public for similar services or the amount to subcontracted providers or out-of-plan providers for similar services.

F. The information provided to the Department of Health Care Services shall include the following data:

1) Beneficiary name;

2) 14-digit Medi-Cal number;

3) Social security number or Client Identification Number (CIN);

4) Date of birth;

5) Contractor name;

6) Provider name (if different from Contractor);

7) Dates of service;

8) Diagnosis code and/or description of illness;

9) Procedure code and/or description of services rendered;

10) Amount billed by a Subcontractor or out-of-plan provider to the Contractor (if applicable);

11) Amount paid by other health insurance to the Contractor or Subcontractor;

12) Amount and date paid by the Contractor to subcontractor or out-of-plan provider (if applicable); and

13) Date of denial and reasons (if applicable).

G. The Contractor shall also provide the Department of Health Care Services with the name, address, and telephone number of the person responsible for receiving and complying with requests for mandatory and/or optional at-risk service information.

H. Information sent to the Department of Health Care Services, pursuant to this section, shall be sent to: California Department of Health Care Services, Third Party Liability Branch, 1500 Capitol Ave., Suite 320, Sacramento, CA 95814.

7. Beneficiary Brochure and Provider List.

A. The Contractor shall be responsible for the production and update of its booklet and provider list in accordance with Title 42, CFR, Section 438.10

and Title 9, CCR, Section 1810.360. The Contractor shall establish criteria to update its booklet and provider list.

Pursuant to Title 42, CFR, 438.10, the Contractor shall:

1) Notify all beneficiaries of their right to change providers;

2) Notify all beneficiaries of their right to request and obtain the following information:

   a) Names, locations, telephone numbers of, and non-English languages spoken by current contracted providers in the beneficiary's service area, including identification of providers that are not accepting new patients.

   b) Any restrictions on the beneficiary's freedom of choice among network providers.

   c) Beneficiary rights and protections, as specified in Title 42, CFR 438.100.

   d) The amount, duration, and scope of benefits available under this Contract in sufficient detail to ensure that beneficiaries understand the benefits to which they are entitled.

   e) Procedures for obtaining benefits, including authorization requirements.

   f) The extent to which, and how, beneficiaries may obtain benefits.

   g) The extent to which, and how, after-hours and emergency coverage are provided, including:

      i. What constitutes an emergency medical condition, emergency services, and post-stabilization services, with reference to the definitions in Title 42, CFR, 438.114(a).

      ii. The fact that prior authorization is not required for emergency services.

      iii. The process and procedures for obtaining emergency services, including use of the 911-telephone system or its local equivalent.

iv. The locations of any emergency settings and other locations at which providers and hospitals furnish emergency services and post-stabilization services covered under the contract.

v. The fact that, subject to the provisions of Title 42, CFR, 438.10(f)(6), the beneficiary has a right to use any hospital or other setting for emergency care.

vi. The post-stabilization care services rules set forth in Title 42, CFR, 422.113(c).

h) Cost sharing, if any.

i) How and where to access any benefits that are available under the State Plan but are not covered under this Contract, including any cost sharing, and how any necessary transportation is provided. Pursuant to Title 42, CFR, Section 438.102(a)(2), for a counseling or referral service that the Contractor does not cover because of moral or religious objections, the Contractor need not furnish information on how and where to obtain the service. Pursuant to Title 42, CFR, Section 438.102(b)(1), the Contractor must provide information about the services it does not cover on moral or religious grounds.

B. The Contractor shall ensure that the general program literature it uses to assist beneficiaries in accessing services including, but not limited to, the booklet required by Title 9, CCR, Section 1810.360(d), materials explaining the beneficiary problem resolution and fair hearing processes required by Section 1850.205(c)(1), and mental health education materials used by the Contractor are available in the threshold languages of the County in compliance with Title 42, CFR, 438.10.

Pursuant to Title 42, CFR, 438.10(g) and Title 9, CCR 1850.205(c)(1), the booklet shall include grievance, appeal and fair hearing procedures and timeframes, as provided in Title 42, CFR, 438.400 through 438.424, using a Department-developed or Department-approved description that must include the following:

1) For State Fair Hearing (Title 42, CFR 431 Subpart E):

a) The right to hearing;

b) The method for obtaining a hearing; and

c) The rules that govern representation at the hearing.

2) The right to file grievances and appeals.

3) The requirements and timeframes for filing a grievance or appeal

4) The availability of assistance in the filing process.

5) The toll-free numbers that the beneficiary can use to file a grievance or an appeal by phone.

6) The fact that, when requested by the beneficiary —

   a) Benefits will continue if the beneficiary files an appeal or a request for State Fair Hearing within the timeframes specified for filing; and,

   b) The beneficiary may be required to pay the cost of services furnished while the appeal is pending, if the final decision is adverse to the beneficiary.

7) The appeal rights that the Department has chosen to make available to providers in Title 9, CCR 1850.315 to challenge the Contractor's failure to cover a service.

8) Advance Directives, as set forth in Title 42, CFR, 438.6(i)(1).

9) Additional information that is available upon request, including the following:

   a) Information on the structure and operation of the Contractor.

   b) Physician incentive plans as set forth in Title 42, CFR, Section 438.6(h), if they are used by Contractor.

C. The Contractor shall provide beneficiaries with a copy of the booklet and provider list when the beneficiary first accesses services and thereafter upon request in accordance with Title 9, CCR, Sections 1810.360 and 1810.110.

D. The Contractor shall not make changes to any of the content in the statewide section of the booklet unless directed to do so, in writing, by the Department;

E. The Contractor shall ensure any changes to the English version of the booklet are also included in the county's threshold languages and made available in alternate formats appropriate to the beneficiary population;

F. The Contractor shall ensure written materials are produced in a format that is easily understood;

G. The Contractor shall ensure that the booklet above includes the current toll-free telephone number(s) that provides information in threshold languages and is available twenty-four hours a day, seven days a week.

H. The Contractor shall ensure that provider directories:

1) Include information on the category or categories of services available from each provider;

2) Contain the names, locations, and telephone numbers of current contracted providers by category;

3) Identify options for services in languages other than English and services that are designed to address cultural differences and;

4) Provide a means by which a beneficiary can identify which providers are not accepting new beneficiaries.

When there is a change in the scope of specialty mental health services covered by the Contractor, the update, in the form of a booklet insert, shall be provided to beneficiaries at least 30 days prior to the change.

8. Requirements for Day Treatment Intensive and Day Rehabilitation.

A. The Contractor shall require providers to request MHP payment authorization for day treatment intensive and day rehabilitation services:

1) In advance of service delivery when day treatment intensive or day rehabilitation will be provided for more than five days per week.

2) At least every three months for continuation of day treatment intensive.

3) At least every six months for continuation of day rehabilitation.

4) Contractor shall also require providers to request MHP authorization for mental health services (as defined in Title 9, CCR, Section 1810.227) provided concurrently with day treatment intensive or day rehabilitation, excluding services to treat emergency and urgent conditions as defined in Title 9, CCR, Sections 1810.216 and 1810.253. These services shall be authorized with the same frequency as the concurrent day treatment intensive or day rehabilitation services.

B. The Contractor shall not delegate the MHP payment authorization function to providers. When the Contractor is the day treatment intensive or day rehabilitation provider, the Contractor shall assure that the MHP payment authorization function does not include staff involved in the provision of day treatment intensive, day rehabilitation services, or mental health services provided concurrent to day treatment intensive or day rehabilitation services.

C. The Contractor shall require that providers of day treatment intensive and day rehabilitation meet the requirements of Title 9, CCR, Sections 1840.318, 1840.328, 1840.330, 1840.350 and 1840.352.

D. The Contractor shall require that providers include, at a minimum, the following day treatment intensive and day rehabilitation service components:

1) Community meetings. These meetings shall occur at least once a day to address issues pertaining to the continuity and effectiveness of the therapeutic program, and shall actively involve staff and clients. Relevant discussion items include, but are not limited to: the day's schedule, any current event, individual issues that clients or staff wish to discuss to elicit support of the group and conflict resolution. Community meetings shall:

a) For day treatment intensive, include a staff person whose scope of practice includes psychotherapy.

b) For day rehabilitation, include a staff person who is a physician, a licensed/waivered/registered psychologist, clinical social worker, or marriage and family therapist; and a registered nurse, psychiatric technician, licensed vocational nurse, or mental health rehabilitation specialist.

2) Therapeutic milieu. This component must include process groups and skill-building groups. Specific activities shall be performed by identified staff and take place during the scheduled hours of operation of the program. The goal of the therapeutic milieu is to teach, model, and reinforce constructive interactions by involving clients in the overall program. (For example, clients are provided with opportunities to lead community meetings and to provide feedback to peers.) The program includes behavior management interventions that focus on teaching self-management skills that children, youth, adults and older adults may use to control their own lives, to deal effectively with present and future problems, and to function well with minimal or no additional therapeutic intervention. Activities include, but are not limited to, staff feedback to clients on

strategies for symptom reduction, increasing adaptive behaviors, and reducing distress.

3) Process groups. These groups, facilitated by staff, shall assist each client to develop necessary skills to deal with his/her problems and issues. The group process shall utilize peer interaction and feedback in developing problem-solving strategies to resolve behavioral and emotional problems. Day rehabilitation may include psychotherapy instead of process groups, or in addition to process groups.

4) Skill-building groups. In these groups, staff helps clients identify barriers related to their psychiatric and psychological experiences. Through the course of group interaction, clients identify skills that address symptoms and increase adaptive behaviors.

5) Adjunctive therapies. These are non-traditional therapies, in which both staff and clients participate, that utilize self-expression (art, recreation, dance, music, etc.) as the therapeutic intervention. Participants do not need to have any level of skill in the area of self-expression, but rather should be able to utilize the modality to develop or enhance skills directed towards client plan goals.

E. Day treatment intensive shall additionally include:

1) Psychotherapy. Psychotherapy is the use of psychological techniques designed to encourage communication of conflicts and insight into problems with the goal of relieving symptoms, changing behavior leading to improved social and vocational functioning, and personality growth. Psychotherapy shall be provided by licensed, registered, or waivered staff practicing within their scope of practice.

2) Mental Health Crisis Protocol. This is an established protocol for responding to clients experiencing a mental health crisis. The protocol shall assure the availability of appropriately trained and qualified staff and include agreed upon procedures for addressing crisis situations. The protocol may include referrals for crisis intervention, crisis stabilization, or other specialty mental health services necessary to address the client's urgent or emergency psychiatric condition (crisis services). If the protocol includes referrals, the day treatment intensive or day rehabilitation program staff shall have the capacity to handle the crisis until the client is linked to an outside crisis service.

3) Written Weekly Schedule. The program shall have a detailed schedule that identifies when and where the service components of

the program will be provided and by whom. The program staff, their qualifications, and the scope of their responsibilities are specified. The schedule is available to clients and, as appropriate, to their families, caregivers or significant support persons.

F. Staffing ratios shall be consistent with the requirements in Title 9, CCR, Section 1840.350, for day treatment intensive, and Section 1840.352 for day rehabilitation. For day treatment intensive, staff shall include at least one staff person whose scope of practice includes psychotherapy.

G. Program staff may be required to spend time on day treatment intensive and day rehabilitation activities outside the hours of operation and therapeutic program (e.g., time for travel, documentation, and caregiver contacts).

H. The Contractor shall require that at least one staff person be present and available to the group in the therapeutic milieu for all scheduled hours of operation.

I. The Contractor shall require day treatment intensive and day rehabilitation programs to maintain documentation that enables Contractor and the Department to audit the program if it uses day treatment intensive or day rehabilitation staff who are also staff with other responsibilities (e.g., as staff of a group home, a school, or another mental health treatment program). There shall be documentation of the scope of responsibilities for these staff and the specific times in which day treatment intensive or day rehabilitation activities are being performed exclusive of other activities.

J. If a beneficiary is unavoidably absent for some part of the hours of operation, the Contractor shall ensure that the provider receives Medi-Cal reimbursement only if the beneficiary is present for at least 50 percent of scheduled hours of operation for that day.

K. The Contractor shall ensure day treatment intensive and day rehabilitation documentation meets the documentation standards described in Section 13 of this Exhibit.

L. The Contractor shall ensure that day treatment intensive and day rehabilitation have at least one contact per month with a family member, caregiver or other significant support person identified by an adult client, or one contact per month with the legally responsible adult for a client who is a minor. This contact may be face-to-face, or by an alternative method (e.g., e-mail, telephone, etc.). Adult clients may decline this service component. The contacts should focus on the role of the support person in supporting the client's community reintegration. The Contractor shall

ensure that this contact occurs outside hours of operation and outside the therapeutic program for day treatment intensive and day rehabilitation.

M. Written Program Description. Day treatment intensive and day rehabilitation providers, including Contractor staff, shall develop and maintain a written program description that describes the specific activities of each service and reflects each of the required components of the services as described in this section. The Contractor shall review the description for compliance with this section prior to the date the provider begins delivering day treatment intensive or day rehabilitation.

N. Additional higher or more specific standards. The Contractor shall retain the authority to set additional higher or more specific standards than those set forth in this contract, provided the Contractor's standards are consistent with applicable state and federal laws and regulations and do not prevent the delivery of medically necessary day treatment intensive and day rehabilitation.

9. Therapeutic Behavioral Services.

A. Therapeutic Behavioral Services (TBS) are supplemental specialty mental health services covered under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) benefit as defined in Title 9, CCR, Section 1810.215.

B. TBS is an intensive, one-to-one, short-term outpatient treatment intervention for beneficiaries under age 21 with serious emotional disturbances (SED) who are experiencing a stressful transition or life crisis and need additional short-term support services.

C. TBS shall not be provided unless it is necessary to prevent a beneficiary's placement in a group home at Rate Classification Level (RCL) 12 through 14 or a locked facility for the treatment of mental health needs or to enable a transition from any of those levels to a lower level of residential care, or for a beneficiary who has undergone at least one emergency psychiatric hospitalization related to their current presenting disability within the preceding 24 months.

10. Procedures for Serving Child Beneficiaries Placed Out-of-County.

A. The Contractor in the child's county of origin shall provide or arrange for medically necessary specialty mental health services for children in a foster care aid code residing outside their county of origin.

B. The Contractor shall use the standard forms issued by the Department when a child in a foster care aid code is placed outside of his/her county of origin. The standard forms are:

1) Client Assessment,

2) Client Plan,

3) Service Authorization Request,

4) Client Assessment Update,

5) Progress Notes – Day Treatment Intensive Services,

6) Progress Notes – Day Rehabilitation Services,

7) Organizational Provider Agreement (Standard Contract).

C. For children in a foster care aid code, the Contractor in the child's county of origin shall make payment arrangements with the host county Mental Health Plan or with the requesting provider within 30 days of the date that the MHP in the child's county of origin authorized services. If the Contractor requires the use of a contract, the contract must be executed within 30 days of the date services were authorized.

D. The Contractor may request an exemption from using the standard documents if the Contractor is subject to an externally placed requirement (such as a federal integrity agreement) that prevents the use of the standardized forms. The Contractor shall request this exemption from the Department in writing.

E. The Contractor shall ensure that the MHP in the child's adoptive parents' county of residence provides medically necessary specialty mental health services to a child in an AAP aid code residing outside his or her county of origin in the same way as the MHP would provide services to an in-county child for whom the MHP is listed as the county of responsibility on the Medi-Cal Eligibility Data System (MEDS).

F. The MHP in the child's legal guardians' county of residence shall provide medically necessary specialty mental health services to a child in a Kin-GAP aid code residing outside his or her county of origin in the same way that it would provide services to any other child for whom the MHP is listed as the county of responsibility on the Medi-Cal Eligibility Data System (MEDS).

G. The Contractor shall comply with timelines specified in Title 9, CCR, Section 1830.220(b)(4)(A)(1-3), when processing or submitting authorization requests for children in a foster care, Adoption Assistance Program (AAP), or Kinship Guardian Assistance Payment (Kin-GAP) aid code living outside his or her county of origin.

H. The Contractor shall submit changes to its procedures for serving beneficiaries placed outside their counties of origin pursuant to Welfare and Institutions Code Section 5777.6(a) and(b) when those changes affect 25 percent or more of the Contractor's beneficiaries placed out of county. The Contractor's submission shall also include significant changes in the description of the Contractor's procedures for providing out-of-plan services in accordance with Title 9, CCR, Section 1830.220, when a beneficiary requires services or is placed in a county not covered by the Contractor's normal procedures.

11. Quality Management (QM) Program.

A. The Contractor's Quality Management (QM) Program shall improve Contractor's established outcomes through structural and operational processes and activities that are consistent with current standards of practice.

B. The Contractor shall have a written description of the QM Program which clearly defines the QM Program's structure and elements, assigns responsibility to appropriate individuals, and adopts or establishes quantitative measures to assess performance and to identify and prioritize area(s) for improvement. The QM Program shall be evaluated annually and updated as necessary per Title 9, CCR, Section 1810.440(a)(6) and Title 42, CFR, Section 438.240(e).

C. The QM Program shall conduct performance monitoring activities throughout the Contractor's operations. These activities shall include but not be limited to, client and system outcomes, utilization management, utilization review, provider appeals, credentialing and monitoring, and resolution of beneficiary grievances.

D. The Contractor shall ensure continuity and coordination of care with physical health care providers. The Contractor shall coordinate with other human services agencies used by its beneficiaries. The Contractor shall assess the effectiveness of any MOU with a physical health care plan.

E. The Contractor shall have mechanisms to detect both underutilization of services and overutilization of services, as required by Title 42, CCR, Section 438.240(b)(3).

F. The Contractor shall implement mechanisms to assess beneficiary/family satisfaction. The Contractor shall assess beneficiary/family satisfaction by:

1) Surveying beneficiary/family satisfaction with the Contractor's services at least annually;

2) Evaluating beneficiary grievances, appeals and fair hearings at least annually; and
3) Evaluating requests to change persons providing services at least annually.

The Contractor shall inform providers of the results of beneficiary/family satisfaction activities.

G. The Contractor shall implement mechanisms to monitor the safety and effectiveness of medication practices. The monitoring mechanism shall be under the supervision of a person licensed to prescribe or dispense prescription drugs. Monitoring shall occur at least annually.

H. The Contractor shall implement mechanisms to address meaningful clinical issues affecting beneficiaries system-wide.

I. The Contractor shall implement mechanisms to monitor appropriate and timely intervention of occurrences that raise quality of care concerns. The Contractor shall take appropriate follow-up action when such an occurrence is identified. The results of the intervention shall be evaluated by the Contractor at least annually.

J. The Contractor shall have a QM Work Plan covering the current contract cycle with documented annual evaluations and documented revisions as needed. The QM Work Plan shall include:

1) Evidence of the monitoring activities including, but not limited to, review of beneficiary grievances, appeals, expedited appeals, fair hearings, expedited fair hearings, provider appeals, and clinical records review as required by Title 9, CCR, Section 1810.440(a)(5) and Title 42, CFR, section 438.416;

2) Evidence that QM activities, including performance improvement projects, have contributed to meaningful improvement in clinical care and beneficiary service;

3) A description of completed and in-process QM activities, including performance improvement projects. The description shall include:

a) Monitoring efforts for previously identified issues, including tracking issues over time;

b) Objectives, scope, and planned QM activities for each year; and,

c) Targeted areas of improvement or change in service delivery or program design.

4) A description of mechanisms Contractor has implemented to assess the accessibility of services within its service delivery area. This shall include goals for responsiveness for the Contractor's 24-hour toll-free telephone number, timeliness for scheduling of routine appointments, timeliness of services for urgent conditions, and access to after-hours care.

5) Evidence of compliance with the requirements for cultural competence and linguistic competence specified in Title 9, CCR, Section 1810.410.

12. Quality Improvement (QI) Program.

A. The Contractor's QI program shall monitor the Contractor's service delivery system with the aim of improving the processes of providing care and better meeting the needs of its clients.

B. The Contractor shall establish a QI Committee to review the quality of specialty mental health services provided to beneficiaries. The QI Committee shall recommend policy decisions; review and evaluate the results of QI activities, including performance improvement projects; institute needed QI actions; ensure follow-up of QI processes; and document QI Committee meeting minutes regarding decisions and actions taken.

C. The QI Program shall be accountable to the Contractor's Director as described in Title 9 CCR, Section 1810.440(a)(1).

D. Operation of the QI program shall include substantial involvement by a licensed mental health staff person, as described in Title 9 CCR, Section 1810.440(a)(4).

E. The QI Program shall include active participation by the Contractor's practitioners and providers, as well as consumers and family members in the planning, design and execution of the QI Program, as described in Title 9 CCR, Section 1810.440(a)(2)(A-C).

F. The Contractor shall maintain a minimum of two active Performance Improvement Projects (PIPs) that meet the criteria in Title 42, CFR, Section 438.240(b)(1) and (d). Each performance improvement projects shall focus on a clinical area, as well as one non-clinical area.

G. QI activities shall include:

1) Collecting and analyzing data to measure against the goals, or prioritized areas of improvement that have been identified;

2) Identifying opportunities for improvement and deciding which opportunities to pursue;

3) Identifying relevant committees internal or external to the Contractor to ensure appropriate exchange of information with the QI Committee;

4) Obtaining input from providers, consumers and family members in identifying barriers to delivery of clinical care and administrative services;

5) Designing and implementing interventions for improving performance;

6) Measuring effectiveness of the interventions;

7) Incorporating successful interventions into the Contractor's operations as appropriate;

8) Reviewing beneficiary grievances, appeals, expedited appeals, fair hearings, expedited fair hearings, provider appeals, and clinical records review as required by Title 9, CCR, Section 1810.440(a)(5).

13. Quality Assurance (QA).

The Contractor shall set standards and implement processes that will support understanding of, and compliance with, documentation standards set forth in this section and any standards set by the Contractor. QA activities may include monitoring performance so that the documentation of care provided will satisfy the requirements set forth below. The documentation standards for client care are minimum standards to support claims for the delivery of specialty mental health services. All standards shall be addressed in the client record; however, there is no requirement that the records have a specific document or section addressing these topics.

A. Assessment.

1) The following areas shall be included, as appropriate, as part of a comprehensive client record when an assessment has been performed. For children or certain other beneficiaries unable to provide a history, this information may be obtained from the parents/care-givers, etc.

a) Presenting Problem. The beneficiary's chief complaint, history of the presenting problem(s), including current level

of functioning, relevant family history and current family information;

b) Relevant conditions and psychosocial factors affecting the beneficiary's physical health and mental health; including, as applicable, living situation, daily activities, social support, cultural and linguistic factors and history of trauma or exposure to trauma;

c) Mental Health History. Previous treatment, including providers, therapeutic modality (e.g., medications, psychosocial treatments) and response, and inpatient admissions. If possible, include information from other sources of clinical data, such as previous mental health records, and relevant psychological testing or consultation reports;

d) Medical History. Relevant physical health conditions reported by the beneficiary or a significant support person. Include name and address of current source of medical treatment. For children and adolescents: Include prenatal and perinatal events and relevant/significant developmental history. If possible, include other medical information from medical records or relevant consultation reports;

e) Medications. Information about medications the beneficiary has received, or is receiving, to treat mental health and medical conditions, including duration of medical treatment. The assessment shall include documentation of the absence or presence of allergies or adverse reactions to medications, and documentation of an informed consent for medications;

f) Substance Exposure/Substance Use. Past and present use of tobacco, alcohol, caffeine, CAM (complementary and alternative medications) and over-the-counter, and illicit drugs;

g) Client Strengths. Documentation of the beneficiary's strengths in achieving client plan goals;

h) Risks. Situations that present a risk to the beneficiary and/or others, including past or current trauma;

i) A mental status examination;

j) A complete five-axis diagnosis from the most current DSM, or a diagnosis from the most current ICD-code shall be

documented, consistent with the presenting problems, history, mental status examination and/or other clinical data; and,

k) Additional clarifying formulation information, as needed.

2) Timeliness/Frequency Standard for Assessment. The Contractor shall establish written standards for timeliness and frequency for the elements identified in item A of this section.

B. Client Plans.

1) Client Plans shall:

a) Have specific observable and/or specific quantifiable goals/treatment objectives;

b) Identify the proposed type(s) of intervention/modality;

c) Have a proposed frequency and duration of intervention(s);
d) Have interventions that focus and address the identified functional impairments as a result of the mental disorder (from Title 9, CCR, Section 1830.205(b));

e) Have interventions that are consistent with the client plan goal;

f) Be consistent with the qualifying diagnoses;

g) Be signed (or electronic equivalent) by:

i The person providing the service(s), or,

ii A person representing a team or program providing services, or

iii A person representing the Contractor providing services;

iv By one of the following as a co-signer, if the client plan is used to establish that services are provided under the direction of an approved category of staff, and if the signing staff is not of the approved category:

A. A physician,

B. A licensed/waivered psychologist,

C. A licensed/registered/waivered social worker,

D. A licensed/registered/waivered marriage and family therapist,

E. A registered nurse;

h) Include documentation of the beneficiary's participation in and agreement with the client plan, as described in Title 9, CCR, Section 1810.440(c)(2)(A)(B).

i Examples of acceptable documentation include, but are not limited to, reference to the beneficiary's participation and agreement in the body of the plan, beneficiary signature on the plan, or a description of the beneficiary's participation and agreement in the client record;

ii The beneficiary's signature or the signature of the beneficiary's legal representative is required on the client plan when:

A. The beneficiary is expected to be in long term treatment as determined by the MHP and,

B. The client plan provides that the beneficiary will be receiving more than one type of specialty mental health service;

iii When the beneficiary's signature or the signature of the beneficiary's legal representative is required on the client plan and the beneficiary refuses or is unavailable for signature, the client plan shall include a written explanation of the refusal or unavailability.

2) The Contractor shall offer a copy of the client plan to the beneficiary.

3) Timeliness/Frequency of Client Plan. The client plan shall be updated at least annually, or when there are significant changes in the client's condition.

C. Progress Notes.

1) Progress notes shall describe how services provided reduced impairment, restored functioning, or prevented significant deterioration in an important area of life functioning outlined in the client plan. Items that shall be contained in the client record related to the client's progress in treatment include:

a) Timely documentation of relevant aspects of client care, including documentation of medical necessity;

b) Documentation of client encounters, including relevant clinical decisions, when decisions are made, alternative approaches for future interventions;

c) Interventions applied, beneficiary's response to the interventions and the location of the interventions;

d) The date the services were provided;

e) Referrals to community resources and other agencies, when appropriate;

f) Documentation of follow-up care, or as appropriate, a discharge summary; and

g) The amount of time taken to provide services;

h) The signature of the person providing the service (or electronic equivalent); the person's type of professional degree, licensure or job title; and the relevant identification number, if applicable

2) Timeliness/Frequency of Progress Notes. Progress notes shall be documented at the frequency by type of service indicated below:

a) Every Service Contact:

i Mental Health Services;

ii Medication Support Services;

iii Crisis Intervention;

iv Targeted Case Management;

b) Daily:

i Crisis Residential;

ii Crisis Stabilization (1x/23hr);

iii Day Treatment Intensive; and

c) Weekly:

i Day Treatment Intensive: a clinical summary reviewed and signed by a physician, a licensed/waivered psychologist, clinical social worker, or marriage and family therapist; or a registered nurse who is either staff to the day treatment intensive program or the person directing the service;

ii Day Rehabilitation;

iii Adult Residential.

D. Other.

1) All entries to the client record shall be legible.

2) All entries in the client record shall include:

a) The date of service;

b) The signature of the person providing the service (or electronic equivalent); the person's type of professional degree, licensure or job title; and the relevant identification number, if applicable.

c) The date the documentation was entered in the client record.

14. Utilization Management (UM) Program.

A. The Utilization Management Program shall be responsible for assuring that beneficiaries have appropriate access to specialty mental health services as required in Title 9, CCR, Section 1810.440(b)(1-3).

B. The Utilization Management (UM) Program shall evaluate medical necessity, appropriateness and efficiency of services provided to Medi-Cal beneficiaries prospectively or retrospectively.

C. The Contractor shall implement mechanisms to assess the capacity of service delivery for its beneficiaries. This includes monitoring the number, type, and geographic distribution of mental health services within the Contractor's delivery system.

D. The Contractor shall implement mechanisms to assess the accessibility of services within its service delivery area. This shall include the assessment of responsiveness of the Contractor's 24 hour toll-free telephone number, timeliness of scheduling routine appointments, timeliness of services for urgent conditions, and access to after-hours care.

The Contractor shall implement mechanisms to assure authorization decision standards are met. Authorization of services shall include all of the following:

1) Pursuant to Title 42, CFR, Section 438.210(b)(1), the Contractor and its subcontractors must have in place, and follow, written policies and procedures for processing requests for initial and continuing authorizations of services.
2) Pursuant to Title 42, CFR, Section 438.210(b)(2), the Contractor shall have in effect mechanisms to ensure consistent application of review criteria for authorization decisions, and shall consult with the requesting provider when appropriate.
3) Pursuant to Title 42, CFR, Section 438.210(b)(3), any decision to deny a service authorization request or to authorize a service in an amount, duration, or scope that is less than requested shall be made by a health care professional who has appropriate clinical expertise in treating the beneficiary's condition or disease.
4) Decisions must be made within the timeframes outlined for service authorizations in Title 42, CFR Section 438.210(d), and notices of action related to such decisions must be provided within the timeframes set forth in Title 42, CFR, Section 438.404.(c).

E. Compensation for Utilization Management Activities.: Pursuant to Title 42, CFR, Section 438.210(e), compensation to individuals or entities that conduct utilization management activities must not be structured so as to provide incentives for the individual or entity to deny, limit, or discontinue medically necessary services to any beneficiary.

15. Additional Provisions.

A. Books and Records.

The Contractor shall maintain such books and records as are necessary to disclose how the Contractor discharged its obligations under this contract. These books and records shall identify the quantity of covered services

provided under this contract, the quality of those services, the manner and amount of payment made for those services, the beneficiaries who received covered services, the manner in which the Contractor administered the provision of specialty mental health services and the cost thereof.

Such books and records shall include, but are not limited to, all physical records originated or prepared pursuant to performance under this contract including: working papers, reports submitted to the Department, financial records, all medical and treatment records, medical charts and prescription files, and other documentation pertaining to services rendered to beneficiaries. These books and records shall be maintained for a minimum of three years after the final payment is made and all pending matters closed, or, in the event the Contractor has been notified that the Department, DHCS, HHS, or the Comptroller General of the United States, or their duly authorized representatives, have commenced an audit or investigation of the contract, until such time as the matter under audit or investigation has been resolved, including the exhaustion of all legal remedies, whichever is later.

The Contractor agrees to include in any subcontract for a sum in excess of $10,000 which utilizes state funds, a provision that states: "The contracting parties shall be subject to the examination and audit of the Department or Auditor General for a period of three years after final payment under contract (Government Code, Section 8546.7)." The Contractor shall also be subject to the examination and audit of the Department and the State Auditor General for a period of three years after final payment under contract (Government Code Section 8546.7).

B. Transfer of Care.

Prior to the termination or expiration of this contract, and upon request by the Department, the Contractor shall assist the State in the orderly transfer of mental health care for beneficiaries in Inyo County. In doing this, the Contractor shall make available to the Department copies of medical records, patient files, and any other pertinent information, including information maintained by any subcontractor that is necessary for efficient case management of beneficiaries, as determined by the Department. Costs of reproduction shall be borne by the Department. In no circumstances shall a beneficiary be billed for this service.

C. Department Policy Letters.

The Contractor shall comply with policy letters issued by the Department to all Mental Health Plans as defined in Title 9, CCR, Section 1810.226. Policy letters shall provide specific details of procedures established by the Department for performance of contract terms when procedures not

covered in this agreement are determined to be necessary for performance under this agreement, but are not intended to change the basis and general terms of the contract.

D. Delegation.

Unless specifically prohibited by this contract or by federal or state law, Contractor may delegate duties and obligations of Contractor under this contract to subcontracting entities if Contractor determines that the subcontracting entities selected are able to perform the delegated duties in an adequate manner in compliance with the requirements of this contract. In addition, Contractor may accept the certification of a provider by another Mental Health Plan, or by the Department, in order to meet the Contractor's obligations under Exhibit A1, Section 4. However, regardless of any such delegation to a subcontracting entity or acceptance of a certification by another MHP, Contractor shall remain ultimately responsible for adequate performance of all duties and obligations under this contract.

16. Beneficiary Problem Resolution Processes.

A. General Provisions.

The Contractor shall represent the Contractor's position in fair hearings (as defined in Title 9, CCR, Section 1810.216.6) dealing with beneficiaries' appeals of denials, modifications, deferrals or terminations of covered services. The Contractor shall carry out the final decisions of the fair hearing process with respect to issues within the scope of the Contractor's responsibilities under this contract. Nothing in this section is intended to prevent the Contractor from pursuing any options available for appealing a fair hearing decision.

1) Pursuant to Title 42, CFR, Section 438.228 and Title 9, CCR, Section 1850.205, the Contractor shall develop problem resolution processes that enable beneficiary to request and receive review of a problem or concern he or she has about any issue related to the Contractor's performance of its duties under this Chapter, including the delivery of specialty mental health services.

2) The Contractor's beneficiary problem resolution processes shall include:

a) A grievance process;

b) An appeal process; and,

c) An expedited appeal process.

3) For the grievance, appeal, and expedited appeal processes, described in Title 42, CFR, Subpart F, and Title 9, CCR, Sections 1850.206, 1850.207 and 1850.208 respectively, the Contractor shall comply with all of the following requirements:

a) Assure that each beneficiary has adequate information about the Contractor's problem resolution processes by taking at least the following actions:

i. Including information describing the grievance, appeal, and expedited appeal processes in the Contractor's beneficiary booklet and providing the beneficiary booklet to beneficiaries as described in Section 7 of this contract.

ii. Posting notices explaining grievance, appeal, and expedited appeal process procedures in locations at all Contractor provider sites. Notices shall be sufficient to ensure that the information is readily available to both beneficiaries and provider staff. The posted notice shall also explain the availability of fair hearings after the exhaustion of an appeal or expedited appeal process, including information that a fair hearing may be requested whether or not the beneficiary has received a notice of action pursuant to Title 9, CCR, Section 1850.210. For the purposes of this Section, a Contractor provider site means any office or facility owned or operated by the Contractor or a provider contracting with the Contractor at which beneficiaries may obtain specialty mental health services.

iii. Pursuant to Title 9 CCR Section 1850.205(c)(1)(C), making available forms that may be used to file grievances, appeals, and expedited appeals and self-addressed envelopes that beneficiaries can access at all Contractor provider sites without having to make a verbal or written request to anyone.

iv. Pursuant to 42, CFR, Section 438.406(a), giving beneficiaries any reasonable assistance in completing the forms and other procedural steps not limited to providing interpreter services and toll-free numbers with TTY/TDD and interpreter capability.

b. The Contractor shall acknowledge receipt of each grievance appeal, and request for expedited appeal to the beneficiary in writing.

c. A beneficiary may authorize another person to act on the beneficiary's behalf. The beneficiary may select a provider as his or her representative in the appeal or expedited appeal process, if the provider consents.

d. A beneficiary's legal representative may use the grievance, appeal, or expedited appeal processes on the beneficiary's behalf.

e. At the beneficiary's request, the Contractor shall identify staff or another individual to be responsible for assisting a beneficiary with these processes, including providing assistance in writing the grievance, appeal, or expedited appeal. If the individual identified by the Contractor is the person providing specialty mental health services to the beneficiary requesting assistance, the Contractor shall identify another individual to assist that beneficiary.

f. A beneficiary shall not be subject to discrimination or any other penalty for filing a grievance, appeal, or expedited appeal.

g. Procedures for these beneficiary problem resolution processes shall maintain the confidentiality of each beneficiary's information.

h. A procedure shall be included by which issues identified as a result of the grievance, appeal or expedited appeal processes are transmitted to the Contractor's Quality Improvement Committee, the Contractor's administration or another appropriate body within the Contractor's operations. These issues shall be considered in the Contractor's Quality Improvement Program, as required by Title 9, CCR, Section 1810.440(a)(5).

i. Individuals involved in any previous review or decision-making on the issue(s) presented in a problem resolution process shall not participate in making the decision on the grievance, appeal, or expedited appeal.

j. The individual making the decision on the grievance, appeal, or expedited appeal shall have the appropriate clinical expertise, as determined by the Contractor, required to treat

the beneficiary's condition, if the grievance concerns the denial of a request for an expedited appeal or if the grievance, appeal, or expedited appeal addresses any clinical issue, including a lack of medical necessity per 42 CFR 438.406(a)(3)(ii).

4) Pursuant to record keeping and review requirements in Title 42, CFR, 438.416, and to facilitate monitoring consistent with Title 9, CCR, Sections 1810.440(a)(5), 1850.205,1850.206, 1850.207, and 1850.208, the Contractor shall:

a. Maintain a grievance and appeal log and record grievances, appeals, and expedited appeals in the log within one working day of the date of receipt of the grievance or appeal. The log entry shall include, but not be limited to, the name of the beneficiary, the date of receipt of the grievance, appeal, or expedited appeal, and the nature of the problem;

b. Record in the grievance and appeal log or another central location determined by the Contractor, the final dispositions of grievances, appeals, and expedited appeals, including the date the decision is sent to the beneficiary. If there has not been final disposition of the grievance, appeal, or expedited appeal, the reason(s) shall be included in the log;

c. Provide a staff person or other individual with responsibility to provide information requested by the beneficiary or the beneficiary's representative regarding the status of the beneficiary's grievance, appeal, or expedited appeal;

d. Acknowledge the receipt of each grievance, appeal, and expedited appeal to the beneficiary in writing;.

e. Identify in its grievance, appeal, and expedited appeal documentation, the roles and responsibilities of the Contractor, the provider, and the beneficiary;

f. Notify the beneficiary, in writing, of the final disposition of the problem resolution process. The notification shall include the reasons for the disposition; and

g. Notify, in writing, any provider identified by the beneficiary or involved in the grievance, appeal, or expedited appeal of the final disposition of the beneficiary's grievance, appeal, or expedited appeal.

5) No provision of a Contractor's beneficiary problem resolution processes shall be construed to replace or conflict with the duties of county patients' rights advocates as described in Welfare and Institutions Code Section 5520.

B. Grievance Process.

Consistent with Title 42, CFR, Section 438.400 and Title 9, CCR, Section 1850.206, the grievance process shall, at a minimum:

1) Allow beneficiaries to present their grievance orally, or in writing;

2) Provide for a decision on the grievance and notify the affected parties within 60 calendar days of receipt of the grievance. This timeframe may be extended by up to 14 calendar days if the beneficiary requests an extension, or if the Contractor determines that there is a need for additional information and that the delay is in the beneficiary's interest. If the Contractor extends the timeframe, the Contractor shall, for any extension not requested by the beneficiary, notify the beneficiary of the extension and the reasons for the extension in writing. The written notice of the extension is not a Notice of Action as defined in Title 9, CCR, Section 1810.230.5.

3) Provide for notification of the beneficiary or the appropriate representative in writing of the grievance decision and documentation of the notification or efforts to notify the beneficiary, if he or she could not be contacted.

C. Appeal Process.

1) Consistent Title 42, CFR, Section 438.408 and Title 9, CCR, Section 1850.205 and 1850.207, the appeal process shall, at a minimum:

a) Allow a beneficiary to file an appeal orally or in writing;

b) Pursuant to Title 42, CFR, 438.402(b)(3), require a beneficiary who makes an oral appeal, that is not an expedited appeal, to subsequently submit the appeal in writing. The date the Contractor receives the oral appeal shall be considered the filing date for the purpose of applying the appeal timeframes;

c) Pursuant to Title 42, CFR, 438.408(a-c), provide for a decision on the appeal and notify the affected parties within 45 calendar days of receipt of the appeal. This timeframe

may be extended by up to 14 calendar days, if the beneficiary requests an extension or the Contractor determines that there is a need for additional information and that the delay is in the beneficiary's interest. If the Contractor extends the timeframes, the Contractor shall, for any extension not requested by the beneficiary, notify the beneficiary of the extension and the reasons for the extension in writing. The written notice of the extension is not a Notice of Action as defined in Title 9, CCR, Section 1810.230.5;

d) Pursuant to Title 42, CFR, Section 438.408(e), inform the beneficiary of his or her right to request a fair hearing after the appeal process of the Contractor has been exhausted;

e) Allow the beneficiary to have a reasonable opportunity to present evidence and arguments of fact or law, in person and/or in writing, in accordance with the beneficiary's election ;

f) Allow the beneficiary and/or his or her representative to examine the beneficiary's case file, including medical records, and any other documents or records considered before and during the appeal process, provided that there is no disclosure of the protected health information of any individual other than the beneficiary;

g) Allow the beneficiary and/or his or her representative, or the legal representative of a deceased beneficiary's estate, to be included as parties to the appeal.

2) Pursuant to Title 42, CFR, 438.408(d-e), the Contractor shall notify the beneficiary, and/or his or her representative, of the resolution of the appeal in writing. The notice shall contain:

a) The results of the appeal resolution process;

b) The date that the appeal decision was made;

c) If the appeal is not resolved wholly in favor of the beneficiary, the notice shall also contain information regarding the beneficiary's right to a fair hearing and the procedure for filing for a fair hearing, if the beneficiary has not already requested a fair hearing on the issue involved in the appeal.

d) If the appeal is not resolved wholly in favor of the beneficiary, the notice shall include information on the beneficiary's right to continue to receive benefits while the fair hearing is pending and how to request the continuation of benefits. Such notice shall state that the beneficiary could be held liable for the cost of services received, if his or her appeal is not granted as a result of the fair hearing.

3) If the decision of the appeal resolution process reverses a decision to deny, limit or delay services, the Contractor shall promptly provide or arrange and pay for the services at issue in the appeal.

D. Expedited Appeal Process.

"Expedited Appeal" means an appeal, as defined in Title 9, CCR, Section 1810.203.5 and 1810.216.2, to be used when the mental health plan determines or the beneficiary and/or the beneficiary's provider certifies that following the timeframe for an appeal as established in Title 9, CCR, Section 1850.207 would seriously jeopardize the beneficiary's life, health, or ability to attain, maintain, or regain maximum function. In addition to meeting the requirements of Title 42, CFR, Section 438.410(a), and Title 9, CCR, Section 1850.205, 1850.207(a),(d),(e),(f),(g), and(i), and 1850.208, the expedited appeal process shall, at a minimum:

1) Be used when the Contractor determines or the beneficiary and/or the beneficiary's provider certifies that taking the time for a standard appeal resolution could seriously jeopardize the beneficiary's life, health or ability to attain, maintain, or regain maximum function.

2) Pursuant to Title 42, CFR, Section 438.402(b)(3), the Contractor must allow the beneficiary to file the request for an expedited appeal orally without requiring that the request be followed by a written appeal.

3) Ensure that punitive action is not taken against a beneficiary or a provider because they request an expedited appeal or support a beneficiary's request for an expedited appeal.

4) Pursuant to Title 42, CFR, Section 438.408(a-c), the Contractor must resolve an expedited appeal and notify the affected parties in writing, no later than three working days after the Contractor receives the appeal. This timeframe may be extended by up to 14 calendar days if the beneficiary requests an extension, or the Contractor determines that there is need for additional information and that the delay is in the beneficiary's interest. If the Contractor extends the timeframes, the Contractor shall, for any extension not requested by the beneficiary, notify the beneficiary of the extension

and the reasons for the extension in writing. The written notice of the extension is not a Notice of Action as defined in Title 9, CCR, Section 1810.230.5.

5) Pursuant to Title 42, CFR, Section 438.408(d)(2), the Contractor must provide a beneficiary with a written notice of the expedited appeal disposition and make reasonable efforts to provide oral notice to the beneficiary and/or his or her representative. The written notice shall meet the requirements of Section 1850.207(h).

6) Pursuant to Title 42, CFR, Section 438.410(c), if the Contractor denies a request for expedited appeal resolution, the Contractor shall:

   a) Transfer the expedited appeal request to the timeframe for appeal resolution as required by Title 9, CCR, Section 1850.207(c).

   b) Make reasonable efforts to give the beneficiary and his or her representative prompt oral notice of the denial of the request for an expedited appeal and provide written notice within two calendar days of the date of the denial. The written notice of the denial of the request for an expedited appeal is not a Notice of Action as defined in Title 9, CCR, Section 1810.230.5.

E. Beneficiary Problem Resolution Processes Established by Providers.

Nothing in Title 9, CCR, Sections 1850.205, 1850.206, 1850.207, 1850.208 and 1850.209 precludes a provider other than the Contractor from establishing beneficiary problem resolution processes for beneficiaries receiving services from that provider. When such processes exist, beneficiaries shall not be required by the Contractor to use or exhaust the provider's processes prior to using the Contractor's beneficiary problem resolution process, unless the following conditions have been met:

1) The Contractor delegates the responsibility for the beneficiary problem resolution process to the provider in writing, specifically outlining the provider's responsibility under the delegation;

2) The provider's beneficiary problem resolution process fully complies with this Section of the contract, the relevant provisions of Title 42, CFR, Subpart F, Title 9, CCR, Sections 1850.205 and 1850.209, and depending on processes delegated, Title 9, CCR, Sections 1850.206, 1850.207, and/or 1850.208; and

3) No beneficiary is prevented from accessing the grievance, appeal or expedited appeal processes solely on the grounds that the grievance, appeal or expedited appeal was incorrectly filed with either the Contractor or the provider.

F. Fair Hearing.

"Fair Hearing" means the State hearing provided to beneficiaries pursuant to Title 22, CCR, Sections 50951 and 50953 and Title 9, CCR, Section 1810.216.6. Fair hearings must comply with Title 42, CFR, Sections 431.200(b), 431.22(a)(5), 438.408(b & f), 438.414, and 438.10(g)(1).

1) If a beneficiary requests a State Fair Hearing, the Department (not the Contractor) shall grant the request. The right to a State Fair Hearing, how to obtain a hearing, and representation rules at a hearing must be explained to the beneficiary and provider by Contractor in its notice of decision or notice of action. Beneficiaries and providers shall also be informed of the following:

   a) A beneficiary may request a State Fair Hearing.

   b) The provider may request a State Fair Hearing only if the Department permits the provider to act as the beneficiary's authorized representative.

   c) The Department must permit the beneficiary to request a State Fair Hearing within a reasonable time period specified by the Department, not in excess of 90 days from whichever of the following dates applies:

      i From the date indicated on the Contractor's notice of action, if the Department does not require exhaustion of the Contractor-level appeal procedures and the beneficiary appeals directly to the Department for a fair hearing.

      ii From the date indicated on the Contractor's notice of resolution, if the Department requires exhaustion of Contractor-level appeals.

2) The Department must reach its decisions within the specified timeframes:

   a) Standard resolution: within 90 days of the date the beneficiary filed the appeal with the Contractor, if the beneficiary filed initially with the Contractor (excluding the days the beneficiary took to subsequently file for a State Fair

Hearing), or the date the beneficiary filed for direct access to a State Fair Hearing.

b) Expedited resolution (if the appeal was heard first through the Contractor appeal process): within 3 working days from agency receipt of a hearing request for a denial of a service that:

i Meets the criteria for an expedited appeal process but was not resolved using the Contractor's expedited appeal timeframes, or

ii Was resolved wholly or partially adversely to the beneficiary using the Contractor's expedited appeal timeframes.

3) Pursuant to Title 42, CFR, Section 438.408(f)(2), the parties to the State Fair Hearing include the Contractor as well as the beneficiary and his or her representative or the representative of a deceased beneficiary's estate.

G. Expedited Fair Hearing.

"Expedited Fair Hearing" means a fair hearing, as defined in Title 42, CFR, 438, Subpart F, Title 9, CCR, Sections 1810.216.4 and 1810.216.6, to be used when a Mental Health Plan determines, or the beneficiary and/or the beneficiary's provider certifies, that that following the timeframe for a fair hearing as established in Title 42, CFR, Section 431.244(f)(1) would seriously jeopardize the beneficiary's life, health, or ability to attain, maintain, or regain maximum function.

H. Continuation of Services Pending Fair Hearing Decision.

1) A beneficiary receiving specialty mental health services pursuant to this Chapter shall have a right to file for continuation of specialty mental health services pending the outcome of a fair hearing pursuant to Title 22, Section 51014.2, and Title 9, CCR, Section 1850.215.

2) The Contractor shall continue to provide specialty mental health services pending the outcome of a fair hearing in accordance with Title 22, Section 51014.2. If the Contractor allows providers to deliver specialty mental health services for a set number of visits or a set duration of time without prior authorization, the Contractor shall continue to provide specialty mental health services pending the outcome of a fair hearing when the Contractor denies a payment authorization request from a provider requesting continuation of services beyond the number or duration permitted

without prior authorization and the beneficiary files a timely request for fair hearing.

3) Before requesting a state fair hearing, the beneficiary must exhaust the Contractor's problem resolution processes as described in Title 9, CCR, Section 1850.205.

I. Provision of Notice of Action.

Consistent with Title 42, CFR, Section 438.400(b) and Title 9, CCR, Section 1810.200 "Action," in the case of an MHP, means:

(a) A denial, modification, reduction or termination of a provider's request for MHP payment authorization of a specialty mental health service covered by the MHP.

(b) A determination by the MHP or its providers that the medical necessity criteria in Section 1830.205(b)(1), (b)(2), (b)(3)(C), or 1830.210(a) have not been met and the beneficiary is not entitled to any specialty mental health services from the MHP.

(c) A failure by the MHP to provide a specialty mental health service covered by the MHP within the timeframe for delivery of the service established by the MHP; or

(d) A failure by the MHP to act within the timeframes for resolution of grievances, appeals, or the expedited appeals.

Pursuant to Title 42, CFR, Section 438.404(a), the notice of action shall be in writing and shall meet the language and format requirements of Title 42, CFR, Section 438.10(c) and (d). The notice of action shall contain the items specified in Title 42, CFR, Section 438.404(a) and (b) and Title 9, CCR, Sections 1850.210.

1) The Contractor shall provide a beneficiary with a Notice of Action when the Contractor denies or modifies a Contractor payment authorization request from a provider for a specialty mental health service to the beneficiary.

2) When the denial or modification involves a request from a provider for continued Contractor payment authorization of a specialty mental health service or when the Contractor reduces or terminates a previously approved Contractor payment authorization, notice shall be provided in accordance with Title 22, CCR, Section 51014.1.

3) A Notice of Action is not required when a denial is a non-binding verbal description to a provider of the specialty mental health services that may be approved by the Contractor.

4) A Notice of Action is not required when the Contractor modifies the duration of any approved specialty mental health services as long as the Contractor provides an opportunity for the provider to request Contractor payment authorization of additional specialty mental health services before the end of the approved duration of services.

5) Except as provided in subsection 6 below, a Notice of Action is not required when the denial or modification is a denial or modification of a request for Contractor payment authorization for a specialty mental health service that has already been provided to the beneficiary.

6) A Notice of Action is required when the Contractor denies or modifies a payment authorization request from a provider for a specialty mental health service that has already been provided to the beneficiary when the denial or modification is a result of post-service, prepayment determination by the Contractor that the service was not medically necessary or otherwise was not a service covered by the Contractor.

7) The Contractor shall deny the Contractor payment authorization request and provide the beneficiary with a Notice of Action when the Contractor does not have sufficient information to approve or modify, or deny on the merits, a Contractor payment authorization request from a provider within the timeframes required by Title 9, CCR, Sections 1820.220 or 1830.215.

8) The Contractor shall provide the beneficiary with a Notice of Action if the Contractor fails to notify the affected parties of a grievance decision within 60 calendar days, of an appeal decision within 45 days, or of an expedited appeal decision within three working days. If the timeframe for a grievance, appeal or expedited appeal decision is extended pursuant to Title 9, CCR, Sections 1850.206, 1850.207 or 1850.208 and the Contractor failed to notify the affected parties of its decision within the extension period, the Contractor shall provide the beneficiary with a Notice of Action.

9) The Contractor shall provide a beneficiary with a Notice of Action if the Contractor fails to provide a specialty mental health service covered by the Contractor within the timeframe for delivery of the service established by the Contractor.

10) The Contractor shall comply with the requirements of Title 42, CFR, Section 438.404(b), and Title 9, CCR, Section 1850.210, regarding the content of Notices of Action and with the following timeframes for mailing of Notices of Action:

a) The written Notice of Action issued pursuant to (1) or (6) above shall be deposited with the United States Postal Service in time for pick-up no later than the third working day after the action. A Notice of Action issued pursuant to (2) above shall be provided in accordance with the applicable timelines set forth in Title 22, Section 51014.1 and Title 42, CFR, 431.220(E).

b) The written Notice of Action issued pursuant to (7) or (8) above shall be deposited with the United States Postal Service in time for pick-up on the date that the applicable timeframe expires.

c) The written Notice of Action issued pursuant to subsection (9) above shall be deposited with the United States Postal Service in time for pick up on the date that the timeframe for delivery of the service established by the Contractor expires.

11) When a Notice of Action would not be required as described in (3)-(5) above, the Contractor shall provide a beneficiary with a Notice of Action when the Contractor or its providers determine that the medical necessity criteria in Title 9, CCR, Section 1830.205(b)(1),(b)(2),(b)(3)(C), or 1830.210(a) have not been met and that the beneficiary is, therefore, not entitled to any specialty mental health services from the Contractor. A Notice of Action is not required when a provider, including the Contractor acting as a provider, determines that a beneficiary does not qualify for a specific service covered by the Contractor, including but not limited to: crisis intervention, crisis stabilization, crisis residential treatment services, psychiatric inpatient hospital services, or any specialty mental health service to treat a beneficiary's urgent condition, provided that the determination does not apply to any other specialty mental health service covered by the Contractor. The Notice of Action shall, at the election of the Contractor, be hand-delivered to the beneficiary on the date of the action or mailed to the beneficiary in accordance with Title 9, CCR, Section 1850.210(f)(1), and shall specify the information contained in Title 9, CCR, Section 1850.212(b).

12) For the purpose of this Section, each reference to a Medi-Cal managed care plan in Title 22, Section 51014.1, shall mean the Contractor.

13) For the purposes of this Section, "medical service", as used in Title 22, Section 51014.1, shall mean specialty mental health services that are subject to prior authorization by a Contractor pursuant to Title 9, CCR, Sections 1820.100 and 1830.100.

14) The Contractor shall retain copies of all Notices of Action issued to beneficiaries under this Section in a centralized file accessible to the Department and DHCS.

J. Contents of a Notice of Action.

1) The Notice of Action issued pursuant to Section I of this contract and Title 42, CFR, Section 438.404(b) and Title 9, CCR, Sections 1850.210(a)-(e) and 1850.212, shall contain the following information:

a) The action taken by the Contractor;

b) The reason for the action taken;

c) Citations to the regulations or Contractor payment authorization procedures supporting the action;

d) The beneficiary's right to file an appeal or expedited appeal with the Contractor; and,

e) The circumstances under which an expedited resolution is available, and how to request it; and,

f) Information about the beneficiary's right to request a fair hearing or an expedited fair hearing, including:

i. The method by which a hearing may be obtained;

ii. A statement that the beneficiary may be either self-represented, or represented by an authorized third party such as legal counsel, a relative, friend or any other person;

iii. An explanation of the circumstances under which a specialty mental health service will be continued if a fair hearing is requested; and,

iv. The time limits for requesting a fair hearing or an expedited fair hearing.

2) A Notice of Action issued pursuant to Title 9, CCR, Sections 1850.210(g) and 1850.212(b), relating to denials for lack of medical necessity, shall specify the following:

i. The reason that the medical necessity criteria were not met, including a citation to the applicable regulation;

ii. The beneficiary's options for obtaining care from sources other than the Contractor, if applicable;

iii. The beneficiary's right to request a second opinion on the determination;

iv. The beneficiary's right to file an appeal or expedited appeal with the Contractor; and,

v. The beneficiary's right to request a fair hearing or an expedited fair hearing, including:

A. The method by which a hearing may be obtained;
B. The time period in which the request for a fair hearing or expedited fair hearing must be filed;
C. That the beneficiary may be either self–represented, or represented by an authorized third party such as legal counsel, a relative, friend or any other person;

K. Pursuant to Title 42, CFR, Section 438.404(c), the Contractor shall give notice at least 10 days before the effective date of action when the action is a termination, suspension, or reduction of previously authorized Medi-Cal-covered services, except:

1) The period of advanced notice is shortened to 5 days if probable beneficiary fraud has been verified;

2) The action shall be effective on the date of the Notice under the following circumstances:

a) The death of a beneficiary;

b) Receipt of a signed written beneficiary statement requesting service termination or giving information requiring termination or reduction of services (provided the beneficiary understands that this will be the result of supplying that information);

c) The beneficiary's admission to an institution where he or she is ineligible for further services;

d) The beneficiary's whereabouts are unknown and mail directed to him or her has no forwarding address;

e) Notice that the beneficiary has been accepted for Medicaid services by another local jurisdiction;

f) A change in the beneficiary's physician's prescription for the level of medical care;

g) Endangerment of the safety or health of individuals in the facility; improvement in the resident's health sufficient to allow a more immediate transfer or discharge; urgent medical needs that require a resident's immediate transfer or discharge; or notice that a resident has not resided in the nursing facility for 30 days (but only in adverse actions based on NF transfers).

3) Pursuant to Title 42, CFR, Section 438.404(c)(2), timeframes for notice of action of denial of payment. If payment is denied, the Contractor shall give notice to the beneficiary on the date of the action.

17. Subcontracts.

A. No subcontract terminates the legal responsibility of the Contractor to the Department to assure that all activities under this contract are carried out.

B. All subcontracts shall be in writing.

C. All inpatient subcontracts shall require that subcontractors maintain necessary licensing and certification.

D. Each subcontract shall contain:

1) Full disclosure of the method and amount of compensation or other consideration to be received by the subcontractor from the Contractor.

2) Specification of the services to be provided.

3) Specification that the subcontract shall be governed by, and construed in accordance with, all laws and regulations, and all contractual obligations of the Contractor under this contract.

4) Specification of the term of the subcontract including the beginning and ending dates, as well as methods for amendment, termination and, if applicable, extension of the subcontract. The subcontract must be subject to full or partial termination if the subcontractor's performance is inadequate.

5) The nondiscrimination and compliance provisions of this contract as described in Exhibit D, Section 6.

6) Subcontractor's agreement to submit reports as required by the Contractor.

7) The subcontractor's agreement to make all of its books and records pertaining to the goods and services furnished under the terms of the subcontract available for inspection, examination or copying by the Department, DHCS, HHS, the Comptroller General of the United States, and other authorized federal and state agencies, or their duly authorized representatives. The subcontract shall also state that inspection shall occur at all reasonable times, at the subcontractor's place of business, or at such other mutually agreeable location in California, in a form maintained in accordance with the general standards applicable to such book or record keeping, for a term of at least five years from the close of the state fiscal year in which the subcontract was in effect.

8) Subcontractor's agreement that assignment or delegation of the subcontract shall be void unless prior written approval is obtained from the Contractor.

9) Subcontractor's agreement to hold harmless both the State and beneficiaries in the event the Contractor cannot or does not pay for services performed by the subcontractor pursuant to the subcontract.

10) The subcontractor's agreement to comply with the Contractor's policies and procedures on advance directives and the Contractor's obligations for Physician Incentive Plans, if applicable based on the services provided under the subcontract.

11) A requirement that the Contractor's monitor the subcontractor and the subcontractor's obligation to provide a corrective action plan if deficiencies are identified.

18. Program Integrity Requirements.

A. The Contractor shall comply with the provisions of Title 42, CFR, Sections 438.604, 438.606 and 438.608, regarding the certification of accurate data submitted by the Contractor to the State and which require the Contractor to have administrative or management arrangements or procedures designed to guard against fraud and abuse.

B. The Contractor shall comply with the provisions of Title 42, CFR, Section 438.610, which relate to prohibited affiliations with individuals or affiliates of individuals debarred, suspended, or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in non-procurement activities under regulations issued under Executive Order No. 12549 or under the guidelines implementing Executive Order No. 12549.

C. Pursuant to Title 42, CFR, Section 438.214(d), the Contractor shall not employ or contract with providers or other individuals and entities excluded from participation in federal health care programs (as defined in section 1128B(f) of the Social Security Act) under either Section 1128, 1128A, or 1156 of the Social Security Act. Federal financial participation is not available for amounts expended for providers excluded by Medicare, Medicaid, or the State Children's Insurance Program, except for emergency services.

D. The Contractor shall periodically check the Office of the Inspector General's List of Excluded Individuals/Entities and the Medi-Cal Suspended and Ineligible Provider List (S & I List) to prevent employment of, or payments to, any individuals or entities on those lists, and per DMH Letter Number 10-05, this must be satisfied prior to Medi-Cal certification of any individual or organizational provider. If the provider is listed on either the Office of the Inspector General's List of Excluded Individuals/Entities or the Medi-Cal S & I List, the Contractor shall not certify or pay any provider with Medi-Cal funds, and any such inappropriate payments or overpayments may be subject to recovery and/or be the basis for other sanctions by the appropriate authority.

E. Report. Pursuant to 42 CFR, Section 455.1(a)(1), the Contractor must report fraud and abuse information to the Department.

1) If the Contractor identifies an issue or receives notification of a complaint concerning an incident of possible potential fraud or abuse, the Contractor shall conduct an internal investigation to determine the validity of the issue/complaint, regarding potential fraud and/or abuse, and develop and implement corrective action, if needed. The majority of potential fraud or abuse issues are expected to be resolved at the Contractor level.

2) If the Contractor's internal investigation concludes that fraud or abuse has occurred or is suspected, the issue is egregious, or beyond the scope of the Contractor's ability to pursue, the Contractor shall report the issue to the Department for review and disposition.
3) The Department is to be notified if the Contractor discontinues a provider contract or disciplines a provider due to a fraud or abuse issue. The Department will, in turn, notify DHCS.

F. Service Verification. Pursuant to Title 42, CFR, Section 455.1(a)(2), the Contractor shall have a way to verify with beneficiaries that services were actually provided.

G. Conflict of Interest. The contract specifies conflict of interest safeguards for officers and employees of the state and local entity, with responsibilities relating to contracts with MCOs and/or to the default enrollment process under the State Plan Amendment option that are at least as effective as the federal safeguards found under Section 27 of the Office of Federal Procurement Policy Act (41 USC 423).

19. Disclosures.

A. Disclosure of 5% or More Ownership Interest:

1) Pursuant to Title 42, CFR, 455.104, Medicaid managed care entities must disclose certain information related to persons who have an ownership or control interest in the managed care entity, as defined in Title 42, CFR, Section 455.101. The parties hereby acknowledge that, because the Contractor is a political subdivision of the State of California, there are no persons who meet such definition, and therefore there is no information to disclose.

a. In the event that, in the future, any person obtains an interest of 5% or more of any mortgage, deed of trust, note or other obligation secured by Contractor, and that interest equals at least 5% of Contractor's property or assets, then Contractor will make the disclosures set forth in i and subsection 2(a).

i. The Contractor will disclose the name, address, date of birth, and Social Security Number of any managing employee, as that term is defined in Title 42, CFR, Section 455.101. However, for purposes of this disclosure, Contractor may use the business address for any member of its Board of Supervisors.

ii. The Contractor shall provide any such disclosure upon execution of this contract, upon its extension or renewal,

and within 35 days after any change in Contractor ownership or upon request of the Department or DHCS.

2) The Contractor shall ensure that its subcontractors/network providers submit the disclosures below to the Contractor regarding the network providers' (disclosing entities') ownership and control. The Contractor's network providers must be required to submit updated disclosures to the Contractor upon submitting the provider application, before entering into or renewing the network providers' contracts, and within 35 days after any change in the subcontractor/network provider's ownership or upon request of the Department or DHCS.

a. What Disclosures Must be Provided:

i. The name and address of any person (individual or corporation) with an ownership or control interest in the network provider. The address for corporate entities shall include, as applicable, a primary business address, every business location, and a P.O. Box address;

ii. Date of birth and Social Security Number (in the case of an individual);

iii. Other tax identification number (in the case of a corporation with an ownership or control interest in the managed care entity or in any subcontractor in which the managed care entity has a 5 percent or more interest);

iv. Whether the person (individual or corporation) with an ownership or control interest in the Contractor's network provider is related to another person with ownership or control interest in the same or any other network provider of the Contractor as a spouse, parent, child, or sibling; or whether the person (individual or corporation) with an ownership or control interest in any subcontractor in which the managed care entity has a 5 percent or more interest is related to another person with ownership or control interest in the managed care entity as a spouse, parent, child, or sibling;

v. The name of any other disclosing entity in which the Contractor or subcontracting network provider has an ownership or control interest; and

vi. The name, address, date of birth, and Social Security Number of any managing employee of the managed care entity.

3) To Whom Must the Disclosures be Provided. All disclosures must be provided to the Medicaid agency.

B. Disclosures Related to Business Transactions – Contractor must submit disclosures and updated disclosures to the Department or HHS including information regarding certain business transactions within 35 days, upon request.

1) The following information must be disclosed:

a) The ownership of any subcontractor with whom the Contractor has had business transactions totaling more than $25,000 during the 12-month period ending on the date of the request; and,

b) Any significant business transactions between the Contractor and any wholly owned supplier, or between the Contractor and any subcontractor, during the 5-year period ending on the date of the request.

2) Contractor must obligate Network Providers to submit the same disclosures regarding network providers' as noted under subsection 1(a) and (b) within 35 days upon request.

C. Disclosures Related to Persons Convicted of Crimes – Contractor shall submit the following disclosures to the Department regarding the Contractor's management:

1) The identity of any person who is a managing employee of the Contractor who has been convicted of a crime related to federal health care programs. (Title 42, CFR, Section 455.106(a)(1), (2).)

2) The identity of any person who is an agent of the Contractor who has been convicted of a crime related to federal health care programs. (Title 42, CFR, Section 455.106(a)(1), (2).) For this purpose, the word "agent" has the meaning described in Title 42, CFR, Section 455.101.

3) The Contractor shall supply the disclosures before entering into the contract and at any time upon the Department's request.

4) Network providers should submit the same disclosures to Contractor regarding the network providers' owners, persons with

controlling interest, agents, and managing employees' criminal convictions. Network providers shall supply the disclosures before entering into the contract and at any time upon the Department's request.

20. Medi-Cal Eligibility Data System (MEDS) and MEDS Monthly Extract File (MMEF) Access.

The Contractor shall enter into a Medi-Cal Privacy and Security Agreement (agreement) with the Department prior to obtaining access to MEDS and the MEDS monthly extract file (MMEF). The Contractor agrees to comply with the provisions as specified in the agreement. The County Mental Health Director or his or her authorized designee shall certify annually that Contractor is in compliance with the agreement. Failure to comply with the terms of the agreement will result in the termination of access to MEDS and MMEF.

21. Additional Requirements.

A. The Contractor shall maintain written policies and procedures on advance directives in compliance with the requirements of Title 42, CFR, Sections 422.128 and 438.6(i)(1), (3) and (4). Any written materials prepared by the Contractor for beneficiaries shall be updated to reflect changes in state laws governing advance directives as soon as possible, but no later than 90 days after the effective date of the change. For purposes of this contract, advance directives means a written instruction, such as a living will or durable power of attorney for health care, recognized under State law, relating to the provision of health care when the individual is incapacitated as defined in Title 42, CFR, Section 489.100.

B. Physician Incentive Plans. The Contractor shall obtain approval from the Department prior to implementing a Physician Incentive Plan. A Physician Incentive Plan is any compensation arrangement to pay a physician or physician group that may directly or indirectly have the effect of reducing or limiting the services provided to any beneficiary. For purposes of this definition, the words shall have the meanings set forth in Title 42, CFR, section 422.208(a). The Department shall approve the Contractor's request only if the proposed Physician Incentive Plan complies with all applicable federal and state regulations.

1)Pursuant to Title 42, CFR, Section 438.6(h), the Contractor shall comply with the requirements set forth in Title 42, CFR Section 422.208 and Title 42, CFR, Section 422.210.

2) The Contractor may operate a Physician Incentive Plan only if no specific payment can be made directly or indirectly under a Physician

Incentive Plan to a physician or physician group as an inducement to reduce or limit medically necessary services furnished to an individual.

3) When seeking approval from the Department for its Physician Incentive Plan, the Contractor will disclose the following:

a Whether services not furnished by physician/group are covered by incentive plan. No further disclosure required if the Physician Incentive Plan does not cover services not furnished by physician/group;

b The type of incentive arrangement, e.g. withhold, bonus, capitation;

c The percentage of funds withheld or bonus provided (if applicable);

d The size of the panel, and, if patients are pooled, the approved method used for pooling; and,

e If the physician/group is at substantial financial risk, proof that the physician/group has adequate stop loss coverage, including amount and type of stop-loss.

4) If a physician or physician group is put at substantial financial risk for services not provided by the physician/group, the Contractor shall ensure adequate stop-loss protection to individual physicians and conduct annual beneficiary surveys.

5) Disclosure to Beneficiaries. The Contractor shall provide information on its Physician Incentive Plan to any Medicaid beneficiary upon request (this includes the right to adequate and timely information on a Physician Incentive Plan).

6) Disclosure to Department. If required to conduct beneficiary survey, survey results shall be disclosed to the Department and, upon request, to beneficiaries, per Social Security Administration (SSA) 1903(m)(2)(A)(x); 42 CFR, 422.208; 42 CFR 422.210; 42 CFR 438.6(h); and SSA 1876(i)(8)(A)(ii)(II).

C. Sharing of Information with Beneficiaries. The Contractor shall not prohibit, or otherwise restrict, a licensed, waivered, or registered professional, as defined in Title 9, CCR, Sections 1810.223 and 1810.254, who is acting within the lawful scope of practice (pursuant to Title 42, CFR, Section 438.102(a)(1)), from advising or advocating on behalf of a beneficiary for whom the provider is providing mental health services for any of the following:

1. the beneficiary's health status, medical care, or treatment options, including any alternative treatment that may be self-administered;

2. information the beneficiary needs in order to decide among all relevant treatment options;
3. the risks, benefits, and consequences of providing or failing to provide treatment; and
4. the beneficiary's right to participate in decisions regarding his or her health care, including the right to refuse treatment, and to express preferences about future treatment decisions.

D. Limitation on Services for Moral or Religious Grounds. Pursuant to Title 42, CFR, Section 438.102(a)(2), the Contractor shall not be required to provide, reimburse for, or provide coverage of, a counseling or referral service if the Contractor objects to the service on moral or religious grounds.

E. Pursuant to Title 42, CFR, Section 438.102(b)(1), if the Contractor elects not to provide, reimburse for, or provide coverage of, a counseling or referral service because of an objection on moral or religious grounds, it must furnish information about the services it does not cover as follows:

1. To the Department
   a) Prior to executing this contract;
   b) Whenever it adopts the policy during the term of the contract; and,
2. Notice shall be consistent with the provisions of Title 42, CFR, Section 438.10; shall be provided to potential beneficiaries before and during enrollment; and provided to beneficiaries within 90 days after adopting the policy with respect to any particular service.

F. Beneficiary Liability for Payment. Pursuant to Title 9, CCR, Section 1810.365, the Contractor or an affiliate, vendor, contractor, or sub-subcontractor of the Contractor shall not submit a claim to, or demand or otherwise collect reimbursement from, the beneficiary or persons acting on behalf of the beneficiary for any specialty mental health or related administrative services provided under this contract, except to collect other health insurance coverage, share of cost, and co-payments. Consistent with Title 42, CFR, Section 438.106, the Contractor or an affiliate, vendor, contractor, or sub-subcontractor of the Contractor shall not hold beneficiaries liable for debts in the event that the Contractor becomes insolvent, for costs of covered services for which the State does not pay the Contractor, for costs of covered services for which the State or the Contractor does not pay the Contractor's providers, for costs of covered services provided under a contract, referral or other arrangement rather than from the Contractor, or for payment of subsequent screening

and treatment needed to diagnose the specific condition of or stabilize a beneficiary with an emergency psychiatric condition.

G. The Contractor shall comply with Title 42, CFR Section 438.236(b), which requires it to adopt practice guidelines.
   1) Such guideline shall meet the following requirements:
      (a) They are based on valid and reliable clinical evidence or a consensus of health care professionals in the applicable field;
      (b) They consider the needs of the beneficiaries;
      (c) They are adopted in consultation with contracting health care professionals;
      (d) They are reviewed and updated periodically as appropriate;
   2) Contractor shall disseminate the guidelines to all affected providers and, upon request, to beneficiaries and potential beneficiaries.
   3) Contractor shall take steps to assure that decisions for utilization management, beneficiary education, coverage of services, and other areas to which the guidelines apply shall be consistent with the guidelines.

H. Health Information System. Pursuant to Title 42, CFR, Section 438.242 and consistent with Title 9, CCR, Section 1810.376, the Contractor shall maintain a health information system that collects, analyzes, integrates, and reports data. The system shall provide information on areas including, but not limited to, utilization, grievances, and appeals.

The Contractor's health information system shall, at a minimum:

1) Collect data on beneficiary and provider characteristics as specified by the Department, and on services furnished to beneficiaries as specified by the Department;
2) Ensure that data received from providers is accurate and complete by:
   a. Verifying the accuracy and timeliness of reported data;
   b. Screening the data for completeness, logic, and consistency; and
   c. Collecting service information in standardized formats to the extent feasible and appropriate.
3) Make all collected data available to the Department and, upon request, to CMS.

Consistent with Title 9, CCR, Section 1810.376(c), the Contractor's health information system is not required to collect and analyze all elements in electronic formats.

I. Persons with special health care needs for the purposes of this contract are adults who have a serious mental disorder and children with a serious emotional disturbance as defined in Welfare and Institutions Code Section 5600.3. The Contractor shall identify persons with special health care

needs through the administration of surveys in accordance with the Department's Performance Outcome System.

J. Cost Sharing. Pursuant to Title 42, CFR, Section 438.108, any cost sharing imposed on Medicaid beneficiaries shall be in accordance with Title 42, CFR, Sections 447.50 through 447.60.

K. Service Authorization and Notices of Action. Pursuant to Title 42, CFR, Section 431.201, the Contractor shall define service authorization in a manner that at least includes a beneficiary's request for the provision of a service.

EXHIBIT B

Payment Provisions.

1. Budget Contingency Clauses.

A. **Federal Budget.**

If federal funding for federal financial participation reimbursement in relation to this contract is eliminated or substantially reduced by Congress, the Department and the Contractor each shall have the option to either cancel this contract or propose a contract amendment to address changes to the program required as a result of the elimination or reduction of federal funding.

B. **State Budget.**

Through June 30, 2012, this program is funded by the State to the extent that the Legislature appropriates funds through the budget process.

On and after July 1, 2012, this program is funded by the State with funds paid to the Contractor from the Local Revenue Fund 2011.

If state funding for this program is eliminated or reduced by an act of the legislature after the effective date of this contract, the Department and the Contractor each shall have the option to either cancel this contract or propose a contract amendment to address changes to the program required as a result of the elimination or reduction of state funding, except that cancellation of the contract by the Contractor is subject to the requirements of Section 5775(d) of the Welfare and Institutions Code.

C. **Delayed Federal or State Budget.**

Contractor and Department agree to consult on interim measures for program operation that may be required to maintain adequate services to beneficiaries in the event that there is likely to be a delay in the availability of federal funding or enactment of the State Budget.

2. Payment to the Contractor.

A. The Contractor shall receive payment of its Managed Care Allocation for the period April 1, 2012 through June 30, 2012, after funds are appropriated by the Legislature to the Department in item 4440-103-0001 of the Budget Act. Payment of the Managed Care Allocation shall be in

accordance with Section 5778(c) of the Welfare and Institutions Code and based on a formula determined by the Department in consultation with the California Mental Health Directors Association.

B. The Contractor shall also receive payment of its Managed Care Allocation from Mental Health Service Funds for the period April 1, 2012 through June 30, 2012, after funds are appropriated by the Legislature to the Department in item 4440-103-3085 of the Budget Act. Payment of the Managed Care Allocation from Mental Health Service Funds shall be in accordance with Section 5892, subdivision (j)(1) of the Welfare and Institutions Code. These payments are subject to the limit set forth in Section 5892, subdivision (j)(6) of the Welfare and Institutions Code.

C. The Contractor shall receive payment of its Managed Care Allocation from the Local Revenue Fund 2011 for the period July 1, 2012 through December 31, 2012.

D. For the period April 1, 2012 through June 30, 2012, the state share for reimbursement of claims for EPSDT services, and any other claims for services that may include a State reimbursement funding share, shall become available after passage of the State Budget Act and, irrespective of the effective date of this contract, shall be used to fund all services provided since the beginning of the state fiscal year. The Contractor shall receive payment of the State portion for EPSDT services from an allocation in accordance with Section 5892, subdivision (j)(4), of the Welfare and Institutions Code. These payments are subject to the limit set forth in Section 5892, subdivision (j)(6), of the Welfare and Institutions Code.

E. For the period July 1, 2012 through June 30, 2013, the Contractor shall receive payments for the State share for reimbursement of claims for EPSDT services, and any other claims for services that may include a State reimbursement funding share, from the Local Revenue Fund 2011.

F. Pursuant to Section 5713 of the Welfare and Institutions Code, the Department may advance payments from the amounts available for either the Managed Care Allocation or the state share for claims for services provided under this contract. Any advance payment shall be made in the form and manner determined by the Director. Advance payments are subject to the provisions of the Budget Act.

3. Federal Financial Participation.

Nothing in this contract shall limit the Contractor's ability to submit claims for appropriate federal financial participation reimbursement based on actual, total fund expenditures for any covered services or utilization review and administrative costs. In accordance with Section 5718(c) of the Welfare and Institutions Code, the county shall ensure compliance with all requirements necessary for Medi-Cal reimbursement for these services. Claims for federal financial participation reimbursement shall be submitted by the Contractor and shall be sent by the Department to the Department of Health Care Services for adjudication throughout the fiscal year, regardless of when the State Budget is enacted.

4. Cost Reporting.

The Contractor shall submit a fiscal year-end cost report no later than December 31 following the close of each fiscal year unless that date is extended by the Department, in accordance with Welfare and Institutions Code Sections 5664(a) and (b), and 5718(c), and guidelines established by the Department. Data submitted shall be full and complete and the cost report shall be certified by the Contractor's Mental Health Director and one of the following: (1) the Contractor's Chief Financial Officer (or equivalent), (2) an individual who has delegated authority to sign for, and reports directly to the Contractor's Chief Financial Officer, or (3)the county's auditor controller, or equivalent. The cost report shall include both Contractor's costs and the cost of its subcontractors, if any. The cost report shall be completed in accordance with instructions contained in the Department's Cost and Financial Reporting System Instruction Manual for the applicable year; however, to the extent that the Contractor disagrees with such instructions, it may raise that disagreement in writing with the Department at the time the cost report is filed, and shall have the right to appeal such disagreement pursuant to procedures developed under Welfare and Institutions Code Section 14171.

In accordance with Section 5655 of the Welfare and Institutions Code, the Department shall provide technical assistance and consultation to the Contractor regarding the preparation and submission of timely cost reports. If the Contractor does not submit the cost report by the reporting deadline, including any extension period granted by the Department, the Department, in accordance with the provisions of Section 5775(e) of the Welfare and Institutions Code, may withhold payments of additional funds until the cost report that is due has been submitted.

5. Audits and Recoupment.

A. When the Department receives notice from CMS of a deferral or offset by CMS or DHCS of payment of FFP in relation to claims by the Contractor, the Department shall notify the Contractor within 30 days of receiving the deferral or offset notice and include the reason for the deferral or offset, if known.

B. Pursuant to Section 14170 of the Welfare and Institutions Code, cost reports submitted to the Department are subject to audit in the manner and form prescribed by the Department. The year-end cost report shall include both Contractor's costs and the costs of its subcontractors, if any. Contractor and its subcontractors shall be subject to audits and/or reviews, including client record reviews, by the Department. In accordance with Section 14170 of the Welfare and Institutions Code, any audit of Contractor's cost report shall occur within three years of the date of receipt by the Department of the final cost report with signed certification by the Contractor's Mental Health Director and one of the following: (1) the Contractor's Chief Financial Officer (or equivalent), (2) an individual who has delegated authority to sign for, and reports directly to the Contractor's Chief Financial Officer, or (3) the county auditor controller, or equivalent. Both signatures are required before the cost report shall be considered final. For purposes of this section, the cost report shall be considered audited once the Department has informed the Contractor of its intent to disallow costs on the cost report.

C. If the adjustments result in the Department owing an amount to the Contractor, payment to the Contractor shall be made in accordance with applicable federal rules for federal funds (invoicing for federal funds). The Department shall invoice DHCS for the federal funds owed to the Contractor within 45 days after the adjustments are final. Consistent with federal law contained in Title 42, U.S.C. Sections 1396b(d)(2)(C) federal funds shall be recouped within 1 year after the issuance of a final audit report containing a final determination that there has been an overpayment of federal funds. In the case of federal fund recoupment, the Department shall send a notice and invoice to the Contractor, giving options for repayment after the adjustments are final. If the Contractor does not respond within the time period specified in the notice, the Department shall offset the recoupment amount from money owed to the Contractor in accordance with the Department's procedures.

D. Any amount of state funds found to be owed to Contractor shall be paid by the Department from currently available State appropriations within 45 days or, if a current appropriation is not available, within 45 days of a new

State appropriation becoming available. If the adjustments result in the Contractor owing an amount to the Department, the Department shall invoice Contractor for repayment of state funds and the Contractor shall have the option of remitting payment to the Department or agreeing to an offset from amounts owed for current claims submitted. In the event that any amount of State funds must be recouped, pursuant to WIC 5717, repayment is to be collected within 30 days.

6. Claims Adjudication Process.

A. In accordance with Section 5718(c) of the Welfare and Institutions Code, claims for federal funds in reimbursement for services shall comply with eligibility and service requirements under applicable federal and state law.

B. The Contractor shall certify each claim submitted to the Department in accordance with Title 9, CCR, Section 1840.112, at the time the claims are submitted to the Department. The Contractor's Chief Financial Officer or his or her equivalent, or an individual with authority delegated by the county auditor-controller, shall sign the certification, declaring, under penalty of perjury, that the Contractor has incurred an expenditure to cover the services included in the claims to satisfy the requirements for federal financial participation. The Contractor's Mental Health Director or an individual with authority delegated by the Mental Health Director shall sign the certification, declaring, under penalty of perjury that, to the best of his or her knowledge and belief, the claim is in all respects true, correct, and in accordance with the law and meets the requirements of Title 9, CCR, Section 1840.112(b). The Contractor shall have mechanisms that support the Mental Health Director's certification, including the certification that the services for which claims were submitted were actually provided to the beneficiary. If the Department requires additional information from the Contractor that will be used to establish Department payments to the Contractor, the Contractor shall certify that the additional information provided is in accordance with Title 42, CFR, Section 438.604.

C. Claims not meeting federal and/or state requirements shall be returned to Contractor as not approved for payment, along with a reason for denial. Claims meeting all HIPAA transaction requirements and certified by the Contractor in accordance with Title 9, CCR, Section 1840.112, shall be processed and submitted by the Department to DHCS within 30 days for adjudication.

D. Good cause justification for late claim submission is governed by regulation (Title 9, CCR, Section 1840.110) and is subject to approval by the Department of Health Care Services.

E. In the event that the Department or the Contractor determines that significant changes must be made relating to either the Department's or the Contractor's claims submission and adjudication systems due to federal or state law changes or business requirements, both the Department and the Contractor agree to provide notice to the other party as soon as practicable prior to implementation. This notice shall include information and comments regarding the anticipated costs and other impacts of the projected changes. The Department and the Contractor agree to meet and discuss the design, development, and costs of the anticipated changes prior to implementation.

F. The Contractor shall comply with Title 9, CCR, Section 1840.304, when submitting claims for federal financial participation for services billed by individual or group providers. The Contractor shall submit service codes from the Health Care Procedure Coding System (HCPCS) published in the most current Mental Health Medi-Cal billing manual.

7. Payment Data Certification.

Contractor shall certify the data it provides to the Department to be used in determining payment of FFP to the Contractor, in accordance with Title 42, CFR, Sections 438.604 and 438.606.

8. System Changes.

In the event changes in federal or state law, including court decisions and interpretations, necessitate significant changes in either the fiscal or program operations, or a significant change in the cost of providing covered services the Department and the Contractor agree to meet and consult, pursuant to Section 5777(c) of the Welfare and Institutions Code, regarding (a) changes required to remain in compliance with the new law or significant changes in existing obligations, (b) projected programmatic and fiscal impacts, (c) necessary contract amendments. To the extent that contract amendments are necessary, the parties agree to act to ensure appropriate amendments are made to accommodate any changes required by law.

9. Administrative Reimbursement.

The Department shall consult and work with Contractor to determine how federal reimbursement can be obtained for additional or unforeseen administration costs. Consistent with federal and state law, the Department shall process and send to DHCS for reimbursement claims for Medi-Cal Administrative Activity submitted by Contractor within 45 days of receipt.

10. Notification of Request for Contract Amendment.

In addition to the provisions in Exhibit D, section 2 below, both parties agree to notify the other party whenever an amendment to this contract is to be requested so that informal discussion and consultation can occur prior to a formal amendment process.

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Exhibit D

Special Provisions

1. Fulfillment of Obligation.

No covenant, condition, duty, obligation, or undertaking continued or made a part of this contract shall be waived except by written agreement of the parties hereto, and forbearance or indulgence in any other form or manner by either party in any regard whatsoever will not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed or discharged by the party to which the same may apply. Until performance or satisfaction of all covenants, conditions, duties, obligations, and undertakings is complete, the other party shall have the right to invoke any remedy available under this contract, or under law, notwithstanding such forbearance or indulgence.

2. Amendment of Contract.

Should either party during the life of this contract desire a change in this contract, such change shall be proposed in writing to the other party. The other party shall acknowledge receipt of the proposal within 10 days and shall have 60 days (or such different period as the parties mutually may set) after receipt of such proposal to review and consider the proposal, to consult and negotiate with the proposing party, and to accept or reject the proposal. Acceptance or rejection may be made orally within the 60-day period, and shall be confirmed in writing within five days thereafter. The party proposing any such change shall have the right to withdraw the proposal at any time prior to acceptance or rejection by the other party. Any such proposal shall set forth a detailed explanation of the reason and basis for the proposed change, a complete statement of cost and benefits of the proposed change and the text of the desired amendment to this contract that would provide for the change. If the proposal is accepted, this contract shall be amended to provide for the change mutually agreed to by the parties on the condition that the amendment is approved by the Department of General Services, if necessary.

3. Contract Disputes.

Should a dispute arise between the Contractor and the Department relating to performance under this contract, other than disputes governed by a dispute resolution process in Chapter 11 of Division 1, Title 9 of the CCR, the Contractor shall, prior to exercising any other remedy which may be available, provide the Department with written notice of the particulars of the dispute within 30 calendar days of the date the dispute arises. The Department shall meet with the Contractor, review the factors in the dispute, and recommend a means of resolving the dispute before a written response is given to the Contractor. The

Department shall provide a written response to the Contractor within 30 days of receipt of the Contractor's written notice.

4. Inspection Rights.

The Contractor shall allow the Department, DHCS, HHS, the Comptroller General of the United States, and other authorized federal and state agencies, or their duly authorized representatives, to inspect or otherwise evaluate the quality, appropriateness, and timeliness of services performed under this contract, and to inspect, evaluate, and audit any and all books, records, and facilities maintained by the Contractor and its subcontractors pertaining to such services at any time during normal business hours. Books and records include, but are not limited to, all physical records originated or prepared pursuant to the performance under this contract including working papers, reports, financial records and books of account, beneficiary records, prescription files, subcontracts, and any other documentation pertaining to covered services and other related services for beneficiaries. Upon request, at any time during the period of this contract, the Contractor shall furnish any such record, or copy thereof, to the Department, DHCS, or HHS. Authorized agencies shall maintain the confidentiality of such books and records in accordance with applicable laws and regulations.

5. Notices.

Unless otherwise specified in this contract, all notices to be given under this contract shall be in writing and shall be deemed to have been given when mailed, to the Department or the Contractor at the following addresses, unless the contract explicitly requires notice to another individual or organizational unit:

Department

County Technical Assistance
1600 9th Street, Room 100
Sacramento, CA 95814

Contractor

Inyo County Mental Health
Gail Zwier, PhD, Mental Health Director
162 J Grove Street
Bishop, CA 93514

6. Nondiscrimination.

A. Consistent with the requirements of applicable federal or state law, the Contractor shall not engage in any unlawful discriminatory practices in the admission of beneficiaries, assignments of accommodations, treatment, evaluation, employment of personnel, or in any other respect on the basis of race, color, gender, religion, marital status, national origin, age, sexual preference or mental or physical handicap.

B. The Contractor shall comply with the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, pertaining to the prohibition of discrimination against qualified handicapped persons in all federally assisted programs or activities, as detailed in regulations signed by the Secretary of Health and Human Services, effective June 2, 1977, and found in the Federal Register, Volume 42, No. 86, dated May 4, 1977.

C. The Contractor shall include the nondiscrimination and compliance provisions of this contract in all subcontracts to perform work under this contract.

D. Notwithstanding other provisions of this section, the Contractor may require a determination of medical necessity pursuant to Title 9, CCR, Sections 1820.205, 1830.205 and/or 1830.210, prior to providing covered services to a beneficiary.

7. Patients' Rights.

The parties to this contract shall comply with applicable laws and regulations relating to patients' rights, including but not limited to Welfare and Institutions Code 5325, Title 9, CCR, Sections 860 through 868, and Title 42, CFR, Section 438.100. The Contractor shall ensure that its subcontractors comply with these provisions.

Pursuant to Title 42, CFR, Section 438.100(a) and Title 42, CFR, Sections 438.100(b)(1) and,(b)(2)), the Contractor shall have written policies regarding the beneficiary rights specified in this section, including the following rights:

A. Each beneficiary is guaranteed the right to be treated with respect and with due consideration for his or her dignity and privacy.

B. Each beneficiary is guaranteed the right to receive information on available treatment options and alternatives, presented in a manner appropriate to the beneficiary's condition and ability to understand.

C. Each beneficiary is guaranteed the right to participate in decisions regarding his or her health care, including the right to refuse treatment.

D. Each beneficiary is guaranteed the right to be free from any form of restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation.

E. Each beneficiary is guaranteed the right to request and receive a copy of his or her medical records, and to request that they be amended or corrected, as specified in 45 CFR, Section 164.524 and 164.526.

F. Pursuant to Title 42, CFR, Section 438.100(c), the parties acknowledge and agree that each beneficiary is free to exercise his or her rights, and the exercise of those rights will not adversely affect the way the Contractor and its providers or the Department treat the beneficiary.

8. Relationship of the Parties.

The Department and the Contractor are, and shall at all times be deemed to be, independent agencies. Each party to this contract shall be wholly responsible for the manner in which it performs the obligations and services required of it by the terms of this contract. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the parties or any of their agents or employees. Each party assumes exclusively the responsibility for the acts of its employees or agents as they relate to the services to be provided during the course and scope of their employment. The Department and its agents and employees shall not be entitled to any rights or privileges of the Contractor's employees and shall not be considered in any manner to be Contractor employees. The Contractor and its agents and employees, shall not be entitled to any rights or privileges of state employees and shall not be considered in any manner to be state employees.

9. Waiver of Default.

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of 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 contract.

10. Additional Provisions.

A. The Contractor shall comply with the provisions of the Copeland Anti-Kickback Act (18 U.S.C. Section 874 and 40 U.S.C. Section 276c), which requires that all contracts and subcontracts in excess of $2000 for construction or repair awarded by the Contractor and its subcontractors

shall include a provision for compliance with the Copeland Anti-Kickback Act (18 U.S.C. Section 874), as supplemented by Department of Labor regulations (Title 29, CFR, Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States").

B. The Contractor shall comply with the provisions of the Davis-Bacon Act, as amended (40 U.S.C. Section 276a to a-7), which provides that, when required by Federal Medicaid program legislation, all construction contracts awarded by the Contractor and its subcontractors of more than $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. Section 276a to a-7) as supplemented by Department of Labor regulations (Title 29, CFR, Part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction").

C. The Contractor shall comply with the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. Section 327-333), as applicable, which requires that all subcontracts awarded by the Contractor in excess of $2,000 for construction and in excess of $2,500 for other subcontracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. Sections 327-333), as supplemented by Department of Labor regulations (Title 29, CFR, Part 5).

D. The Contractor shall comply with the provisions of the Clean Air Act (42 U.S.C. Section 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), as amended, which provide that contracts and subcontracts of amounts in excess of $100,000 shall contain a provision that requires the Contractor or subcontractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act. Violations shall be reported to the federal Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency.

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EXHIBIT E

Additional Provisions.

1. Term and Termination.

A. Contract Renewal.

This contract may be renewed unless good cause is shown for non-renewal pursuant to Title 9, CCR, Section 1810.321. This contract shall be renewed every three years.

B. Contract Termination.

The Department or the Contractor may terminate this contract in accordance with Title 9, CCR, Section 1810.323.

C. Mandatory Termination.

The Department is required to terminate this contract in accordance with Subdivision (d) of Section 5777 of the Welfare and Institutions Code when circumstances occur as specified in that provision.

The Department shall terminate its contract if the Secretary of the federal Health and Human Services Agency has determined that the Contractor does not meet the requirements for participation in the Medicaid program as provided in Title XIX of the Social Security Act. The Department shall deliver written notice of termination to the Contractor at least 60 calendar days prior to the effective date of termination.

D. Termination of Obligations.

All obligations to provide covered services under this contract shall automatically terminate on the effective date of any termination of this contract. The Contractor shall be responsible for providing covered services to beneficiaries until the termination or expiration of the contract and shall remain liable for the processing and payment of invoices and statements for covered services provided to beneficiaries prior to such expiration or termination.

E. When Contractor terminates a subcontract with a provider, Contractor shall make a good faith effort to provide notice of this termination, within 15 days, to the persons that Contractor, based on available information, determines have recently been receiving services from that provider.

2. Duties of the State.

In discharging its obligations under this contract, the Department shall perform the following duties:

A. Payment for Services.

The Department shall make the appropriate payments set forth in Exhibit B and take all available steps to secure and pay FFP to the Contractor, once the Department receives FFP, for claims submitted by the Contractor. The Department shall notify Contractor and allow Contractor an opportunity to comment to the Department when questions are posed by CMS, or when there is a federal deferral, withholding, or disallowance with respect to claims made by the Contractor.

B. Reviews.

The Department shall conduct reviews of access to and quality of care in Contractor's county at least once every three years and issue reports to the Contractor detailing findings, recommendations, and corrective action, as appropriate, pursuant to Title 9, CCR, Sections 1810.380 and 1810.385. The Department shall also arrange for an annual external quality review of the Contractor as required by Title 42, CFR, Section 438.204(d) and Title 9, CCR, Section 1810.380(a)(7).

C. Monitoring for Compliance.

The Department shall monitor the Contractor's operations for compliance with the provisions of this contract, and applicable federal and state law and regulations. Such monitoring activities shall include, but not be limited to, inspection and auditing of Contractor facilities, management systems and procedures, and books and records, as the Department deems appropriate, at any time during the Contractor's or facility's normal business hours. When monitoring activities identify areas of non-compliance, the Department shall issue reports to the Contractor detailing findings, recommendations, and corrective action. Failure to comply with required corrective action could lead to civil penalties, as appropriate, pursuant to Title 9, CCR, Sections 1810.380 and 1810.385.

D. The Department shall review and either approve, disapprove, or request additional information for each Implementation Plan as defined in Title 9, CCR, Section 1810.221 and 1810.310 . Notices of Approval, Notices of Disapproval and requests for additional information shall be forwarded to the Contractor within 60 days of the receipt of the Implementation Plan. A

Contractor shall submit proposed changes to its approved Implementation Plan in writing to the Department for review. A Contractor shall submit proposed changes in the policies, processes or procedures that would modify the Contractor's current Implementation Plan prior to implementing the proposed changes. (See Title 9, CCR, Section 1810.310 (b)-(c).)

E. The Department shall act promptly to review the Contractor's Cultural Competence Plan submitted pursuant to Title 9, CCR, Section 1810.410. The Department shall provide a Notice of Approval or a Notice of Disapproval, including the reasons for the disapproval, to the Contractor within 60 calendar days after receipt of the plan from the Contractor. If the Department fails to provide a Notice of Approval or Disapproval, the Contractor may implement the plan 60 calendar days from its submission to the Department.

F. Certification of Organizational Provider Sites Owned or Operated by the Contractor.

The Department shall certify the organizational provider sites that are owned, leased or operated by the Contractor, in accordance with Title 9, CCR, Section 1810.435, and the requirements specified in Exhibit A1, Section 4 of this contract. This certification shall be performed prior to the date on which the Contractor begins to deliver services under this contract at these sites and once every three years after that date, unless the Department determines an earlier date is necessary. The on-site review required by Title 9, CCR, Section 1810.435(e), shall be conducted of any site owned, leased, or operated by the Contractor and used for to deliver covered services to beneficiaries, except that on-site review is not required for public school or satellite sites.

The Department may allow the Contractor to begin delivering covered services to beneficiaries at a site subject to on-site review by the Department prior to the date of the on-site review, provided the site is operational and has any required fire clearances. The earliest date the Contractor may begin delivering covered services at a site subject to on site review by the Department is the date the Contractor requested certification of the site in accordance with procedures established by the Department, the date the site was operational, or the date a required fire clearance was obtained, whichever date is latest.

The Department may allow the Contractor to continue delivering covered services to beneficiaries at a site subject to on-site review by the Department as part of the recertification process prior to the date of the on-site review, provided the site is operational and has all required fire clearances.

Nothing in this section precludes the Department from establishing procedures for issuance of separate provider identification numbers for each of the organizational provider sites operated by the Contractor to facilitate the claiming of federal financial participation by the Contractor and the Department's tracking of that information.

G. Distribution of Informing Materials.

The Department shall provide annual notice to all beneficiaries in accordance with Title 42, CFR, Section 438.10(f)(2), and Title 9, CCR, Section 1810.360(c).

H. Sanctions.

The Department shall conduct oversight and impose sanctions on the Contactor for violations of the terms of this contract, and applicable federal and state law and regulations, in accordance with Title 9, CCR, Sections 1810.380 and 1810.385.

I. Notification.

The Department shall notify beneficiaries of their Medi-Cal specialty mental health benefits and options available upon termination or expiration of this contract.

J. Performance Measurement.

The Department shall measure the Contractor's performance based on Medi-Cal approved claims and other data available to the Department using standard measures established by the Department in consultation with stakeholders.

EXHIBIT F

HIPAA Business Associate Addendum

1. Recitals.

A. This Contract (Agreement) has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ('the HITECH Act"), 42 U.S.C. Section 17921 et seq., and their implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations").

B. The Department wishes to disclose to Contractor certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information ("PHI"), including protected health information in electronic media ("ePHI"), under federal law, and personal information ("PI") under state law.

C. As set forth in this Agreement, Contractor is the Business Associate of the Department acting on the Department's behalf and provides services, arranges, performs or assists in the performance of functions or activities on behalf of the Department and creates, receives, maintains, transmits, uses or discloses PHI, ePHI and PI. The Department and Contractor are each a party to this Agreement and are collectively referred to as the "parties."

D. The purpose of this Exhibit F is to protect the privacy and security of the PHI, ePHI and PI that may be created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, and to comply with certain standards and requirements of HIPAA, the HITECH Act and the HIPAA regulations, including, but not limited to, the requirement that the Department must enter into a contract containing specific requirements with Contractor prior to the disclosure of PHI to Contractor, as set forth in 45 CFR Parts 160 and 164 and the HITECH Act.

E. The terms used in this Exhibit F, but not otherwise defined, shall have the same meanings as those terms have in the HIPAA regulations. Any reference to statutory or regulatory language shall be to such language as in effect or as amended.

2. Definitions.

A. Breach shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations, and under the Information Practices Act, Civil Code section 1798.29.

B. Business Associate shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.

C. Covered Entity shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.

D. Department PHI or PI shall mean Protected Health Information, Electronic Protected Health Information or Personal Information, as defined below, accessed in a database maintained by the Department, received by Contractor from the Department or acquired or created by Contractor in connection with performing the functions, activities and services specified in this Agreement on behalf of the Department. The terms PHI or PI as used in this document shall mean Department PHI or PI.

E. Electronic Health Record shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921 and implementing regulations.

F. Electronic Protected Health Information (ePHI) means individually identifiable health information transmitted by electronic media or maintained in electronic media, including but not limited to electronic media as set forth under 45 CFR section 160.103.

G. Individually Identifiable Health Information means health information, including demographic information collected from an individual, that is created or received by a health care provider, health plan, employer or health care clearinghouse, and relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, that identifies the individual or where there is a reasonable basis to believe the information can be used to identify the individual, as set forth under 45 CFR Section 160.103.

H. Privacy Rule shall mean the HIPAA Regulations that are found at 45 CFR Parts 160 and 164, subparts A and E.

I. Personal Information (PI) shall have the meaning given to such term in California Civil Code Section 1798.29.

J. Protected Health Information (PHI) means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or is transmitted or maintained in any other form or medium, as set forth under 45 CFR Section 160.103 and as defined under HIPAA.

K. Required by law, as set forth under 45 CFR Section 164.103, means a mandate contained in law that compels an entity to make a use or disclosure of PHI that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

L. Secretary means the Secretary of the U.S. Department of Health and Human Services ("HHS") or the Secretary's designee.

M. Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI or PI, or confidential data utilized in complying with this Agreement; or interference with system operations in an information system that processes, maintains or stores PHI or PI.

N. Security Rule shall mean the HIPAA regulations that are found at 45 CFR Parts 160 and 164.

O. Unsecured PHI shall have the meaning given to such term under the HITECH Act, 42 U.S.C. Section 17932(h), any guidance issued by the Secretary pursuant to such Act and the HIPAA regulations.

3. Terms of Agreement.

A. **Permitted Uses and Disclosures of Department PHI by Contractor.**

Except as otherwise indicated in this Exhibit F, Contractor may use or disclose Department PHI only to perform functions, activities or services specified in this Agreement, for, or on behalf of the Department, provided that such use or disclosure would not violate the HIPAA regulations, if done by the Department. Any such use or disclosure, if not for purposes of treatment activities of a health care provider as defined by the Privacy

Rule, must, to the extent practicable, be limited to the limited data set, as defined in 45 CFR Section 164.514(e)(2), or, if needed, to the minimum necessary to accomplish the intended purpose of such use or disclosure, in compliance with the HITECH Act and any guidance issued pursuant to such Act, and the HIPAA regulations.

B. **Specific Use and Disclosure Provisions**. Except as otherwise indicated in this Exhibit F, Contractor may:

1) **Use and disclose for management and administration**. Use and disclose Department PHI for the proper management and administration of the Contractor business, provided that such disclosures are required by law, or the Contractor obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Contractor of any instances of which it is aware that the confidentiality of the information has been breached.

2) **Provision of Data Aggregation Services**. Use PHI to provide data aggregation services to the Department to the extent requested by the Department and agreed to by Contractor. Data aggregation means the combining of PHI created or received by the Business Associate on behalf of the Department with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of the Department.

C. **Prohibited Uses and Disclosures**

1) Contractor shall not disclose PHI about an individual to a health plan for payment or health care operations purposes if the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full and the individual requests such restriction, in accordance with 42 U.S.C. Section 17935(a) and 45 CFR Section 164.522(a).

2) Contractor shall not directly or indirectly receive remuneration in exchange for Department PHI, except with the prior written consent of the Department and as permitted by 42 U.S.C. Section 17935(d)(2).

D. **Responsibilities of Contractor**

Contractor agrees:

1) Nondisclosure. Not to use or disclose Department PHI other than as permitted or required by this Agreement or as required by law.

2) Safeguards. To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Department PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of the Department, in compliance with 45 CFR Sections 164.308, 164.310 and 164.312, and to prevent use or disclosure of Department PHI other than as provided for by this Agreement. Contractor shall implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications and other requirements of 45 CFR Section 164, subpart C, in compliance with 45 CFR Section 164.316. Contractor shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities, and which incorporates the requirements of section 3, Security, below. Contractor will provide the Department with its current and updated policies upon request.

3) Security. Contractor shall ensure the continuous security of all computerized data systems containing Department PHI or PI and to protect paper documents containing Department PHI or PI. At a minimum, Contractor shall: :

a) Comply with all of the data system security precautions listed in Attachment A, Business Associate Data Security Requirements with respect to Department PHI;

b) Achieve and maintain compliance with the HIPAA Security Rule (45 CFR Parts 160 and 164), as necessary in conducting operations on behalf of the Department under this Agreement;

c) Provide a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III - Security of Federal Automated

Information Systems, which sets forth guidelines for automated information systems in Federal agencies;

d) Comply with the substantive privacy and security requirements in the Computer Matching and Privacy Protection Act Agreement between the Social Security Administration and the California Health and Human Services Agency (CHHS) and in the Agreement between the Social Security Administration and DHCS, known as the Information Exchange Agreement (IEA Agreement), which are appended as Attachment B and hereby incorporated into this Agreement. The specific sections of the IEA Agreement with substantive privacy and security requirements which are to be complied with are in the following sections, E, Security Procedures, F. Contractor/Agent Responsibilities, and G, Safeguarding and Reporting Responsibilities for Personally Identifiable Information ("PII"), and in Attachment 4 to the IEA, Electronic Information Exchange Security Requirements, Guidelines and Procedures for Federal, State and Local Agencies Exchanging Electronic Information with the Social Security Administration.

e) In case of a conflict between any of the security standards contained in any of these enumerated sources of security standards, the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to PHI from unauthorized disclosure. Further, Contractor must comply within a reasonable period of time with changes to these standards that occur after the effective date of this Agreement.

f) Contractor shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with the Department.

E. **Mitigation of Harmful Effects**. To mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Department PHI by Contractor or its subcontractors in violation of the requirements of this Exhibit F.

F. **Contractor's Agents and Subcontractors**.

1) To enter into written agreements with any agents, including subcontractors and vendors, to whom Contractor provides

Department PHI or PI that impose the same restrictions and conditions on such agents, subcontractors and vendors that apply to Contractor with respect to such PHI and PI under this Exhibit F, and that comply with all applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, including the requirement that any agents, subcontractors or vendors implement reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI and PI. Contractor shall incorporate, when applicable, the relevant provisions of this Exhibit F into each subcontract or subaward to such agents, subcontractors and vendors, including the requirement that any security incidents or breaches of unsecured PHI or PI be reported to Contractor.

2) In accordance with 45 CFR Section 164.504(e)(1)(ii), upon Contractor's knowledge of a material breach or violation by its subcontractor of the agreement between Contractor and the subcontractor, Contractor shall:

   a) Provide an opportunity for the subcontractor to cure the breach or end the violation and terminate the agreement if the subcontractor does not cure the breach or end the violation within the time specified by the Department; or

   b) Immediately terminate the agreement if the subcontractor has breached a material term of the agreement and cure is not possible.

G. **Availability of Information to the Department and Individuals to Provide Access and Information:**

1) To provide access as the Department may require, and in the time and manner designated by the Department (upon reasonable notice and during Contractor's normal business hours) to PHI in a Designated Record Set, to the Department (or, as directed by the Department), to an Individual, in accordance with 45 CFR Section 164.524. Designated Record Set means the group of records maintained for the Department that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for Department health plans; or those records used to make decisions about individuals on behalf of the Department. Contractor shall use the forms and processes developed by the Department for this purpose and shall respond to requests for access to records transmitted by the Department within fifteen (15)

calendar days of receipt of the request by producing the records or verifying that there are none.

2) If Contractor maintains an Electronic Health Record with PHI, and an individual requests a copy of such information in an electronic format, Contractor shall provide such information in an electronic format to enable the Department to fulfill its obligations under the HITECH Act, including but not limited to, 42 U.S.C. Section 17935(e). This section shall be effective as of the date that 42 U.S.C. Section 17935(e) and its implementing regulations apply to the Department.

3) If Contractor receives data from the Department that was provided to the Department by the Social Security Administration, upon request by the Department, Contractor shall provide the Department with a list of all employees, contractors and agents who have access to the Social Security data, including employees, contractors and agents of its subcontractors and agents.

H. **Amendment of Department PHI**. To make any amendment(s) to Department PHI that were requested by a patient and that the Department directs or agrees should be made to assure compliance with 45 CFR Section 164.526., in the time and manner designated by the Department, with the Contractor being given a minimum of twenty (20) days within which to make the amendment.

I. **Internal Practices**. To make Contractor's internal practices, books and records relating to the use and disclosure of Department PHI available to the Department or to the Secretary, for purposes of determining the Department's compliance with the HIPAA regulations. If any information needed for this purpose is in the exclusive possession of any other entity or person and the other entity or person fails or refuses to furnish the information to Contractor, Contractor shall provide written notification to the Department and shall set forth the efforts it made to obtain the information.

J. **Documentation of Disclosures**. To document and make available to the Department or (at the direction of the Department) to an Individual such disclosures of Department PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with the HITECH Act and its implementing regulations, including but not limited to 45 CFR Section 164.528 and 42 U.S.C. Section 17935(c). If Contractor maintains electronic health records for the Department as of January 1, 2009, Contractor must provide an accounting of disclosures, including

those disclosures for treatment, payment or health care operations, effective with disclosures on or after January 1, 2014. If Contractor acquires electronic health records for the Department after January 1, 2009, Contractor must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations, effective with disclosures on or after the date the electronic health record is acquired, or on or after January 1, 2011, whichever date is later. The electronic accounting of disclosures shall be for disclosures during the three years prior to the request for an accounting. This section shall be effective only as of the date that 42 USC section 17935(c) and its implementing regulations apply to the Department.

K. **Breaches and Security Incidents.** During the term of this Agreement, Contractor agrees to implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and to take the following steps:

1. **Initial Notice to the Department.** (1) To notify the Department **immediately by telephone call plus email or fax** upon the discovery of a breach of unsecured PHI or PI in electronic media or in any other media if the PHI or PI was, or is reasonably believed to have been, accessed or acquired by an unauthorized person, or upon the discovery of a suspected security incident that involves data provided to the Department by the Social Security Administration. (2) To notify the Department **within 24 hours by email or fax** of the discovery of any suspected security incident, intrusion or unauthorized access, use or disclosure of PHI or PI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. A breach shall be treated as discovered by Business Associate as of the first day on which the breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the breach) who is an employee, officer or other agent of Business Associate.

   Notice shall be provided to the Department Program Contract Manager and the Department Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notice shall be provided by calling the Department Information Security Officer. Notice shall be made using the DHCS "Privacy Incident Report" form, including all information known at the time. Contractor shall use the most current version of this form, which is posted on the DHCS Information Security Officer website (www.dhcs.ca.gov, then select "Privacy" in the left column and then "Business Use" near the

middle of the page) or use this link:
http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/DHCSBusinessAssociatesOnly.aspx

Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of PHI or PI, Contractor shall take:

a. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and

b. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

2. **Investigation and Investigation Report**. To immediately investigate such suspected security incident, security incident, breach, or unauthorized access, use or disclosure of PHI or PI. Within 72 hours of the discovery, Contractor shall submit an updated "Privacy Incident Report" containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the Department Program Contract Manager and the Department Information Security Officer:

3. **Complete Report**. To provide a complete report of the investigation to the Department Program Contract Manager and the Department Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall be submitted on the "Privacy Incident Report" form and shall include an assessment of all known factors relevant to a determination of whether a breach occurred under applicable provisions of HIPAA, the HITECH Act, the HIPAA regulations and/or state law. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If the Department requests information in addition to that listed on the "Privacy Incident Report" form, Contractor shall make reasonable efforts to provide the Department with such information. If, because of the circumstances of the incident, Contractor needs more than ten (10) working days from the discovery to submit a complete report, the Department may grant a reasonable extension of time, in which case Contractor shall submit periodic updates until the complete report is submitted. If necessary, a Supplemental Report may be used to submit revised

or additional information after the completed report is submitted, by submitting the revised or additional information on an updated "Privacy Incident Report" form. The Department will review and approve the determination of whether a breach occurred and individual notifications are required, and the corrective action plan.

4. **Notification of Individuals**. If the cause of a breach of PHI or PI is attributable to Contractor or its subcontractors, agents or vendors, Contractor shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The notifications shall comply with the requirements set forth in 42 U.S.C. section 17932 and its implementing regulations, including, but not limited to, the requirement that the notifications be made without unreasonable delay and in no event later than 60 calendar days. The Department Program Contract Manager and the Department Information Security Officer shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made. The Department will provide its review and approval expeditiously and without unreasonable delay.

5. **Responsibility for Reporting of Breaches.** If the cause of a breach of PHI or PI is attributable to Contractor or its agents, subcontractors or vendors, Contractor is responsible for all required reporting of the breach as specified in 42 U.S.C. section 17932 and its implementing regulations, including notification to media outlets and to the Secretary. If a breach of unsecured PHI involves more than 500 residents of the State of California or its jurisdiction, Contractor shall notify the Secretary of the breach immediately upon discovery of the breach. If Contractor has reason to believe that duplicate reporting of the same breach or incident may occur because its subcontractors, agents or vendors may report the breach or incident to the Department in addition to Contractor, Contractor shall notify the Department, and the Department and Contractor may take appropriate action to prevent duplicate reporting. The breach reporting requirements of this paragraph are in addition to the reporting requirements set forth in subsection 1, above.

6. **Department Contact Information**. To direct communications to the above referenced Department staff, the Contractor shall initiate contact as indicated herein. The Department reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an

amendment to this Addendum or the Agreement to which it is incorporated.

Contractor shall use the following contact information up to and including June 30, 2012:

Department Program Contract Manager	**DMH Information Security Officer**
See the Exhibit A, Scope of Work for Program Contract Manager information	Information Security Officer California Department of Mental Health 1600 9th Street, Room 150 Sacramento, CA 95814 Phone: (916) 651-6776 Email: iso@dmh.ca.gov Fax: (916) 651-1341

Contractor shall use the following contact information on July 1, 2012, and thereafter:

Department Program Contract Manager	**DHCS Privacy Officer**	**DHCS Information Security Officer**
See the Exhibit A, Scope of Work for Program Contract Manager information	Privacy Officer c/o: Office of HIPAA Compliance Department of Health Care Services P.O. Box 997413, MS 4722 Sacramento, CA 95899-7413 Email: privacyofficer@dhcs.ca.gov Telephone: (916) 445-4646 Fax: (916) 440-7680	Information Security Officer DHCS Information Security Office P.O. Box 997413, MS 6400 Sacramento, CA 95899-7413 Email: iso@dhcs.ca.gov Telephone: ITSD Service Desk (916) 440-7000 or (800) 579-0874 Fax: (916) 440-5537

L. **Termination of Agreement.** In accordance with Section 13404(b) of the HITECH Act and to the extent required by the HIPAA regulations, if Contractor knows of a material breach or violation by the Department of this Exhibit F, it shall take the following steps:

1) Provide an opportunity for the Department to cure the breach or end the violation and terminate the Agreement if the Department does not cure the breach or end the violation within the time specified by Contractor; or

2) Immediately terminate the Agreement if the Department has breached a material term of the Exhibit F and cure is not possible.

M. **Due Diligence.** Contractor shall exercise due diligence and shall take reasonable steps to ensure that it remains in compliance with this Exhibit F and is in compliance with applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, and that its agents, subcontractors and vendors are in compliance with their obligations as required by this Exhibit F.

N. **Sanctions and/or Penalties**. Contractor understands that a failure to comply with the provisions of HIPAA, the HITECH Act and the HIPAA regulations that are applicable to Contractors may result in the imposition of sanctions and/or penalties on Contractor under HIPAA, the HITECH Act and the HIPAA regulations.

4. Obligations of the Department.

The Department agrees to:

A. **Permission by Individuals for Use and Disclosure of PHI**. Provide the Contractor with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Contractor's permitted or required uses and disclosures.

B. **Notification of Restrictions**. Notify the Contractor of any restriction to the use or disclosure of PHI that the Department has agreed to in accordance with 45 CFR Section 164.522, to the extent that such restriction may affect the Contractor's use or disclosure of PHI.

C. **Requests Conflicting with HIPAA Rules**. Not request the Contractor to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by the Department.

5. Audits, Inspection and Enforcement

A. From time to time, and subject to all applicable federal and state privacy and security laws and regulations, the Department may conduct a reasonable inspection of the facilities, systems, books and records of Contractor to monitor compliance with this Exhibit F. Contractor shall promptly remedy any violation of any provision of this Exhibit F. The fact that the Department inspects, or fails to inspect, or has the right to inspect, Contractor's facilities, systems and procedures does not relieve Contractor of its responsibility to comply with this Exhibit F. The Department's failure to detect a non-compliant practice, or a failure to report a detected non-

compliant practice to Contractor does not constitute acceptance of such practice or a waiver of The Department's enforcement rights under this Agreement, including this Exhibit F.

B. If Contractor is the subject of an audit, compliance review, or complaint investigation by the Secretary or the Office of Civil Rights, U.S. Department of Health and Human Services, that is related to the performance of its obligations pursuant to this HIPAA Business Associate Exhibit F, Contractor shall notify the Department. Upon request from the Department, Contractor shall provide the Department with a copy of any PHI or PI that Business Associate provides to the Secretary or the Office of Civil Rights concurrently with providing such PHI or PI to the Secretary. Contractor is responsible for any civil penalties assessed due to an audit or investigation of Contractor, in accordance with 42 U.S.C. Section 17934(c).

6. **Termination.**

A. **Term.** The Term of this Exhibit F shall extend beyond the termination of the Agreement and shall terminate when all Department PHI is destroyed or returned to the Department, in accordance with 45 CFR Section 164.504(e)(2)(ii)(I).

B. **Termination for Cause**. In accordance with 45 CFR Section 164.504(e)(1)(ii), upon the Department's knowledge of a material breach or violation of this Exhibit F by Contractor, the Department shall:

1) Provide an opportunity for Contractor to cure the breach or end the violation and terminate this Agreement if Contractor does not cure the breach or end the violation within the time specified by the Department; or

2) Immediately terminate this Agreement if Contractor has breached a material term of this Exhibit F and cure is not possible.

C. **Judicial or Administrative Proceedings**. Contractor will notify the Department if it is named as a defendant in a criminal proceeding for a violation of HIPAA. The Department may terminate this Agreement if Contractor is found guilty of a criminal violation of HIPAA. The Department may terminate this Agreement if a finding or stipulation that the Contractor has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Contractor is a party or has been joined. DHCS will consider the nature and seriousness of the violation in deciding whether or not to terminate the Agreement.

D. **Effect of Termination**. Upon termination or expiration of this Agreement for any reason, Contractor shall return or destroy all Department PHI that Contractor still maintains in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, Contractor shall notify the Department of the conditions that make the return or destruction infeasible, and the Department and Contractor shall determine the terms and conditions under which Contractor may retain the PHI. Contractor shall continue to extend the protections of this Exhibit F to such PHI, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to Department PHI that is in the possession of subcontractors or agents of Contractor.

7. **Miscellaneous Provisions.**

A. **Disclaimer**. The Department makes no warranty or representation that compliance by Contractor with this Exhibit F, HIPAA or the HIPAA regulations will be adequate or satisfactory for Contractor's own purposes or that any information in Contractor's possession or control, or transmitted or received by Contractor, is or will be secure from unauthorized use or disclosure. Contractor is solely responsible for all decisions made by Contractor regarding the safeguarding of the Department PHI.

B. **Amendment**. The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Exhibit F may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable laws relating to the security or privacy of Department PHI. Upon the Department's request, Contractor agrees to promptly enter into negotiations with the Department concerning an amendment to this Exhibit F embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable laws. The Department may terminate this Agreement upon thirty (30) days written notice in the event:

1) Contractor does not promptly enter into negotiations to amend this Exhibit F when requested by the Department pursuant to this section; or

2) Contractor does not enter into an amendment providing assurances regarding the safeguarding of Department PHI that the Department

deems is necessary to satisfy the standards and requirements of HIPAA and the HIPAA regulations.

C. **Assistance in Litigation or Administrative Proceedings**. Contractor shall make itself and any subcontractors, employees or agents assisting Contractor in the performance of its obligations under this Agreement, available to the Department at no cost to the Department to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Department, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by the Contractor, except where Contractor or its subcontractor, employee or agent is a named adverse party.

D. **No Third-Party Beneficiaries**. Nothing express or implied in the terms and conditions of this Exhibit F is intended to confer, nor shall anything herein confer, upon any person other than the Department or Contractor and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.

E. **Interpretation**. The terms and conditions in this Exhibit F shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Exhibit F shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act and the HIPAA regulations.

F. **Regulatory References**. A reference in the terms and conditions of this Exhibit F to a section in the HIPAA regulations means the section as in effect or as amended.

G. **Survival.** The respective rights and obligations of Contractor under Section 6, Item D of this Exhibit F shall survive the termination or expiration of this Agreement.

H. **No Waiver of Obligations**. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

Attachment A

Business Associate Data Security Requirements

I. Personnel Controls

A. Employee Training. All workforce members who assist in the performance of functions or activities on behalf of the Department, or access or disclose Department PHI or PI must complete information privacy and security training, at least annually, at Contractor's expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following termination of this Agreement.

B. Employee Discipline. Appropriate sanctions must be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.

C. Confidentiality Statement. All persons that will be working with Department PHI or PI must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to Department PHI or PI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for Department inspection for a period of six (6) years following termination of this Agreement.

D. Background Check. Before a member of the workforce may access Department PHI or PI, a background screening of that worker must be conducted. The screening should be commensurate with the risk and magnitude of harm the employee could cause, with more thorough screening being done for those employees who are authorized to bypass significant technical and operational security controls. The Contractor shall retain each workforce member's background check documentation for a period of three (3) years.

2. Technical Security Controls

A. Workstation/Laptop encryption. All workstations and laptops that store Department PHI or PI either directly or temporarily must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as

Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved by the Department Information Security Office.

B. **Server Security.** Servers containing unencrypted Department PHI or PI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.

C. **Minimum Necessary.** Only the minimum necessary amount of Department PHI or PI required to perform necessary business functions may be copied, downloaded, or exported.

D. **Removable media devices.** All electronic files that contain Department PHI or PI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.

E. **Antivirus software.** All workstations, laptops and other systems that process and/or store Department PHI or PI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.

F. **Patch Management.** All workstations, laptops and other systems that process and/or store Department PHI or PI must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release. Applications and systems that cannot be patched within this time frame due to significant operational reasons must have compensatory controls implemented to minimize risk until the patches can be installed. Applications and systems that cannot be patched must have compensatory controls implemented to minimize risk, where possible.

G. **User IDs and Password Controls.** All users must be issued a unique user name for accessing Department PHI or PI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed at least every 90

days, preferably every 60 days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:

1) Upper case letters (A-Z)
2) Lower case letters (a-z)
3) Arabic numerals (0-9)
4) Non-alphanumeric characters (punctuation symbols)

H. **Data Destruction.** When no longer needed, all Department PHI or PI must be wiped using the Gutmann or US Department of Defense (DoD) 5220.22-M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission of the Department Information Security Office.

I. **System Timeout.** The system providing access to Department PHI or PI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.

J. **Warning Banners.** All systems providing access to Department PHI or PI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.

K. **System Logging.** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for Department PHI or PI, or which alters Department PHI or PI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If Department PHI or PI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.

L. **Access Controls.** The system providing access to Department PHI or PI must use role based access controls for all user authentications, enforcing the principle of least privilege.

M. **Transmission encryption.** All data transmissions of Department PHI or PI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing Department PHI can be encrypted. This requirement pertains

to any type of Department PHI or PI in motion such as website access, file transfer, and E-Mail.

N. **Intrusion Detection**. All systems involved in accessing, holding, transporting, and protecting Department PHI or PI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

3. **Audit Controls**

A. **System Security Review.** Contractor must ensure audit control mechanisms that record and examine system activity are in place. All systems processing and/or storing Department PHI or PI must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.

B. **Log Reviews.** All systems processing and/or storing Department PHI or PI must have a routine procedure in place to review system logs for unauthorized access.

C. **Change Control.** All systems processing and/or storing Department PHI or PI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

4. **Business Continuity / Disaster Recovery Controls**

A. **Emergency Mode Operation Plan.** Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of Department PHI or PI held in an electronic format in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than 24 hours.

B. **Data Backup Plan.** Contractor must have established documented procedures to backup Department PHI to maintain retrievable exact copies of Department PHI or PI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and an estimate of the amount of time needed to restore Department PHI or PI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of Department data.

5. Paper Document Controls

A. **Supervision of Data.** Department PHI or PI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. Department PHI or PI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.

B. **Escorting Visitors.** Visitors to areas where Department PHI or PI is contained shall be escorted and Department PHI or PI shall be kept out of sight while visitors are in the area.

C. **Confidential Destruction.** Department PHI or PI must be disposed of through confidential means, such as cross cut shredding and pulverizing.

D. **Removal of Data.** Only the minimum necessary Department PHI or PI may be removed from the premises of the Contractor except with express written permission of the Department. Department PHI or PI shall not be considered "removed from the premises" if it is only being transported from one of Contractor's locations to another of Contractors locations.

E. **Faxing.** Faxes containing Department PHI or PI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.

F. **Mailing.** Mailings containing Department PHI or PI shall be sealed and secured from damage or inappropriate viewing of such PHI or PI to the extent possible. Mailings which include 500 or more individually identifiable records of Department PHI or PI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of the Department to use another method is obtained.

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

12

FROM: Public Works Department

FOR THE BOARD MEETING OF: September 4, 2012

SUBJECT: Ratification of Amendment No. 2 to the contract for engineering services with Quincy Engineering, Inc. (Quincy) for the Sabrina Road Bridge Replacement Project.

DEPARTMENTAL RECOMMENDATIONS: Request that the board:

1. Ratify Amendment No. 2 to County of Inyo Standard Contract No. 156 between the County of Inyo and Quincy Engineering, Inc. (Quincy) of Sacramento, California for the provision of engineering services in the amount of $127,850 for the Sabrina Bridge Replacement Project, increasing the total contract amount from $632,582 to $760,432. $127,850
2. Authorize the chairperson to execute the amendment, contingent upon obtaining appropriate signatures; and contingent upon adoption of the fiscal year 2012/2013 budget.

CAO RECOMMENDATION:

SUMMARY DISCUSSION: Quincy recently completed engineering design and plan preparation for the Sabrina Road Bridge Replacement Project, which is currently under construction. The project is federally funded by the Highway Bridge Program (HBP) and Toll Credit Program.

The Sabrina Bridge spans the Middle Fork of Bishop Creek at Sabrina Road approximately 0.3 miles west of the intersection of Sabrina Road and S.R. 168. During the summer season, Sabrina Bridge provides access to Lake Sabrina, an important tourist destination for fishing, boating, camping, and hiking. The bridge is susceptible to scour, and is considered functionally obsolete according to the criteria of the Department of Transportation's (Caltrans') Bridge Inspection Program. Both the superstructure and the foundations of the bridge will be completely replaced; and the approach roadway on both sides of the bridge will be realigned to improve sight distance.

Because of an unanticipated shortage of qualified staff within the Public Works Department, Quincy has been requested to provide Assistant Resident Engineer services during construction. These services consist of continuous onsite inspection to ensure that the contractor complies with the plans and specifications for the project, monitoring contractor activities for prevailing wage compliance, and preparation of daily reports that are submitted to the County's Resident Engineer. It is anticipated that the Assistant Resident Engineer services will be needed for approximately three months. The cost of these additional services, which include one Assistant Resident Engineer paid at the prevailing wage rate for onsite inspectors, travel, equipment, and long-term per-diem, is estimated at $127,850. Quincy has been providing these services since construction started on July 30, 2012. Therefore, the Public Works Department is requesting that the Board ratify this amendment.

The project is funded by the Highway Bridge Program (HBP), which will reimburse the county for 100 percent of the construction and construction engineering costs of the project. The project is also eligible for Toll Credits, which will fund the match for the construction phase of the project. Section 1044 of the Intermodal Surface Transportation Efficiency Act permits states to apply the value of certain highway expenditures funded with toll revenues toward the required state match on current federal-aid projects. The HBP will reimburse the county for 88.53 percent of the construction and construction engineering costs of the project, and the Toll Credits Program will pay the remaining 11.47 percent match.

ALTERNATIVES:
The Board could choose not to approve the Amendment No. 2 for Assistant Resident Engineer services with Quincy for the Sabrina Bridge Replacement Project. This is not recommended because the Public Works Department does not have qualified staff that can be assigned to the project on a full-time basis.

OTHER AGENCY INVOLVEMENT:
County counsel, the auditor, and the risk manager must review and sign the amendment.

FINANCING: The cost of construction support services will be paid through budget unit 034601, State Funded Roads, object code 5711, Sabrina Bridge. The cost of the Sabrina Road Bridge Replacement Project will be reimbursed by the HBP and Toll Credits Program. The HBP procedures require reimbursement to local agencies upon submittal of progress invoices for expenditures actually made. Therefore, these funds will be loaned from the road fund and reimbursed with HBP and Toll Credits Program 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: – Date 8.9.12
AUDITOR/CONTROLLER	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor/controller prior to submission to the board clerk.)	Approved: V Date 8/10/12
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) Lynn M. Hanger Date: 8/29/12

AMENDMENT NUMBER 2 TO
AGREEMENT BETWEEN THE COUNTY OF INYO AND
Quincy Engineering, Inc.
FOR THE PROVISION OF ENGINEERING AND ENVIRONMENTAL SERVICES
FOR THE SABRINA ROAD BRIDGE REPLACEMENT PROJECT

WHEREAS, the County of Inyo (hereinafter referred to as "County") and Quincy Engineering, Inc., of Sacramento, California (hereinafter referred to as "Contractor"), have entered into an Agreement for the Provision of Engineering and Environmental Services dated December 1, 2009, on County of Inyo Standard Contract No. 156, for the term from December 1, 2009 to June 30, 2013.

WHEREAS, County and Contractor do desire and consent to amend such Agreement as set forth below;

WHEREAS, such Agreement provides that it may be modified, amended, changed, added to, or subtracted from, 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 Contractor hereby amend such Agreement as follows:

1. Section 3D, Limit upon amount payable under Agreement. The first sentence is revised as follows:

   "The total sum of all payments made by the County to Contractor for services and work performed under this Agreement, including travel and per diem expenses, if any, shall not exceed Seven Hundred Sixty Thousand, Four Hundred Thirty-Two Dollars and No Cents ($760,432.00) (hereinafter referred to as "contract limit").

2. Attachment A to the Contract, *Scope of Work*, shall be revised to include the additional tasks required for continuous construction inspection (Assistant Resident Engineer) services during construction of the Sabrina Bridge Replacement Project as described in Attachment A2 to the Contract.

3. Quincy's fees, including travel and per diem rates, for the scope of work described in Attachment A2 to the Contract shall be the fees listed in Quincy's *Year 2012 Hourly Rates* included as Attachment B1 to Amendment No. 1 to the Contract.

The effective date of this amendment to the Agreement is August 21, 2012.

All other terms and conditions of the Agreement are unchanged and shall remain the same.

AMENDMENT NUMBER 2 TO
AGREEMENT BETWEEN THE COUNTY OF INYO AND
Quincy Engineering, Inc.
FOR THE PROVISION OF ENGINEERING SERVICES
FOR THE RIVERSIDE ROAD BRIDGE REPLACMENT PROJECT

IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEALS THIS _____ DAY OF _____, 2012.

COUNTY OF INYO

By: _____

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

CONTRACTOR

By: _____

Dated: _____

Taxpayer's Identification Number:

_____

ATTACHMENT A2

AGREEMENT BETWEEN COUNTY OF INYO
Quincy Engineering, Inc.
FOR THE PROVISION OF ENGINEERING SERVICES
FOR THE SABRINA ROAD BRIDGE REPLACMENT PROJECT

TERM:

FROM: December 1, 2012 **TO:** June 30, 2013

SCOPE OF WORK:

The scope of work described in the original contract, dated December 1, 2009, is revised to include additional tasks required for continuous construction inspection (Assistant Resident Engineer) services for the Sabrina Road Bridge Replacement Project. The scope of services and estimated fee for these services shall be in general accordance with Quincy's proposal entitled *Contract Amendment 2 – On-Site Inspection Services,* included in Attachment A2 to this amendment.

QUINCY ENGINEERING, INC.

3247 Ramos Circle
Sacramento, CA
95827-2501
(916) 368-9181
Fax: (916) 368-1308

200 Hawthorne Ave. SE
Suite E-530
Salem, OR 97301
(503) 763-9995
Fax: (503) 763-9981

Ms. Lynn M. Flanigan, P.E.
Inyo County Public Works Department
168 N. Edwards Street
Independence, CA 93526

July 27, 2012

Re: Lake Sabrina Road Bridge Replacement Project
Contract Amendment 2 – On-site Inspection Services

Dear Ms. Flanigan:

Enclosed is the scope of work and cost estimate for Contract Amendment 2 for on-site continuous construction inspection services.

Contract Amendment 1 contained special inspections services that included some on-site intermittent construction inspection services. This included 330 hours of intermittent weekly on-site inspections, the associated short term per-diem, mileage and prevailing wage compliance costs.

Contract Amendment 2 is needed due to a recent unanticipated county staffing limitation. In order to adequately administer the construction contract, and assure contractor compliance in accordance with the state and federal funding requirements, the Resident Engineer needs a full time on-site inspector. This amendment has been developed to meet the needs as determined by the Resident Engineer and includes the inspection time needed to cover the 105 working days.

Contract Amendment 2 includes the time and expenses needed in addition to that contained within Amendment 1 such that the sum of the two will cover the services needed. The amendment 2 items include a net increase of 760 hours (1090-330) of additional on-site construction inspection services, 3 months of long term per-diem, travel, field equipment, and prevailing wage compliance costs.

The project contract summary is as follows:

Original Contract not to exceed amount	$489,082
Amendment 1	$143,500
Amendment 2	$127,850
Total Not to Exceed Amount	$760,432

Please feel free to call and discuss this amendment if you have any questions.

Sincerely,
Quincy Engineering, Inc.

James L. Foster, Jr., P.E.
Project Manager

Scope of Work
Construction Support

Phase 4 of the original contract and Amendment 1 scope of work is amended by this Amendment 2 as indicated with strikethrough (removal) and italics (additions) as follows:

PHASE 4 - CONSTRUCTION SUPPORT

TASK 24 - CONSTRUCTION ENGINEERING SERVICES

Construction Support services are to be provided as requested by the Resident Engineer during construction as follows:

24.1 – CONSTRUCTION SUPPORT MANAGEMENT AND OVERSIGHT

No Change – Amendment 1 content removed from Amendment 2 for clarity.

24.2 - CONTRACTOR SUBMITTAL REVIEWS

No Change – Amendment 1 content removed from Amendment 2 for clarity.

24.3 – REQUESTS FOR INFORMATION

No Change – Amendment 1 content removed from Amendment 2 for clarity.

24.4 – SPECIAL INSPECTION

1. ~~QEI will provide on-site inspections by a bridge or roadway engineer as determined by the County's Resident Engineer. Six inspection trips with two partial travel days (5 hours each) and five full (8 hour on-site plus ½ hour to and ½ hour from site) days for a total of 55 hours per trip has been assumed. This equates to a total of 330 hours for this task. Special Inspections include: CIDH Pile installation, Stem and Soffit construction, Deck construction, Post Tensioning, Barrier Railing construction, and one at the discretion of the RE.~~ Kleinfelder will perform one site inspection for the foundation construction.

   Per this Amendment 2, the QEI portion of Item 24.4.1 described above will be replaced with item 24.4.3 below.

2. *No Change – Amendment 1 content removed from Amendment 2 for clarity.*

3. *QEI will provide on-site inspections by an Associate Engineer as determined by the County's Resident Engineer. The duration of this inspection work will approximately coincide with the construction schedule. Inspection work will begin July 30, 2012 and will end November 9, 2012 for a total of 15 weeks of construction inspection. It is assumed that there will be 60 hours of weekly inspection work for 10 weeks and 50 hours of weekly inspection work for the remaining weeks. This inspection work will consist of typical on-site inspection duties (writing daily diaries, checking construction work for plan/specification compliance, contractor submittals previously defined in Amendment 1, etc.) as well as submittal review throughout construction. For per diem considerations, inspection work performed during the months of August, September and October 2012 will be considered as Long term. All other inspection work will be considered as short term. A total of 14 short term per-diem days, 3 long term per-diem months, and 940 hours of time has been allotted to this task. This will cover 90 of the 105 contract working days. An additional 15 days of inspection (150 hours), with short term per-diem, will be provided as an optional item if deemed necessary by the County. The total net hours for amendment 2 are (940+150-330=760 hours)*

TASK 25 - PREPARE RECORD DRAWINGS

No Change – Amendment 1 content removed from Amendment 2 for clarity.

Project: Construction Support - Phase 4 Amendment 2
On-Site Inspection Services
Inyo County - Sabrina Road Bridge over the Bishop Creek

Project Number: BRLO 5948(051)
Date: 7/27/2012

	Direct Labor:			$32,809.20
	Overhead (1.731):			$56,792.73
A.	*Subtotal:*			$89,601.93
	Subconsultant Costs:			
	(1). RMT:			
	(2). Kleinfelder:			
	(3). :			
	(4). :			
	(5). :			
	(6). :			
B.	*Subconsultant Subtotal:*			
	Other Direct Costs:			
	Travel (7 round trips)	4228	@ $0.555 per mi.	$2,346.54
	Fax			
	Delivery	1	$46.90	$46.90
	Prevailing Wage Diff. (Straight time) - RF -	528	$9.49	$5,010.72
	Prevailing Wage Diff. (1.5 OT) - RF -	190	32.47	$6,169.30
	Prevailing Wage Diff. (2.0 OT) - RF -	2	53.45	$106.90
	total	720	OK	
	Payroll Taxes (7.650% of PW Costs)			$863.45
	Misc.			
	(1). Short Term Per-deim (Covered in Amendment1):			
	(2). Long Term Per-deim (3 months @ $2000 per month) :			$6,000.00
	(3). Truck Allowance (3 months @1400 per month):			$4,200.00
	(4). Field Computer (3 months @200 per omnth):			$600.00
	(5). Field Cell Phone (3 Months @ 120 per month):			$360.00
C.	*Direct Cost Subtotal:*			$25,703.81
	Subtotal = A+B+C			$115,305.73
	Fixed Fee	14.0% of A		$12,544.27
	TOTAL =			**$127,850.00**

Note: Invoices will be based upon actual QEI hourly rates plus overhead at 173.1% and a fee of 14% of labor and overhead. Subconsultant and Direct Costs will be billed at actual cost. Hours and direct costs are those needed in addition to those included in Amendment 1

ATTACHMENT B2

AGREEMENT BETWEEN COUNTY OF INYO
Quincy Engineering, Inc.
FOR THE PROVISION OF ENGINEERING SERVICES
FOR THE SABRINA ROAD BRIDGE REPLACMENT PROJECT

TERM:

FROM: December 1, 2009 **TO:** June 30, 2013

SCHEDULE OF FEES:

The rates and estimated fees described in the original contract, dated December 1, 2009, are revised in accordance with Quincy's 2012 rate sheet, estimated fee, and estimated hours summary included in Attachment B1 to Amendment No. 1 to the Contract. The contractor shall be compensated at these rates for the scope of work described in Attachment A2 to Amendment No. 2.

Payment for the rates and costs identified herein shall constitute full compensation for providing all services, labor, equipment, materials, and other incidentals necessary to perform all work described in Attachment A2, *Scope of Work.*

The fee and hours summary shown in Attachment A2 are estimates of probable costs, and are presented for information only. The actual costs billed may differ, depending on the actual number of hours and actual direct costs incurred by the contractor. The total compensation to be provided shall not exceed the total contract amount, subject to such adjustments as may be made by properly approved amendments.

ATTACHMENT C2

AGREEMENT BETWEEN COUNTY OF INYO
Quincy Engineering, Inc.
FOR THE PROVISION OF ENGINEERING SERVICES
FOR THE SABRINA ROAD BRIDGE REPLACMENT PROJECT

TERM:

FROM: December 1, 2009 **TO:** June 30, 2013

SCHEDULE OF TRAVEL AND PER DIEM PAYMENTS:

The contractor shall be compensated at the rates shown in Quincy Engineering, Inc.'s 2012 rate sheet as shown in Attachment B1 to Amendment No. 1 to the Contract for travel and per diem expenses

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
13

FROM: Public Works Department

FOR THE BOARD MEETING OF: September 4, 2012

SUBJECT: Resolution and Notice of Completion for the Inyo County Energy Efficiency Upgrade Project.

DEPARTMENTAL RECOMMENDATIONS:

1. Recommend the Board approve the resolution accepting the improvements for the Inyo County Energy Efficiency Upgrade Project; and
2. Authorize the recording of a Notice of Completion for the Inyo County Energy Efficiency Upgrade Project.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

Express Energy, Inc. of Garden Grove, California recently completed construction of the Inyo County Energy Efficiency Upgrade Project. The primary objective of the project was to remove and replace the existing fluorescent lamps in many of Inyo County's buildings with more energy efficient lamps. The project consisted of re-lamping thousands of fluorescent lamps in buildings from Bishop to Tecopa. A summary of the projected saving in kilowatt hours and dollars is included in your Board package The summary also includes a list of the buildings that were involved in the construction. These include most of the larger facilities owned or leased by the County. Several of the leased facilities have high electrical costs primarily because of their physical size and the number of light fixtures in the buildings.

The final contract amount for the Inyo County Energy Efficiency Upgrade Project is $60,763 and the final construction contract costs were approximately $120,268. The total final cost of the project, including construction, construction engineering, oversight, accounting and managements is estimated at $140,500. This number includes soft costs that were related to the project, but were not directly billed to the project by various departments such as the Auditor, County Counsel and portions of the accounting and management by the Public Works Department. The project was budgeted in the FY 2010/2011 Deferred Maintenance Budget. The California Energy Commissons has been billed for $65,204 and Utility Rebates should provide approximately $59,500 paid directly to the contractor. The direct cost to the County include project managenent expenses of approximately $14,000.

On June 14, 2012 a final inspection was performed by Public Works staff, and the improvements were determined to be complete to the satisfaction of the Public Works Director. Accordingly, the Director is requesting that the Board adopt the attached resolution, which accepts the completed improvements and authorizes the Public Works Director to record a notice of completion for the project, which formally accepts the work.

The notice of completion limits the time periods for claims and establishes the date the contractor is paid the remaining funds due under the contract (the retention).

ALTERNATIVES:

The Board could choose not to approve the resolution. Consequently, the project would not be formally accepted and the notice of completion could not be filed. Choosing not to approve the resolution is not recommended because it will extend the time period during which stop notices can be submitted and will delay the release of retention to the Contractor.

OTHER AGENCY INVOLVEMENT:

County Counsel has reviewed the resolution.
The County Auditor's office will pay the retention currently being withheld.

FINANCING:

A portion of the funds for the Inyo County AARA Energy Efficiency Upgrade Project are provided by the California Energy Commission. The funds when provided, will be deposited into the Deferred Maintenance Budget 011501, Object Code 4555, (Federal Grants). The Deferred Maintenance Budget 011510, Object Code 5700 has appropriate budget for the project.

The County should also receive rebate incentives from the utility companies for some of the proposed electrical components. These rebates will offset and supplement the costs of the construction.

And, based on the County's current expenditures for electrical power, the County may expect a reduction in power billing of approximately $59,600 annually by installing the recommended lighting upgrades.

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 7/26/12
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 8/29/12
PERSONNEL DIRECTOR NA	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: 8-29-12

RECORDING REQUESTED BY
AND TO BE RETURNED TO:
County of Inyo
c/o Interim Director of Public Works
Public Works Department
168 No. Edwards Street
PO Drawer Q
Independence, CA 93526

NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN THAT:

1. A work of improvement known as the Inyo County Energy Efficiency Upgrade Project, on the property hereinafter described was completed on June 14, 2012 and was accepted by the Inyo County Board of Supervisors on September, 2012.

2. The property on which the Inyo County Energy Efficiency Upgrade Project has been completed and located is on the grounds of: the buildings listed in Attachment A.

3. The County of Inyo, a political subdivision of the State of California, the address of which is 224 North Edwards Street, P.O. Drawer N, Independence, CA 93526, owns or leases and maintains the real property upon which were involved in the construction of the Inyo County Energy Efficiency Upgrade Project.

4. The undersigned Doug Wilson is the Interim Director of Public Works of the County of Inyo and has been duly authorized pursuant to a Resolution adopted September, 2012 by the Board of Supervisors of the County of Inyo to execute and file this Notice of Completion.

5. The name of the original contractor that constructed the Inyo County Energy Efficiency Upgrade Project pursuant to contract with the owner is Express Energy, Inc.

Pursuant to the contract, the contractor was required to furnish all labor, materials, methods or processes, implements, tools, machinery, equipment, transportation services, and all other items and related functions that are necessary or appurtenant to construct the project designated in the contract.

COUNTY OF INYO

Dated: _____

By: _____
Doug Wilson, Interim Director of Public Works

RESOLUTION # 2012 -

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF INYO, STATE OF CALIFORNIA AUTHORIZING THE RECORDING OF A NOTICE OF COMPLETION FOR THE INYO COUNTY ELECTRICAL UPGRADE PROJECT

WHEREAS, Doug Wilson, Interim Director of Public Works for the County of Inyo, has determined that the Inyo County Energy Efficiency Upgrade Project has been completed by Express Energy, Inc. in accordance with the Project Plans and Specifications.

NOW, THEREFORE, BE IT RESOLVED, that the Director of Public Works is hereby authorized and directed to sign and file with the County Recorder a separate Notice of Completion pertaining to the Inyo County Energy Efficiency Upgrade Project.

Passed, approved and adopted this _____th day of September, 2012 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Marty Fortney,
Chairperson, Board of Supervisors

ATTEST:

Kevin Carunchio, Clerk

by _____
Assistant Clerk to the Board

VERIFICATION

STATE OF CALIFORNIA)
) SS.
COUNTY OF INYO)

I, Doug Wilson, hereby declare: That I am the Interim Director of Public Works for the County of Inyo, a political subdivision of the State of California, the public entity on behalf of which I executed the foregoing NOTICE OF COMPLETION for the Inyo County Energy Efficiency Upgrade Project , and which entity is the owner of the aforesaid interest or estate in the property therein described; that I am authorized by the public entity to execute this NOTICE on the entity's behalf; that I am authorized to and hereby make this verification on behalf of the public entity; and that I have read said NOTICE and know the contents thereof. I declare under penalty of perjury under the laws of the State of California that the NOTICE and the information set forth therein are true and correct.

Dated:_____

_____
Doug Wilson
Interim Director of Public Works

2012 INYO COUNTY ENERGY EFFICIENCY UPGRADE PROJECT, INSTALLATION SUMMARY

LINE NUMBER	SITE	Office or Room No.	ADDRESS	APPROXIMATE AREA, SQ-FT	LEASE	ESTIMATED kWh/Year Saved	ESTIMATED Cost Savings/Year
LADWP ACCOUNTS							
1	#1	Inyo County Courthouse	168 N. Edwards Street, Independence	21,468		33,416	$ 4,244
2	#2	Inyo County Courthouse Annex	168 N. Edwards Street, Independence	14,152		56,230	$ 7,141
3	#3	Inyo County Administration Building	224 N. Edwards Street, Independence	5,277		19,352	$ 2,787
4	#4	Inyo County Jail	550 S. Clay Street, Independence	36,296		52,002	$ 5,668
5	#5	Inyo County Library Bishop Branch	208 Academy Street, Bishop	5,206		10,913	$ 1,528
6	#6	County Services Building, Bishop	207 W. South Street, Bishop	5,536		14,413	$ 2,909
7	#7	Health and Human Services - Bishop	162 Grove Street, Bishop	8,574	YES	47,180	$ 8,398
8	#8	Inyo County Juvenile Detention Facility	201 Mazourka Canyon Road, Independence	9,650		7,878	$ 890
9	#9	Health and Human Services - Independence	155 E. Market Street, Independence	4,285		11,095	$ 1,409
10	#10	Inyo County Water Department	135 S. Jackson Street, Independence	5,586		10,679	$ 1,986
11	#11	Statham Hall Senior Center	138 Jackson Street, Independence	6,698		8,184	$ 1,310
12	#13	Eastern California Museum	155 N. Grant Street, Independence	5,882	DWP Lease property	11,027	$ 1,764
13	#14	Inyo County Administrative Services - Bishop	163 May Street, Bishop	5,224	YES	13,607	2,027
14	#15	Health and Human Services - Lone Pine	380 N. Mt. Whitney Avenue, Lone Pine	3,290	YES	4,201	$ 731
15	#16	D.A./Child Services - Bishop	230 W. Line Street, Bishop	3,369	YES	9,308	$ 1,387
16	#20	Inyo County Road Department - Independence	750 S. Clay Street, Independence	11,389		17,413	$ 2,403
17	#21	Legion Hall/Senior Center - Big Pine	180 Dewey Street, Big Pine	5,688		2,355	$ 337
18	#22	WIC - Women, Infants, and Children	568 W. Line Street, Bishop	2,000	YES	2,243	$ 303
19	#23	Inyo County Library - Lone Pine Branch	127 W. Bush Street, Lone Pine	1,440		710	$ 95
20	#24	Legion Hall/Senior Center - Independence	205 S. Edwards Street, Independence	4,700		705	$ 106
21	ADD #1	Inyo County Sheriffs Substation - Lone Pine	726 N. Main St., Lone Pine	1,912	DWP Leased property	8,010	$ 1,193
22	ADD # 2	Motor Pool/ Maintenance Shop	136 A Jackson St. Independence	1,734		2,424	$ 347
DWP TOTALS				169,356		343,342	$ 48,964

LINE NUMBER	SITE	Office or Room No.	ADDRESS	APPROXIMATE AREA, SQ-FT	LEASE	ESTIMATED kWh/Year Saved	ESTIMATED Cost Savings/Year
SOUTHERN CALIFORNIA EDISON ACCOUNTS							
23		Shoshone Road Shop	245 Highway 127, Shoshone, CA	990	BLM Grant	836	$ 164
24		Tecopa Sr. Center	409 Hot Springs Rd., Tecopa CA	2,608	BLM Lease	15,427	$ 2,715
25		Tecopa Library/HHS	410 Hot Springs Rd., Tecopa CA	720	BLM Lease	3,202	$ 628
26		Inyo Animal Shelter	2000 County Road, Big Pine	+/- 2000 SQ-FT		695	$ 97
27		HHS & Probation Dept - Bishop	912-914 N. Main Street, Bishop	4,686	**YES**	18,111	$ 3,550
28		Bishop Senior Center	506 Park Avenue, Bishop	4,600	DWP Leased property	2,858	$ 503
29		Bishop Road Shop,	701 S. Main St. Bishop	2,800		3,998	$ 784
30		Bishop Road Yard & Construction Trailer,	3236 W. Line St., Bishop	2,800	DWP Leased property	2,641	$ 518
31		Bishop Airport Terminal, Engineering Trailer, Firehouse & Quonset Hut	701 Airport Road, Bishop	4,600	DWP Easement	3,800	$ 745
32		Sheriffs Posse Hut	703 Airport Road Bishop	3,750	DWP Leased property	4,598	$ 901
EDISON TOTALS				29,554		**56,165**	**$ 10,603**
GRAND TOTAL				**198,910**	Note 1	**399,507**	**$ 59,567**

Note 1: 400,000 kWh reduction in power consumption equals approximately 235 metric tons of CO^2 per year reduction
Calculation based on data supplied by DWP for DWP generated power

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
14

☐ Consent ☒ Departmental ☐ Correspondence Action ☐ Public Hearing

☐ Scheduled Time for ☐ Closed Session ☐ Informational

FROM: Inyo County Planning Department

FOR THE BOARD MEETING OF: September 4, 2012

SUBJECT: Forest Service's Proposed Project-Level Predecisional Administrative Review Process

RECOMMENDATION: Review draft correspondence regarding the Forest Service's Proposed Project-level Predecisional Administrative Review Process and authorize the Chair to sign.

SUMMARY DISCUSSION: The U.S. Forest Service has proposed a project-level pre-decisional administrative review process for projects and activities implementing land and resource management plans developed under the Forest and Rangeland Renewable Resources Planning Act of 1974, and document with a Record of Decision or Decision Notice in lieu of the Appeal Reform Act (refer to Attachment 2). At its August 28, 2012 meeting, the Board reviewed the proposed rule and provided preliminary input. The Board also requested that staff invite the Inyo National Forest Supervisor to the September 4 meeting to discuss the proposed rule (and other issues), investigate the purposes of the rule further, and draft correspondence regarding the proposed rule for consideration on September 4.

Staff has invited the Forest Supervisor to the September 4 meeting, and has prepared draft correspondence for the Board's consideration (Attachment 1). Staff is investigating the proposed rule further, and will provide an update on September 4.

ALTERNATIVES: The Board could direct changes to the correspondence, or not transmit any correspondence. Comments on the rule are due by September 7, 2012.

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 *(Must be reviewed and approved by county counsel prior to submission to the board clerk.)*
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (M*ust be reviewed and approved by the auditor-controller prior to submission to the board clerk.)*
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)

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

Date: 8-28-12

Attachments:

1. Draft Correspondence
2. Agenda Request Form from August 28, 2012

September 4, 2012

USDA Forest Service, Objection Regulation Comments
PO Box 4654
Logan, UT 84323

Re: Forest Service's Proposed Project-level Predecisional Administrative Review Process

To Whom It May Concern:

On behalf of the Inyo County Board of Supervisors, thank you for inviting us to participate in the U.S. Forest Service's rulemaking process for the procedures that will be utilized in our national forests, including the proposed Project-level Predecisional Administrative Review Process. While we are uncertain about how this proposed rule may impact us during implementation, we are concerned that it may disenfranchise members of our local community by muting their voices relative to the powerful interests that quite often assert themselves in the Forest Service's land management plans. We therefore request that you review the proposed rule to work to ensure that the people who live and work in our national forest's are provided the greatest opportunity for input as possible.

We are also concerned about any page limits that may be imposed on predecisional administrative review submittals, and request that you take care in crafting page-limit regulations. We are well aware of the difficulties of responding to lengthy appeals, but we also know that the Forest Service often produces voluminous documents, and that length in some cases may be necessary to make a case in complex circumstances. We therefore request that if page limits are imposed for predecisional administrative review submittals, that flexibility be provided for various situations, as well as clear exceptions for, and encouragement of, incorporation by reference of documents previously submitted, published documents, and other appropriate references.

Thank you again for the opportunity to provide input into this important rulemaking process. If you have any questions, please contact the County's Administrative Officer, Kevin Carunchio, at (760) 878-0292 or kcarunchio@inyocounty.us.

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
Chief Tidwell, USFS
Sustainable Forest Action Coalition

Attachment 1

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: Inyo County Planning Department

FOR THE BOARD MEETING OF: August 28, 2012

SUBJECT: Forest Service's Proposed Project-Level Predecisional Administrative Review Process

RECOMMENDATION: Review the Forest Service's Proposed Project-level Predecisional Administrative Review Process and provide direction to staff.

SUMMARY DISCUSSION: The U.S. Forest Service has proposed a project-level pre-decisional administrative review process for projects and activities implementing land and resource management plans developed under the Forest and Rangeland Renewable Resources Planning Act of 1974, and document with a Record of Decision or Decision Notice in lieu of the Appeal Reform Act. The proposal implements Section 428 of the Consolidated Appropriates Act of 2012. Attached is the Federal Register Notice describing the proposed Rule.

ALTERNATIVES: The Board could direct staff to prepare correspondence for the Chair's signature regarding the proposal with specific direction regarding the content, or provide input and direct staff to return with draft correspondence for the Board's consideration on September 4. Comments on the rule are due by September 7, 2012.

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 *(Must be reviewed and approved by county counsel prior to submission to the board clerk.)*
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (*Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)*
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)

Attachment 2

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

Date: 8-21-12

Attachments: Proposed Rule

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703, 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05–0694 to read as follows:

§ 165.T05–0694 Safety Zone; Red Bull Flugtag, Delaware River, Camden, NJ.

(a) *Definitions.* The following definitions apply to this section:

(1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Delaware Bay.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Delaware Bay with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the Red Bull Flugtag Camden under the auspices of a Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Delaware Bay.

(4) *Regulated area* includes the boundary described as originating from the shoreline then west to 39°56′54″ N, 075°07′59″ W then north to 39°56′58″ N, 075°07′58″ W then east to the shoreline.

(b) *Regulations.* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the event area.

(c) *Effective period.* This section will be enforced from 10 a.m. to 5 p.m. on September 15, 2012.

Dated: July 26, 2012.

T. C. Wiemers,

Captain, U.S. Coast Guard, Acting Captain of the Port, Delaware Bay.

[FR Doc. 2012–19345 Filed 8–7–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 218

RIN 0596–AD07

Project-Level Predecisional Administrative Review Process

AGENCY: Forest Service, USDA.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule establishes the sole process by which the public may file objections seeking predecisional administrative review for proposed projects and activities implementing land management plans, including projects authorized pursuant to the Healthy Forests Restoration Act of 2003 (HFRA). The Consolidated Appropriations Act of 2012 directs the Secretary of Agriculture, acting through the Chief of the Forest Service, to provide for a pre-decisional objection process for proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans developed under the Forest and Rangeland Renewable Resources Planning Act of 1974, and documented with a Record of Decision (ROD) or Decision Notice (DN). Section 428 further directs the Secretary to apply these procedures in lieu of the Appeal Reform Act (ARA), which provided for a postdecisional administrative appeal process. The proposed rule also establishes procedures concerning how the Forest Service will provide notice for such projects and activities. The Forest Service invites written comments on this proposed rule.

DATES: Comments on this proposed rule must be received in writing by September 7, 2012. Comments concerning the information collection requirements contained in this proposed rule must be received in writing by October 9, 2012.

ADDRESSES: Send written comments to USDA Forest Service, Objection Regulation Comments, P.O. Box 4654, Logan, UT 84323; by electronic mail to *ObjectionRegulation@fscomments.us*; by fax to 435–750–8799; or by the electronic process available at the Federal eRulemaking portal at *http://www.regulations.gov*.

The public may inspect comments received on this proposed rule at USDA, Forest Service, Ecosystem Management Coordination Staff, 1400 Independence Ave. SW., Washington, DC, between 8:00 a.m. and 4:30 p.m. on business days. Those wishing to inspect comments should call ahead 202–205–0895 to facilitate an appointment and entrance to the building.

Comments concerning the information collection requirements contained in this proposed rule should reference OMB No. 0596–0172 and the docket number, date, and page number of this issue of the **Federal Register.** Comments concerning the information collection requirements may be submitted as provided for comments on the proposed rule. For more information, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Deb Beighley, Assistant Director, Appeals and Litigation at 202–205–1277.

Individuals using telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m. Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: If comments are sent by electronic mail or by fax, the public is requested not to send duplicate written comments via regular mail. Please confine written comments to issues pertinent to the proposed rule; explain the reasons for any recommended changes; and, where possible, reference the specific section or paragraph being addressed.

The *http://www.regulations.gov* Web site is an "anonymous access" system, which means the Forest Service will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the Forest Service without going through *http://www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public record. If you submit an electronic comment, the Forest Service recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the Forest Service cannot read your comment due to technical difficulties and cannot contact you for clarification, the Agency may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

All timely and properly submitted comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received on this proposed rule at USDA, Forest Service,

Ecosystem Management Coordination Staff, 1400 Independence Ave. SW., Washington, DC, between 8:00 a.m. and 4:30 p.m. on business days. Those wishing to inspect comments should call ahead 202–205–0895 to facilitate an appointment and entrance to the building.

Background

On December 23, 2011, President Obama signed into law the Consolidated Appropriations Act of 2012. Section 428 of the Act (hereafter "Section 428") directs the Secretary of Agriculture (Secretary), acting through the Chief of the Forest Service (Chief), to provide for a predecisional objection process based on Section 105(a) of the Healthy Forests Restoration Act of 2003 (HFRA) (16 U.S.C. 6515(a), for proposed actions of the Forest Service concerning projects and activities implementing land management plans and documented with a Record of Decision or Decision Notice. The Act further directs that these procedures be applied in lieu of subsections (c), (d), and (e) of Section 322 of Public Law 102–381 (16 U.S.C. 1612 note) (Appeal Reform Act or ARA) that collectively provide for a postdecisional administrative appeal process for projects and activities implementing land management plans. The Department has developed this proposed rule to: (1) Preserve the predecisional objection process already in place for proposed hazardous fuel reduction projects authorized under the HFRA; (2) expand the scope of that objection process to include other covered actions; and (3) establish a process for providing the notice and comment provisions of the ARA.

President Bush signed into law the Healthy Forests Restoration Act of 2003 (HFRA) to reduce the threat of destructive wildfires while upholding environmental standards and encouraging early public input during planning processes. One of the provisions of the Act (sec. 105) required the Secretary to issue an interim final rule establishing a predecisional administrative review process for hazardous fuel reduction projects authorized by the HFRA. The interim final rule was promulgated at 36 CFR part 218 on January 9, 2004 (69 FR 1529), followed by a final rule on September 17, 2008 (73 FR 53705) that incorporated the results of public comment and the knowledge gained through the Agency's experience with implementing the rule.

Congress enacted the ARA in 1992. The ARA states that "the Secretary of Agriculture, acting through the Chief of the Forest Service, shall establish a notice and comment process for proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans * * * and shall modify the procedure for appeals of decisions concerning such projects." ARA section 322(a), 106 Stat. 1419. The ARA (ARA § 322(c), 106 Stat. 1419) further provided that qualifying individuals may file an appeal "[n]ot later than 45 days after the date of issuance of a decision of the Forest Service concerning actions referred to in subsection (a) * * *." The Department promulgated implementing regulations for the ARA at 36 CFR part 215 in 1993 and revised them in 2003.

Prior to passage of the HFRA, public notice and comment for hazardous fuel reduction project proposals, and appeal of the decisions, would have been conducted according to the procedures set out at 36 CFR part 215. The HFRA objection rule exempts qualifying hazardous fuel reduction projects from the notice, comment, and appeal procedures set out at part 215 and establishes separate objection procedures specifically for hazardous fuel reduction projects, pursuant to 36 CFR part 218.

Now, through Section 428, Congress has directed the Secretary to apply the predecisional objection established in part 218, in place of the appeal provisions at part 215, for proposed actions regarding projects and activities implementing land management plans and documented with a Record of Decision (ROD) or Decision Notice (DN). The Department has determined the most appropriate way to carry out this direction is to revise part 218, by amending subparts A and B, and creating subpart C.

Subpart A includes general provisions applicable to HFRA and non-HFRA covered projects and activities.

Subpart B provides additional direction that is specific to proposed actions not authorized under the HFRA. This subpart includes the notice and comment requirements directed by subsection (b) of the ARA and the emergency situation provisions directed by Section 428.

Subpart C provides additional direction that is specific to proposed hazardous fuel reduction projects authorized under the HFRA.

Administrative Review of Categorically Excluded Projects

On March 19, 2012, the U.S. District Court for the Eastern District of California found that Forest Service regulations exempting project decisions from notice, comment, and appeal when they are categorically excluded from analysis under the National Environmental Policy Act (NEPA) are in violation of the ARA and enjoined the Forest Service from following these regulations. The court's nationwide injunction precludes use of Forest Service notice, comment, and administrative appeal regulations, 36 CFR 215.4(a) and 215.12(f). The court held the 215 regulations conflict with the plain language of the ARA, claiming that Congress did not intend to exclude from notice, comment, and appeal actions that were categorically excluded from documentation under the NEPA. The Department promulgated the regulations pursuant to the Agency's reasonable interpretation of the ARA and the Government has appealed the ruling to the U.S. Court of Appeals for the Ninth Circuit.

The Department is concerned that statements made in the District Court's opinion regarding prudential mootness of litigation concerning 36 CFR part 215 may confuse the public regarding the Congressional intent with respect to the enactment and promulgation of regulations implementing Section 428. While the District Court noted that Section 428 did not change Section 322(a) and (b) of the ARA, the Court's order did not address the full implication of the enactment of Section 428. Section 428 is an amendment of Section 322, and the revised statutory scheme must be read as whole; the existing provisions of Section 322 must be read in harmony with the new provisions of Section 428.

Section 322(a) commands an integrated regulatory system of notice, comment, and appeal for covered projects. Section 322(b) establishes the notice system for such projects. Through Section 428, the post-decisional appeal system of Section 322(c)–(e) has been replaced by a predecisional objection process that is similar to the HFRA administrative review process in that it is exclusively applicable to projects and activities evaluated in an environmental analysis (EA) or environmental impact statement (EIS). Congress gave no indication that it intended differential treatment between the scope of coverage for the notice and comment provisions for "such projects" compared to the activities to be covered by the new predecisional objection process (which are expressly limited in the statutory text to decisions documented in DNs and RODs).

The Department is aware that plaintiffs proffered an alternative view suggesting Congress intended to create a third separate administrative review system with the result being the use of

three appeal processes: an administrative review system under Section 105 of HFRA for HFRA predecisional objections; an administrative review system under Section 428 establishing a non-HFRA predecisional objection process; and an independent, residual post-decisional appeal system under Section 322.

During the pendency of the appeal of the District Court's ruling, the Forest Service has instructed its line officers to abide and comply with the District Court's orders. Further, the Department is aware that Congress is presently considering legislation clarifying notice, comment, and appeal of categorical exclusions. Rather than delay in their entirety the implementation regulations under Section 428, the Department has elected to move forward with the portion of the Section 428 rulemaking that addresses projects associated with EAs and EISs, but reserves and defers promulgation of regulations addressing categorically excluded projects and activities. Within the comment period provided for by this proposed rule, the public may provide written comments concerning treatment of such projects in the future by the Forest Service.

Use of Legal Notices To Initiate Opportunities To Comment and Object

Since 1990 the Agency has relied on the publication of notices in the legal notices section of newspapers of general circulation as the means to make interested and affected parties aware that a plan or project decision has been made. Even more significantly, because the legal notice is not the only means used to provide decision notification, the publication date of legal notices has been used as the sole trigger initiating the start of an appeal filing period. Beginning in 1993, legal notices have also been used to notify and initiate the 30-day comment period mandated by the Appeal Reform Act.

Prior to 1990, the beginning of appeal filing periods were based on the date of the plan or project decision. Deciding officers were required to promptly mail the appropriate decision document to those who had requested it and those who were known to have participated in the decision making process, with the intention that those wishing to utilize the administrative appeal process would have the maximum time available to them.

The switch to requiring the publication of legal notices and using the publication date to initiate the appeal filing period was made to address problems notifying all potentially affected individuals and organizations in enough time that they had the full time available to file an appeal. The causes of these problems included inadvertent failure to identify all interested or potentially affected individuals and organizations, and the delay between when a decision was signed and when a potential appellant received a mailed notice of the decision or otherwise learned of the decision. The reliance on a legal notice publication date was seen as providing an additional and reliable source of notification that would maximize the time available for filing a notice of appeals, and establishing a uniform, service-wide mechanism that provides convincing evidence that the Agency has given timely and constructive notice of decisions to the public.

Although legal notices have been used, generally with success, in this manner for the past two decades, they are still an imperfect solution for some potential appellants. Not all appellants have ready access to the newspaper of record used for the project decision they are interested in and, even if access is available, it can be a burden to keep close watch on the legal notices section of a paper for the appearance of a notice announcing the decision for a particular project.

There are also issues from the Agency's perspective with the use of legal notices. Some newspapers only publish weekly, which can cause delays in getting a notice published in a timely manner. Also, legal notices can be quite expensive, costing in the hundreds of dollars in a newspaper of larger circulation.

The rationale in support of, and the arguments against, the use of legal notices have changed little in the past 20 years. One thing that has changed is the availability of new communications technology, including email, web pages, and social media. The Department believes that within these tools is the potential to provide more effective means of providing timely notifications to those who may be interested in providing comment on a project proposal or who wish to be eligible to submit an objection for administrative review. Even so, these technologies may still not be a solution for all. As widespread as communications technology has become, it is still not used by all citizens.

This proposed rule does not vary from the standard practice of requiring legal notices to notify and establish the beginning dates for the 30-day comment periods and objection filing periods. Still, the Department is open to suggestions on an improved means of providing timely notification to all interested and affected individuals so that the full comment period or objection filing period is available. Comments and suggestions concerning this aspect of the administrative review procedures will be considered when developing a final rule.

Page Limits for Objections

Several persons within and outside the Forest Service have suggested imposing a limitation on the number of pages permitted for objections and appeals. These proponents contend that limiting the number of pages would encourage a more focused presentation of issues regarding an Agency proposal or decision and provide for a more effective review of the issues being raised.

The Agency's appeal and objection regulations have had no limitations on the number of pages that could be filed, and historically these filings have included from 1 to well over 100 pages, exclusive of attachments or exhibits. The Department of the Interior's Board of Land Appeals currently imposes a 30-page limitation on appeals, and some have suggested this would be an appropriate limitation for Forest Service objections and appeals. Consideration would also be given to including documents incorporated by reference, attachments, or exhibits as part of any page limitation that might be imposed.

Although there is no page limitation on objections included in this proposed rule, the Department is taking public comment on this topic now for consideration when a final rule is developed.

Section-by-Section Description of Proposed Rule

Part 218—Project-Level Predecisional Administrative Review Process

Subpart A—General Provisions

Section 218.1—Purpose and Scope

This section describes the purpose and scope of a predecisional administrative review (hereinafter "objection") process for projects and activities implementing land management plans, including proposed hazardous fuel reduction projects authorized by the Healthy Forests Restoration Act (HFRA).

Section 218.2—Definitions

This section defines some of the commonly used terms and phrases in the proposed rule.

Section 218.3—Reviewing Officer

Paragraph (a) of this section establishes who has the authority to carry out the responsibilities of the reviewing officer.

Paragraph (b) provides the reviewing officer with the authority to make all procedural determinations not specifically explained in this part, including those procedures necessary to ensure compatibility, to the extent practicable, when undertaking a joint proposed project subject to each agency's administrative review procedures. The section also provides that such procedural determinations are not subject to further review.

Section 218.4—Proposed Projects and Activities Not Subject to Objection

This section establishes that when no timely and qualifying comments (§§ 218.2 and 218.25) are received, a proposed project or activity is not subject to objection. This is because there would be no eligible objectors (§ 218.5) if no timely and qualifying comments are submitted.

Section 218.5—Who May File an Objection

This section of the rule identifies the qualifying requirements for who may file an objection under this subpart.

Paragraph (a) provides that those individuals and non-Federal entities who have submitted specific and timely written comments regarding the proposed project or activity during a designated opportunity for public comment provided during preparation of an environmental assessment or environmental impact statement for the proposed project or activity are eligible to file an objection. Paragraph (a) further states that for a proposed project or activity described in an environmental impact statement, the opportunity for public comment would be fulfilled during scoping, by the formal comment process for draft environmental impact statements set forth in 40 CFR 1506.10, and any other periods public comment is specifically requested. For proposed actions described in an environmental assessment, the opportunity for public comment will be fulfilled during scoping or any other periods public comment is specifically requested, as environmental assessments are not required to be circulated for public comment in draft form.

Paragraph (b) states that when an organization submits specific written comments, eligibility is conferred on that organization only, not on individual members of that organization. The Department will treat an organization as its own entity for purposes of submitting comments and determining eligibility to file objections. The Department will not accept individual members of organizations to establish eligibility to file individual objections. Any individual member of an organization may submit written comments on his or her own behalf.

Paragraph (c) clarifies that if an objection is submitted on behalf of a number of named individuals or non-Federal entities, each individual or entity listed must meet the eligibility requirement of having submitted specific written comments during scoping or the other opportunities to comment.

Paragraph (d) states that Federal agencies are not allowed to file an objection. Other avenues are available to Federal agencies for working through concerns regarding a proposed action. It is expected that the various Federal agencies will work cooperatively during project development.

Paragraph (e) allows Federal employees to file objections as individuals in a manner consistent with Federal conflict of interest requirements.

Section 218.6—Computation of Time Periods

Paragraphs (a) and (b) describe how time periods are computed.

Paragraph (c) states that the time to file an objection is determined exclusively by the publication date of the legal notice of the EA or final EIS, and draft DN or ROD, in the newspaper of record or, when the Chief is the responsible official, in the **Federal Register**. Although other notifications may be provided, only the legal notice or **Federal Register** publication dates may be used to calculate the objection filing period.

Paragraph (d) states that time extensions are not permitted except as necessary to avoid having a time period end on a non-business day or as permitted at § 218.26.

Section 218.7—Giving Notice of Objection Process for Proposed Projects and Activities Subject to Objection

This section describes the methods to be used when giving notice that an EA or final EIS, and draft Decision Notice (DN) or Record of Decision (ROD) for a proposed action is available for administrative review and how the proposed action must be described in this notice.

Paragraph (a) states that the responsible official should provide early disclosure during scoping and in the EA or EIS, whether a proposed action is a hazardous fuel reduction project under the HFRA or other project implementing a land management plan, and which part 218 objection procedures will be applicable.

Paragraph (b) requires that the responsible official must make available the EA or final EIS, and a draft DN or ROD, to those who have requested the documents or meet the objection eligibility requirements at § 218.4(a). Making a draft decision document available at this time provides the public with a clear statement of the Agency's intent and rationale for the decision to be made following the objection process, even more so than that provided by identification of a preferred alternative in the NEPA analysis documents.

Paragraph (c) states that the responsible official must announce through notice in a previously designated newspaper of record when an EA or final EIS, and draft DN or ROD, are available for administrative review, except for proposals of the Chief where **Federal Register** publication is provided. The legal notice begins the objection-filing period of either 30 or 45 days as specified at §§ 218.26(a) and 218.33(a).

Paragraph (c) further outlines the format and content of the legal notice, including a statement that incorporation of documents by reference is permitted only as provided for at § 218.7(b). This provision ensures that the contents of an objection, including all attachments, are readily available to the reviewing officer for timely completion of the objection process. Similarly, objectors cannot meet the requirements of this process by attempting to incorporate substantive materials and arguments from other objectors. The Federal courts have taken a similar view of such procedural strategies; see *Swanson* v. *U.S. Forest Service,* 87 F.3d 339 (9th Cir. 1996).

The content requirement for a legal notice also includes a statement that issues raised in objections must be based on previously submitted specific written comments regarding the proposed project or activity unless the issue is based on new information arising after the opportunities for comment.

Paragraph (d) requires annual publication in the **Federal Register** of the newspapers to be used for giving legal notice of proposed actions subject to this rule.

Section 218.8—Filing an Objection

This section provides information on how to file an objection.

Paragraph (a) provides for an objection to be filed with the reviewing officer in writing.

Paragraph (b) provides that incorporation of documents by reference shall not be allowed except for certain specified documents. The reasons for

not permitting other documents by reference are addressed in preceding § 218.6(c).

Paragraph (c) specifies that issues raised in objections must be based on previously submitted specific written comments regarding the proposed project or activity and attributed to the objector. This requirement does not apply to objection issues based on new information arising after the opportunities for comment. The paragraph also places the burden of demonstrating compliance with this requirement on the objector.

Paragraph (d) provides a detailed list of information that must be included in an objection. The information in the list is needed for timely and effective processing and review of the objections.

Section 218.9—Evidence of Timely Filing

This section describes the objector's responsibilities for ensuring the timely filing of an objection, including the means to be used by the Forest Service for determining timeliness.

Section 218.10—Objections Set Aside From Review

Paragraph (a) specifies when the reviewing officer must set aside an objection without review or response on the concerns raised, including when an objection is not filed within the objection period; the proposed project is not subject to the procedures of this part and, therefore, is not subject to the objections process; the objector did not submit specific written comments regarding the proposed project or activity during the opportunities for public comment; there is insufficient information to review and respond; the objector withdraws the objection; the objector's identity is not provided or cannot be determined from the signature; or the objection is illegible for any reason.

Paragraph (b) states that when an objection is set aside and not processed, the reviewing officer must give written notice to the objector and responsible official, and document the set aside in the appeal record.

Section 218.11—Resolution of Objections

This section describes the objection resolution process.

Paragraph (a) allows for either the reviewing officer or the objector to request a meeting to discuss the objection and attempt resolution. The reviewing officer has the discretion to determine if sufficient time remains in the review period to make a meeting practical. To assist with identifying areas of potential resolution, the responsible official should be a participant in objection resolution meetings. The paragraph further requires that all meetings with objectors are open to the public.

Paragraph (b) provides for a written response to the objection. The response is not required to be point-by-point and the reviewing officer may issue a single response to multiple objections of the same proposed action. Paragraph (b) also states that there is no higher level review of the reviewing officer's written response to the objection.

Section 218.12—Timing of Project Decision

This section describes when a responsible official may make a final decision regarding a proposed action subject to the provisions of this part.

Paragraph (a) allows decisions to be made on proposed actions only when responses have been made to all objections, and paragraph (b) specifies that the decisions documented in a DN or ROD must be consistent with the reviewing officer's response to the objections.

Paragraph (c) states that a decision can be made on a proposed action on the 5th business day following the close of the filing period when no timely objections are filed. This is to allow for receipt of any objections that might have been mailed and postmarked prior to the close of the objection filing period. National Environmental Policy Act regulations (40 CFR 1506.10) require a minimum of 30 days between notice of the final environmental impact statement and issuance of a ROD when administrative appeal of the ROD is not available.

Section 218.13—Secretary's Authority

Paragraph (a) identifies the Secretary's authority.

Paragraph (b) identifies that projects and activities authorized by the Secretary or Under Secretary of Agriculture are not subject to these procedures. Nothing in the Consolidated Appropriations Act (CAA), Appeal Reform Act (ARA), or HFRA alters the Secretary's long-established authority to exercise any delegated authority and such decisions constitute the final administrative determination of the USDA.

Section 218.13—Judicial Proceedings

Section 218.13 reflects the Department's interpretation and implementation of the ARA, CAA, and HFRA, the statutory foundation for these regulations. Statutory and judicial exhaustion requirements ensure that an agency is able to develop full factual records, to apply technical and managerial expertise to identified problems, to exercise its judgment and discretion, and to correct its own mistakes. Exhaustion requirements are credited with promoting accuracy, efficiency, public participation, agency autonomy, and judicial economy.

Generally, statutory exhaustion requirements are jurisdictional and cannot be waived by courts. The CAA and HFRA permit plaintiffs to undertake the burden of demonstrating that a "futility or inadequacy" exception should be invoked as to a specific plaintiff or claim. The Department understands these statutory provisions are to be read together, narrowly construed, and invoked only in rare instances such as where information becomes available only after the conclusion of the administrative process.

Congress stated that National Environmental Policy Act (NEPA) documents are to be in complete or final form when made available for objection. The objection process is, therefore, not a second comment period on a draft document, but rather a final opportunity to ensure full understanding of public concerns shortly preceding a decision.

Congress' view on the purpose or intent for the objection process likewise narrows the operation of the futility exemption to those situations where information, which dramatically changes the picture with regard to environmental effects, or the need for the project, comes to light after the NEPA document has been completed.

A contrary reading would be inconsistent with Congress' expectation that the exception provisions are not applicable to information which has not been brought to the attention of the Agency. The objection process protects against the possibility of a "futile" objection due to delay because final decisions on proposed actions cannot be issued prior to conclusion of the objection process and any issue brought to the attention of the agency during project or activity development can be assessed through the objection process. Similarly, predecisional review of each proposed action avoids the criticism sometimes leveled against postdecisional appeals that reviewers are unfairly disposed to a particular or predetermined outcome. Instances of futility or inadequacy should be rare indeed as the administrative review is conducted through a process Congress created specifically for authorized hazardous fuel reduction projects and then applied to this broader class of actions, and which occurs prior to the

Agency's final decision. Moreover, the participatory requirements for these projects are predicated on Congress's determination, expressed through the statutory scheme, that predecisional collaboration is vital to avoiding potential disputes and that the land managers are in the optimal position to identify and correct any errors and to fine-tune the design of proposed actions if they are made aware of concerns before final decisions are made. Sweeping exceptions to the participatory requirements are at odds with Congress' intent.

Section 218.15—Information Collection Requirements

This section explains that the rule contains information collection requirements as defined in 5 CFR part 1320 by specifying the information that objectors must supply in an objection. Public comment is being sought on this information collection requirement, as discussed in the Regulatory Certifications section. See the Addresses section for instructions on how to submit comments on the information collection requirement.

Section 218.16—Effective Dates

This section sets out the effective date of this rule and provides for a rapid, yet smooth, transition from the use of a postdecisional appeal process for most project proposals to this predecisional objection process. Transition provisions are necessary to assure that interested and affected parties have full opportunity to be notified of the applicable administrative review procedures and to gain eligibility to file objections under these regulations regardless of what stage of planning and decision making the proposal is at when the final rule becomes effective.

Subpart B—Provisions Specific to Project-Level Proposals Not Authorized Under the Healthy Forests Restoration Act

Section 218.20—Applicability and Scope

This section explains that the subpart is applicable to proposed actions regarding projects and activities implementing land management plans and documented with a Record of Decision (ROD) or Decision Notice (DN), except those authorized under the Healthy Forests Restoration Act. These are the proposals for which Section 428 of the Consolidated Appropriations Act of 2012 (hereafter "Section 428") directed that final regulations be issued that provide for a predecisional objection process for proposed projects and activities documented with a ROD or DN, in lieu of subsections (c), (d), and (e) of Section 322 of the Appeal Reform Act (ARA). The provisions of this subpart implement the notice and comment requirements of the ARA and the emergency situation requirements of Section 428. These provisions are to be used for applicable projects in combination with the general provisions of subpart A.

Section 218.21—Emergency Situations

This section sets out the procedures for emergency situations. Section 428 specifies that if the Chief of the Forest Service determines an emergency situation exists for which immediate implementation of a proposed action is necessary, the proposed action shall not be subject to the predecisional objection process, and implementation shall begin immediately after the Forest Service gives notice of the final decision for the proposed action.

Paragraph (a) establishes that authority for making an emergency situation determination rests with the Chief and Associate Chief.

Paragraph (b) describes the process of making an emergency situation determination. Emergency situation is defined in § 218.2. This paragraph also notes that an emergency situation determination is not subject to review.

Paragraph (c) clarifies when implementation of a project or activity decision may begin if an emergency situation determination has been made. It differentiates between decisions determined to be an emergency documented in a DN and in a ROD. This differentiation is necessary to clarify compliance with Council on Environmental Quality regulations governing final environmental impact statement and ROD timeframes.

Paragraph (d) explains that the decision notification required by Forest Service NEPA regulations at part 220 shall include notification that the proposed action has been determined to be an emergency situation.

Section 218.22—Proposed Projects and Activities Subject to Legal Notice and Opportunity To Comment

Although the Consolidated Appropriations Act of 2012 superseded subsections (c), (d), and (e) of the Appeal Reform Act (ARA), the Department understands Congress' intent to be that the notice and comment provisions of the ARA would continue to operate for the set of projects and activities subject to predecisional objection. The ARA established an integrated system of notice, comment, and appeal for certain Forest Service projects and activities. Congress has reformed this system with the Consolidated Appropriations Act of 2012.

This section describes the proposed actions that are subject to the notice and comment requirements established by Section 322(b) of the ARA.

Paragraphs (a) and (b) establish that proposed projects and activities for which an environmental assessment (EA) or environmental impact statement (EIS) are prepared are subject to the legal notice and opportunity to comment requirements of this subpart.

Paragraph (c) requires that legal notice and opportunity to comment will be provided for proposed amendments to a land management plan that are included as part of a proposed project or activity for which an EA is prepared and that are applicable only to the proposed project or activity.

This section also provides that proposed projects or activities resulting from a supplement or revision of an EA or EIS based on consideration of new information or changed circumstances (paragraph (d)) and proposed research activities to be conducted on National Forest System land (paragraph (e)) are subject to legal notice and opportunity to comment procedure.

Section 218.23—Proposed Projects and Activities Not Subject to Legal Notice and Opportunity To Comment

Paragraph (a) is reserved pending consideration of further developments concerning whether proposed actions that are categorically excluded from documentation in an EA or EIS should be subject to the notification and public involvement requirements.

Land management plan proposals that are made separately from any proposed projects are not subject to the legal notice and opportunity to comment provisions of this subpart (paragraph (b)), nor are proposed projects and activities that are not subject to provisions of the NEPA and its implementing regulations.

As with prior project appeal procedures, paragraph (d) excludes from legal notice and opportunity to comment determinations by the responsible official that a correction, supplement, or revision of an EA or EIS is not required and paragraph (e) excludes rules promulgated in accordance with the Administrative Procedure Act and policies and procedures issued in the Forest Service directives system.

Paragraph (f) excludes from legal notice and opportunity to comment hazardous fuel reduction projects authorized under the HFRA. Public

notice and comment opportunities for these projects are guided by the provisions of the HFRA and of the NEPA and its implementing regulations.

Section 218.24—Notification of Opportunity To Comment on Proposed Projects and Activities

This section establishes the requirements for providing legal and other notice of the opportunity to comment on proposed projects and activities implementing land management plans.

Paragraph (a) describes general responsibilities of the responsible official regarding publication of a legal notice of opportunity to comment.

Paragraph (b) provides the content requirements of a legal notice of opportunity to comment.

Paragraph (c) provides for where legal notices of opportunity to comment must be published.

Section 218.25—Comments on Proposed Projects and Activities

Paragraph (a) establishes specific provisions regarding the opportunity to comment, including the time periods for submission, requirements associated with the comments, and the means by which the Agency will establish timeliness of comments submitted.

Paragraph (b) provides requirements for the acceptance and use of submitted comments.

Section 218.26—Objection Time Periods

Paragraph (a) specifies that the objection-filing period is 45 days following publication of the legal notice of the EA or final EIS, and draft decision, in the newspaper of record or the publication date of the notice in the **Federal Register** when the Chief is the responsible official. This is the same filing period length that has been provided for postdecisional appeals of project decisions since 1993.

Paragraph (b) states that a written response to the objection shall be issued within 45 days following the end of the objection-filing period. The reviewing officer has the discretion to extend the time for up to 10 days when he or she determines that additional time is necessary to provide adequate response to objections or to participate in resolution discussions with the objector(s). This provision for optional extension of the review and response time increases the potential for constructive resolution of objection concerns when fruitful discussions are occurring.

Subpart C—Provisions Specific to Proposed Projects Authorized Under the Healthy Forests Restoration Act

Section 218.30—Applicability and Scope

This section explains that the subpart is applicable to proposed hazardous fuel reduction projects authorized under the Healthy Forests Restoration Act (HFRA). The provisions of this subpart are to be used for applicable projects in combination with the general provisions of subpart A.

Section 218.31—Authorized Hazardous Fuel Reduction Projects Subject to Objection

This section describes projects subject to the objection process provisions of subpart C. Hazardous fuel reduction projects that are subject to the provision of subpart C, in combination with the provision of subpart A, are not subject to the requirements of subpart B.

Section 218.32—Objection Time Periods

Paragraph (a) specifies that the objection-filing period is 30 days following publication of the legal notice of the EA or final EIS in the newspaper of record or the publication date of the notice in the **Federal Register** when the Chief is the responsible official.

Paragraph (b) states that a written response to the objection shall be issued within 30 days following the end of the objection-filing period.

These are the same filing and response timeframes provided for proposed hazardous fuel reduction projects authorized under the HFRA since 2004. The shorter timeframes for this class of projects, as compared to those for proposed actions not authorized under the HFRA (subpart B of the proposed rule), are appropriate because of the interest in expediting the reduction of hazardous fuels as a means to reduce the threat of destructive wildfires.

Regulatory Certifications

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. This proposed rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This proposed rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients of such programs.

Moreover, this proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that act. Therefore, a regulatory flexibility analysis is not required for this proposed rule.

Environmental Impacts

This proposed rule establishes a predecisional administrative review (objection) process for proposed actions regarding projects and activities implementing land management plans, including authorized hazardous fuel reduction projects on National Forest System land. Agency NEPA regulations at 36 CFR 220.6(d)(2) exclude from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instruction." This proposed rule clearly falls within this category of actions and no extraordinary circumstances exist which would require preparation of an environmental assessment or an environmental impact statement. Previous Forest Service administrative appeal rulemakings have applied this categorical exclusion and been confirmed by the courts.

Energy Effects

This proposed rule has been reviewed under Executive Order 13211 of May 18, 2001, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use." It has been determined that this proposed rule does not constitute a significant energy action as defined in the Executive order.

Controlling Paperwork Burdens on the Public

This proposed rule represents an extension with revision of a currently approved information collection requirement as defined in 5 CFR Part 1320, Controlling Paperwork Burdens on the Public. The information to be collected from those who choose to participate in the predecisional administrative review process under the Consolidated Appropriations Act of 2012 and the Healthy Forests Restoration Act is the minimum needed for the reviewing officer to make an informed decision on an objection.

Description of Information Collection

Title: Project-Level Predecisional Administrative Review Process.

OMB Number: 0596–0172.

Expiration Date of Approval: February 28, 2014.

Type of Request: Extension with Revision.

Abstract: The information collected is needed for a citizen or organization to explain the nature of the objection being made to a proposed project or activity undertaken under the authority of the Consolidated Appropriations Act of 2012 or the Healthy Forests Restoration Act, and the reason(s) why the individual or organization objects. Specifically, an objector must provide:

1. A name, mailing address, and if possible, telephone number;
2. Signature or other verification of authorship upon request;
3. The name of the proposed project or activity, the name and title of the responsible official, the National Forest(s) and/or Ranger District(s) on which the proposed project or activity will be implemented; and
4. Any specific changes that the objector seeks and the rationale for those changes.

Estimate of Burden: The public reporting burden to provide information when filing an objection to a proposed project or activity is estimated to average 8 hours per response.

Respondents: Individuals, businesses, not-for-profit institutions, State, local or Tribal Government.

Estimated Number of Respondents: 375.

Estimated Number of Responses per Respondent: 1 response per year.

Estimated Total Annual Burden on Respondents: 3,000 hours.

Comments are Invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of this Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Use of Comments: All comments received in response to this information collection will be summarized and included in the request for final OMB approval. All comments, including names and addresses when provided will become a matter of public record.

Federalism

The Agency has considered this proposed rule under the requirements of Executive Order 13132, Federalism, and Executive Order 12875, Government Partnerships. The Agency has made a preliminary assessment that the proposed rule conforms with the federalism principles set out in these Executive orders; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Based on comments received on this proposed rule, the Agency will consider if any additional consultation will be needed with State and local governments prior to adopting a final rule.

Consultation and Coordination With Indian Tribal Governments

On March 21, 2012, the Regional Foresters were instructed by the Deputy Chief for the National Forest System to send letters inviting more than 600 federally recognized Tribes and Alaska Native Corporations to begin consultation on the proposed rule for a project-level predecisional review process. The Forest Service will continue to conduct government-to-government consultation on the project-level predecisional review process rule until the date 30 days after publication of the proposed rule in the **Federal Register**. The Department considers tribal consultation as an ongoing, iterative process that encompasses development of the proposed rule through the issuance of the final rule.

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630. It has been determined that the proposed rule does not pose the risk of a taking of private property.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988 on civil justice reform. After adoption of this proposed rule, (1) all State and local laws and regulations that conflict with this rule or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this proposed rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Agency has assessed the effects of this proposed rule on State, local, and tribal governments and the private sector. This proposed rule does not compel the expenditure of $100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under Section 202 of the act is not required.

List of Subjects in 36 CFR Part 218

Administrative practice and procedure, National Forests.

Therefore, for the reasons set forth in the preamble, part 218 of Title 36 of the Code of Federal Regulations is proposed to be revised as follows:

PART 218—PROJECT-LEVEL PREDECISIONAL ADMINISTRATIVE REVIEW PROCESS

Subpart A—General Provisions

Sec.

218.1 Purpose and scope.
218.2 Definitions.
218.3 Reviewing officer.
218.4 Proposed projects and activities not subject to objection.
218.5 Who may file an objection.
218.6 Computation of time periods.
218.7 Giving notice of objection process for proposed projects and activities subject to objection.
218.8 Filing an objection.
218.9 Evidence of timely filing.
218.10 Objections set aside from review.
218.11 Resolution of objections.
218.12 Timing of project decision.
218.13 Secretary's authority.
218.14 Judicial proceedings.
218.15 Information collection requirements.
218.16 Effective dates.

Subpart B—Provisions Specific to Project-Level Proposals Not Authorized Under the Healthy Forests Restoration Act

218.20 Applicability and scope.
218.21 Emergency situations.
218.22 Proposed projects and activities subject to legal notice and opportunity to comment.
218.23 Proposed projects and activities not subject to legal notice and opportunity to comment.
218.24 Notification of opportunity to comment on proposed projects and activities.
218.25 Comments on proposed projects and activities.
218.26 Objection time periods.

Subpart C—Provisions Specific to Proposed Projects Authorized Under the Healthy Forests Restoration Act

218.30 Applicability and scope.
218.31 Authorized hazardous fuel reduction projects subject to objection.

218.32 Objection time periods.

Authority: Pub. L. 108–148, 117 Stat 1887 (Healthy Forests Restoration Act of 2003); Sec. 428, Pub. L. 112–74 (Consolidated Appropriations Act, 2012); 125 Stat 1046 (16 U.S.C. 6515 note).

Subpart A—General Provisions

§ 218.1 Purpose and scope.

This subpart establishes a predecisional administrative review (hereinafter referred to as "objection") process for proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans and documented with a Record of Decision or Decision Notice, including proposed authorized hazardous fuel reduction projects as defined in the Healthy Forests Restoration Act of 2003 (HFRA). The objection process is the sole means by which administrative review of qualifying project proposals on National Forest System land may be sought.

(a) Subpart A provides the general provisions of the objection process, including who may file objections to proposed projects and activities, the responsibilities of the participants in an objection, and the procedures that apply for review of the objection.

(b) Subpart B includes provisions that are specific to proposed projects and activities implementing land and resource management plans and documented with a Record of Decision or Decision Notice, except those authorized under the HFRA.

(c) Subpart C includes provisions that are specific to proposed hazardous fuel reduction projects authorized under the HFRA.

§ 218.2 Definitions.

Address. An individual's or organization's current physical mailing address. An email address is not sufficient.

Authorized hazardous fuel reduction project—A hazardous fuel reduction project authorized by the Healthy Forests Restoration Act of 2003 (HFRA).

Comments—Specific written comments submitted to the responsible official or designee during a designated opportunity for public participation provided for a proposed project that are in regard to that project.

Decision notice (DN)—A concise written record of a responsible official's decision based on an environmental assessment and a finding of no significant impact (FONSI) (40 CFR 1508.13; 36 CFR 220.7). The draft decision document made available pursuant to § 218.7(c)(1) will include a draft FONSI unless an environmental impact statement is being prepared.

Emergency situation—A situation on National Forest System (NFS) lands for which immediate implementation of a decision is necessary to achieve one or more of the following: relief from hazards threatening human health and safety; mitigation of threats to natural resources on those NFS or adjacent lands; avoiding a loss of commodity value sufficient to jeopardize the agency's ability to accomplish project objectives directly related to resource protection or restoration.

Entity—For purposes of who may file an objection (§ 218.5), an entity includes non-governmental organizations, businesses, partnerships, state and local governments, Alaska Native Corporations, and Indian Tribes.

Environmental assessment (EA)—A public document that provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement (EIS) or a finding of no significant impact (FONSI), aids an agency's compliance with the National Environmental Policy Act (NEPA) when no EIS is necessary, and facilitates preparation of a statement when one is necessary (40 CFR 1508.9; 36 CFR 220.7).

Environmental impact statement (EIS)—A detailed written statement as required by Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 (40 CFR 1508.11; 36 CFR 220.5).

Forest Service line officer—A Forest Service official who serves in a direct line of command from the Chief and who has the delegated authority to make and execute decisions approving projects subject to this part.

Lead objector—For an objection submitted with multiple individuals and/or entities listed, the individual or entity identified to represent all other objectors for the purposes of communication, written or otherwise, regarding the objection.

Name—The first and last name of an individual or the name of an entity. An electronic username is insufficient for identification of an individual or entity.

National Forest System land—All lands, waters, or interests therein administered by the Forest Service (36 CFR 251.51).

Newspaper(s) of record—Those principal newspapers of general circulation annually identified in a list and published in the **Federal Register** by each regional forester to be used for publishing notices of projects and activities implementing land management plans.

Objection—The written document filed with a reviewing officer by an individual or entity seeking predecisional administrative review of a proposed project or activity implementing a land management plan, including proposed HFRA-authorized hazardous fuel reduction projects, and documented with an environmental assessment or environmental impact statement.

Objection period—The period following publication of the legal notice in the newspaper of record of an environmental assessment (30 calendar days) or final environmental impact statement (45 calendar days) for a proposed project or activity during which an objection may be filed with the reviewing officer. When the Chief is the responsible official the objection period begins following publication of a notice in the **Federal Register**.

Objection process—The procedures established in this subpart for predecisional administrative review of proposed projects or activities implementing land management plans, including proposed HFRA-authorized hazardous fuel reduction projects.

Objector—An individual or entity filing an objection who submitted comments specific to the proposed project or activity during scoping or other opportunity for public comment. The use of the term "objector" applies to all persons or entities who meet eligibility requirements associated with the filed objection (§ 218.5).

Record of decision (ROD)—A document signed by a responsible official recording a decision that was preceded by preparation of an environmental impact statement (EIS) (40 CFR 1505.2; 36 CFR 220.5).

Responsible official—The Forest Service employee who has the delegated authority to make and implement a decision approving proposed projects or activities subject to this part.

§ 218.3 Reviewing officer.

(a) The reviewing officer is the U. S. Department of Agriculture (USDA) or Forest Service official having the delegated authority and responsibility to review an objection filed under this part. The reviewing officer is a Forest Service line officer at the next higher administrative level above the responsible official, or the respective Associate Deputy Chief, Deputy Regional Forester, or Deputy Forest Supervisor with the delegation of authority relevant to the provisions of this part.

(b) The reviewing officer determines procedures to be used for processing objections when the procedures are not

specifically described in this part, including such procedures as needed to be compatible to the extent practicable, with the administrative review processes of other Federal agencies, for projects proposed jointly with other agencies. Such determinations are not subject to further administrative review.

§ 218.4 Proposed projects and activities not subject to objection.

Proposed projects and activities are not subject to objection when no specific and timely written comments regarding the proposed project or activity (see § 218.2) are received during a designated opportunity for public comment (see § 218.5(a)). The responsible official must issue an explanation with the Record of Decision or Decision Notice that the project or activity was not subject to objection.

§ 218.5 Who may file an objection.

(a) Individuals and entities as defined in § 218.2 who have submitted specific and timely written comments as defined in § 218.2 regarding the proposed project or activity during a designated opportunity for public comment provided during preparation of an EA or EIS for the proposed project or activity may file an objection. For proposed projects or activities described in a draft EIS, such opportunity for public comment will be fulfilled during scoping, by the comment period on the draft EIS in accordance with procedures in 40 CFR 1506.10, and any other periods public comment is specifically requested. For proposed projects or activities described in an EA, such opportunity for public comment will be fulfilled during scoping or any other periods public comment is specifically requested.

(b) Comments received from an authorized representative(s) of an entity are considered those of the entity only. Individual members of that entity do not meet objection eligibility requirements solely on the basis of membership in an entity. A member or an individual must submit written comments independently in order to be eligible to file an objection in an individual capacity.

(c) When an objection lists multiple individuals or entities, each individual or entity must meet the requirements of paragraph (a) of this section. If the objection does not identify a lead objector as required at § 218.8(d)(3), the reviewing officer will delegate the first eligible objector on the list as the lead objector. Individuals or entities listed on an objection that do not meet eligibility requirements must not be considered objectors. Objections from individuals or entities that do not meet the requirements of paragraph (a) must not be accepted and must be documented in the objection record.

(d) Federal agencies may not file objections.

(e) Federal employees who otherwise meet the requirements of this subpart for filing objections in a non-official capacity must comply with Federal conflict of interest statutes at 18 U.S.C. 202–209 and with employee ethics requirements at 5 CFR part 2635. Specifically, employees must not be on official duty nor use Government property or equipment in the preparation or filing of an objection. Further, employees must not incorporate information unavailable to the public, such as Federal agency documents that are exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552 (b)).

§ 218.6 Computation of time periods.

(a) *Computation.* All time periods are computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, when the time period expires on a Saturday, Sunday, or Federal holiday, the time is extended to the end of the next Federal working day as stated in the legal notice (11:59 p.m. in the time zone of the receiving office for objections filed by electronic means such as email or facsimile).

(b) *Objection-filing period.* The day after publication of the legal notice for the EA or final EIS in the newspaper of record or **Federal Register** (see § 218.7(c)) is the first day of the objection-filing period.

(c) *Publication date.* The publication date of the legal notice of the EA or final EIS in the newspaper of record or, when the Chief is the responsible official, the **Federal Register**, is the exclusive means for calculating the time to file an objection. Objectors may not rely on dates or timeframe information provided by any other source.

(d) *Extensions.* Time extensions are not permitted except as provided at paragraph (a) of this section, and § 218.26(b).

§ 218.7 Giving notice of objection process for proposed projects and activities subject to objection.

(a) In addition to the notification required in paragraph (c) of this section, the responsible official must disclose during scoping and in the EA or EIS that the proposed project or activity is:

(1) A hazardous fuel reduction project as defined by the HFRA, section 101(2), that is subject to subparts A and C of this part, or

(2) A project or activity implementing a land management plan and not authorized under the HFRA, that is subject to subparts A and B of this part.

(b) The responsible official must promptly make available the final EIS or the EA, and a draft Record of Decision (ROD) or Decision Notice (DN), to those who have requested the documents or are eligible to file an objection in accordance with § 218.5(a).

(c) Upon completion and notification of the availability of the final EIS or EA, and draft ROD or DN, legal notice of the opportunity to object to a proposed project or activity must be published in the applicable newspaper of record identified as defined in § 218.2 for each National Forest System unit. When the Chief is the responsible official, notice must be published in the **Federal Register**. The legal notice or **Federal Register** notice must

(1) Include the name of the proposed project or activity, a concise description of the draft decision and any proposed land management plan amendments, name and title of the responsible official, name of the forest and/or district on which the proposed project or activity will occur, instructions for obtaining a copy of the final EIS or EA and draft ROD or DN as defined in § 218.2, and instructions on how to obtain additional information on the proposed project or activity.

(2) State that the proposed project or activity is subject to the objection process pursuant to 36 CFR part 218 and include the following:

(i) Name and address of the reviewing officer with whom an objection is to be filed. The notice must specify a street, postal, fax, and email address, the acceptable format(s) for objections filed electronically, and the reviewing officer's office business hours for those filing hand-delivered objections.

(ii) A statement that objections will be accepted only from those who have previously submitted specific written comments regarding the proposed project during scoping or other opportunity for public comment in accordance with § 218.5(a). The statement must also specify that issues raised in objections must be based on previously submitted specific written comments regarding the proposed project unless the issue is based on new information arising after the opportunities for comment.

(iii) A statement that the publication date of the legal notice in the newspaper of record or **Federal Register** notice is the exclusive means for calculating the time to file an objection (see §§ 218.26(a) and 218.32(a)), and that those wishing to object should not rely

upon dates or timeframe information provided by any other source. A specific date must not be included in the notice.

(iv) A statement of whether the proposal is a hazardous fuel reduction project authorized under the HFRA and subject to the predecisional objection procedures specific to such projects in subpart C of this part or is a project implementing a land management plan, not authorized under the HFRA, and therefore subject to the objection procedures specific to these projects in subpart B of this part.

(v) A statement that an objection, including attachments, must be filed (regular mail, fax, email, hand-delivery, express delivery, or messenger service) with the appropriate reviewing officer (see § 218.8) within 30 days of the date of publication of the legal notice for the objection process if the proposal is an authorized hazardous fuel reduction project, or within 45 days if the proposal is otherwise a project or activity implementing a land management plan. It should also be stated that incorporation of documents by reference is permitted only as provided for at § 218.8(b).

(vi) A statement describing the minimum content requirements of an objection (see § 218.8(d)).

(d) Through notice published annually in the **Federal Register**, each regional forester must advise the public of the newspaper(s) of record utilized for publishing legal notice required by this part.

§ 218.8 Filing an objection.

(a) Objections must be filed with the reviewing officer in writing. All objections are available for public inspection during and after the objection process.

(b) Incorporation of documents by reference is not allowed, except for the following list of items which may be provided by including date, page, and section of the cited document. All other documents must be included with the objection.

(1) All or any part of a Federal law or regulation.

(2) Forest Service directives and land management plans.

(3) Documents referenced by the Forest Service in the proposed project EA or EIS that is subject to objection.

(4) Comments previously provided to the Forest Service by the objector during proposed project or activity comment periods.

(c) Issues raised in objections must be based on previously submitted specific written comments regarding the proposed project or activity and attributed to the objector, unless the issue is based on new information that arose after the opportunities for comment. The burden is on the objector to demonstrate compliance with this requirement for objection issues (see § 218.8(d)(6)).

(d) At a minimum, an objection must include the following:

(1) Objector's name and address as defined in § 218.2, with a telephone number, if available;

(2) Signature or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the objection);

(3) When multiple names are listed on an objection, identification of the lead objector as defined in § 218.2. Verification of the identity of the lead objector must be provided upon request;

(4) The name of the proposed project, the name and title of the responsible official, and the name(s) of the national forest(s) and/or ranger district(s) on which the proposed project will be implemented;

(5) Sufficient narrative description of those aspects of the proposed project addressed by the objection, specific issues related to the proposed project; if applicable, how the objector believes the environmental analysis or draft decision specifically violates law, regulation, or policy; and suggested remedies that would resolve the objection; and

(6) A statement that demonstrates the link between prior written comments on the particular proposed project or activity and the content of the objection, unless the objection concerns an issue that arose after the designated opportunity(ies) for comment (see § 218.8(c)).

§ 218.9 Evidence of timely filing.

It is the objector's responsibility to ensure timely filing of an objection. Timeliness must be determined by the following indicators:

(a) The date of the U.S. Postal Service postmark for an objection received before the close of the fifth business day after the objection filing date;

(b) The electronically generated posted date and time for email and facsimiles;

(c) The shipping date for delivery by private carrier for an objection received before the close of the fifth business day after the objection filing date; or

(d) The official agency date stamp showing receipt of hand delivery.

§ 218.10 Objections set aside from review.

(a) The reviewing officer must set aside and not review an objection when one or more of the following applies:

(1) Objections are not filed in a timely manner (see §§ 218.7(c)(2)(v), 218.9).

(2) The proposed project is not subject to the objection procedures in §§ 218.1, 218.4, 218.20, and 218.31 of this part.

(3) The individual or entity did not submit timely and specific written comments regarding the proposed project or activity during scoping or another designated opportunity for public comment (see § 218.5(a)).

(4) None of the issues included in the objection are based on previously submitted written comments unless one or more of those issues arose after the opportunities for comment.

(5) The objection does not provide sufficient information as required by § 218.8(d)(5) and (6) for the reviewing officer to review.

(6) The objector withdraws the objection.

(7) An objector's identity is not provided or cannot be determined from the signature (written or electronically scanned) and a reasonable means of contact is not provided (see § 218.8(d)(1) and (2)).

(8) The objection is illegible for any reason, including submissions in an electronic format different from that specified in the legal notice.

(b) The reviewing officer must give written notice to the objector and the responsible official when an objection is set aside from review and must state the reasons for not reviewing the objection. If the objection is set aside from review for reasons of illegibility or lack of a means of contact, the reasons must be documented and a copy placed in the objection record.

§ 218.11 Resolution of objections.

(a) *Meetings.* Prior to the issuance of the reviewing officer's written response, either the reviewing officer or the objector may request to meet to discuss issues raised in the objection and potential resolution. The reviewing officer has the discretion to determine whether or not adequate time remains in the review period to make a meeting with the objector practical. The responsible official should be a participant along with the reviewing officer in objection resolution meetings. All meetings are open to the public.

(b) *Reviewing officer's response to objections.* (1) A written response must set forth the reasons for the response, but need not be a point-by-point response and may contain instructions to the responsible official, if necessary. In cases involving more than one objection to a proposed project or activity, the reviewing officer may consolidate objections and issue one or more responses.

(2) No further review from any other Forest Service or USDA official of the

reviewing officer's written response to an objection is available.

§ 218.12 Timing of project decision.

(a) The responsible official may not sign a ROD or DN concerning a proposed project or activity subject to the provisions of this part until the reviewing officer has responded to all pending objections.

(b) The ROD or DN signed by the responsible official must be consistent with the reviewing officer's response to objections.

(c) When no objection is filed within the allotted filing period (see §§ 218.26 and 218.32):

(1) The reviewing officer must notify the responsible official.

(2) Approval of the proposed project or activity documented in a ROD in accordance with 40 CFR 1506.10, or in a DN may occur on, but not before, the fifth business day following the end of the objection-filing period.

§ 218.13 Secretary's authority.

(a) Nothing in this section shall restrict the Secretary of Agriculture from exercising any statutory authority regarding the protection, management, or administration of National Forest System land.

(b) Decisions concerning projects and activities issued by the Secretary of Agriculture or the Under Secretary, Natural Resources and Environment, are not subject to the procedures set forth in this part. Approval of projects and activities by the Secretary or Under Secretary constitutes the final administrative determination of the U.S. Department of Agriculture.

§ 218.14 Judicial proceedings.

The objection process set forth in this subpart fully implements Congress' design for a predecisional administrative review process. These procedures present a full and fair opportunity for concerns to be raised and considered on a project-by-project basis. Individuals and groups must structure their participation so as to alert the local agency officials making particular land management decisions of their positions and contentions. Further, any filing for Federal judicial review of a decisions covered by these regulations is premature and inappropriate unless the plaintiff has exhausted the administrative review process set out in this part.

§ 218.15 Information collection requirements.

The rules of this part specify the information that objectors must provide in an objection to a proposed project (see § 218.8). As such, these rules contain information collection requirements as defined in 5 CFR part 1320. These information requirements are assigned OMB Control Number 0596–0172.

§ 218.16 Effective dates.

(a) *Effective dates for HFRA-authorized projects.* (1) Provisions of this part that are applicable to hazardous fuel reduction projects authorized under the HFRA are in effect as of [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] for projects where scoping begins on or after this date.

(2) Hazardous fuel reduction project proposals under the HFRA for which public scoping began prior to [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] may use the predecisional objection procedures posted at *http://www.fs.fed.us/objections.*

(3) Hazardous fuel reduction project proposals that are re-scoped with the public or re-issued for notice and comment after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] are subject to this part.

(b) *Effective dates for non-HFRA-authorized projects.* (1) Project proposals with public scoping completed, but that have not had legal notice published. The applicable provisions of this part are in effect as of [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] where public scoping was previously initiated for project proposals, but legal notice of the opportunity to comment has not yet been published; unless scoping or other public notification of the project (e.g. Schedule of Proposed Actions) has clearly indicated the project to be under the former 36 CFR part 215 appeal process.

(2) Project proposals which have legal notice published, but a Decision Notice or Record of Decision has not been signed. If a Decision Notice or Record of Decision is signed within 6 months of [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], it will be subject to the 36 CFR part 215 appeal process. If the Decision Notice or Record of Decision is to be signed more than 6 months beyond [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], the project proposal will be subject to the requirements of this part. In this case, the responsible official will notify all interested and affected parties who participated during scoping or provided specific written comment regarding the proposed project or activity during the comment period initiated with a legal notice that the project proposal will be subject to the predecisional objection regulations at 36 CFR part 218. All interested and affected parties who provided written comment as defined in § 218.2 during scoping or the comment period will be eligible to participate in the objection process.

(3) Project proposals are subject to the requirements of this part when initial public scoping, re-scoping with the public, or re-issuance of notice and comment begins on or after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

Subpart B—Provisions Specific to Project-Level Proposals Not Authorized Under Healthy Forests Restoration Act

§ 218.20 Applicability and scope.

This subpart includes provisions that are specific to proposed projects and activities implementing land and resource management plans and documented with a Record of Decision or Decision Notice, except those authorized under the Healthy Forests Restoration Act (HFRA). The sections of this subpart must be considered in combination with the general provisions of subpart A for the full complement of regulatory direction pertaining to predecisional administrative review of the applicable projects and activities.

§ 218.21 Emergency situations.

(a) *Authority.* The Chief and the Associate Chief of the Forest Service are authorized to make the determination that an emergency situation as defined in § 218.2 exists.

(b) *Determination.* The determination that an emergency situation exists shall be based on an examination of the relevant information. During the consideration by the Chief or Associate Chief, additional information may be requested from the responsible official. The determination that an emergency situation does or does not exist is not subject to administrative review under this part.

(c) *Implementation.* When it is determined that an emergency situation exists with respect to all or part of the decision, implementation may proceed as follows:

(1) Immediately after notification (see 36 CFR 220.7(d)) of a decision documented in a decision notice (DN).

(2) Immediately when the decision is documented in a record of decision (ROD), after complying with the timeframes and publication requirements described in 40 CFR 1506.10(b)(2).

(d) *Notification.* The responsible official shall identify any emergency

situation determination made for a project or activity in the notification of the decision (see 36 CFR 220.5(g) and 220.7(d)).

§ 218.22 Proposed projects and activities subject to legal notice and opportunity to comment.

The legal notice and opportunity to comment procedures of this subpart apply only to:

(a) Proposed projects and activities implementing land management plans for which an environmental assessment (EA) is prepared;

(b) Proposed projects and activities implementing land management plans and described in a draft or supplemental environmental impact statement (EIS), for which notice and comment procedures are governed by 40 CFR parts 1500 through 1508 also;

(c) Proposed amendments to a land management plan that are included as part of a proposed project or activity for which an EA or EIS is prepared and which are applicable only to a proposed project or activity covered in paragraph (a) of this section;

(d) A proposed project or activity decision resulting from a supplement or revision of an EA or EIS based on consideration of new information or changed circumstances; and

(e) Proposed research activities to be conducted on National Forest System land.

§ 218.23 Proposed projects and activities not subject to legal notice and opportunity to comment.

The legal notice and opportunity to comment procedures of this subpart do not apply to:

(a) [Reserved];

(b) Proposed land management plans, plan revisions, and plan amendments that are made separately from any proposed projects;

(c) Proposed projects and activities not subject to the provisions of the National Environmental Policy Act and the implementing regulations at 40 CFR parts 1500 through 1508 and 36 CFR part 220;

(d) Determinations by the responsible official, after consideration of new information or changed circumstances, that a correction, supplement, or revision of the EA or EIS is not required; and

(e) Rules promulgated in accordance with the Administrative Procedure Act (5 U.S.C. 551 et seq.) or policies and procedures issued in the Forest Service Manual and Handbooks (36 CFR part 216).

(f) Proposed hazardous fuel reduction projects authorized under the Healthy Forests Restoration Act.

§ 218.24 Notification of opportunity to comment on proposed projects and activities.

(a) *Responsible official.* The responsible official shall:

(1) Provide legal notice of the opportunity to comment on a proposed project or activity implementing the land management plan.

(2) Determine the most effective timing and then publish the legal notice of the opportunity to comment on a proposed project or activity as provided for in paragraph (c)(2) of this section.

(3) Promptly provide notice about the proposed project or activity to any individual or organization who has requested it and to those who have participated in planning for that project.

(4) Accept all written comments on the proposed project or activity as provided for in § 218.25(a)(4).

(5) Identify all specific written comments regarding the proposed project.

(b) *Content of legal notice.* All legal notices shall include the following:

(1) The title and brief description of the proposed project or activity.

(2) A general description of the proposed project or activity's location with sufficient information to allow the interested public to identify the location.

(3) When applicable, a statement that the responsible official is requesting an emergency situation determination or it has been determined that an emergency situation exists for the proposed project or activity as provided for in § 218.21.

(4) For a proposed project or activity to be analyzed and documented in an environmental assessment (EA), a statement that the opportunity to comment ends 30 days following the date of publication of the legal notice in the newspaper of record (see § 218.25(a)(2)); legal notices shall not contain the specific date since newspaper publication dates may vary.

(5) For a proposed project or activity that is analyzed and documented in a draft environmental impact statement (EIS), a statement that the opportunity to comment ends 45 days following the date of publication of the notice of availability (NOA) in the **Federal Register** (see § 218.25(a)(2)). The legal notice must be published after the NOA and contain the NOA publication date.

(6) A statement that only those who submit timely and specific written comments regarding the proposed project or activity during a designated opportunity for public comment will be accepted as objectors.

(7) The responsible official's name, title, telephone number, and addresses (street, postal, facsimile, and email) to whom comments are to be submitted and the responsible official's office business hours for those submitting hand-delivered comments (see § 218.25(a)(4)(ii)).

(8) A statement indicating that for objection eligibility each individual or representative from each organization submitting specific written comments regarding the proposed project or activity must either sign the comments or verify identity upon request.

(9) The acceptable format(s) for electronic comments.

(10) Instructions on how to obtain additional information on the proposed project or activity.

(c) *Publication.* (1) Through notice published annually in the **Federal Register**, each Regional Forester shall advise the public of the newspaper(s) of record utilized for publishing legal notices required by this part.

(2) Legal notice of the opportunity to comment on a proposed project or activity shall be published in the applicable newspaper of record identified in paragraph (c)(1) of this section for each National Forest System unit. When the Chief is the responsible official, notice shall also be published in the **Federal Register**. The publication date of the legal notice in the newspaper of record is the exclusive means for calculating the time to submit written comments on a proposed project or activity to be analyzed and documented in an EA. The publication date of the NOA in the **Federal Register** is the exclusive means for calculating the time to submit written comments on a proposed project or activity that is analyzed and documented in a draft EIS.

§ 218.25 Comments on proposed projects and activities.

(a) *Opportunity to comment.* (1) *Time period for submission of comments*—(i) *Environmental assessment.* Comments on the proposed project or activity shall be accepted for 30 days following the date of publication of the legal notice.

(ii) *Draft environmental impact statement.* Comments on the proposed project or activity shall be accepted for a minimum of 45 days following the date of publication in the **Federal Register** pursuant to 40 CFR parts 1500 through 1508.

(iii) *Comments.* It is the responsibility of all individuals and organizations to ensure that their comments are received in a timely manner as provided for in paragraph (a)(4) of this section.

(iv) *Extension.* The time period for the opportunity to comment on environmental assessments shall not be extended.

(2) *Computation of the comment period.* The time period is computed using calendar days, including Saturdays, Sundays, and Federal holidays. However, when the time period expires on a Saturday, Sunday, or Federal holiday, comments shall be accepted until the end of the next Federal working day (11:59 p.m.).

(i) *Environmental assessment (EA).* The 30-day comment period for proposed projects or activities to be analyzed and documented in an EA begins on the first day after publication of the legal notice.

(ii) *Draft environmental impact statement (EIS).* The 45-day comment period for proposed projects or activities that are analyzed and documented in a draft EIS begins on the first day after publication of the NOA in the **Federal Register**.

(3) *Requirements.* Individuals and entities wishing to be eligible to object must provide the following during the comment period:

(i) Name and address.

(ii) Title of the proposed project or activity.

(iii) Specific written comments as defined in § 218.2 regarding the proposed project or activity, along with supporting reasons that the responsible official should consider in reaching a decision.

(iv) Signature or other verification of identity upon request; identification of the individual or entity who authored the comment(s) is necessary for objection eligibility.

(A) For objections listing multiple entities or multiple individuals, a signature or other means of verification must be provided for the individual authorized to represent each entity and for each individual in the case of multiple names, to meet objection eligibility requirements.

(B) Those using electronic means may submit a scanned signature. Otherwise another means of verifying the identity of the individual or entity representative may be necessary for electronically submitted comments.

(v) Individual members of an entity must submit their own comments to meet the requirements of objection eligibility; comments received on behalf of an organization are considered as those of the organization only.

(4) Evidence of timely submission. When there is a question about timely submission of comments, timeliness shall be determined as follows:

(i) Written comments must be postmarked by the Postal Service, emailed, faxed, or otherwise submitted (for example, express delivery service) by 11:59 p.m. on the 30th calendar day following publication of the legal notice for proposed projects or activities to be analyzed and documented in an EA or the 45th calendar day following publication of the NOA in the **Federal Register** for a draft EIS.

(ii) Hand-delivered comments must be time and date imprinted at the correct responsible official's office by the close of business on the 30th calendar day following publication of the legal notice for proposed projects or activities to be analyzed and documented in an EA or the 45th calendar day following publication of the NOA in the **Federal Register** for a draft EIS.

(iii) For emailed comments, the sender should normally receive an automated electronic acknowledgment from the agency as confirmation of receipt. If the sender does not receive an automated acknowledgment of the receipt of the comments, it is the sender's responsibility to ensure timely receipt by other means.

(b) *Consideration of comments.* (1) The responsible official shall consider all written comments submitted in compliance with paragraph (a) of this section.

(2) All written comments received by the responsible official shall be placed in the project file and shall become a matter of public record.

§ 218.26 Objection time periods.

(a) *Time to file an objection.* Written objections, including any attachments, must be filed with the reviewing officer within 45 days following the publication date of the legal notice of the EA or final EIS in the newspaper of record or the publication date of the notice in the **Federal Register** when the Chief is the responsible official (see § 218.7(c)). It is the responsibility of objectors to ensure that their objection is received in a timely manner.

(b) *Time for responding to an objection.* The reviewing officer must issue a written response to the objector(s) concerning their objection(s) within 45 days following the end of the objection-filing period. The reviewing officer has the discretion to extend the time for up to 10 days when he or she determines that additional time is necessary to provide adequate response to objections or to participate in resolution discussions with the objector(s).

Subpart C—Provisions Specific to Proposed Projects Authorized Under the Healthy Forests Restoration Act

§ 218.30 Applicability and scope.

This subpart includes provisions that are specific to proposed hazardous fuel reduction projects documented with a Record of Decision or Decision Notice, and authorized under the Healthy Forests Restoration Act (HFRA). The sections of this subpart must be considered in combination with the general provisions of subpart A for the full complement of regulatory direction pertaining to predecisional administrative review of the applicable projects and activities.

§ 218.31 Authorized hazardous fuel reduction projects subject to objection.

(a) Only authorized hazardous fuel reduction projects as defined by the HFRA, section 101(2), occurring on National Forest System land that have been analyzed in an EA or EIS are subject to this subpart. Authorized hazardous fuel reduction projects processed under the provisions of the HFRA are not subject to the requirements in subpart B of this part.

(b) When authorized hazardous fuel reduction projects are approved contemporaneously with a plan amendment that applies only to that project, the objection process of this part applies to both the plan amendment and the project.

§ 218.32 Objection time periods.

(a) *Time to file an objection.* Written objections, including any attachments, must be filed with the reviewing officer within 30 days following the publication date of the legal notice of the EA or final EIS in the newspaper of record or the publication date of the notice in the **Federal Register** when the Chief is the responsible official (see § 218.6(c)). It is the responsibility of objectors to ensure that their objection is received in a timely manner.

(b) *Time for responding to an objection.* The reviewing officer must issue a written response to the objector(s) concerning their objection(s) within 30 days following the end of the objection-filing period.

Dated: July 19, 2012.

Thomas L. Tidwell,

Chief, Forest Service.

[FR Doc. 2012–19302 Filed 8–7–12; 8:45 am]

BILLING CODE 3410–11–P

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
15

☐ Consent ☒ Departmental ☐ Correspondence Action ☐ Public Hearing
☐ Scheduled Time ☐ Closed Session ☐ Informational

FROM: Supervisor Susan Cash - Supervisor Linda Arcularius

FOR THE BOARD MEETING OF: September 4, 2012

SUBJECT: Proposition 30, *Temporary Taxes to Fund Education. Guaranteed Local Public Safety Funding.*

DEPARTMENTAL RECOMMENDATION:

Request Board provide direction to Supervisors Cash and Arcularius, the Board's representatives to CSAC and RCRC, regarding the Board's position on Proposition 30 – *Temporary Taxes to Fund Education - Guaranteed Local Public Safety Funding.*

SUMMARY DISCUSSION:

Proposition 30 referred to as "The Schools & Local Public Safety Protection Act of 2012" will appear on the November 2012 Statewide Ballot as *"Proposition 30, Temporary Taxes to fund Education. Guaranteed Local Public Safety Funding. Initiative Constitutional Amendment."* Please see the attached analysis of Proposition 30, from both CSAC and RCRC.

The CSAC Board of Directors is being asked on September 6, 2012 to take a "support" position on the recommendation of three policy committees as well as the CSAC Executive Board. RCRC will be requesting its members to take a position on the measure at the September RCRC Board of Directors Meeting. As Inyo County's CSAC and RCRC's representative at the Board of Directors of the respective organizations, we are requesting direction from the Inyo Board on how to cast Inyo's vote. This initiative is consistent with and conflicts with different points in the County's legislative platform.

ALTERNATIVES:

At CSAC, Inyo County can vote "Yes" to support, "No" to oppose support, or abstain from the vote. It is important to note that the first, and possibly only, motion to be voted on at CSAC will be on a "Support" position as recommended by the Executive Board. Different action can only be taken after a vote on a "Support" position. At RCRC, Inyo County will have the ability to either support, oppose or abstain from taking a position on the Initiative.

OTHER AGENCY INVOLVEMENT:

California State Association of Counties (CSAC) and the Regional Council of Rural Counties.

FINANCING:

Unknown. Ultimately, any financing mechanisms mentioned in the attached analysis are not dependent on our position on the Proposition, but on the success or failure of the measure in the General Election.

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 Assistant Clerk of the Board.)* Approved: _____ Date_____
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)_____ Susan Cash Linda Arellano Date:_____

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August 22, 2012

To: CSAC Board of Directors

From: Steve Keil, Interim Executive Director
Jean Kinney Hurst, Legislative Representative

Re: **Proposition 30: The Schools and Local Public Safety Protection Act – ACTION ITEM**

Recommendation. The CSAC Executive Committee recommends a position of "support" on Proposition 30.

Overview. The CSAC Board of Directors has made obtaining a constitutional guarantee of revenues to support the 2011 realigned programs, as well as protecting counties from costs associated with future changes to those programs, a top Association priority for 2012.

Proposition 30, slated for the November ballot, is Governor Brown's measure that is jointly sponsored by the California Federation of Teachers and is the only remaining vehicle to provide those constitutional guarantees and protections previously negotiated by counties with the Administration.

The CSAC Officers referred Proposition 30 to the Health and Human Services, Administration of Justice, and Government Finance and Operations policy committees. Each policy committee met during the CSAC Legislative Conference and each recommended a "support" position on the measure. Proposition 30 was subsequently referred to the CSAC Executive Committee, which also recommends a position of "support."

The CSAC Policy and Procedure Manual states that the CSAC Officers will assign qualified propositions to appropriate policy committees when they fall within existing policy as outlined in CSAC's Legislative Platform or pose a direct impact on county government. If the policy committees recommend a position on any measures, then those measures proceed to the CSAC Executive Committee for debate and action. If the Executive Committee votes to recommend a position on a measure, it moves to the full Board of Directors for action. Any Board member can request the Board's consideration of a ballot measure not otherwise slated for discussion.

Please note that CSAC policies also require 30 votes to take a position on a ballot measure.

Background. The provisions of Proposition 30 have been discussed by the CSAC Board of Directors at length since early 2011. Constitutional protections for realignment revenues and programs has been the cornerstone of CSAC's support

for realignment in all aspects of that discussion. This year, the CSAC Board of Directors:

- On January 5, 2012, voted to suspend all efforts by CSAC to independently qualify a ballot measure seeking 2011 realignment funding protections, leaving *The Schools and Local Public Safety Protection Act of 2012* (sponsored by Governor Brown) as the only available vehicle to achieve those constitutional protections.

- On February 23, 2012, voted to adopt a "support" position on *The Schools and Local Public Safety Protection Act of 2012* upon a recommendation by the CSAC Executive Committee. The California State Sheriffs Association (CSSA) and the Chief Probation Officers of California (CPOC) had previously also voted to support the Governor's measure.

In March of 2012, the Governor reached a compromise agreement with the California Federation of Teachers (CFT) to modify his proposal, resulting in a new measure, *The Schools and Local Public Safety Protection Act Version 3.* The CFT then abandoned qualification efforts on its original school tax measure.

This compromise measure, upon qualifying for the November ballot, has been designated by the Secretary of State as Proposition 30, now the only available vehicle to achieve constitutional protections for 2011 realignment.

Proposition 30 contains identical constitutional protections negotiated between the Administration and CSAC in early 2011, including protections for realignment revenues and protections from cost increases associated with realigned programs. The changes to the Governor's original measure are associated with the temporary tax increases, as outlined below:

		Governor's December Measure	Proposition 30
Personal Income Tax Provisions	INCOME FOR SINGLE (JOINT) FILER		
	$250,000 ($500,000)	1%	1%
	$300,000 ($600,000)	1.5%	2%
	$500,000 ($1,000,000)	2%	3%
	LENGTH OF TAX	5 years	7 years
Sales Tax Provisions			
	RATE	½ cent	¼ cent
	LENGTH OF TAX	4 years	4 years

These temporary taxes are exclusively dedicated to school entities (K-12 education and community colleges) and are subject to the Proposition 98 guarantee. These revenues are deposited into a newly created fund and allocated to schools, bypassing the Legislature. This provision essentially means that these revenues are first to fill the "bucket" of the state's annual Proposition 98 calculation, thus saving state General Fund revenues (by about half the amount of revenues raised).

A copy of the Legislative Analyst's Office analysis of Proposition 30 is attached for your review.

Attachments

Ballot Label and Summary
Proposition 30 Text
Legislative Analyst's Office Analysis of Proposition 30

PROPOSITION 30 TEMPORARY TAXES TO FUND EDUCATION. GUARANTEED LOCAL PUBLIC SAFETY FUNDING. INITIATIVE CONSTITUTIONAL AMENDMENT.

OFFICIAL TITLE AND SUMMARY — PREPARED BY THE ATTORNEY GENERAL

TEMPORARY TAXES TO FUND EDUCATION. GUARANTEED LOCAL PUBLIC SAFETY FUNDING. INITIATIVE CONSTITUTIONAL AMENDMENT.

- Increases personal income tax on annual earnings over $250,000 for seven years.
- Increases sales and use tax by ¼ cent for four years.
- Allocates temporary tax revenues 89% to K–12 schools and 11% to community colleges.
- Bars use of funds for administrative costs, but provides local school governing boards discretion to decide, in open meetings and subject to annual audit, how funds are to be spent.
- Guarantees funding for public safety services realigned from state to local governments.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Additional state tax revenues of about $6 billion annually from 2012–13 through 2016–17. Smaller amounts of additional revenue would be available in 2011–12, 2017–18, and 2018–19.
- These additional revenues would be available to fund programs in the state budget. Spending reductions of about $6 billion in 2012–13, mainly to education programs, would not take effect.

ANALYSIS BY THE LEGISLATIVE ANALYST

OVERVIEW

This measure temporarily increases the state sales tax rate for all taxpayers and the personal income tax (PIT) rates for upper-income taxpayers. These temporary tax increases provide additional revenues to pay for programs funded in the state budget. The state's 2012–13 budget plan—approved by the Legislature and the Governor in June 2012—assumes passage of this measure. The budget, however, also includes a backup plan that requires spending reductions (known as "trigger cuts") in the event that voters reject this measure. This measure also places into the State Constitution certain requirements related to the recent transfer of some state program responsibilities to local governments. Figure 1 summarizes the main provisions of this proposition, which are discussed in more detail below.

Figure 1

Overview of Proposition 30

State Taxes and Revenues

- Increases sales tax rate by one-quarter cent for every dollar for four years.
- Increases personal income tax rates on upper-income taxpayers for seven years.
- Raises about $6 billion in additional annual state revenues from 2012–13 through 2016–17, with smaller amounts in 2011–12, 2017–18, and 2018–19.

State Spending

- If approved by voters, additional revenues available to help balance state budget through 2018–19.
- If rejected by voters, 2012–13 budget reduced by $6 billion. State revenues lower through 2018–19.

Local Government Programs

- Guarantees local governments receive tax revenues annually to fund program responsibilities transferred to them by the state in 2011.

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

STATE TAXES AND REVENUES

Background

The General Fund is the state's main operating account. In the 2010–11 fiscal year (which ran from July 1, 2010 to June 30, 2011), the General Fund's total revenues were $93 billion. The General Fund's three largest revenue sources are the PIT, the sales tax, and the corporate income tax.

Sales Tax. Sales tax rates in California differ by locality. Currently, the average sales tax rate is just over 8 percent. A portion of sales tax revenues goes to the state, while the rest is allocated to local governments. The state General Fund received $27 billion of sales tax revenues during the 2010–11 fiscal year.

Personal Income Tax. The PIT is a tax on wage, business, investment, and other income of individuals and families. State PIT rates range from 1 percent to 9.3 percent on the portions of a taxpayer's income in each of several income brackets. (These are referred to as marginal tax rates.) Higher marginal tax rates are charged as income increases. The tax revenue generated from this tax—totaling $49.4 billion during the 2010–11 fiscal year—is deposited into the state's General Fund. In addition, an extra 1 percent tax applies to annual income over $1 million (with the associated revenue dedicated to mental health services).

Proposal

Increases Sales Tax Rate From 2013 Through 2016. This measure temporarily increases the statewide sales tax rate by one-quarter cent for every dollar of goods purchased. This higher tax rate would be in effect for four years—from January 1, 2013 through the end of 2016.

Increases Personal Income Tax Rates From 2012 Through 2018. As shown in Figure 2, this measure increases the existing 9.3 percent PIT rates on higher incomes. The additional marginal tax rates would increase as taxable income increases. For joint filers, for example, an additional 1 percent marginal tax rate would be imposed on income between $500,000 and $600,000 per year, increasing the total rate to 10.3 percent. Similarly, an additional 2 percent marginal tax rate would be imposed on income between $600,000 and $1 million, and an additional 3 percent marginal tax rate would be imposed on income above $1 million, increasing the total rates on these income brackets to 11.3 percent and 12.3 percent, respectively. These new tax rates would affect about 1 percent of California PIT filers. (These taxpayers currently pay about 40 percent of state personal income taxes.) The tax rates would be in effect for seven years—

Figure 2

Current and Proposed Personal Income Tax Rates Under Proposition 30

Single Filer's Taxable Income[a]	Joint Filers' Taxable Income[a]	Head-of-Household Filer's Taxable Income[a]	Current Marginal Tax Rate[b]	Proposed Additional Marginal Tax Rate[b]
$0–$7,316	$0–$14,632	$0–$14,642	1.0%	—
7,316–17,346	14,632–34,692	14,642–34,692	2.0	—
17,346–27,377	34,692–54,754	34,692–44,721	4.0	—
27,377–38,004	54,754–76,008	44,721–55,348	6.0	—
38,004–48,029	76,008–96,058	55,348–65,376	8.0	—
48,029–250,000	96,058–500,000	65,376–340,000	9.3	—
250,000–300,000	500,000–600,000	340,000–408,000	9.3	1.0%
300,000–500,000	600,000–1,000,000	408,000–680,000	9.3	2.0
Over 500,000	Over 1,000,000	Over 680,000	9.3	3.0

[a] Income brackets shown were in effect for 2011 and will be adjusted for inflation in future years. Single filers also include married individuals and registered domestic partners (RDPs) who file taxes separately. Joint filers include married and RDP couples who file jointly, as well as qualified widows or widowers with a dependent child.

[b] Marginal tax rates apply to taxable income in each tax bracket listed. The proposed additional tax rates would take effect beginning in 2012 and end in 2018. Current tax rates listed exclude the mental health tax rate of 1 percent for taxable income in excess of $1 million.

For text of Proposition 30, see page 80.

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

starting in the 2012 tax year and ending at the conclusion of the 2018 tax year. (Because the rate increase would apply as of January 1, 2012, affected taxpayers likely would have to make larger payments in the coming months to account for the full-year effect of the rate increase.) The additional 1 percent rate for mental health services would still apply to income in excess of $1 million. Proposition 30's rate changes, therefore, would increase these taxpayers' marginal PIT rate from 10.3 percent to 13.3 percent. Proposition 38 on this ballot would also increase PIT rates. The nearby box describes what would happen if both measures are approved.

What Happens if Voters Approve Both Proposition 30 and Proposition 38?

State Constitution Specifies What Happens if Two Measures Conflict. If provisions of two measures approved on the same statewide ballot conflict, the Constitution specifies that the provisions of the measure receiving more "yes" votes prevail. Proposition 30 and Proposition 38 on this statewide ballot both increase personal income tax (PIT) rates and, as such, could be viewed as conflicting.

Measures State That Only One Set of Tax Increases Goes Into Effect. Proposition 30 and Proposition 38 both contain sections intended to clarify which provisions are to become effective if both measures pass:

- ***If Proposition 30 Receives More Yes Votes.*** Proposition 30 contains a section indicating that its provisions would prevail in their entirety and none of the provisions of any other measure increasing PIT rates—in this case Proposition 38—would go into effect.
- ***If Proposition 38 Receives More Yes Votes.*** Proposition 38 contains a section indicating that its provisions would prevail and the tax rate provisions of any other measure affecting sales or PIT rates—in this case Proposition 30—would not go into effect. Under this scenario, the spending reductions known as the "trigger cuts" would take effect as a result of Proposition 30's tax increases not going into effect.

Fiscal Effect

Additional State Revenues Through 2018–19. Over the five fiscal years in which both the sales tax and PIT increases would be in effect (2012–13 through 2016–17), the average annual state revenue gain resulting from this measure's tax increases is estimated at around $6 billion. Smaller revenue increases are likely in 2011–12, 2017–18, and 2018–19 due to the phasing in and phasing out of the higher tax rates.

Revenues Could Change Significantly From Year to Year. The revenues raised by this measure could be subject to multibillion-dollar swings—either above or below the revenues projected above. This is because the vast majority of the additional revenue from this measure would come from the PIT rate increases on upper-income taxpayers. Most income reported by upper-income taxpayers is related in some way to their investments and businesses, rather than wages and salaries. While wages and salaries for upper-income taxpayers fluctuate to some extent, their investment income may change significantly from one year to the next depending upon the performance of the stock market, housing prices, and the economy. For example, the current mental health tax on income over $1 million generated about $730 million in 2009–10 but raised more than twice that amount in previous years. Due to these swings in the income of these taxpayers and the uncertainty of their responses to the rate increases, the revenues raised by this measure are difficult to estimate.

STATE SPENDING

Background

State General Fund Supports Many Public Programs. Revenues deposited into the General Fund support a variety of programs—including public schools, public universities, health programs, social services, and prisons. School spending is the largest part of the state budget. Earlier propositions passed by state voters require the state to provide a minimum annual amount—commonly called the Proposition 98 minimum guarantee—for schools (kindergarten through high school) and community colleges (together referred to as K–14 education). The minimum guarantee is funded through a combination of state General Fund and local property tax revenues. In many years, the calculation of the minimum guarantee is highly sensitive to changes in state General Fund revenues. In years when General Fund revenues grow by a large amount, the guarantee is likely to increase by a large amount. A large share of the state and local funding that is allocated to schools and community colleges is "unrestricted," meaning that they may use the funds for any educational purpose.

Proposal

New Tax Revenues Available to Fund Schools and Help Balance the Budget. The revenue generated by the measure's temporary tax increases would be included in the calculations of the Proposition 98 minimum guarantee—raising the guarantee by billions of dollars each year. A portion of the new revenues therefore would be used to support higher school funding, with the remainder helping

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

to balance the state budget. From an accounting perspective, the new revenues would be deposited into a newly created state account called the Education Protection Account (EPA). Of the funds in the account, 89 percent would be provided to schools and 11 percent to community colleges. Schools and community colleges could use these funds for any educational purpose. The funds would be distributed the same way as existing unrestricted per-student funding, except that no school district would receive less than $200 in EPA funds per student and no community college district would receive less than $100 in EPA funds per full-time student.

Fiscal Effect if Measure Is Approved

2012–13 Budget Plan Relies on Voter Approval of This Measure. The Legislature and the Governor adopted a budget plan in June to address a substantial projected budget deficit for the 2012–13 fiscal year as well as projected budget deficits in future years. The 2012–13 budget plan (1) assumes that voters approve this measure and (2) spends the resulting revenues on various state programs. A large share of the revenues generated by this measure is spent on schools and community colleges. This helps explain the large increase in funding for schools and community colleges in 2012–13—a $6.6 billion increase (14 percent) over 2011–12. Almost all of this increase is used to pay K–14 expenses from the previous year and reduce delays in some state K–14 payments. Given the large projected budget deficit, the budget plan also includes actions to constrain spending in some health and social services programs, decrease state employee compensation, use one-time funds, and borrow from other state accounts.

Effect on Budgets Through 2018–19. This measure's additional tax revenues would be available to help balance the state budget through 2018–19. The additional revenues from this measure provide several billion dollars annually through 2018–19 that would be available for a wide range of purposes—including funding existing state programs, ending K–14 education payment delays, and paying other state debts. Future actions of the Legislature and the Governor would determine the use of these funds. At the same time, due to swings in the income of upper-income taxpayers, potential state revenue fluctuations under this measure could complicate state budgeting in some years. After the proposed tax increases expire, the loss of the associated tax revenues could create additional budget pressure in subsequent years.

Figure 3

2012–13 Spending Reductions if Voters Reject Proposition 30

(In Millions)	
Schools and community colleges	$5,354
University of California	250
California State University	250
Department of Developmental Services	50
City police department grants	20
CalFire	10
DWR flood control programs	7
Local water safety patrol grants	5
Department of Fish and Game	4
Department of Parks and Recreation	2
DOJ law enforcement programs	1
Total	**$5,951**

DWR = Department of Water Resources; DOJ = Department of Justice.

Fiscal Effect if Measure Is Rejected

Backup Budget Plan Reduces Spending if Voters Reject This Measure. If this measure fails, the state would not receive the additional revenues generated by the proposition's tax increases. In this situation, the 2012–13 budget plan requires that its spending be reduced by $6 billion. These trigger cuts, as currently scheduled in state law, are shown in Figure 3. Almost all the reductions are to education programs—$5.4 billion to K–14 education and $500 million to public universities. Of the K–14 reductions, roughly $3 billion is a cut in unrestricted funding. Schools and community colleges could respond to this cut in various ways, including drawing down reserves, shortening the instructional year for schools, and reducing enrollment for community colleges. The remaining $2.4 billion reduction would increase the amount of late payments to schools and community colleges back to the 2011–12 level. This could affect the cash needs of schools and community colleges late in the fiscal year, potentially resulting in greater short-term borrowing.

Effect on Budgets Through 2018–19. If this measure is rejected by voters, state revenues would be billions of dollars lower each year through 2018–19 than if the measure were approved. Future actions of the Legislature and the Governor would determine how to balance the state budget at this lower level of revenues. Future state budgets could be balanced through cuts to schools or other programs, new revenues, and one-time actions.

For text of Proposition 30, see page 80.

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

LOCAL GOVERNMENT PROGRAMS

Background

In 2011, the state transferred the responsibility for administering and funding several programs to local governments (primarily counties). The transferred program responsibilities include incarcerating certain adult offenders, supervising parolees, and providing substance abuse treatment services. To pay for these new obligations, the Legislature passed a law transferring about $6 billion of state tax revenues to local governments annually. Most of these funds come from a shift of a portion of the sales tax from the state to local governments.

Proposal

This measure places into the Constitution certain provisions related to the 2011 transfer of state program responsibilities.

Guarantees Ongoing Revenues to Local Governments. This measure requires the state to continue providing the tax revenues redirected in 2011 (or equivalent funds) to local governments to pay for the transferred program responsibilities. The measure also permanently excludes the sales tax revenues redirected to local governments from the calculation of the minimum funding guarantee for schools and community colleges.

Restricts State Authority to Expand Program Requirements. Local governments would not be required to implement any future state laws that increase local costs to administer the program responsibilities transferred in 2011, unless the state provided additional money to pay for the increased costs.

Requires State to Share Some Unanticipated Program Costs. The measure requires the state to pay part of any new local costs that result from certain court actions and changes in federal statutes or regulations related to the transferred program responsibilities.

Eliminates Potential Mandate Funding Liability. Under the Constitution, the state must reimburse local governments when it imposes new responsibilities or "mandates" upon them. Under current law, the state could be required to provide local governments with additional funding (mandate reimbursements) to pay for some of the transferred program responsibilities. This measure specifies that the state would not be required to provide such mandate reimbursements.

Ends State Reimbursement of Open Meeting Act Costs. The Ralph M. Brown Act requires that all meetings of local legislative bodies be open and public. In the past, the state has reimbursed local governments for costs resulting from certain provisions of the Brown Act (such as the requirement to prepare and post agendas for public meetings). This measure specifies that the state would not be responsible for paying local agencies for the costs of following the open meeting procedures in the Brown Act.

Fiscal Effects

State Government. State costs could be higher for the transferred programs than they otherwise would have been because this measure (1) guarantees that the state will continue providing funds to local governments to pay for them, (2) requires the state to share part of the costs associated with future federal law changes and court cases, and (3) authorizes local governments to refuse to implement new state laws and regulations that increase their costs unless the state provides additional funds. These potential costs would be offset in part by the measure's provisions eliminating any potential state mandate liability from the 2011 program transfer and Brown Act procedures. The net fiscal effect of these provisions is not possible to determine and would depend on future actions by elected officials and the courts.

Local Government. The factors discussed above would have the opposite fiscal effect on local governments. That is, local government revenues could be higher than they otherwise would have been because the state would be required to (1) continue providing funds to local governments to pay for the program responsibilities transferred in 2011 and (2) pay all or part of the costs associated with future federal and state law changes and court cases. These increased local revenues would be offset in part by the measure's provisions eliminating local government authority to receive mandate reimbursements for the 2011 program shift and Brown Act procedures. The net fiscal effect of these provisions is not possible to determine and would depend on future actions by elected officials and the courts.

SUMMARY

If voters approve this measure, the state sales tax rate would increase for four years and PIT rates would increase for seven years, generating an estimated $6 billion annually in additional state revenues, on average, between 2012–13 and 2016–17. (Smaller revenue increases are likely for the 2011–12, 2017–18, and 2018–19 fiscal years.) These revenues would be used to help fund the state's 2012–13 budget plan and would be available to help balance the budget over the next seven years. The measure also would guarantee that local governments continue to annually receive the share of state tax revenues transferred in 2011 to pay for the shift of some state program responsibilities to local governments.

If voters reject this measure, state sales tax and PIT rates would not increase. Because funds from these tax increases would not be available to help fund the state's 2012–13 budget plan, state spending in 2012–13 would be reduced by about $6 billion, with almost all the reductions related to education. In future years, state revenues would be billions of dollars lower than if the measure were approved.

For text of Proposition 30, see page 80.

12-0009

March 14, 2012

RECEIVED
MAR 14 2012
INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

VIA MESSENGER

Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814

Attention: Ashley Johansson

Re: *The Schools and Local Public Safety Protection Act of 2012 - ver. 3*

Dear Ms. Johansson:

In accordance with the requirements of Elections Code section 9001(a), I request that the Attorney General prepare a circulating title and summary for a measure entitled "The Schools and Local Public Safety Protection Act of 2012." The text of the measure, a check for $200.00, and the certifications required by Elections Code sections 9001(b) and 9608 are enclosed.

This initiative is substantively identical to The Schools and Local Public Safety Protection Act of 2012 (ver. 2), AG number 12-0001, except that (1) the sales and use tax increase is only ¼ cent; (2) the income tax rate for the top two brackets is raised by an additional .5 and 1.0 percent, respectively; and (3) the income tax rate increases remain in effect through the end of the 2018 tax year.

Please direct all correspondence and inquiries regarding this measure to:

Karen Getman
Thomas A. Willis
Remcho, Johansen & Purcell, LLP
201 Dolores Avenue
San Leandro, CA 94577
Phone: (510) 346-6200
Fax: (510) 346-6201

Sincerely,

Thomas A. Willis

Enclosures
(00166767)

THE SCHOOLS AND LOCAL PUBLIC SAFETY PROTECTION ACT OF 2012

Sec. 1. Title.

This measure shall be known and may be cited as "The Schools and Local Public Safety Protection Act of 2012."

Sec. 2. Findings.

(a) Over the past 4 years alone, California has had to cut more than $56 billion from education, police and fire protection, healthcare and other critical state and local services. These funding cuts have forced teacher layoffs, increased school class sizes, increased college fees, reduced police protection, increased fire response times, exacerbated dangerous overcrowding in prisons, and substantially reduced oversight of parolees.

(b) These cuts in critical services have hurt California's seniors, middle-class, working families, children, college students and small businesses the most. We cannot afford more cuts to education and the other services we need.

(c) After years of cuts and difficult choices it is necessary to turn the state around. Raising new tax revenue is an investment in our future that will put California back on track for growth and success.

(d) The Schools and Local Public Safety Protection Act of 2012 will make California's tax system more fair. With working families struggling while the wealthiest among us enjoy record income growth, it is only right to ask the wealthy to pay their fair share.

(e) The Schools and Local Public Safety Protection Act of 2012 raises the income tax on those at the highest end of the income scale – those who can most afford it. It also temporarily restores some sales taxes in effect last year, while keeping the overall sales tax rate lower than it was in early 2011.

(f) The new taxes in this measure are temporary. Under the Constitution the 1/4 cent sales tax increase expires in four years, and the income tax increases for the wealthiest taxpayers end in seven years.

(g) The new tax revenue is guaranteed in the Constitution to go directly to local school districts and community colleges. Cities and counties are guaranteed ongoing funding for public safety programs such as local police and child protective services. State money is freed up to help balance the budget and prevent even more devastating cuts to services for seniors, working families, and small businesses. Everyone benefits.

(h) To ensure these funds go where the voters intend, they are put in special accounts that the Legislature cannot touch. None of these new revenues can be spent on state bureaucracy or administrative costs.

(i) These funds will be subject to an independent audit every year to ensure they are spent only for schools and public safety. Elected officials will be subject to prosecution and criminal penalties if they misuse the funds.

Sec. 3. Purpose and Intent.

(a) The chief purpose of this measure is to protect schools and local public safety by asking the wealthy to pay their fair share of taxes. This measure takes funds away from state control and places them in special accounts that are exclusively dedicated to schools and local public safety in the state constitution.

(b) This measure builds on a broader state budget plan that has made billions of dollars in permanent cuts to state spending.

(c) The measure guarantees solid, reliable funding for schools, community colleges, and public safety while helping balance the budget and preventing further devastating cuts to services for seniors, middle-class, working families, children and small businesses.

(d) This measure gives constitutional protection to the shift of local public safety programs from state to local control and the shift of state revenues to local government to pay for those programs. It guarantees that schools are not harmed by providing even more funding than schools would have received without the shift.

(e) This measure guarantees that the new revenues it raises will be sent directly to school districts for classroom expenses, not administrative costs. This school funding cannot be suspended or withheld no matter what happens with the state budget.

(f) All revenues from this measure are subject to local audit every year, and audit by the independent Controller to ensure that they will be used only for schools and local public safety.

Sec. 4. Section 36 is added to Article XIII of the California Constitution, to read:

SEC. 36. (a) For purposes of this section:

(1) "Public Safety Services" includes the following:

(A) Employing and training public safety officials, including law enforcement personnel, attorneys assigned to criminal proceedings, and court security staff.

(B) Managing local jails and providing housing, treatment, and services for, and supervision of, juvenile and adult offenders.

(C) Preventing child abuse, neglect, or exploitation; providing services to children and youth who are abused, neglected, or exploited, or who are at risk of abuse, neglect, or exploitation, and the families of those children; providing adoption services; and providing adult protective services.

(D) Providing mental health services to children and adults to reduce failure in school, harm to self or others, homelessness, and preventable incarceration or institutionalization.

(E) Preventing, treating, and providing recovery services for substance abuse.

(2) "2011 Realignment Legislation" means legislation enacted on or before September 30, 2012, to implement the state budget plan, that is entitled 2011 Realignment and provides for the assignment of Public Safety Services responsibilities to local agencies, including related reporting responsibilities. The legislation shall provide local agencies with maximum flexibility and control over the design, administration, and delivery of Public Safety Services consistent with federal law and funding requirements, as determined by the Legislature. However, 2011 Realignment Legislation shall include no new programs assigned to local agencies after January 1, 2012 except for the early periodic screening, diagnosis, and treatment (EPSDT) program and mental health managed care.

(b)(1) Except as provided in (d), commencing in fiscal year 2011-2012 and continuing thereafter, the following amounts shall be deposited into the Local Revenue Fund 2011, as established by Section 30025 of the Government Code, as follows:

(A) All revenues, less refunds, derived from the taxes described in Sections 6051.15 and 6201.15 of the Revenue and Taxation Code, as those sections read on July 1, 2011.

(B) All revenues, less refunds, derived from the vehicle license fees described in Section 11005 of the Revenue and Taxation Code, as that section read on July 1, 2011.

(2) On and after July 1, 2011, the revenues deposited pursuant to paragraph (1) shall not be considered General Fund revenues or proceeds of taxes for purposes of Section 8 of Article XVI of the California Constitution.

(c)(1) Funds deposited in the Local Revenue Fund 2011, are continuously appropriated exclusively to fund the provision of Public Safety Services by local agencies. Pending full implementation of the 2011 Realignment Legislation, funds may also be used to reimburse the State for program costs incurred in providing Public Safety Services on behalf of local agencies. The methodology for allocating funds shall be as specified in the 2011 Realignment Legislation.

(2) The county treasurer, city and county treasurer, or other appropriate official shall create a County Local Revenue Fund 2011 within the treasury of each county or city

and county. The money in each County Local Revenue Fund 2011 shall be exclusively used to fund the provision of Public Safety Services by local agencies as specified by the 2011 Realignment Legislation.

(3) Notwithstanding Section 6 of Article XIII B, or any other constitutional provision, a mandate of a new program or higher level of service on a local agency imposed by the 2011 Realignment Legislation, or by any regulation adopted or any executive order or administrative directive issued to implement that legislation, shall not constitute a mandate requiring the State to provide a subvention of funds within the meaning of that section. Any requirement that a local agency comply with Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, with respect to performing its Public Safety Services responsibilities, or any other matter, shall not be a reimbursable mandate under Section 6 of Article XIII B.

(4)(A) Legislation enacted after September 30, 2012, that has an overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation shall apply to local agencies only to the extent that the State provides annual funding for the cost increase. Local agencies shall not be obligated to provide programs or levels of service required by legislation, described in this subparagraph, above the level for which funding has been provided.

(B) Regulations, executive orders, or administrative directives, implemented after October 9, 2011, that are not necessary to implement the 2011 Realignment Legislation, and that have an overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation, shall apply to local agencies only to the extent that the State provides annual funding for the cost increase. Local agencies shall not be obligated to provide programs or levels of service pursuant to new regulations, executive orders, or administrative directives, described in this subparagraph, above the level for which funding has been provided.

(C) Any new program or higher level of service provided by local agencies, as described in subparagraphs (A) and (B), above the level for which funding has been provided, shall not require a subvention of funds by the State nor otherwise be subject to Section 6 of Article XIII B. This paragraph shall not apply to legislation currently exempt from subvention under paragraph (2) of subdivision (a) of Section 6 of Article XIII B as that paragraph read on January 2, 2011.

(D) The State shall not submit to the federal government any plans or waivers, or amendments to those plans or waivers, that have an overall effect of increasing the cost borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation, except to the extent that the plans, waivers, or amendments are required by federal law, or the State provides annual funding for the cost increase.

(E) The State shall not be required to provide a subvention of funds pursuant to this paragraph for a mandate that is imposed by the State at the request of a local agency or to comply with federal law. State funds required by this paragraph shall be from a source other than those described in subdivisions (b) and (d), ad valorem property taxes, or the Social Services Subaccount of the Sales Tax Account of the Local Revenue Fund.

(5)(A) For programs described in subparagraphs (C) to (E) inclusive, of paragraph (1) of subdivision (a) and included in the 2011 Realignment Legislation, if there are subsequent changes in federal statutes or regulations that alter the conditions under which federal matching funds as described in the 2011 Realignment Legislation are obtained, and have the overall effect of increasing the costs incurred by a local agency, the State shall annually provide at least 50 percent of the nonfederal share of those costs as determined by the State.

(B) When the State is a party to any complaint brought in a federal judicial or administrative proceeding that involves one or more of the programs described in subparagraphs (C) to (E) inclusive, of paragraph (1) of subdivision (a) and included in the 2011 Realignment Legislation, and there is a settlement or judicial or administrative order that imposes a cost in the form of a monetary penalty or has the overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation, the State shall annually provide at least 50 percent of the nonfederal share of those costs as determined by the State. Payment by the State is not required if the State determines that the settlement or order relates to one or more local agencies failing to perform a ministerial duty, failing to perform a legal obligation in good faith, or acting in a negligent or reckless manner.

(C) The state funds provided in this paragraph shall be from funding sources other than those described in subdivisions (b) and (d), ad valorem property taxes, or the Social Services Subaccount of the Sales Tax Account of the Local Revenue Fund.

(6) If the State or a local agency fails to perform a duty or obligation under this section or under the 2011 Realignment Legislation, an appropriate party may seek judicial relief. These proceedings shall have priority over all other civil matters.

(7) The funds deposited into a County Local Revenue Fund 2011 shall be spent in a manner designed to maintain the State's eligibility for federal matching funds, and to ensure compliance by the State with applicable federal standards governing the State's provision of Public Safety Services.

(8) The funds deposited into a County Local Revenue Fund 2011 shall not be used by local agencies to supplant other funding for Public Safety Services.

(d) If the taxes described in subdivision (b) are reduced or cease to be operative, the State shall annually provide moneys to the Local Revenue Fund 2011 in an amount equal to or greater than the aggregate amount that otherwise would have been provided

by the taxes described in subdivision (b). The method for determining that amount shall be described in the 2011 Realignment Legislation, and the State shall be obligated to provide that amount for so long as the local agencies are required to perform the Public Safety Services responsibilities assigned by the 2011 Realignment Legislation. If the State fails to annually appropriate that amount, the Controller shall transfer that amount from the General Fund in pro rata monthly shares to the Local Revenue Fund 2011. Thereafter, the Controller shall disburse these amounts to local agencies in the manner directed by the 2011 Realignment Legislation. The state obligations under this subdivision shall have a lower priority claim to General Fund money than the first priority for money to be set apart under Section 8 of Article XVI and the second priority to pay voter-approved debts and liabilities described in Section 1 of Article XVI.

(e)(1) To ensure that public education is not harmed in the process of providing critical protection to local Public Safety Services, the Education Protection Account is hereby created in the General Fund to receive and disburse the revenues derived from the incremental increases in taxes imposed by this section as specified in subdivision (f).

(2)(A) Before June 30, 2013, and before June 30th of each year thereafter through 2018, the Director of Finance shall estimate the total amount of additional revenues, less refunds, that will be derived from the incremental increases in tax rates made in subdivision (f) that will be available for transfer into the Education Protection Account during the next fiscal year. The Director of Finance shall make the same estimate by January 10, 2013, for additional revenues, less refunds, that will be received by the end of the 2012-13 fiscal year.

(B) During the last ten days of the quarter of each of the first three quarters of each fiscal year from 2013-14 through 2018-19, the Controller shall transfer into the Education Protection Account one fourth of the total amount estimated pursuant to subparagraph (A) for that fiscal year, except as this amount may be adjusted pursuant to subparagraph (D).

(C) In each of the fiscal years 2012-13 through 2020-21, the Director of Finance shall calculate an adjustment to the Education Protection Account, as specified by subparagraph (D), by adding together the following amounts, as applicable:

(i) In the last quarter of each fiscal year from 2012-13 through 2018-19, the Director of Finance shall recalculate the estimate made for the fiscal year pursuant to subparagraph (A), and shall subtract from this updated estimate the amounts previously transferred to the Education Protection Account for that fiscal year.

(ii) In June 2015 and in every June through 2021, the Director of Finance shall make a final determination of the amount of additional revenues, less refunds, derived from the incremental increases in tax rates made in subdivision (f) for the fiscal year ending two years prior. The amount of the updated estimate calculated in clause (i) for the fiscal year ending two years prior shall be subtracted from the amount of this final determination.

(D) If the sum determined pursuant to subparagraph (C) is positive, the Controller shall transfer an amount equal to that sum into the Education Protection Account within 10 days preceding the end of the fiscal year. If that amount is negative, the Controller shall suspend or reduce subsequent quarterly transfers, if any, to the Education Protection Account until the total reduction equals the negative amount herein described. For purposes of any calculation made pursuant to clause (i) of subparagraph (C), the amount of a quarterly transfer shall not be modified to reflect any suspension or reduction made pursuant to this subparagraph.

(3) All moneys in the Education Protection Account are hereby continuously appropriated for the support of school districts, county offices of education, charter schools, and community college districts as set forth in this paragraph.

(A) Eleven percent of the moneys appropriated pursuant to this paragraph shall be allocated quarterly by the Board of Governors of the California Community Colleges to community college districts to provide general purpose funding to community college districts in proportion to the amounts determined pursuant to Section 84750.5 of the Education Code, as that code section read upon the enactment of this section. The allocations calculated pursuant to this subparagraph shall be offset by the amounts specified in subdivisions (a), (c) and (d) of Section 84751 of the Education Code, as that section read upon enactment of this section, that are in excess of the amounts calculated pursuant to Section 84750.5 of the Education Code, as that section read upon enactment of this section, provided that no community college district shall receive less than one hundred dollars ($100) per full time equivalent student.

(B) Eighty nine percent of the moneys appropriated pursuant to this paragraph shall be allocated quarterly by the Superintendent of Public Instruction to provide general purpose funding to school districts, county offices of education, and state general-purpose funding to charter schools in proportion to the revenue limits calculated pursuant to Sections 2558 and 42238 and the amounts calculated pursuant to Section 47633 of the Education Code for county offices of education, school districts, and charter schools, respectively, as those sections read upon enactment of this section. The amounts so calculated shall be offset by the amounts specified in subdivision (c) of Section 2558, paragraphs (1) through (7) of subdivision (h) of Section 42238, and Section 47635 of the Education Code for county offices of education, school districts, and charter schools, respectively, as those sections read upon enactment of this section, which are in excess of the amounts calculated pursuant to Sections 2558, 42238, and 47633 of the Education Code for county offices of education, school districts, and charter schools, respectively, as those sections read upon enactment of this section, provided that no school district, county office of education, or charter school shall receive less than two hundred dollars ($200) per unit of average daily attendance.

(4) This subdivision is self-executing and requires no legislative action to take effect. Distribution of the moneys in the Education Protection Account by the Board of

Governors of the California Community Colleges and the Superintendent of Public Instruction shall not be delayed or otherwise affected by failure of the Legislature and Governor to enact an annual budget bill pursuant to Section 12 of Article IV, by invocation of paragraph (h) of Section 8 of Article XVI, or by any other action or failure to act by the Legislature or Governor.

(5) Notwithstanding any other provision of law, the moneys deposited in the Education Protection Account shall not be used to pay any costs incurred by the Legislature, Governor or any agency of state government.

(6) A community college district, county office of education, school district, and charter school shall have sole authority to determine how the moneys received from the Education Protection Account are spent in the school or schools within its jurisdiction, provided, however, that the appropriate governing board or body shall make these spending determinations in open session of a public meeting of the governing board or body and shall not use any of the funds from the Education Protection Account for salaries or benefits of administrators or any other administrative costs. Each community college district, county office of education, school district, and charter school shall annually publish on its Internet Web site an accounting of how much money was received from the Education Protection Account and how that money was spent.

(7) The annual independent financial and compliance audit required of community college districts, county offices of education, school districts, and charter schools shall, in addition to all other requirements of law, ascertain and verify whether the funds provided from the Education Protection Account have been properly disbursed and expended as required by this section. Expenses incurred by those entities to comply with the additional audit requirement of this section may be paid with funding from the Education Protection Account and shall not be considered administrative costs for purposes of this section.

(8) Revenues, less refunds, derived pursuant to subdivision (f) for deposit in the Education Protection Account pursuant to this section shall be deemed "General Fund revenues," "General Fund proceeds of taxes" and "moneys to be applied by the State for the support of school districts and community college districts" for purposes of Section 8 of Article XVI.

(f)(1)(A) In addition to the taxes imposed by Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code, for the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers at the rate of 1/4 percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in this state on and after January 1, 2013, and before January 1, 2017.

(B) In addition to the taxes imposed by Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code, an excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property purchased

from any retailer on and after January 1, 2013, and before January 1, 2017, for storage, use, or other consumption in this state at the rate of 1/4 percent of the sales price of the property.

(C) The Sales and Use Tax Law, including any amendments enacted on or after the effective date of this section, shall apply to the taxes imposed pursuant to this paragraph.

(D) This paragraph shall cease to be operative on January 1, 2017.

(2) For any taxable year beginning on or after January 1, 2012, and before January 1, 2019, with respect to the tax imposed pursuant to Section 17041 of the Revenue and Taxation Code, the income tax bracket and the rate of 9.3 percent set forth in paragraph (1) of subdivision (a) of Section 17041 of the Revenue and Taxation Code shall be modified by each of the following:

(A)(i) For that portion of taxable income that is over two hundred and fifty thousand dollars ($250,000) but not over three hundred thousand dollars ($300,000) the tax rate is 10.3 percent of the excess over two hundred and fifty thousand dollars ($250,000).

(ii) For that portion of taxable income that is over three hundred thousand dollars ($300,000) but not over five hundred thousand dollars ($500,000) the tax rate is 11.3 percent of the excess over three hundred thousand dollars ($300,000).

(iii) For that portion of taxable income that is over five hundred thousand dollars ($500,000), the tax rate is 12.3 percent of the excess over five hundred thousand dollars ($500,000).

(B) The income tax brackets specified in clauses (i), (ii), and (iii) of subparagraph (A) shall be recomputed, as otherwise provided in subdivision (h) of Section 17041 of the Revenue and Taxation Code, only for taxable years beginning on and after January 1, 2013.

(C)(i) For purposes of subdivision (g) of Section 19136 of the Revenue and Taxation Code, this provision shall be considered to be chaptered on the date it becomes effective.

(ii) For purposes of Part 10 (commencing with Section 17001) and Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code, the modified tax brackets and tax rates established and imposed by this paragraph shall be deemed to be established and imposed under Section 17041 of the Revenue and Taxation Code.

(D) This paragraph shall cease to be operative on December 1, 2019.

(3) For any taxable year beginning on or after January 1, 2012, and before January 1, 2019, with respect to the tax imposed pursuant to Section 17041 of the Revenue and Taxation Code, the income tax bracket and the rate of 9.3 percent set forth in paragraph (1) of subdivision (c) of Section 17041 of the Revenue and Taxation Code shall be modified by each of the following:

(A)(i) For that portion of taxable income that is over three hundred forty thousand dollars ($340,000) but not over four hundred eight thousand dollars ($408,000) the tax rate is 10.3 percent of the excess over three hundred forty thousand dollars ($340,000).

(ii) For that portion of taxable income that is over four hundred eight thousand dollars ($408,000) but not over six hundred eighty thousand dollars ($680,000) the tax rate is 11.3 percent of the excess over four hundred eight thousand dollars ($408,000).

(iii) For that portion of taxable income that is over six hundred eighty thousand dollars ($680,000), the tax rate is 12.3 percent of the excess over six hundred eighty thousand dollars ($680,000).

(B) The income tax brackets specified in clauses (i), (ii), and (iii) of subparagraph (A) shall be recomputed, as otherwise provided in subdivision (h) of Section 17041 of the Revenue and Taxation Code, only for taxable years beginning on and after January 1, 2013.

(C)(i) For purposes of subdivision (g) of Section 19136 of the Revenue and Taxation Code, this provision shall be considered to be chaptered on the date it becomes effective.

(ii) For purposes of Part 10 (commencing with Section 17001) and Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code, the modified tax brackets and tax rates established and imposed by this paragraph shall be deemed to be established and imposed under Section 17041 of the Revenue and Taxation Code.

(D) This paragraph shall cease to be operative on December 1, 2019.

(g)(1) The Controller, pursuant to his or her statutory authority, may perform audits of expenditures from the Local Revenue Fund 2011 and any County Local Revenue Fund 2011, and shall audit the Education Protection Account to ensure that those funds are used and accounted for in a manner consistent with this section.

(2) The Attorney General or local district attorney shall expeditiously investigate, and may seek civil or criminal penalties for, any misuse of moneys from the County Local Revenue Fund 2011 or the Education Protection Account.

Sec. 5. Effective Date.

Subdivision (b) of Section 36 of Article XIII, as added by this measure, shall be operative as of July 1, 2011. Paragraphs (2) and (3) of subdivision (f) of Section 36 of Article XIII, as added by this measure, shall be operative as of January 1, 2012. All other provisions of this measure shall take effect the day after the election in which it is approved by a majority of the voters voting on the measure provided.

Sec. 6. Conflicting Measures.

In the event that this measure and another measure that imposes an incremental increase in the tax rates for personal income shall appear on the same statewide ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes than a measure deemed to be in conflict with it, the provisions of this measure shall prevail in their entirety, and the other measure or measures shall be null and void.

Sec. 7.

This measure provides funding for school districts and community college districts in an amount that equals or exceeds that which would have been provided if the revenues deposited pursuant to Sections 6051.15 and 6201.15 of the Revenue and Taxation Code pursuant to Chapter 43 of the Statutes of 2011 had been considered "General Fund revenues" or "General Fund proceeds of taxes" for purposes of Section 8 of Article XVI of the California Constitution.

Alpine Amador Butte Calaveras Colusa Del Norte
El Dorado Glenn Imperial Inyo Lake Lassen
Madera Mariposa Merced Modoc

Mono Napa Nevada Placer Plumas San Benito
Shasta Sierra Siskiyou Sutter Tehama
Trinity Tuolumne Yolo Yuba

REGIONAL COUNCIL OF Rural Counties

Chair - Kim Dolbow Vann, Colusa County
First Vice Chair - Kevin Cann, Mariposa County
Second Vice Chair - Nate Beason, Nevada County
Past Chair - Diane Dillon, Napa County

President and CEO – Greg Norton
Executive Vice President – Patricia J. Megason
Chief Financial Officer – Karl Dolk

To: RCRC Board of Directors

From: Paul A. Smith, Senior Legislative Advocate

Date: August 7, 2012

Re: Proposition 30 – "The Schools & Local Public Safety Protection Act of 2012" (the Governor's Tax Measure) – **For Review and Discussion Only**

Summary

This memo provides an analysis of Proposition 30, the "The Schools & Local Public Safety Protection Act of 2012" - commonly known as Governor Jerry Brown's tax measure. Proposition 30 would increase the state sales tax, increase personal income taxes on certain filers, and provide some constitutional protections for counties relative to the realignment of programs that occurred in 2011.

Background

During 2011, the Governor focused much of his energies on two inter-related policy goals – 1) extending various state tax increases that were set to expire on July 1, 2011; and, 2) realigning a variety of state services/programs to counties. The Governor attempted to persuade the Legislature to place these two policy goals on a special statewide election ballot; however, he could not secure the 2/3rds vote necessary to put the question before the voters.

In 2011, the Legislature and Governor enacted a comprehensive realignment of criminal justice programs and services to counties as well as realigned the funding of a variety of health and human services programs. Funding for the realignment scheme is currently set in statute through a dedication of 1.065% of the state portion of the sales tax rate and a limited amount of vehicle license fee revenues. The realigning of the health and human services programs started in the beginning of the 2011-12 fiscal year while the criminal justice realignment – via AB 109 – took effect on October 1 2011. The 2012-13 state Budget continues this scheme.

In the Fall of 2011, the Governor proclaimed that in the absence of securing a 2/3rds vote in the Legislature to place a tax question before the voters, he would organize an initiative measure to accomplish the same goal. At that time, there were three competing tax increase proposals with slightly differing approaches. By March 2012, the Governor agreed to merge his proposal with one of the competing tax increase proposals. The results of that merger now comprise Proposition 30. The other competing measure – commonly referred to as the Munger Initiative – will also appear on the November 2012 Ballot as Proposition 38.

Issue

Proposition 30 speaks to several policy goals – temporarily increasing taxes, providing counties with some constitutional protections with respect to the 2011 Realignment, revising the process/funding of certain state mandates, and funding for education.

Increasing Taxes

Proposition 30 would increase the current personal income tax rate of 9.3% in the following manner:

- Increase by 1% (to 10.3%) on individuals earning $250,000;
- Increase by 2% (to 11.3%) on individuals earning $300,000; and,
- Increase by 3% (to 12.3%) on individuals earning more than $500,000.

These increases would apply to filings for the 2012 tax year and expire after 7 years.

In addition, Proposition 30 increases the state sales tax ¼ cent beginning on January 1, 2013. The sales tax increase would expire on January 1, 2017.

The 2012-13 state Budget assumes Proposition 30 will be adopted; however, if the voters fail to approve it, the following trigger reductions are currently in place:

- Reductions in K-12 and community college funding ($5.356 billion);
- Reductions to the U.C. ($250 million) and the C.S.U. ($250 million);
- Reductions to CALFIRE's firefighting capabilities ($10 million);
- Reductions in the number of State Park rangers, Fish & Game wardens, other Fish & Game personnel, law enforcement programs within the Department of Justice and elimination of seasonal lifeguards at state beaches ($6 million); and,
- Reductions for channel/levee maintenance and floodplain mapping ($6.6 million).

Constitutional Protections

Proposition 30 provides some – but certainly not all – level of constitutional protections for counties in providing realigned services and programs. These protections, which are nearly identical to SCA 1X (Steinberg) of 2011 include:

- Continuous appropriation for realignment. [Sec. 36 (c) (1)]
- Legislation enacted after September 30, 2012 and/or regulations, executive orders or administrative directives implemented after October 9, 2011 that have an overall effect of increasing the costs already borne by a county for programs or services mandated by the 2011 Realignment shall apply to counties only to the extent the state provides funding the cost increase. As such, counties are not obligated to provide the enhanced program/service if commensurate monies are not provided. [Sec. 36 (c) (4) (A) and Sec 36 (c) (4) (B)]
- When changes are made by the federal government to programs subject to 2011 Realignment and counties experience cost increases, the state shall pay at least 50% of the non-federal share. [Sec. 36 (c) (5) (A)]
- When a federal court or administrative proceeding results in monetary penalties and/or increased costs against a county for performing the administration of 2011

Realigned programs, the state shall bear 50% of the non-federal share, with some exceptions. [Sec. 36 (c) (4) (B)]

- If the state or county fails to perform a duty or obligation under the 2011 Realignment scheme, an appropriate party may seek judicial relief and the matter shall have priority over all civil matters. [Sec. 36 (c) (6)]
- If the taxes that currently fund realignment (the dedicated 1.065% of state sales taxes and vehicle license fee revenues) are reduced/cease to be operative, the state is required to provide replacement revenues that are equal to or greater than otherwise would have been provided. If the state fails to provide the appropriate amounts, the State Controller shall transfer the appropriate amount of money to counties on a monthly basis from the state General Fund. The Realignment scheme shall have third call on the General Fund after K-12 education commitments and obligations to pay voter-approved debts. [Sec. 36 (d)]

State Mandates

Proposition 30 makes two important revisions with respect to mandate claims:

- Realigned programs from 2011 are not subject to mandate claims nor subject to reimbursement [Sec. 36 (c) (3)]
- Local government costs associated with performing various Brown Act requirements are no longer subject to state reimbursement. However, the mandates to perform the statutory requirements remain. [Sec. 36 (c) (3)]

Funding for Education

Proposition 30 specifies that all of the revenue raised by the tax increases shall be directed to schools. However, the measure also states that these taxes shall be counted as "General Fund proceeds of taxes" for the Proposition 98 calculation. This allows the state to reduce the state's ongoing contribution to schools. The state can then use the freed up General Fund money to fund non-education programs.

Furthermore, school programmatic funding would remain flat because the tax increase is backfilling a number of one-time maneuvers used in the 2011-12 Budget. The Governor also proposes to use $2.2 billion of the new tax revenues to pay down his 2011-12 education deferral. Finally, the funds used for Realignment (the 1.065% of the state sales tax) would not be used in the Proposition 98 calculation even though these revenues have traditionally been part of the calculation.

Staff Recommendation

Proposition 30 is on the August RCRC Board Meeting agenda so that Board Members can review and discuss the measure both at the Board Meeting and with the other members of their Boards of Supervisors prior to taking a position on the measure at the September RCRC Board of Directors Meeting.

Attachments

- Copy of Proposition 30
- Copy of Urban Counties Caucus endorsement letter
- Copy of California State Sheriffs Association endorsement letter
- Tax rate changes per proposed ballot measures

URBAN COUNTIES CAUCUS

Chair
Supervisor Greg Cox
Executive Director
Jolena L. Voorhis

www.urbancounties.com

1100 "K" Street, Suite 101/Sacramento, CA 95814/ (916) 327-7531 FAX (916) 491-4182/UCC@urbancounties.com

June 8, 2012

Honorable Edmund G. Brown, Jr.
Governor, State of California
State Capitol
Sacramento, CA 95814

SUBJECT: Governor's Initiative – The Schools and Local Public Safety Protection Act of 2012 - Version 3 SUPPORT

Dear Governor Brown:

The Urban Counties Caucus (UCC), a coalition of the twelve most populous counties in the state, writes to inform you of our support of the Schools and Local Public Safety Protection Act of 2012 (version 3) which is currently pending signature verification with the Secretary of State.

At our Board meeting on May 30, 2012, our Board voted to support this measure on an 8-2 vote based on the fact that the measure provides the constitutional protections for counties under the 2011 Public Safety Realignment. During the discussion at the Board meeting, several members stated that this measure provided critical protections for counties in realignment that counties need for realignment to be successful.

The proposed initiative provides protections for counties in three key areas:

- Funding. This measure would provide dedicated funding, including protections if the state does not appropriate funding.
- Outside Actions. This measure would provide protections against future legislative action, administrative action, and judicial actions. This would also provide that the state would share costs of any federal law change.
- Flexibility. This measure would retain many of the agreements made by counties under realignment and provide needed flexibility so that counties can manage the programs under realignment.

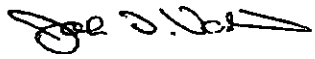
UCC sincerely appreciates your leadership in this area to ensure that counties receive the constitutional protections that were a key part of the agreement under realignment. Urban counties have been partners with the state in providing these services and with the passage of the proposed initiative we hope that this partnership can continue to thrive and ensure the success of the important goals of realignment.

Board of Directors: Chair: Supervisor Greg Cox, San Diego County **Vice Chair:** Supervisor Liz Kniss, Santa Clara County **Treasurer:** Vinod Sharma, Finance Director, Santa Clara County **Members:** Supervisor Keith Carson, Alameda County; Supervisor Federal Glover, Contra Costa County; Supervisor Don Knabe, Los Angeles County; Supervisor John Moorlach, Orange County; Supervisor John Benoit, Riverside County; Supervisor Susan Peters, Sacramento County; Supervisor Gary Ovitt, San Bernardino County; Supervisor Eric Mar, San Francisco County; Supervisor Carole Groom, San Mateo County; Supervisor Kathy Long, Ventura County

The state and counties are facing significant challenges in providing services with limited resources and this initiative will ensure that critical services are provided while at the same time protecting counties from undue fiscal hardship.

For the above reasons, UCC is in support of this ballot measure. If you have any questions please call me at (916) 327-7531.

Sincerely,



Jolena L. Voorhis
Executive Director

cc: Members, California State Legislature
Nancy McFadden, Governor's Office
Ana Matosantos, Director, Department of Finance
Diane Cummins, Department of Finance
Craig Cornett, Chief Fiscal Advisor, Senate President Pro-Tem Steinberg
Chris Wood, Budget Director, Assembly Speaker Perez
Seren Taylor, Director, Senate Republican Fiscal
Eric Swanson, Director, Assembly Republican Fiscal

Board of Directors: Chair: Supervisor Greg Cox, San Diego County **Vice Chair:** Supervisor Liz Kniss, Santa Clara County **Treasurer:** Vinod Sharma, Finance Director, Santa Clara County **Members:** Supervisor Keith Carson, Alameda County; Supervisor Federal Glover, Contra Costa County; Supervisor Don Knabe, Los Angeles County; Supervisor John Moorlach, Orange County; Supervisor John Benoit, Riverside County; Supervisor Susan Peters, Sacramento County; Supervisor Gary Ovitt, San Bernardino County; Supervisor Eric Mar, San Francisco County; Supervisor Carole Groom, San Mateo County; Supervisor Kathy Long, Ventura County

To: All Sheriffs
From: Sheriff Mark N. Pazin, CSSA President and Nick Warner, Legislative Director
Re: CSSA Endorses the Schools and Local Public Safety Protection Act

Sheriffs – At CSSA's February 9, 2012 Board of Directors meeting, the Sheriffs voted to support Governor Brown's initiative, the Schools and Local Public Safety Protection Act. The following press release has gone out today to announce CSSA's endorsement (link to press release also provided).

California State Sheriffs' Association Endorse the Schools and Local Public Safety Protection Act

http://www.jerrybrown.org/california-state-sheriffs%E2%80%99-association-endorse-schools-and-local-public-safety-protection-act

Californians to Protect Schools, Universities and Public Safety
14 February 2012

California State Sheriffs' Association Endorse the Schools and Local Public Safety Protection Act

Only solution to protect local law enforcement and provide fiscal stability

SACRAMENTO, Calif., February 14, 2012 – The California State Sheriffs' Association (CSSA) today announced it has endorsed Governor Jerry Brown's initiative, the Schools and Local Public Safety Protection Act, as it is the only solution that will protect realignment funding for local law enforcement agencies while providing long-term fiscal stability.

"The California State Sheriffs' Association voted overwhelmingly to support this important public safety initiative. The Schools and Local Public Safety Protection Act is the only initiative that will stabilize and protect critical public safety programs that allow local law enforcement and sheriffs to protect the citizens of this great state," said Merced County Sheriff Mark Pazin, President of the California State Sheriffs' Association (CSSA).

The Schools and Local Public Safety Protection Act keeps funding local and out of the hands of state politicians by constitutionally protecting local public safety funds. Local public safety funds will stay local and will not go into the state's General Fund. This protection will help avoid the constant legislative budget battles the public safety sector has to face every year in Sacramento.

"Now is the time for all of us to do our part. This initiative is the only solution that will put the power back in the hands of local communities and closer to the people to meet their local needs," continued Pazin. "We commend Governor Brown's leadership and his commitment to prioritizing public safety and creating a fiscal stability that we desperately need in this state," continued Pazin.

Last year California faced a $26.6 billion shortfall with future estimated annual budget gaps of $20 billion. In one year, Governor Brown drastically reduced California's deficit by more than half. The Governor's

initiative solution is focused on stabilizing the budget while investing in our schools, public safety, and local communities.

CSSA joins a large group of supporters for the Schools and Local Public Safety Protection Act, which includes teachers, public safety officials, business, and community leaders across the state. A partial list of supporters include: Chief Probation Officers of California, California Teachers Association, California Building and Construction Trades Council, California Medical Association, California Building Industries Association, SEIU State Council, AFSCME, Los Angeles Community College District, and many others.

###

Comparisons of Proposed Ballot Measure for November 2012

	Proposition 30 (Governor + CFT)	Proposition 38 (Munger)	Initial Governor's Proposal	Initial CFT Proposal
Income Tax Rate **Highest Existing Marginal State Rate is 9.3% commencing at $48,029** **(Single Filers)**	Increase by 1% (to 10.3%) on individuals earning $250,000 - $300,000 Increase by 2% (to 11.3%) on individuals earning $300,000 - $500,000 Increase by 3% (to 12.3%) on individuals earning more than $500,000 Filings apply for 2012 tax year and expire after 7 years	Increase by 0.4% (to 2.4%) on individuals earning $7,316 - $17,346 Increase by 0.7% (to 4.7%) on individuals earning $17,346 - $27,377 Increase by 1.1% (to 7.1%) on individuals earning $27,377 - $38,004 Increase by 1.4% (to 9.4%) on individuals earning $38,004 - $48,029 Increase by 1.6% (to 10.9%) on individuals earning $48,029 - $100,000 Increase by 1.8% (to 11.1%) on individuals earning $100,000 - $250,000 Increase by 1.9% (to 11.2%) on individuals earning $250,000 - $500,000 Increase by 2.0% (to 11.3%) on individuals earning $500,000 - $1 million Increase by 2.1% (to 11.4%) on individuals earning $1 million - $2.5 million Increase by 2.2% (to 11.5%) on individuals earning more than $2.5 million Effective over the 12-year period from 2013 through 2024	Increase by 1% (to 10.3%) on individuals earning $500,000 - $600,000 Increase by 1.5% (to 10.8%) on individuals earning $600,000 - $1 million Increase by 2% (to 11.3%) on individuals earning more than $1 million These increases would apply to filings for the 2012 tax year and expire after 5 years	Increase by 3% (to 12.3%) on individuals earning $1,000,000 - $2,000,000 Increase by 5% (to 14.3%) on individuals earning $2,000,000 and above Permanent Increase
Sales Tax	Increase the state sales tax 1/4 cent beginning on January 1, 2012. The sales tax increase would expire on January 1, 2017	No sales tax increase	Increase the state sales tax ½ cent beginning on January 1, 2012. The sales tax increase would expire on January 1, 2017	No sales tax increase
Dedicated Purpose	Education/GF Programs	Strict spending requirements to education	Education/GF Programs	Education, county health and human services, county public safety
Other	Constitutional Protections for Realignment		Constitutional Protections for Realignment	

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

16

☐ Consent ☒ Departmental ☐ Correspondence Action ☐ Public Hearing

☐ Scheduled Time ☐ Closed Session ☐ Informational

FROM: Supervisor Susan Cash - Supervisor Linda Arcularius

FOR THE BOARD MEETING OF: September 4, 2012

SUBJECT: Proposition 31, *The Government Performance and Accountability Act*

DEPARTMENTAL RECOMMENDATION:

Request Board provide direction to Supervisors Cash and Arcularius, the Board's representatives to CSAC and RCRC, regarding the Board's position on Proposition 31 – The Government Performance and Accountability Act.

SUMMARY DISCUSSION:

Please see attached analysis of Proposition 31, which will appear on the November 2012 Statewide Ballot, from CSAC and RCRC.

The CSAC Board of Directors is being asked on September 6, 2012 to take a "support" position on the recommendation of three policy committees as well as the CSAC Executive Board. RCRC will be requesting its members to take a position on the measure at the September RCRC Board of Directors Meeting. As Inyo County's CSAC and RCRC's representative at the Board of Directors of the respective organizations, we are requesting direction from the Inyo Board on how to cast Inyo's vote. This initiative is consistent with and conflicts with different points in the County's legislative platform.

ALTERNATIVES:

At CSAC, Inyo County can vote "Yes" to support, "No" to oppose support, or abstain from the vote. It is important to note that the first, and possibly only, motion to be voted on at CSAC will be on a "Support" position as recommended by the Executive Board. Different action can only be taken after a vote on a "Support" position. At RCRC, Inyo County will have the ability to either support, oppose or abstain from taking a position on the Initiative.

OTHER AGENCY INVOLVEMENT:

California State Association of Counties (CSAC) and Regional Council of Rural Counties (RCRC).

***FINANCING*:**

Unknown. Ultimately, any financing mechanisms mentioned in the attached analysis are not dependent on our position on the Proposition, but on the success or failure of the measure in the General Election.

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 Assistant Clerk of the Board.)* Approved: _____ Date_____
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) Susan Cash Linda Arredondo Date:_____

1100 K Street
Suite 101
Sacramento
California
95814

Telephone
916.327-7500
Facsimile
916.441.5507

August 22, 2012

To: CSAC Government Finance and Operations Policy Committee

From: Steve Keil, CSAC Interim Executive Director

Re: **Proposition 31 – ACTION ITEM**

Recommendation: Adopt a SUPPORT position on Proposition 31.

Overview. This memo is intended to provide the relevant information to the CSAC Board of Directors to assist in considering a SUPPORT position for Proposition 31.

Proposition 31 is promoted by the California Forward Action Fund, which, along with California Forward, has been working on far-reaching reforms to state and local governance for a number of years. During that time, the group has sought the input of a broad range of Californians, including many local officials and many interested citizens and community groups.

Policy. Chapter 1 of the CSAC Platform, aside from several references to local control generally, has language about "permit[ting] county government the flexibility to provide services and facilities in a manner that resolves day-to-day problems communities face." The Platform also encourages counties, cities, and special districts to "adopt formal policies that encourage locally initiated solutions to regional problems" (Chapter 1, Section 3).

Chapter 9, Section 2D of the Platform refers to counties being able to streamline or eliminate unnecessary administrative requirements, reduce or eliminate regulations that control implementation of state-mandated programs, and have greater program flexibility to meet individual county needs.

If the Community Strategic Action Plans authorized by Proposition 31 work as intended, they will achieve these goals for counties.

The Platform is silent on the subject of performance-based budgeting, but that part of Proposition 31 could be construed as thwarting local control to the extent counties may not choose whether to make the types of statements in their budgets that the measure would require. Many county budgets likely already adhere to the minimum requirements of this section.

For these reasons, the intent of Proposition 31 largely aligns with CSAC policy.

Process. In accordance with the State Ballot Proposition Policy found in the CSAC Policy and Procedures Manual (page 12), the officers referred the measure

to the Government Finance and Operations policy committee. The policy committee adopted a recommendation of support, then forwarded that recommendation to the CSAC Executive Committee, who also recommend a support position. The state's General Election will be held two months after this Board meeting, on November 6, 2012.

Recommendation: Both the CSAC Executive Committee and the CSAC Government Finance and Operations policy committee recommend that the CSAC Board of Directors adopt **a SUPPORT position** Proposition 31.

Attachments

I. CSAC summary of Proposition 31
II. Legislative Analyst's Office summary and fiscal analysis
III. California Forward outline
IV. Text of the measure

CSAC Summary of Proposition 31

Changes to the State Budget Process

- All bills must be in print for at least three days before the Legislature can pass it, except in a special session responding to a natural disaster or terrorist attack.
- If the cost of implementing a bill, including the budget bill, exceeds $25 million in any fiscal year (adjusted annually for inflation), whether by increasing a program or decreasing revenue, that bill is void unless that bill or another bill provides offsetting savings or revenue. Exceptions:
    - Restoring funding for cuts made after 2008-09.
    - Increases to fund existing statutory responsibilities, including increases due to cost of living or workload.
    - Growth in state funding for a program as required by federal law.
    - Funding to cover one-time expenditures.
    - Funding for state mandates.
    - Payments for principal or interest payments on state general obligation bonds.
- Disallows bills from being introduced in the second year of session that are substantially similar to bills not passed by the house of origin the previous year.

Biennial Budget

- Governor proposes budget in odd years:
    - Must identify 1-time resources.
    - May submit supplemental budget in even years to amend or augment.
    - Must include revenue and expenditure estimates for the following three years.
    - Must include statutory changes and five-year infrastructure plan and strategic growth plan.
    - Must include statement of how the budget promotes the achievement of the major purposes and goals of government.
        - The major purposes of government are defined as: achieving a prosperous economy, quality environment, and community equity. Those purposes are promoted by working to achieve the following goals: increasing employment, improving education, decreasing poverty, decreasing crime, and improving health.
    - Must include outcome measures to assess progress.
    - Must evaluate effectiveness at achieving the major goals of government according to outcome measures.
    - Recommended reductions and revenues must include analysis of economic impact.
- By May 1 each year, committees must have considered the budget bill and it must be referred to a joint committee of the Legislature for review, which must report its recommendations to each house by June 1.

- Department of Finance must update revenue and expenditure estimates by May 15 and immediately prior to passage of the budget bill or supplemental budget. They must also, by November 30, update actual revenues and expenditures compared to the budget.
- The state's performance-based budgeting must be fully implemented by 2015-16.
- The Legislature must pass budget and related appropriation bills by June 15.
- Appropriations for the second year may not be spent in the budget year.
- The budget bill must include the basis for General Fund revenue estimates and an explanation of any difference from previous years.

Oversight

- Disallows the Legislature from passing bills after June 30 in the second year of a two-year session, except bills taking effect immediately. The current cutoff date is September 1.
- Reserves the period after July 4 of the second year of session for program oversight and review.
- Requires the Legislature to establish an oversight process for state funded programs based on performance standards set for in statute and in the Budget Act.
- The review process must result in recommendations in the form of proposed legislation that improves or terminates programs. Each program must be reviewed at least every five years.
- The oversight process must include review of the Community Strategic Action Plans (see below), to 1) determine whether statutes and regulations identified by local agencies as obstacles should be amended or repealed and 2) whether the Action Plans have improved services.

Addressing Fiscal Emergencies

- Bills addressing a declared fiscal emergency and passed in the special session called for that purpose take effect immediately. Majority-vote okay for non-tax measures.
- If the Legislature does not send the Governor a bill addressing the emergency within 45 days, the Governor may reduce or eliminate General Fund appropriations not required by the Constitution or federal law, not to exceed the size of the identified shortfall.
- The Legislature may override all or part of the Governor's reductions with a two-thirds vote.

<u>Changes to the Local Budget Process</u>

- Local budgets must include the following, as they apply to the entity's powers and duties:
    - A statement of how it will promote the major purposes and goals of government, as applicable to the entity's functions, role, and locally determined priorities.
        - The major purposes of government are defined as: achieving a prosperous economy, quality environment, and community equity. Those purposes are promoted by working to achieve the following goals: increasing employment, improving education, decreasing poverty, decreasing crime, and improving health.
    - A description of the outcome measures used to assess progress to the goals above.

- A statement of the outcome measurements for major expenditures and their relationship to the goals above.
- A statement of how the entity will align its expenditures and investments to achieve the goals above.
- A report on progress toward achieving the goals above, including the outcome measurements from the previous year's budget.

- Local budget processes must be open and transparent, including the identification of the goals above.

Community Strategic Action Plans

Development of a Plan

- A county Board of Supervisors may initiate the development of a Community Strategic Action Plan. They must invite all other local entities within the county whose functions are within the anticipated scope of the Plan.
- Any local entity may petition the county to initiate a Plan, to be included in the planning process of a Plan, or to amend a Plan.
- The Plan must be developed through an open, transparent, inclusive process.
- The Plan must include:
  - The outcomes desired by participating agencies and how they will be measured.
  - A method for regularly reporting outcomes to the public and the state.
  - An outline of how the Plan will achieve the major purposes and goals defined above.
  - A description of the public services delivered pursuant to the Plan and the roles and responsibilities of the participating entities.
  - An explanation of why the Plan will allow those services to be delivered more effectively and efficiently.
  - An allocation of resources to support the Plan.
  - A consideration of disparities within communities served by the Plan.
  - An explanation of how the Plan is consistent with the budgets of entities participating in the Plan.
- The Plan, including any amendments, must be approved by the county, by local entities providing the Plan's municipal services to at least a majority of the county's population, and one or more school districts serving at least a majority of the county's public school pupils.
- The Plan would not apply to any entity that does not approve it.
- Parties to a Plan may identify state statutes and regulations impeding progress toward the Plan's goals and include in the Plan functional equivalents to the objectives of those statutes and regulations.
- Parties to a Plan that identifies such statutes must submit their Plan to the Legislature. If the Legislature does not act to disapprove the provisions within 60 days, the provisions will be operative for four years.

- Parties to a Plan that identifies such regulations must do the same as above but to the appropriate agency or department, which is subject to the same 60-day review period.

Funding of Plans

- Sales and use taxes attributable to a rate of 0.035 percent are placed in a continuously appropriated trust fund.
- In the first quarter of each fiscal year beginning in 2014-15, the Controller shall distribute the trust fund to each county that has adopted a Plan, according to population served by the Plans.

Oversight of Plans

- Counties with Plans must evaluate their effectiveness at least every four years.

LAO

70 YEARS OF SERVICE

December 14, 2011

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Dawn McFarland
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed constitutional amendment related to the state legislative and budgeting process and local finance (A.G. File No. 11-0068).

BACKGROUND

State Budget Process. Under the California Constitution, the Legislature has the power to appropriate state funds and make midyear adjustments to those appropriations. The annual state budget act is the Legislature's primary method of authorizing expenses for a particular fiscal year. The Constitution requires that (1) the Governor propose a balanced budget by January 10 for the next fiscal year (beginning July 1) and (2) the Legislature pass the annual budget act by June 15. The Governor may then either sign or veto the budget bill. The Governor also may reduce or eliminate specific appropriations items using his or her "line-item veto" power. The Legislature may override a veto with a two-thirds vote in each house. Once the budget has been approved by the Legislature and Governor, the Governor has limited authority to reduce spending during the year without legislative approval.

State Fiscal Emergencies. The Governor has the power to declare a fiscal emergency if he or she determines after the budget has been enacted that the state is facing substantial revenue shortfalls or spending overruns. In such cases, the Governor must propose legislation to address the fiscal emergency and call the Legislature into special session. If the Legislature fails to pass and send to the Governor legislation to address the budget problem within 45 days, it is prohibited from (1) acting on any other bills or (2) adjourning until such legislation is passed.

State Appropriations Process. The Legislature may enact laws that create or expand state programs or reduce state tax revenues. Any new law that has a state fiscal effect typically is referred to a committee in each house of the Legislature called the Appropriations

Committee. These committees assess the likely fiscal effect of the legislation and decide whether to recommend the passage of the legislation by each house.

PROPOSAL

This measure amends the Constitution to:

- Constrain the Legislature's authority to enact laws that increase state costs or decrease state revenues by more than $25 million annually.
- Expand the Governor's authority to implement midyear reductions to appropriations in the state budget.
- Shift state funds to local governments for the purpose of implementing new "Community Strategic Action Plans."
- Modify state and local government budget practices.

Constrains the Legislature's Authority to Increase State Costs or Decrease Revenues

The measure contains provisions that constrain the Legislature's authority to (1) create or expand state programs or (2) reduce state revenues if the fiscal effect of these actions on the state would exceed $25 million annually. In order to enact legislation containing program expansions or revenue reductions valued at more than $25 million, lawmakers generally would have to approve legislation containing revenue increases or cost reductions to offset the net change in state costs or revenues. The $25 million threshold would be adjusted annually for inflation.

Authorizes the Governor to Reduce Spending in the Budget

The measure provides that if the Legislature has not sent bills to the Governor addressing a fiscal emergency by the 45th day following the issuance of the fiscal emergency proclamation, the Governor may reduce or eliminate any appropriation contained in the budget act for that fiscal year that is not otherwise required by the Constitution or federal law. The total amount reduced cannot exceed the amount necessary to balance the budget. The Legislature may override all or part of the reductions by a two-thirds vote of each house of the Legislature.

Shifts State Funds to Local Governments to Implement New Plans

Under the measure, every county and any local government (school district, community college district, city, and special district) within its borders could create a joint Community Strategic Action Plan (CSAP) for the purpose of providing services identified by the plan. Local governments that choose to participate in a CSAP would (1) receive additional funding from the state, (2) be authorized to reallocate local property taxes among participating local governments, and (3) be given limited authority to follow locally adopted procedures that are not fully consistent with state laws and regulations. Specifically:

- ***Shift of State Revenues.*** The measure creates the Performance and Accountability Trust Fund in the State Treasury to provide state resources for implementation of CSAPs. Beginning in 2013-14, the measure shifts 0.035 percent of the state sales tax rate to the Performance and Accountability Trust Fund and requires the state General Fund to backfill any reduced revenue to the fund if the state sales tax is reduced in the future. The revenue deposited in the Performance and Accountability Trust Fund would be allocated to local governments with approved CSAPs on a per capita basis.
- ***Reallocate Property Tax.*** The measure permits local governments participating in the CSAP to reallocate their property taxes among themselves if the reallocation is approved by a two-thirds vote of the governing bodies of each of the local governments affected by the reallocation.

Increased Flexibility in Program Administration. The measure allows CSAPs to include certain provisions that otherwise would be contrary to existing state laws and regulations but that are "functionally equivalent" to the objectives of those laws or regulations. The local governments would be required to submit these provisions to the Legislature (in the case of state laws) or appropriate state agency (in the case of state regulations) for review. If the Legislature or agency does not act to reject the CSAP provisions, those provisions would be deemed to be in compliance with state laws and regulations. These local CSAP provisions would expire after four years unless renewed through the same process.

State and Local Government Budgeting Practices

The measure makes various changes to state and local budgeting practices and other procedures, including:

- ***Two-Year State Budget Cycle.*** Under this measure, in each odd numbered calendar year the Governor would submit a budget proposal for the two subsequent fiscal years. For example, in January 2013 the Governor would submit a budget for the fiscal year beginning in July 2013 and for the fiscal year beginning in July 2014. In even numbered years, the Governor could submit an update for either of the two years covered by the previous submission.
- ***Performance Standards for State Programs.*** This measure contains several provisions amending the Constitution to establish a process to review the performance of state programs. Under the proposal, the Governor would be required to include certain information as part of the budget released every two years, including a statement of how the budget will achieve specified statewide goals, a statement of outcome measures by which to evaluate state agencies and programs, and a report on the state's progress in meeting statewide goals.
- ***Legislative Oversight.*** The measure changes the legislative calendar and reserves part of each legislative biennium—beginning in July of the second year of the biennium—

for legislative oversight and review of state programs. The measure requires the Legislature to create an oversight process and use this process to review every state program, whether managed by the state or local governments, at least once every five years.

- ***Legislative Process and Calendar.*** The proposal amends a provision of the Constitution related to when legislative bills must be in print. The Constitution currently requires that bills be in print and distributed to Members of the Legislature before they can be passed. This proposal amends the Constitution to require that bills generally be in print and be available to the public for three days before passage.
- ***Local Government Performance Information.*** The measure requires that each local government provide certain information as part of their adopted budgets. This information includes statements regarding how the budget will promote specified goals and priorities, description of outcome measures to assess progress in meeting these goals, and a report on the progress in achieving these goals. The measure further requires that each local government develop and implement an open and transparent process in the development of its proposed budget.

FISCAL EFFECT

State Sales Tax Revenue Transfer. The shift of a portion of the state sales tax to the Performance and Accountability Trust Fund for local government use would reduce state revenue—and increase local revenue—by about $200 million annually, beginning in 2013-14. The measure specifies that any increased revenues allocated to schools as a result of this measure would not reduce their eligibility for state funds.

Changes in Legislature's and Governor's Fiscal Authority. Constraining the Legislature's authority to expand programs or decrease revenues unless it adopts measures with offsetting fiscal effects could result in state program costs being lower—or state revenues being higher—than otherwise would be the case. In addition, expanding the Governor's authority to implement midyear reductions to the state budget could result in overall state spending being lower than it would have been otherwise. The net fiscal effect of these provisions is unknown, but could be significant over time.

Changes in Budgeting Practices. State and local governments would have increased costs to modify their budgeting practices and provide more ongoing information regarding program outcomes. Specifically, state and local governments likely would experience increased information technology, printing, and data analysis costs. These costs would be higher initially—perhaps in the range of tens of millions of dollars annually—and then moderate over time. The compilation and analysis of this budget and performance information could lead to improved state and local government program efficiencies over time, potentially offsetting these costs.

SUMMARY OF FISCAL EFFECT

This measure would have the following major fiscal effects:

- Decreased state revenues and commensurate increased local revenues, probably in the range of about $200 million annually, beginning in 2013-14.
- Potential decreased state program costs or increased state revenues resulting from changes in the fiscal authority of the Legislature and Governor.
- Increased state and local costs of tens of millions of dollars annually to implement new budgeting practices. Over time, these costs would moderate and potentially be offset by savings from improved program efficiencies.

Sincerely,

Mac Taylor
Legislative Analyst

Ana J. Matosantos
Director of Finance

The Government Performance and Accountability Act

Californians need to know what they are getting for their tax dollars and what government is achieving. If approved by California voters through the ballot measure process, this proposal will position both state and local governments to effectively manage California's fiscal affairs to promote concrete results Californians want and value for their tax dollars.

Specific Provisions

1. Performance-Based Budgeting

State and local governments should focus on improving results. The proposal would require state and local government budgets to establish clear goals for delivering results and accountability -- focusing spending decisions on priorities, desired results, and the changes needed to improve performance.

2. Legislative Transparency and Oversight

The state needs a stable budget-making process to help communities reach their goals. The proposal would make all bills available to the public three days before a vote to preclude "gut and amend" bills, ending the practice of bypassing public hearings for controversial legislation. The Department of Finance would also be required to update fiscal information three times per year.

3. Pay-As-You-Go

Lawmakers should be required to identify ways to pay for major policy choices, rather than putting all programs at risk of being cut in future years. The proposal requires major new programs and tax cuts costing $25 million or more to have a clearly identified funding source before they are enacted.

4. Multi-Year Budgets With Greater Accountability

To reduce the perennial uncertainty of the state's current short-term budget-making practices, the proposal would require the state to enact two-year budgets. It would limit the period during which bills can be heard (with an exception for bills addressing emergencies), and require a portion of the legislative session to be dedicated to program performance reviews. All programs would be reviewed at least once every 5 years. The proposal also would require the state to prepare and make public five-year forecasts before approving the budget, to act quickly when the budget falls out of balance, and to make budget negotiations more transparent.

5. Community-Driven Problem Solving

To improve performance at the local level, communities will need more flexibility to tailor programs to meet local needs. Through "Community Strategic Action Plans," the proposal would give local governments the incentives and authority to design programs that work together to improve results. Cities, counties, school districts and special districts would identify common goals -- such as improving outcomes for youth -- and how they would coordinate actions to cost-effectively achieve them.

These plans also would identify state laws or regulations that prevent local governments from efficiently and effectively providing services, and include a local method for achieving the state objective. The proposal would also give local governments the ability to reallocate local sales and property taxes (other than those allocated to schools), and provide incentive funding from the state.

What this means for Californians...

- Policy, program, and fiscal decisions by the state and local governments will be driven by performance data on what is working, what isn't, and an awareness of the long-term fiscal impact of alternative approaches.

- Community Strategic Action Plans will allow local governments to achieve local priorities in a collaborative, inclusive and cost-effective way while permitting significantly greater flexibility in how participating local jurisdictions allocate resources and meet statewide requirements.

- Californians will have more opportunities to inform decisions affecting their communities, they will have more information about the job performance of their elected representatives, and they will have the opportunity to see results where they live that are a direct consequence of their participation.

11 - 0068

RECEIVED
NOV 0 3 2011
INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

November 1, 2011

VIA MESSENGER

Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814

Attention: Dawn McFarland

Re: *The Government Performance and Accountability Act*

Dear Ms. McFarland:

Pursuant to Elections Code section 9001(a), we request that the Attorney General prepare a title and summary of a measure entitled "The Government Performance and Accountability Act." The text of the measure, a check for $200.00, the addresses at which we are registered to vote and the certifications required by Elections Code sections 9001(b) and 9608 are enclosed.

Please direct all correspondence and inquiries regarding this measure to:

Robin B. Johansen
James C. Harrison
Remcho, Johansen & Purcell, LLP
201 Dolores Avenue
San Leandro, CA 94577
Phone: (510) 346-6200
Fax: (510) 346-6201

Sincerely,

November 3, 2011

VIA MESSENGER

Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814

Attention: Dawn McFarland

Re: *The Government Performance and Accountability Act*

Dear Ms. McFarland:

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Fax: (510) 346-6201

Sincerely,

Enclosures
(00156289)

The Government Performance and Accountability Act

SECTION ONE. Findings and Declarations.

The People of the State of California hereby find and declare that government must be:

1. **Trustworthy.** California government has lost the confidence of its citizens and is not meeting the needs of Californians. Taxpayers are entitled to a higher return on their investment and the public deserves better results from government services.

2. **Accountable for Results.** To restore trust, government at all levels must be accountable for results. The people are entitled to know how tax dollars are being spent and how well government is performing. State and local government agencies must set measurable outcomes for all expenditures and regularly and publicly report progress toward those outcomes.

3. **Cost-Effective.** California must invest its scarce public resources wisely to be competitive in the global economy. Vital public services must therefore be delivered with increasing effectiveness and efficiency.

4. **Transparent.** It is essential that the public's business be public. Honesty and openness promote and preserve the integrity of democracy and the relationship between the people and their government.

5. **Focused on Results.** To improve results, public agencies need a clear and shared understanding of public purpose. With this measure, the people declare that the purpose of state and local governments is to promote a prosperous economy, a quality environment, and community equity. These purposes are advanced by achieving at least the following goals: increasing employment, improving education, decreasing poverty, decreasing crime, and improving health.

6. **Cooperative.** To make every dollar count, public agencies must work together to reduce bureaucracy, eliminate duplication, and resolve conflicts. They must integrate services and adopt strategies that have been proven to work and can make a difference in the lives of Californians.

7. **Closer to the People.** Many governmental services are best provided at the local level, where public officials know their communities and residents have access to elected officials. Local governments need the flexibility to tailor programs to the needs of their communities.

8. **Supportive of Regional Job Generation.** California is composed of regional economies. Many components of economic vitality are best addressed at the regional scale. The State is obliged to enable and encourage local governments to collaborate regionally to enhance the ability to attract capital investment into regional economies to generate well-paying jobs.

9. **Willing to Listen.** Public participation is essential to ensure a vibrant and responsive democracy and a responsive and accountable government. When government listens, more people are willing to take an active role in their communities and their government.

10. **Thrifty and Prudent.** State and local governments today spend hundreds of millions of dollars on budget processes that do not tell the public what is being accomplished. Those same funds can be better used to develop budgets that link dollars to goals and communicate progress toward those goals, which is a primary purpose of public budgets.

SECTION TWO. Purpose and Intent.

In enacting this measure, the People of the State of California intend to:

1. Improve results and accountability to taxpayers and the public by improving the budget process for the State and local governments with existing resources.

2. Make state government more efficient, effective, and transparent through a state budget process that does the following:

   a. Focuses budget decisions on what programs are trying to accomplish and whether progress is being made.

   b. Requires the development of a two-year budget and a review of every program at least once every five years to make sure money is well spent over time.

   c. Requires major new programs and tax cuts to have clearly identified funding sources before they are enacted.

   d. Requires legislation – including the Budget Act – to be public for three days before lawmakers can vote on it.

3. Move government closer to the people by enabling and encouraging local governments to work together to save money, improve results, and restore accountability to the public through the following:

a. Focusing local government budget decisions on what programs are trying to accomplish and whether progress is being made.

b. Granting counties, cities, and schools the authority to develop, through a public process, a Community Strategic Action Plan for advancing community priorities that they cannot achieve by themselves.

c. Granting local governments that approve an Action Plan flexibility in how they spend state dollars to improve the outcomes of public programs.

d. Granting local governments that approve an Action Plan the ability to identify state statutes or regulations that impede progress and a process for crafting a local rule for achieving a state requirement.

e. Encouraging local governments to collaborate to achieve goals more effectively addressed at a regional scale.

f. Providing some state funds as an incentive to local governments to develop Action Plans.

g. Requiring local governments to report their progress annually and evaluate their efforts every four years as a condition of continued flexibility – thus restoring accountability of local elected officials to local voters and taxpayers.

4. Involve the people in identifying priorities, setting goals, establishing measurements of results, allocating resources in a budget, and monitoring progress.

5. Implement the budget reforms herein using existing resources currently dedicated to the budget processes of the State and its political subdivisions without significant additional funds. Further, establish the Performance and Accountability Trust Fund from existing tax bases and revenues. No provision herein shall require an increase in any taxes or modification of any tax rate or base.

SECTION THREE. Section 8 of Article IV of the California Constitution is hereby amended to read:

SEC. 8. (a) At regular sessions no bill other than the budget bill may be heard or acted on by committee or either house until the 31st day after the bill is introduced unless the house dispenses with this requirement by rollcall vote entered in the journal, three fourths of the membership concurring.

(b) The Legislature may make no law except by statute and may enact no statute except by bill. No bill may be passed unless it is read by title on 3 days in each house except that the house may dispense with this requirement by rollcall vote entered in the journal, two thirds of the membership concurring. No bill other than a bill containing an urgency clause that is passed in a special session called by the Governor to address a state of emergency declared by the Governor arising out of a natural disaster or a terrorist attack may be passed until the bill with amendments has been in printed and distributed to the members and available to the public for at least 3 days. No bill may be passed unless, by rollcall vote entered in the journal, a majority of the membership of each house concurs.

(c) (1) Except as provided in paragraphs (2) and (3) of this subdivision, a statute enacted at a regular session shall go into effect on January 1 next following a 90-day period from the date of enactment of the statute and a statute enacted at a special session shall go into effect on the 91st day after adjournment of the special session at which the bill was passed.

(2) A statute, other than a statute establishing or changing boundaries of any legislative, congressional, or other election district, enacted by a bill passed by the Legislature on or before the date the Legislature adjourns for a joint recess to reconvene in the second calendar year of the biennium of the legislative session, and in the possession of the Governor after that date, shall go into effect on January 1 next following the enactment date of the statute unless, before January 1, a copy of a referendum petition affecting the statute is submitted to the Attorney General pursuant to subdivision (d) of Section 10 of Article II, in which event the statute shall go into effect on the 91st day after the enactment date unless the petition has been presented to the Secretary of State pursuant to subdivision (b) of Section 9 of Article II.

(3) Statutes calling elections, statutes providing for tax levies or appropriations for the usual current expenses of the State, and urgency statutes shall go into effect immediately upon their enactment.

(d) Urgency statutes are those necessary for immediate preservation of the public peace, health, or safety. A statement of facts constituting the necessity shall be set forth in one section of the bill. In each house the section and the bill shall be passed separately, each

by rollcall vote entered in the journal, two thirds of the membership concurring. An urgency statute may not create or abolish any office or change the salary, term, or duties of any office, or grant any franchise or special privilege, or create any vested right or interest.

SECTION FOUR. Section 9.5 is hereby added to Article IV of the California Constitution to read:

SEC. 9.5. A bill passed by the Legislature that (1) establishes a new state program, including a state-mandated local program described in Section 6 of Article XIII B, or a new agency, or expands the scope of such an existing state program or agency, the effect of which would, if funded, be a net increase in state costs in excess of twenty-five million dollars ($25,000,000) in that fiscal year or in any succeeding fiscal year, or (2) reduces a state tax or other source of state revenue, the effect of which will be a net decrease in state revenue in excess of twenty-five million dollars ($25,000,000) in that fiscal year or in any succeeding fiscal year, is void unless offsetting state program reductions or additional revenue, or a combination thereof, are provided in the bill or another bill in an amount that equals or exceeds the net increase in state costs or net decrease in state revenue. The twenty-five million dollar ($25,000,000) threshold specified in this section shall be adjusted annually for inflation pursuant to the California Consumer Price Index.

SECTION FIVE. Section 10 of Article IV of the California Constitution is hereby amended to read:

SEC. 10. (a) Each bill passed by the Legislature shall be presented to the Governor. It becomes a statute if it is signed by the Governor. The Governor may veto it by returning it with any objections to the house of origin, which shall enter the objections in the journal and proceed to reconsider it. If each house then passes the bill by rollcall vote entered in the journal, two-thirds of the membership concurring, it becomes a statute.

(b) (1) Any bill, other than a bill which would establish or change boundaries of any legislative, congressional, or other election district, passed by the Legislature on or before the date the Legislature adjourns for a joint recess to reconvene in the second calendar year of the biennium of the legislative session, and in the possession of the Governor after that date, that is not returned within 30 days after that date becomes a statute.

(2) Any bill passed by the Legislature before June 30 of the second calendar year of the biennium of the legislative session and in the possession of the Governor on or after June 30 that is not returned on or before July 31 of that year becomes a statute. In addition, any bill passed by the Legislature before September 1 of the second calendar year of the biennium of the legislative session and in the possession of the Governor on or after

September 1 that is not returned on or before September 30 of that year becomes a statute.

(3) Any other bill presented to the Governor that is not returned within 12 days becomes a statute.

(4) If the Legislature by adjournment of a special session prevents the return of a bill with the veto message, the bill becomes a statute unless the Governor vetoes the bill within 12 days after it is presented by depositing it and the veto message in the office of the Secretary of State.

(5) If the 12th day of the period within which the Governor is required to perform an act pursuant to paragraph (3) or (4) of this subdivision is a Saturday, Sunday, or holiday, the period is extended to the next day that is not a Saturday, Sunday, or holiday.

(c) (1) Any bill introduced during the first year of the biennium of the legislative session that has not been passed by the house of origin by January 31 of the second calendar year of the biennium may no longer be acted on by the house. No bill may be passed by either house on or after ~~September 1 of an even-numbered year~~ June 30 of the second year of the biennium except ~~statutes calling elections, statutes providing for tax levies or appropriations for the usual current expenses of the State, and urgency statutes,~~ bills that take effect immediately, and bills passed after being vetoed by the Governor.

(2) No bill may be introduced or considered in the second year of the biennium that is substantially the same and has the same effect as any introduced or amended version of a measure that did not pass the house of origin by January 31 of the second calendar year of the biennium as required in paragraph (1).

(d) (1) The Legislature may not present any bill to the Governor after November 15 of the second calendar year of the biennium of the legislative session. On the first Monday following July 4 of the second year of the biennium, the Legislature shall convene, as part of its regular session, to conduct program oversight and review. The Legislature shall establish an oversight process for evaluating and improving the performance of programs undertaken by the State or by local agencies implementing state-funded programs on behalf of the State based on performance standards set forth in statute and in the biennial Budget Act. Within one year of the effective date of this provision, a review schedule shall be established for all state programs whether managed by a state or local agency implementing state-funded programs on behalf of the State. The schedule shall sequence the review of similar programs so that relationships among program objectives can be identified and reviewed. The review process shall result in recommendations in the form of proposed legislation that improves or terminates programs. Each program shall be reviewed at least once every five years.

(2) The process established for program oversight under paragraph (1) shall also include a review of Community Strategic Action Plans adopted pursuant to Article XI A for the purpose of determining whether any state statutes or regulations that have been identified by the participating local government agencies as state obstacles to improving results should be amended or repealed as requested by the participating local government agencies based on a review of at least three years of experience with the Community Strategic Action Plans. The review shall assess whether the Action Plans have improved the delivery and effectiveness of services in all parts of the community identified in the plan.

(e) The Governor may reduce or eliminate one or more items of appropriation while approving other portions of a bill. The Governor shall append to the bill a statement of the items reduced or eliminated with the reasons for the action. The Governor shall transmit to the house originating the bill a copy of the statement and reasons. Items reduced or eliminated shall be separately reconsidered and may be passed over the Governor's veto in the same manner as bills.

(f) (1) If, following the enactment of the budget bill for the 2004-05 fiscal year or any subsequent fiscal year, the Governor determines that, for that fiscal year, General Fund revenues will decline substantially below the estimate of General Fund revenues upon which the budget bill for that fiscal year, as enacted, was based, or General Fund expenditures will increase substantially above that estimate of General Fund revenues, or both, the Governor may issue a proclamation declaring a fiscal emergency and shall thereupon cause the Legislature to assemble in special session for this purpose. The proclamation shall identify the nature of the fiscal emergency and shall be submitted by the Governor to the Legislature, accompanied by proposed legislation to address the fiscal emergency. In response to the Governor's proclamation, the Legislature may present to the Governor a bill or bills to address the fiscal emergency.

(2) If the Legislature fails to pass and send to the Governor a bill or bills to address the fiscal emergency by the 45th day following the issuance of the proclamation, the Legislature may not act on any other bill, nor may the Legislature adjourn for a joint recess, until that bill or those bills have been passed and sent to the Governor.

(3) A bill addressing the fiscal emergency declared pursuant to this section shall contain a statement to that effect. For purposes of paragraphs (2) and (4), the inclusion of this statement shall be deemed to mean conclusively that the bill addresses the fiscal emergency. A bill addressing the fiscal emergency declared pursuant to this section that contains a statement to that effect, and is passed and sent to the Governor by the 45th day following the issuance of the proclamation declaring the fiscal emergency, shall take effect immediately upon enactment.

(4) (A) If the Legislature has not passed and sent to the Governor a bill or bills to address a fiscal emergency by the 45th day following the issuance of the proclamation declaring the fiscal emergency, the Governor may, by executive order, reduce or eliminate any existing General Fund appropriation for that fiscal year to the extent the appropriation is not otherwise required by this Constitution or by federal law. The total amount of appropriations reduced or eliminated by the Governor shall be limited to the amount necessary to cause General Fund expenditures for the fiscal year in question not to exceed the most recent estimate of General Fund revenues made pursuant to paragraph (1).

(B) If the Legislature is in session, it may, within 20 days after the Governor issues an executive order pursuant to subparagraph (A), override all or part of the executive order by a rollcall vote entered in the journal, two-thirds of the membership of each house concurring. If the Legislature is not in session when the Governor issues the executive order, the Legislature shall have 30 days to reconvene and override all or part of the executive order by resolution by the vote indicated above. An executive order or a part thereof that is not overridden by the Legislature shall take effect the day after the period to override the executive order has expired. Subsequent to the 45th day following the issuance of the proclamation declaring the fiscal emergency, the prohibition set forth in paragraph (2) shall cease to apply when (i) one or more executive orders issued pursuant to this paragraph have taken effect, or (ii) the Legislature has passed and sent to the Governor a bill or bills to address the fiscal emergency.

(C) A bill to restore balance to the budget pursuant to subparagraph (B) may be passed in each house by rollcall vote entered in the journal, a majority of the membership concurring, to take effect immediately upon being signed by the Governor or upon a date specified in the legislation, provided, however, that any bill that imposes a new tax or increases an existing tax must be passed by a two-thirds vote of the members of each house of the Legislature.

SECTION SIX. Section 12 of Article IV of the California Constitution is hereby amended to read:

SEC. 12. (a) (1) Within the first 10 days of each odd-numbered calendar year, the Governor shall submit to the Legislature, with an explanatory message, a budget for the ensuing two fiscal years, containing itemized statements for recommended state expenditures and estimated total state ~~revenues~~ resources available to meet those expenditures. The itemized statement of estimated total state resources available to meet recommended expenditures submitted pursuant to this subdivision shall identify the amount, if any, of those resources that are anticipated to be one-time resources. The two-year budget, which shall include a budget for the budget year and a budget for the succeeding fiscal year, shall be known collectively as the biennial budget. Within the

first 10 days of each even-numbered year, the Governor may submit a supplemental budget to amend or augment the enacted biennial budget.

(b) The biennial budget shall contain all of the following elements to improve performance and accountability:

(1) An estimate of the total resources available for the expenditures recommended for the budget year and the succeeding fiscal year.

(2) A projection of anticipated expenditures and anticipated revenues for the three fiscal years following the fiscal year succeeding the budget year.

(3) A statement of how the budget will promote the purposes of achieving a prosperous economy, quality environment, and community equity, by working to achieve at least the following goals: increasing employment; improving education; decreasing poverty; decreasing crime; and improving health.

(4) A description of the outcome measures that will be used to assess progress and report results to the public and of the performance standards for state agencies and programs.

(5) A statement of the outcome measures for each major expenditure of state government for which public resources are proposed to be appropriated in the budget and their relationship to the overall purposes and goals set forth in paragraph (3).

(6) A statement of how the State will align its expenditure and investment of public resources with that of other government entities that implement state functions and programs on behalf of the State to achieve the purposes and goals set forth in paragraph (3).

(7) A public report on progress in achieving the purposes and goals set forth in paragraph (3) and an evaluation of the effectiveness in achieving the purposes and goals according to the outcome measures set forth in the preceding year's budget.

(c) If, for the budget year and the succeeding fiscal year, collectively, recommended expenditures exceed estimated revenues, the Governor shall recommend reductions in expenditures or the sources from which the additional revenues should be provided or both. To the extent practical, the recommendations shall include an analysis of the long-term impact that expenditure reductions or additional revenues would have on the state economy. Along with the biennial budget, the Governor shall submit to the Legislature, any legislation required to implement appropriations contained in the biennial budget.

together with a five-year capital infrastructure and strategic growth plan, as specified by statute.

(d) If the Governor's budget proposes to (1) establish a new state program, including a state-mandated local program described in Section 6 of Article XIII B, or a new agency, or expand the scope of an existing state program or agency, the effect of which would, if funded, be a net increase in state costs in excess of twenty-five million dollars ($25,000,000) in that fiscal year or in any succeeding fiscal year, or (2) reduce a state tax or other source of state revenue, the effect of which will be a net decrease in state revenue in excess of twenty-five million dollars ($25,000,000) in that fiscal year or any succeeding fiscal year, the budget shall propose offsetting state program reductions or additional revenue, or a combination thereof, in an amount that equals or exceeds the net increase in state costs or net decrease in state revenue. The twenty-five million dollar ($25,000,000) threshold specified in this subdivision shall annually be adjusted for inflation pursuant to the California Consumer Price Index.

(~~be~~) The Governor and the Governor-elect may require a state agency, officer or employee to furnish whatever information is deemed necessary to prepare the biennial budget and any supplemental budget.

(~~ef~~) (1) The biennial budget and any supplemental budget shall be accompanied by a budget bill itemizing recommended expenditures for the budget year and the succeeding fiscal year. A supplemental budget bill shall be accompanied by a bill proposing the supplemental budget.

(2) The budget bill and other bills providing for appropriations related to the budget bill or a supplemental budget bill, as submitted by the Governor, shall be introduced immediately in each house by the persons chairing the committees that consider the budget.

(3) On or before May 1 of each year, after the appropriate committees of each house of the Legislature have considered the budget bill, each house shall refer the budget bill to a joint committee of the Legislature, which may include a conference committee, which shall review the budget bill and other bills providing for appropriations related to the budget bill and report its recommendations to each house no later than June 1 of each year. This shall not preclude the referral of any of these bills to policy committees in addition to a joint committee.

(~~3~~)(4) The Legislature shall pass the budget bill and other bills providing for appropriations related to the budget bill by midnight on June 15 of each year. Appropriations made in the budget bill, or in other bills providing for appropriations

related to the budget bill, for the succeeding fiscal year shall not be expended in the budget year.

~~(4)~~(5) Until the budget bill has been enacted, the Legislature shall not send to the Governor for consideration any bill appropriating funds for expenditure during the ~~fiscal~~ budget year or the succeeding fiscal year ~~for which the budget bill is to be enacted~~, except emergency bills recommended by the Governor or appropriations for the salaries and expenses of the Legislature.

(~~d~~g) No bill except the budget bill or the supplemental budget bill may contain more than one item of appropriation, and that for one certain, expressed purpose. Appropriations from the General Fund of the State, except appropriations for the public schools and appropriations in the budget bill, the supplemental budget bill, and in other bills providing for appropriations related to the budget bill, are void unless passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring.

(e~~h~~) (1) Notwithstanding any other provision of law or of this Constitution, the budget bill, the supplemental budget bill, and other bills providing for appropriations related to the budget bill may be passed in each house by rollcall vote entered in the journal, a majority of the membership concurring, to take effect immediately upon being signed by the Governor or upon a date specified in the legislation. Nothing in this subdivision shall affect the vote requirement for appropriations for the public schools contained in subdivision (~~d~~g) of this section and in subdivision (b) of Section 8 of this article.

(2) For purposes of this section, "other bills providing for appropriations related to the budget bill or a supplemental budget bill" shall consist only of bills identified as related to the budget in the budget bill or in the supplemental budget bill passed by the Legislature.

(3) For purposes of this section, "budget bill" shall mean the bill or bills containing the budget for the budget year and the succeeding fiscal year.

(~~f~~i) The Legislature may control the submission, approval, and enforcement of budgets and the filing of claims for all state agencies.

(~~g~~j) (1) For the 2004-05 fiscal year, or any subsequent fiscal year, the Legislature ~~may~~ shall not send to the Governor for consideration, nor ~~may~~ shall the Governor sign into law, a budget bill for the budget year or for the succeeding fiscal year that would appropriate from the General Fund, for ~~that~~ each fiscal year of the biennial budget, a total amount that, when combined with all appropriations from the General Fund for that fiscal year made as of the date of the budget bill's passage, and the amount of any General Fund moneys transferred to the Budget Stabilization Account for that fiscal year pursuant

to Section 20 of Article XVI, exceeds General Fund revenues, transfers, and balances available from the prior fiscal year for that fiscal year estimated as of the date of the budget bill's passage. The estimate of General Fund revenues, transfers, and balances shall be set forth in the budget bill passed by the Legislature. The budget bill passed by the Legislature shall also contain a statement of the total General Fund obligations described in this subdivision for each fiscal year of the biennial budget, together with an explanation of the basis for the estimate of General Fund revenues, including an explanation of the amount by which the Legislature projects General Fund revenues for that fiscal year to differ from General Fund revenues for the immediately preceding fiscal year.

(~~h~~k) Notwithstanding any other provision of law or of this Constitution, including subdivision (ef) of this section, Section 4 of this article, and Sections 4 and 8 of Article III, in any year in which the budget bill is not passed by the Legislature by midnight on June 15, there shall be no appropriation from the current budget or future budget to pay any salary or reimbursement for travel or living expenses for Members of the Legislature during any regular or special session for the period from midnight on June 15 until the day that the budget bill is presented to the Governor. No salary or reimbursement for travel or living expenses forfeited pursuant to this subdivision shall be paid retroactively.

SECTION SEVEN. Article XI A is hereby added to the California Constitution to read:

ARTICLE XI A. COMMUNITY STRATEGIC ACTION PLANS

SEC. 1. (a) Californians expect and require that local government entities publicly explain the purpose of expenditures and whether progress is being made toward their goals. Therefore, in addition to the requirements of any other provision of this Constitution, the adopted budget of each local government entity shall contain all of the following as they apply to the entity's powers and duties:

(1) A statement of how the budget will promote, as applicable to a local government entity's functions, role, and locally-determined priorities, a prosperous economy, quality environment, and community equity, as reflected in the following goals: increasing employment, improving education, decreasing poverty, decreasing crime, improving health, and other community priorities;

(2) A description of the overall outcome measurements that will be used to assess progress in all parts of the community toward the goals established by the local government entity pursuant to paragraph (1);

(3) A statement of the outcome measurement for each major expenditure of government for which public resources are appropriated in the budget and the relationship to the overall goals established by the local government entity pursuant to paragraph (1);

(4) A statement of how the local government entity will align its expenditure and investment of public resources to achieve the goals established by the local government entity pursuant to paragraph (1); and

(5) A public report on progress in achieving the goals established by the local government entity pursuant to paragraph (1) and an evaluation of the effectiveness in achieving the outcomes according to the measurements set forth in the previous year's budget.

(b) Each local government entity shall develop and implement an open and transparent process that encourages the participation of all aspects of the community in the development of its proposed budget, including identifying community priorities pursuant to paragraph (1) of subdivision (a) of this section.

(c) This section shall become operative in the budget year of the local government entity which commences in the year 2014.

(d) The provisions of this section are self-executing and are to be interpreted to apply only to those activities over which local entities exercise authority.

SEC. 2. (a) A county, by action of the board of supervisors, may initiate the development of a Community Strategic Action Plan, hereinafter referred to as the Action Plan. The county shall invite the participation of all other local government entities within the county whose existing functions or services are within the anticipated scope of the Action Plan. Any local government entity within the county may petition the board of supervisors to initiate an Action Plan, to be included in the planning process, or to amend the Action Plan.

(b) The participating local government entities shall draft an Action Plan through an open and transparent process that encourages the participation of all aspects of the community, including neighborhood leaders. The Action Plan shall include the following:

(1) A statement that (A) outlines how the Action Plan will achieve the purposes and goals set forth in paragraphs (1) through (5), inclusive, of subdivision (a) of Section 1 of this article, (B) describes the public services that will be delivered pursuant to the Action Plan and the roles and responsibilities of the participating entities, (C) explains why those services will be delivered more effectively and

efficiently pursuant to the Action Plan, (D) provides for an allocation of resources to support the plan, including funds that may be received from the Performance and Accountability Trust Fund, (E) considers disparities within communities served by the Action Plan, and (F) explains how the Action Plan is consistent with the budgets adopted by the participating local government entities;

(2) The outcomes desired by the participating local government entities and how those outcomes will be measured; and

(3) A method for regularly reporting outcomes to the public and to the State.

(c) (1) The Action Plan shall be submitted to the governing bodies of each of the participating local government entities within the county. To ensure a minimum level of collaboration, the Action Plan must be approved by the county, local government entities providing municipal services pursuant to the Action Plan to at least a majority of the population in the county, and one or more school districts serving at least a majority of the public school pupils in the county.

(2) The approval of the Action Plan, or an amendment to the Action Plan, by a local government entity, including the county, shall require a majority vote of the membership of the governing body of that entity. The Action Plan shall not apply to any local government entity that does not approve the Action Plan as provided in this paragraph.

(d) Once an Action Plan is adopted, a county may enter into contracts that identify and assign the duties and obligations of each of the participating entities, provided that such contracts are necessary for implementation of the Action Plan and are approved by a majority vote of the governing body of each local government entity that is a party to the contract.

(e) Local government entities which have adopted an Action Plan pursuant to this section and that have satisfied the requirements of Section 3 of this article, if applicable, may integrate state or local funds that are allocated to them for the purpose of providing the services identified by the Action Plan in a manner that will advance the goals of the Action Plan.

SEC. 3. (a) If the parties to an Action Plan adopted pursuant to Section 2 of this article conclude that a state statute or regulation, including a statute or regulation restricting the expenditure of funds, impedes progress toward the goals of the Action Plan or they need additional statutory authority to implement the Action Plan, the local government entities may include provisions in the Action Plan that are functionally equivalent to the objective or objectives of the applicable statute or regulation. The provision shall include a description of the intended state objective, of how the rule is an obstacle to better

outcomes, of the proposed community rule, and how the community rule will contribute to better outcomes while advancing a prosperous economy, quality environment, and community equity. For purposes of this section, a provision is functionally equivalent to the objective or objectives of a statute or regulation if it substantially complies with the policy and purpose of the statute or regulation.

(b) The parties shall submit an Action Plan containing the functionally equivalent provisions described in subdivision (a) with respect to one or more state statutes to the Legislature during a regular or special session. If, within 60 days following its receipt of the Action Plan, the Legislature takes no concurrent action, by resolution or otherwise, to disapprove the provisions, the provisions shall be deemed to be operative, with the effect in law that compliance with the provisions shall be deemed compliance with the state statute or statutes.

(c) If the parties to an Action Plan adopted pursuant to Section 2 of this article conclude that a regulation impedes the goals of the Action Plan, they may follow the procedure described in subdivision (a) of this section by submitting their proposal to the agency or department responsible for promulgating or administering the regulation, which shall consider the proposal within 60 days. If, within 60 days following its receipt of the Action Plan, the agency or department takes no action to disapprove the provisions, the provisions shall be deemed to be operative, with the effect in law that compliance with the provisions shall be deemed compliance with the state regulation or regulations. Any action to disapprove the provision shall include a statement setting forth the reasons for doing so.

(d) This section shall only apply to statutes or regulations that directly govern the administration of a state program that is financed in whole or in part with state funds.

(e) Any authority granted pursuant to this section shall automatically expire four years after the effective date, unless renewed pursuant to this section.

SEC. 4. (a) The Performance and Accountability Trust Fund is hereby established in the State Treasury for the purpose of providing state resources for the implementation of integrated service delivery contained in the Community Strategic Action Plans prepared pursuant to this article. Notwithstanding Section 13340 of the Government Code, money in the fund shall be continuously appropriated solely for the purposes provided in this article. For purposes of Section 8 of Article XVI, the revenues transferred to the Performance and Accountability Trust Fund pursuant to this Act shall be considered General Fund proceeds of taxes which may be appropriated pursuant to Article XIII B.

(b) Money in the Performance and Accountability Trust Fund shall be distributed according to statute to counties whose Action Plans include a budget for expenditure of the funds that satisfies Sections 1 and 2 of this article.

(c) Any funds allocated to school districts pursuant to an Action Plan must be paid for from a revenue source other than the Performance and Accountability Trust Fund, and may be paid from any other source as determined by the entities participating in the Action Plan. The allocation received by any school district pursuant to an Action Plan shall not be considered General Fund proceeds of taxes or allocated local proceeds of taxes for purposes of Section 8 of Article XVI.

SEC. 5. A county that has adopted an Action Plan pursuant to Section 2 of this article shall evaluate the effectiveness of the Action Plan at least once every four years. The evaluation process shall include an opportunity for public comments, and for those comments to be included in the final report. The evaluation shall be used by the participating entities to improve the Action Plan and by the public to assess the performance of its government. The evaluation shall include a review of the extent to which the Action Plan has achieved the purposes and goals set forth in paragraphs (1) through (5), inclusive, of subdivision (a) of Section 1 of this article, including: improving the outcomes among the participating entities in the delivery and effectiveness of the applicable governmental services; progress toward reducing community disparities; and whether the individuals or community members receiving those services were represented in the development and implementation of the Action Plan.

SEC. 6. (a) The State shall consider how it can help local government entities deliver services more effectively and efficiently through an Action Plan adopted pursuant to Section 2 of this article. Consistent with this goal, the State or any department or agency thereof may enter into contracts with one or more local government entities that are participants in an Action Plan to perform any function that the contracting parties determine can be more efficiently and effectively performed at the local level. Any contract made pursuant to this section shall conform to the Action Plan adopted pursuant to the requirements of Section 2 of this article.

(b) The State shall consider and determine how it can support, through financial and regulatory incentives, efforts by local government entities and representatives of the public to work together to address challenges and to resolve problems that local government entities have voluntarily and collaboratively determined are best addressed at the geographic scale of a region in order to advance a prosperous economy, quality environment, and community equity. The State shall promote the vitality and global competitiveness of regional economies and foster greater collaboration among local governments within regions by providing priority consideration for state-administered

funds for infrastructure and human services, as applicable, to those participating local government entities that have voluntarily developed a regional collaborative plan and are making progress toward the purposes and goals of their plan, which shall incorporate the goals and purposes set forth in paragraphs (1) through (5), inclusive, of subdivision (a) of Section 1 of this article.

SEC. 7. Nothing in this article is intended to abrogate or supersede any existing authority enjoyed by local government entities, nor to discourage or prohibit local government entities from developing and participating in regional programs and plans designed to improve the delivery and efficiency of government services.

SEC. 8. For purposes of this article, the term "local government entity" shall mean a county, city, city and county, and any other local government entity, including school districts, county offices of education, and community college districts.

SECTION EIGHT. Section 29 of Article XIII of the California Constitution is hereby amended to read:

SEC. 29. (a) The Legislature may authorize counties, cities and counties, and cities to enter into contracts to apportion between them the revenue derived from any sales or use tax imposed by them that is collected for them by the State. Before the contract becomes operative, it shall be authorized by a majority of those voting on the question in each jurisdiction at a general or direct primary election.

(b) Notwithstanding subdivision (a), on and after the operative date of this subdivision, counties, cities and counties, and cities, may enter into contracts to apportion between them the revenue derived from any sales or use tax imposed by them pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law, or any successor provisions, that is collected for them by the State, if the ordinance or resolution proposing each contract is approved by a two-thirds vote of the governing body of each jurisdiction that is a party to the contract.

(c) Notwithstanding subdivision (a), counties, cities and counties, cities, and any other local government entity, including school districts and community college districts, that are parties to a Community Strategic Action Plan adopted pursuant to Article XI A may enter into contracts to apportion between and among them the revenue they receive from ad valorem property taxes allocated to them, if the ordinance or resolution proposing each contract is approved by a two-thirds vote of the governing body of each jurisdiction that is a party to the contract. Contracts entered into pursuant to this section shall be consistent with each participating entity's budget adopted in accordance with Section 1 of Article XI A.

SECTION NINE. Chapter 6 (commencing with Section 55750) is hereby added to Part 2 of Division 2 of Title 5 of the Government Code to read:

CHAPTER 6. COMMUNITY STRATEGIC ACTION PLANS.

SEC. 55750. (a) Notwithstanding Section 7101 of the Revenue and Taxation Code or any other provision of law, beginning in the 2013-14 fiscal year, the amount of revenues, net of refunds, collected pursuant to Section 6051 of the Revenue and Taxation Code and attributable to a rate of 0.035 percent shall be deposited in the State Treasury to the credit of the Performance and Accountability Trust Fund, as established pursuant to Section 4 of Article XI A of the California Constitution, and shall be used exclusively for the purposes for which that fund is created.

(b) To the extent that the Legislature reduces the sales tax base and that reduction results in less revenue to the Performance and Accountability Trust Fund than the Fund received in the 2013-14 fiscal year, the Controller shall transfer from the General Fund to the Performance and Accountability Trust Fund an amount that when added to the revenues received by the Performance and Accountability Trust Fund in that fiscal year equals the amount of revenue received by the Fund in the 2013-2014 fiscal year.

SEC. 55751. (a) Notwithstanding Section 7101 of the Revenue and Taxation Code or any other provision of law, beginning in the 2013-14 fiscal year, the amount of revenues, net of refunds, collected pursuant to section 6201 of the Revenue and Taxation Code and attributable to a rate of 0.035 percent shall be deposited in the State Treasury to the credit of the Performance and Accountability Trust Fund, as established pursuant to Section 4 of Article XI A of the California Constitution, and shall be used exclusively for the purposes for which that fund is created.

(b) To the extent that the Legislature reduces the use tax base and that reduction results in less revenue to the Performance and Accountability Trust Fund than the Fund received in the 2013-14 fiscal year, the Controller shall transfer from the General Fund to the Performance and Accountability Trust Fund an amount that when added to the revenues received by the Performance and Accountability Trust Fund in that fiscal year equals the amount of revenue received by the Fund in the 2013-14 fiscal year.

SEC. 55752. (a) In the 2014-15 fiscal year and every subsequent fiscal year, the Controller shall distribute funds in the Performance and Accountability Trust Fund established pursuant to Section 4 of Article XI A of the California Constitution to each county that has adopted a Community Strategic Action Plan that is in effect on or before June 30 of the preceding fiscal year, and that has submitted its Action Plan to the Controller for the purpose of requesting funding under this section. The distribution shall be made in the first quarter of the fiscal year. Of the total amount available for

distribution from the Performance and Accountability Trust Fund in a fiscal year, the Controller shall apportion to each county Performance and Accountability Trust Fund, which is hereby established, to assist in funding its Action Plan, a percentage equal to the percentage computed for that county under subdivision (c).

(b) As used in this section, the population served by a Community Strategic Action Plan is the population of the geographic area that is the sum of the population of all of the participating local government entities, provided that a resident served by one or more local government entities shall be counted only once. The Action Plan shall include a calculation of the population of the geographic area served by the Action Plan, according to the most recent Department of Finance demographic data.

(c) The Controller shall determine the population served by each county's Action Plan as a percentage of the total population computed for all of the Action Plans that are eligible for funding pursuant to subdivision (a).

(d) The funds provided pursuant to Section 4 of Article XI A of the California Constitution and this chapter represent in part ongoing savings that accrue to the State that are attributable to the 2011 realignment and to the measure that added this section. Four years following the first allocation of funds pursuant to this section, the Legislative Analyst's Office shall assess the fiscal impact of the Action Plans and the extent to which the plans have improved the efficiency and effectiveness of service delivery or reduced the demand for state-funded services.

SECTION TEN. Section 42246 is hereby added to Article 2 of Chapter 7 of Part 24 of Division 3 of Title 2 of the Education Code to read:

SEC. 42246. Funds contributed or received by a school district pursuant to its participation in a Community Strategic Action Plan authorized by Article XI A of the California Constitution shall not be considered in calculating the State's portion of the district's revenue limit under Section 42238 or any successor statute.

SECTION ELEVEN. Section 9145 is hereby added to Article 7 of Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government Code to read:

SEC. 9145. For the purposes of Sections 9.5 and 12 of Article IV of the California Constitution, the following definitions shall apply:

(a) "Expand the scope of an existing state program or agency" does not include any of the following:

(1) Restoring funding to an agency or program that was reduced or eliminated in any fiscal year subsequent to the 2008-09 fiscal year to balance the budget or address a forecasted deficit.

(2) Increases in state funding for a program or agency to fund its existing statutory responsibilities, including increases in the cost of living or workload, and any increase authorized by a memorandum of understanding approved by the Legislature.

(3) Growth in state funding for a program or agency as required by federal law or a law that is in effect as of the effective date of the measure adding this section.

(4) Funding to cover one-time expenditures for a state program or agency, as so identified in the statute that appropriates the funding.

(5) Funding for a requirement described in paragraph (5) of subdivision (b) of Section 6 of Article XIII B of the California Constitution.

(b) "State costs" do not include costs incurred for the payment of principal or interest on a state general obligation bond.

(c) "Additional revenue" includes, but is not limited to, revenue to the State that results from specific changes made by federal or state law and that the state agency responsible for collecting the revenue has quantified and determined to be a sustained increase.

SECTION TWELVE. Section 11802 is hereby added to Article 1 of Chapter 8 of Part 1 of Division 3 of Title 2 of the Government Code to read:

SEC. 11802. No later than June 30, 2013, the Governor shall, after consultation with state employees and other interested parties, submit to the Legislature a plan to implement the performance-based budgeting provisions of Section 12 of Article IV of the California Constitution. The plan shall be fully implemented in the 2015-16 fiscal year and in each subsequent fiscal year.

SECTION THIRTEEN. Section 13308.03 is hereby added to Article 1 of Chapter 3 of Part 3 of Division 3 of Title 2 of the Government Code to read:

SEC. 13308.03. In addition to the requirements set forth in Section 13308, the Director of Finance shall:

(a) By May 15 of each year, submit to the Legislature and make available to the public updated projections of state revenue and state expenditures for the budget year and the succeeding fiscal year either as proposed in the budget bill pending in one or both houses of the Legislature or as appropriated in the enacted budget bill, as applicable.

(b) Immediately prior to passage of the biennial budget, or any supplemental budget, by the Legislature, submit to the Legislature a statement of total revenues and total expenditures for the budget year and the succeeding fiscal year, which shall be incorporated into the budget bill.

(c) By November 30 of each year, submit a fiscal update containing actual year-to-date revenues and expenditures for the current year compared to the revenues and expenditures set forth in the adopted budget to the Legislature. This requirement may be satisfied by the publication of the Fiscal Outlook Report by the Legislative Analyst's Office.

SECTION FOURTEEN. Amendment.

The statutory provisions of this measure may be amended solely to further the purposes of this measure by a bill approved by a two-thirds vote of the members of each house of the Legislature and signed by the Governor.

SECTION FIFTEEN. Severability.

If any of the provisions of this measure or the applicability of any provision of this measure to any person or circumstances shall be found to be unconstitutional or otherwise invalid, that finding shall not affect the remaining provisions or applications of this measure to other persons or circumstances, and to that extent the provisions of this measure are deemed to be severable.

SECTION SIXTEEN. Effective Date.

Sections Four, Five, and Six of this Act shall become operative on the first Monday of December in 2014. Unless otherwise specified in the Act, the other sections of the Act shall become operative the day after the election at which the Act is adopted.

SECTION SEVENTEEN. Legislative Counsel.

(a) The People find and declare that the amendments proposed by this measure to Section 12 of Article IV of the California Constitution are consistent with the amendments to Section 12 of Article IV of the California Constitution proposed by Assembly Constitutional Amendment No. 4 of the 2009-10 Regular Session (Res. Ch. 174, Stats. 2010) (hereafter "ACA 4"), which will appear on the statewide general election ballot of November 4, 2014.

(b) For purposes of the Legislative Counsel's preparation and proofreading of the text of ACA 4 pursuant to Sections 9086 and 9091 of the Elections Code, and Sections 88002 and 88005.5 of the Government Code, the existing provisions of Section 12 of Article IV of the California Constitution shall be deemed to be the provisions of that section as amended by this measure. The Legislative Counsel shall prepare and proofread the text of ACA 4, accordingly, to distinguish the changes proposed by ACA 4 to Section 12 of Article IV of the California Constitution from the provisions of Section 12 of Article IV of the California Constitution as amended by this measure. The Secretary of State shall place the complete text of ACA 4, as prepared and proofread by the Legislative Counsel pursuant to this section, in the ballot pamphlet for the statewide general election ballot of November 4, 2014.

Alpine Amador Butte Calaveras Colusa Del Norte
El Dorado Glenn Imperial Inyo Lake Lassen
Madera Mariposa Merced Modoc

Mono Napa Nevada Placer Plumas San Benito
Shasta Sierra Siskiyou Sutter Tehama
Trinity Tuolumne Yolo Yuba

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To: RCRC Board of Directors

From: Paul A. Smith, Senior Legislative Advocate

Date: August 7, 2012

Re: Proposition 31 – "The Government Performance & Accountability Act" (the California Forward Measure) - **For Review and Discussion Only**

Summary

This memo provides an analysis of Proposition 31, the "The Government Performance & Accountability Act", being put forth by California Forward. The measure would make a number of comprehensive changes to the process of adopting a state budget, ensuring the delivery of state and local government services, and reforming the process used by the Legislature for enacting legislation and conducting oversight of state programs.

Background

Existing Constitutional provisions and state statutes provide a process for declaring a state "fiscal emergency" and enacting a state budget. Furthermore, the Legislature has in place a set of rules and timelines for enacting legislation; however, most of those rules can be subject to a waiver. The Legislature currently has wide discretion for the oversight of state and local programs and frequently uses the Joint Legislative Audit Committee structure for conducing audits and oversight for a variety of subject matters.

Issue

Noting the need to restructure the relationship between the State and its residents and local government, California Forward – a non-profit group of civic leaders – has put forth Proposition 31. Proposition 31 encompasses a number of reforms to the structure of state government and local governments as well as the processes used to make and administer public policy. These reforms are briefly outlined below:

Changes to State Process

- Requires state legislation – including the Budget Act - to be public for at least three days before the Legislature can vote on it. Only exception would be an urgency measure passed in a special session to address a state of emergency declared by the Governor arising out of a natural disaster or a terrorist attack.

- New state programs, enhanced state programs, and/or tax expenditures costing more than $25 million must have an identified revenue source or an off-set. There are some limited exemptions to this new requirement.

- Requires the Legislature to show how bills that decrease state taxes or other revenues by more than $25 million in any fiscal year would be paid for with spending reductions, revenue increases, or a combination of the two.

- Mandatory legislative oversight of state programs (most likely to occur at the end of 2nd year of the two-year Session) whereby each state program shall be reviewed at least once every five years and shall result in recommendations that improve or terminate the program.

- Gives the Governor additional powers to reduce expenditures in a declared fiscal emergency, particularly when the Legislature fails to act.

- Institutes a two-year state budgeting process. That process will create a budget for the budget year and a budget for the succeeding fiscal year and provides for the Legislature and the Governor to make adjustments (particularly in the second year) accordingly. As part of the biennial budget, the measure institutes performance-based budgeting.

Changes to Local Process

In addition to new procedures placed upon the State, Proposition 31 spells out new requirements for local governments (i.e. counties) when crafting and adopting their respective budgets. Specifically, a county would be required, as part of their budget writing process, to have:

- A statement of how the budget will promote – as part of its function - a prosperous economy, quality environment, and community equity;

- A description of the overall outcome measurements that will be used to assess progress towards reaching the goals outlined in the statement, including the alignment of its fiscal resources to achieve the goals; and,

- A public report which reflects the progress made in achieving the goals put forth in the budget.

These new budget requirements must be adopted in 'an open and transparent process' and be in place for the commencement of the 2014-15 fiscal year.

Community Strategic Action Plans

Of great importantance to counties is Proposition 31's provision relating to "Community Strategic Action Plans" (Action Plans).

Purpose. The sponsors of Proposition 31 believe that Action Plans can be created locally to outline various public services, policy goals and community objectives to fit the needs of that community. As such, a statement must be incorporated into the Action Plan outlining the purposes and goals, how/why the services are to be delivered more effectively through the Action Plan, and the allocation of financial resources to the Action Plan.

Participation. Counties will have a central role in the Action Plan; however, participation, including that of the county, is optional. Specifically, a county interested in launching an Action Plan would have its Board of Supervisors initiate the Action Plan and invite other local governments within the county to join in its development. Furthermore, any local government within the county can petition the Board of Supervisors to participate in some aspect the plan and its development.

Approval of the Plan. After developing the plan 'though an open and transparent process', it must be approved, at a minimum, by the county Board of Supervisors and 1) the governing board of one or more local government entities that provide municipal services covering at least a majority of the population in the county (most likely cities); and, 2) one or more school districts covering at least a majority of the pupils of the county. No local government entity can be bound to the Action Plan if its government body did not provide approval. It should be noted that counties can enter into contracts with participating entities in the execution of the Action Plan.

Removing Statutory/Regulatory Barriers. Proposition 31 sets forth a process – to be utilized by those counties/local government entities that have adopted an Action Plan -- to obtain relief from a statute or a regulation in order to continue to fulfill the goals of the Action Plan, provided there is a "functional equivalent" in the plan that corresponds with the existing statute/regulation. It should be noted that relief would only apply to statutes and regulations concerning a state program that is financed in whole or in part with state funds. Relief would automatically expire after four years unless renewed.

Funding. Proposition 31 outlines a variety of ways to finance the goals and objectives of the Action Plan. They include: 1) local governments are allowed to integrate state and local funds as those funds apply to the programs subject to the Action Plan; 2) via contract and approved by a 2/3rds vote of each local government body, reapportioning local property tax receipts within those entities that participate in the Action Plan; and, 3) tapping into the Performance & Accountability Trust Fund which is created under Proposition 31 and funded through a portion (0.035%) of the state sales tax.

Counties that have adopted an Action Plan shall evaluate its effectiveness at least once every four years and that evaluation process must include public participation.

Staff Recommendation

Proposition 31 is on the August RCRC Board Meeting agenda so that Board Members can review and discuss the measure both at the Board Meeting and with the other members of their Boards of Supervisors prior to taking a position on the measure at the September RCRC Board of Directors Meeting.

Attachments

- Copy of Proposition 31
- Yolo County Resolution in Support of Proposition 31

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
17

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

FROM: George L. Milovich, Agricultural Commissioner/Director of Weights and Measures

FOR THE BOARD MEETING OF: **September 4, 2012**

SUBJECT: Change in Authorized Strength

DEPARTMENTAL RECOMMENDATION:

Request Board A) Approve the new job series and job descriptions of the Agricultural Biologist/Weights and Measures Inspector I, Range 60 ($3,271-$3,973), II, Range 65 ($3,671-$4,464) and Senior, Range 70 ($4,138-$5,032) and B) Increase the authorized strength within the Agricultural Commissioners Department by one full-time Agricultural Biologist/Weights and Measures Inspector I , Range 60 and C) Request Board find that consistent with the adopted Authorized Position Review Policy: a) the availability of funding for the position comes from the Agricultural Commissioners Department , as certified by the Agricultural Commissioner concurred with by the County Administrator and Auditor-Controller; b) where internal candidates meet the qualifications for the position of Agricultural Biologist/Weights and Measures Inspector I, the position could be filled through an internal recruitment; and c) approve the hiring of one Biologist/Weights and Measures Inspector I, Range 60 through a closed departmental recruitment. D) Upon filling of this position delete the position within the Agricultural Commissioners Department that becomes vacant from the internal recruitment. E) Changes are contingent on adoption of the Board Approved 2012/2013 County Budget.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

Employee cross-functionality within the Agricultural Commissioner's office will increase the capability and efficiency of the department's response to variable types of workload. The intent of the department is to recruit an Agricultural Biologist/Weights and Measures Inspector , which includes in an updated job description mosquito control work as required, to assist with both inspections within the areas of agriculture and weights and measures, as well as mosquito control work during peak mosquito population periods. This solution also addresses inequities that may exist if the department were to request a Mosquito Technician licensed in weights and measures regulation to perform inspections outside of his or her job description.

ALTERNATIVES:

Not authorize the Inyo County Agriculture Department to make the suggested changes in authorized strength to the identified budget units; however this will decrease the department's ability to operate more efficiently and effectively.

OTHER AGENCY INVOLVEMENT:

FINANCING:

The Agriculture budget will bill the mosquito control budget for the hours spent performing mosquito control functions, offsetting the total cost of one employee to the agriculture budget. Any work performed in the agriculture function is partially reimbursable by unclaimed gas tax monies during the following fiscal year. These changes are included in the 2012/2013 CAO Recommended 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 (M*ust be reviewed and approved by the auditor-controller prior to submission to the board clerk.)* Leslie L. Chapman 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.) Sue DL Approved: ✓ Date 8/28/12

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

INYO COUNTY
PERSONNEL SERVICES
P. O. BOX 249
INDEPENDENCE, CA 93526

(760) 878-0377
FAX (760) 878-0465

AN EQUAL OPPORTUNITY EMPLOYER
(WOMEN, MINORITIES, AND DISABLED ARE ENCOURAGED TO APPLY)

AGRICULTURAL BIOLOGIST/WEIGHTS & MEASURES INSPECTOR I, II, or SENIOR

DEPARTMENT:		Agricultural Commissioner
LOCATION:		Inyo and Mono Counties
SALARY:	Level I	Range 60
	Level II	Range 65
	Senior	Range 70

DISTINGUISHING CHARACTERISTICS:

This series will be utilized in the agriculture, weights and measures, and other functional areas of the Agricultural Commissioner's Office to perform the services, inspections, and controls as required by law. Incumbents should possess a high degree of scientific analytical ability; good oral and written communication skills; and the ability to work effectively with others.

Level I – This is an entry level position. Trainee will work under immediate supervision while learning tasks associated with their skill area.

Level II – Under general supervision, this level is distinguished by the variety of skill and experience required. Persons at this level are required to act independently and perform satisfactorily in several skill areas.

Senior – Under general supervision, this level is the most highly trained and skilled position in the series and incumbents perform the greatest variety and most difficult tasks. Persons working at this level may train or act as the lead person when working with less skilled individuals. Incumbent may function as a Program Supervisor in planning, scheduling, training, and monitoring programs as assigned by the Commissioner/Sealer; may also function as an Agricultural Biologist/Weights and Measures Inspector, performing work as assigned.

ESSENTIAL JOB DUTIES:

Level I – Trainee assists the Deputy Agricultural Commissioner/Sealer in conducting standard inspections to determine compliance of agricultural and weights and measurement standards, collecting samples, investigating complaint investigations, issuing pesticide permits and business registrations and other related duties as required.

Level II – Conducts field surveys and inspections as directed by the Agricultural Commissioner/Sealer's Office, including fruit, vegetable, and egg quality control, nursery compliance, pest and disease control, pesticide safety, weighing and measuring devices, quantity control of packaged commodities, weighmaster and petroleum products, electric meters and liquid petroleum gas; investigates and determines commodity fitness and recommends remedial measures used in regulation of agricultural industry such as suggestions or reprimands, issuing certificates of compliance or notices of non-compliance ordering reconditioning or destruction of commodities, office hearings, or issuing citations; disseminates agricultural and weights and measures policies, legal requirements, and information; advises and serves general public, community groups, government agencies, and private industry on agricultural and weights and measures problems and concerns; conducts studies and reports such as annual crop statistics, pesticide illness investigations, statistical sampling surveys, follow-up inspections, and investigation of complaints and infractions; prepares routine reports and correspondence; makes oral presentations; other related duties as required.

Senior – In addition to the above, plans work schedules and monitors work progress to assure program integrity; performs programs as planned; prepares reports as required by the programs and keeps the Agricultural Commissioner/Sealer informed; performs remedial legal actions required to obtain compliance with State laws and regulations; supervises personnel engaged in agricultural and weights and measures inspections and investigations; performs departmental administrative work relating to programs, personnel, budget, and reporting functions; represents the Agricultural Commissioner/Sealer to the public and other agencies as required; speaks to various groups on departmental activities; works with members in all facets of the agricultural industry, and other industries and agencies; obtains compliance, preferably by education rather than by enforcement; compiles statistics; maintains an inventory of equipment and supplies; other related duties as assigned.

MINIMUM QUALIFICATIONS

LICENSING:
Level I – This position requires any one (1) license.

Level II – This position requires any (3) licenses.

Senior – This position requires all eight (8) licenses.

EDUCATION:
Level I, II, Senior – Achievement of the appropriate level of college commiserate with CDFA requirements for licensing.

EXPERIENCE:
Level I – None required.

Level II – One (1) year experience in the technical inspection and enforcement of agricultural or weights and measures laws as a licensed Agricultural Biologist/Weights & Measures Inspector I

Senior – Two (2) years of responsible experience acting in the capacity of an Agricultural Biologist/Weights & Measures Inspector II.

Knowledge of: State laws, regulations, policies, and agreements pertaining to the function of the Agricultural Commissioner/Sealer's Office; enforcement powers and obligations of the Agricultural Commissioner, rules of evidence, investigating, techniques, and court procedures; mechanics and operation of scales and other weighing and measuring devices; general agricultural and weights and measures practices and issues; methods for treating and controlling plant pests and diseases commonly found in California; rules and regulations governing general inspection of agricultural pests and the sale and use of pesticides and economic poisons; basic principles of County budgeting methods. Senior incumbents should also have knowledge of personnel supervision and principles of program management.

Ability to: Interpret and enforce agricultural standards, laws, and regulations; inspect, test, and seal commercial weighing and measuring equipment; keep accurate records and prepare reports; operate a computer in the course of work; understand and carry out oral and written directions; establish and maintain cooperative working relationships with those contacted during the course of work. Senior incumbents should also have the ability to supervise personnel engaged in agricultural and weights and measures inspections and investigations; plan, coordinate, and review inspection programs; perform departmental administrative work relating to programs, personnel, budget, and reporting functions.

Physical ability to: Work outdoors, often in adverse conditions, including extreme temperatures, sun, wind, water, and insects; walk distances on difficult and remote terrain, and lift and carry for some distance weights of up to 50 pounds; operate specialized equipment.

Special requirements: Must successfully complete a County pre-employment background investigation and physical examination, including drug screen. Must possess a valid Class B commercial operator's license issued by the California Department of Motor Vehicles.

This class specification lists the major duties and requirements of the job and is not all-inclusive. Incumbents may be expected to perform job-related duties other than those contained in this document.

For Clerk's Use Only:
AGENDA NUMBER

18

AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

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

FROM: HEALTH & HUMAN SERVICES – Prevention

FOR THE BOARD MEETING OF: **September 4, 2012**

SUBJECT: Request that your Board approve a proclamation designating September 2012, as National Recovery Month.

DEPARTMENTAL RECOMMENDATION:
Request the Board: 1) Declare September 2012, as National Recovery Month and; 2) Authorize the Chairperson to sign the Official Proclamation.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:
For more than 20 years, National Recovery Month has promoted the societal benefits of prevention, treatment, and recovery for substance use disorders, celebrated people in recovery, lauded the contributions of treatment and service providers, and promoted the message that recovery, in all its forms, is possible.

This year's theme, "Join the Voices for Recovery: It's Worth It", emphasizes that while the road to recovery may be difficult, the benefits of preventing and overcoming substance use disorders are significant and important to everyone. People in recovery achieve healthy lifestyles, both physically and emotionally, and participate in positive ways in their cities and towns. Inyo County Health and Human Services, Inyo County Probation, Inyo County Drug Court, and the local recovery community will hold the second annual 'Celebrate Recovery' event this September, to pay tribute to those in long-term recovery, those new to recovery, share stories of struggles and triumphs, and to enjoy camaraderie in an alcohol/drug-free setting.

In 2010, 2.9 million people aged 18 or older (1.0% of the US population) received treatment for an illicit drug or alcohol use problem at a specialized facility in the past year. This is hardly even makes a dent in the 23.1 million people, ages 12 and older, who need treatment but are not getting it; this according to the 2010 National Survey on Drug Use and Health. Rallying round people with substance use disorders, getting them the help they need, finding treatment, and providing recovery support services is a challenge that in the long run affects not only the substance abuser and their families, but the health and wellbeing of all the communities in Inyo County.

ALTERNATIVES:
The Board can choose not to approve the declaration which will affect our ability to inform the public about National Recovery Month.

OTHER AGENCY INVOLVEMENT:
None

FINANCING:
There is no financial impact from this decision.

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.)* 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) Jean Turner Date: 8-23-12

PROCLAMATION
OF THE BOARD OF SUPERVISORS
COUNTY OF INYO, STATE OF CALIFORNIA
PROCLAIMING THE MONTH OF SEPTEMBER 2012
AS NATIONAL RECOVERY MONTH

WHEREAS, behavioral health is an essential part of health and one's overall wellness; and

WHEREAS, prevention of substance use disorders works, treatment is effective, and people recover in our area and around the Nation; and

WHEREAS, the benefits of prevention and overcoming substance use disorders are significant and valuable to individuals, families, and the community at large; and

WHEREAS, people in recovery achieve healthy lifestyles, both physically and emotionally, and contribute in positive ways to their communities; and

WHEREAS, we all need to recognize the achievements of those who have achieved long-term recovery and share with others how recovery can positively benefit one's life; and

WHEREAS, we must encourage relatives and friends of people with substance use disorders to implement preventive measures, recognize the signs of a problem, and guide those in need to appropriate treatment and recovery support services; and

WHEREAS, in 2010, 23.1 million persons aged 12 and older needed treatment for an illicit drug or alcohol use problem, only 2.6 million received treatment (***2010 National Survey on Drug Use and Health***). Given the serious nature of this public health problem, we must continue to strive to reach the millions more who need help; and

WHEREAS, to help more people achieve and sustain long term recovery, the *US Department of Health and Human Services (HHS), the Substance Abuse and Mental Health Services Administration (SAMHSA), the White House Office of National Drug Control Policy (ONDCP) and Inyo County Health and Human Service* invite all residents of ***Inyo County*** to participate in ***National Recovery Month***; and

NOW, THEREFORE, the Inyo County Board of Supervisors joins with other communities and the Nation in proclaiming the month of September 2012 as National Recovery Month in Inyo County and call upon the people of Inyo County to observe this month with appropriate programs, activities, and ceremonies supporting this year's theme, ***" Join the Voices for Recovery: It's Worth It."***

PASSED AND PROCLAIMED by the Inyo County Board of Supervisors, this 4th day of September, 2012.

_____
Chairperson, Inyo County Board of Supervisors

For Clerk's Use Only:
AGENDA NUMBER

19

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

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

FROM: HEALTH & HUMAN SERVICES –

FOR THE BOARD MEETING OF: September 4, 2012

SUBJECT: Approval, Contingent Upon Signatures, of a Contract with County of Mono for ESAAA Services to Seniors

DEPARTMENTAL RECOMMENDATION:

Request your Board approve the four-year agreement with the County of Mono for the provision of Eastern Sierra Area Agency on Aging (ESAAA) services to Mono County resident senior citizens, in the amount of $288,701 for the period of October 1, 2012 through June 30, 2016, contingent upon (1) Board's adoption of future budgets; and (2) obtaining the appropriate Mono County signatures by September 25, 2012; and authorize the Chairperson to sign.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

As we approach the September 30 end of the existing interim contract between the counties of Inyo and Mono for serving Mono County seniors through ESAAA, we must now present the contract for the remainder of the 2012-2016 four-year period. The 90-day interim contract ending on September 30 allowed the new ESAAA Board to establish funding minimums and set contract amounts as part of the four-year planning process. Staff is recommending that all ESAAA subcontractors be on a four-year contract cycle that mirrors the four-year planning cycle, with contingencies for annual updates and changes. This four-year cycle is one small way to reduce administrative time and cost associated with preparing new contracts annually, following annual contract negotiations.

Staff is recommending that your Board pre-approve the contract offer to Mono to ensure continuity of services after September 30, in spite of the fact that Mono Board and staff members have been unable to provide clarity of their preferences for proceeding. Should the Mono Board fail to approve this contract and commit to on-going services beyond September 30, the Inyo County ESAAA staff is prepared to service Mono County seniors, effective October 1.

The exact funding amounts per year for Mono services are as follows:

Fiscal Year
2012/13 (10/1-06/30) = $58,388
2013/14 = $76,771
2014/15 = $76,771
2015/16 = $76,771

Contingent upon State allocations in future years, the above amounts could be lower or higher.

ALTERNATIVES:

Board could choose not to approve this request, possibly resulting in continued indecision and uncertainty beyond September 30 about what services and funding Mono County will receive from ESAAA.

OTHER AGENCY INVOLVEMENT:

California Department of Aging

FINANCING:

Funding for this contract comes from California Department of Aging State and Federal Funds. This is budgeted in the ESAAA Budget (683000) in Other County Contributions (5539). 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: _____ Date: 8·28·12
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: _____
BUDGET OFFICER:	**BUDGET AND RELATED ITEMS** *(Must be reviewed and approved by the Budget Officer prior to submission to the Board Clerk.)* Approved: _____ Date: _____

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received) Jan Turner Date: 8-29-12

AGREEMENT BETWEEN COUNTY OF INYO
AND County of Mono
FOR THE PROVISION OF Senior **SERVICES**

INTRODUCTION

WHEREAS, the County of Inyo (hereinafter referred to as "County") may have the need for the community based senior services of Mono County Social Services of County of Mono (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, upon its request, those services and work set forth in Attachment **A,** attached hereto and by reference incorporated herein. Requests by the County to the Contractor to perform under this Agreement will be made by Jean Turner, whose title is: Director. Requests to the Contractor for work or services to be performed under this Agreement will be based upon the County's need for such services. The County makes no guarantee or warranty, of any nature, that any minimum level or amount of services or work will be requested of the Contractor by the County under this Agreement. County by this Agreement incurs no obligation or requirement to request from Contractor the performance of any services or work at all, even if County should have some need for such services or work during the term of this Agreement.

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, county, 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 October 1, 2012 to June 30, 2016 unless sooner terminated as provided below.

3. CONSIDERATION.

A. Compensation. County shall pay to Contractor in accordance with the Schedule of Fees (set forth as Attachment **B)** for the services and work described in Attachment **A** which are performed by Contractor at the County's request.

B. Travel and per diem. Contractor will not be paid or reimbursed for travel expenses or per diem which Contractor incurs in providing services and work requested by County 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 $288,701 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 described in Attachment **A**, which were done at the County's request. 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 **C**, 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, 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 **D** 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, county, municipal, 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	
Health & Human Services	Department
PO Drawer A	Street
Independence, CA 93526	City and State

Contractor:	
County of Mono	Name
P.O. Box 576	Street
Bridgeport, CA 93517	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.

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AGREEMENT BETWEEN COUNTY OF INYO
AND County of Mono
FOR THE PROVISION OF Senior **SERVICES**

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

COUNTY OF INYO

By:_____

Dated: _____

CONTRACTOR

By:_____
Signature

_____
Print or Type Name

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 County of Mono
FOR THE PROVISION OF Senior **SERVICES**

TERM:

FROM: 10/01/12 **TO:** 06/30/16

SCOPE OF WORK:

Contractor will provide the following senior services within Mono County according to the requirements of the Older Americans Act and applicable Federal and State regulatory standards as outlined in the attached Standard Agreement for Contract #AP-1213-16 with the State of California and California Department of Aging. The contract with the State of California is attached and incorporated herein.

Service	Minimum Units of Service
1. Home Delivered Meals:	
a. October 1, 2012 through June 30, 2013	2,873 meals
b. Each Fiscal Year beginning July 1, 2013	3,831 meals
2. Congregate Meals:	
a. October 1, 2012 through June 30, 2013	2,138 meals
b. Each Fiscal Year beginning July 1, 2013	2,850 meals
3. Transportation:	
a. October 1, 2012 through June 30, 2013	210 one-way trips
b. Each Fiscal Year beginning July 1, 2013	280 one-way trips
4. Assisted Transportation:	
a. October 1, 2012 through June 30 2013	36 one-way trips
b. Each Fiscal Year beginning July 1, 2013	49 one-way trips

Contractor will provide a monthly summary of service activity in the above categories in terms of identified units of service according to administrative requirements specified by the County.

Contractor's good-faith failure to render any minimum number of service units, despite best efforts, shall not constitute a breach of this Agreement.

Notwithstanding Paragraph 14, this Agreement may be canceled by County without cause, and at will, for any reason by giving to Contractor ninety (90) days written notice of such intent to cancel. Contractor may cancel this Agreement without cause, and at will, for any reason whatsoever by giving ninety (90) days written notice of such intent to cancel to County.

ATTACHMENT B

AGREEMENT BETWEEN COUNTY OF INYO
AND County of Mono
FOR THE PROVISION OF Senior **SERVICES**

TERM:

FROM: 10/01/12 **TO:** 06/30/16

SCHEDULE OF FEES:

Contractor will submit an Area Plan Budget (CDA 122) to Eastern Sierra Area Agency on Aging (ESAAA) each year by July 1, as required by the California Department of Aging (CDA). Contractor will also submit as required by the CDA, the Financial Closeout Report (CDA 180) within 45 days following the end of the fiscal year or within 30 days following termination prior to the end of the contract period, unless otherwise specified by the CDA.

Contractor will submit an invoice for the actual quarterly expenditures and ESAAA will reimburse based on the actual expenditures up to the maximum quarterly amount (1/4 of the total annual contract amount). If Contractor's expenses are either less than or over the quarterly maximum, those differences may be reconciled with future quarters' funds, within the same fiscal year, so long as the Contractor is continuing to provide services pursuant to this contract within those same future quarters. The quarterly invoice shall be submitted by Contractor to the ESAAA administrative services contractor (Inyo County) by the tenth (10^{th}) of the month following the end of the quarter for services delivered in the previous quarter, and shall be paid by ESAAA by the end of the month after the quarterly invoice is received. Appropriate backup showing the actual expenditures must also be attached to the invoice. The total contract amount for October 1, 2012 through June 30, 2013 is $58,388 (remaining 3 quarters of the year). In future years, if the allocation amount were to remain the same, the annual amount to be reimbursed would be approximately $76,771. Payment will be conditioned on monthly submission of service activity reports as specified in Attachment A. The monthly service report shall be submitted by Contractor to the ESAAA administrative services contractor (Inyo County) by the tenth (10^{th}) of each month for services delivered in the previous month. Both invoice and service activity reports shall be submitted to Inyo County Health & Human Services, PO Drawer A, Independence, CA 93526 or by electronic means specified by the ESAAA administrative services contractor (Inyo County).

The contract amount noted above is based on the most recent allocation letter from the California Department of Aging (CDA). If future allocations to ESAAA from CDA are reduced, a revised contract amount shall be calculated based on the most recent allocation letter. Subsequently, Contractor's maximum contract amount is subject to change annually.

Notwithstanding Paragraph 14, this Agreement may be cancelled by County without cause, and at will, for any reason by giving the Contractor ninety (90) days written notice of such intent to cancel. Contractor may cancel this Agreement without cause, and at will, for any reason whatsoever by giving ninety (90) days written notice of such intent to cancel to County.

ATTACHMENT C

AGREEMENT BETWEEN COUNTY OF INYO
AND County of Mono
FOR THE PROVISION OF Senior **SERVICES**

TERM:

FROM: 10/01/12 **TO:** 06/30/16

Form W-9

Request for Taxpayer
Identification Number and Certification
(Please submit W-9 form with Contract, available on-line or by County)

ATTACHMENT D

AGREEMENT BETWEEN COUNTY OF INYO
AND County of Mono
FOR THE PROVISION OF Senior **SERVICES**

TERM:

FROM: 10/01/12 **TO:** 06/30/16

SEE ATTACHED INSURANCE PROVISIONS

Specifications 2
Insurance Requirements for Professional Services

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with limits no less than **$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **$500,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **$1,000,000** per accident for bodily injury or disease.

(Not required if consultant provides written verification it has no employees)

1. **Professional Liability** (Errors and Omissions) Insurance appropriates to the Consultant's profession, with limit no less than **$1,000,000** per occurrence or claim, $2,000,000 aggregate.

If the Consultant maintains higher limits than the minimums shown above, the Entity requires and shall be entitled to coverage for the higher limits maintained by the contractor.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds on the auto policy with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Consultant; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the **Consultant's insurance coverage shall be primary** insurance as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the Entity**.

Waiver of Subrogation

Consultant hereby grants to Entity a waiver of any right to subrogation which any insurer of said Consultant may acquire against the Entity by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the Entity. The Entity may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.

Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not ***replaced with another claims-made policy form with a Retroactive Date*** prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of ***five (5)*** years after completion of contract work.

Verification of Coverage

Consultant shall furnish the Entity with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

Special Risks or Circumstances

Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

STATE OF CALIFORNIA
STANDARD AGREEMENT
STD 213 (Rev 06/03)

AGREEMENT NUMBER
AP-1213-16
REGISTRATION NUMBER

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

STATE AGENCY'S NAME
California Department of Aging

CONTRACTOR'S NAME
County of Inyo

2. The term of this Agreement is: July 1, 2012 Through June 30, 2013

3. The maximum amount of this Agreement is: **$ 750,878.00** Seven hundred fifty thousand eight hundred seventy-eight and 00/100 dollars

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

Exhibit A – Scope of Work	14 page(s)
Exhibit B – Budget Detail, Payment Provisions, and Closeout	12 page(s)
Exhibit C* – General Terms and Conditions	GTC 610
Check mark one item below as Exhibit D:	
☒ Exhibit - D Special Terms and Conditions (Attached hereto as part of this agreement)	28 page(s)
☐ Exhibit - D* Special Terms and Conditions	
Exhibit E – Additional Provisions	15 page(s)

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at www.ols.dgs.ca.gov/Standard+Language

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)* ✍ Marty Fortney — DATE SIGNED *(Do not type)* 6-26-12

PRINTED NAME AND TITLE OF PERSON SIGNING
MARTY FORTNEY - CHAIRPERSON, BOARD OF SUPERVISORS

ADDRESS
163 May Street Bishop CA 93514

STATE OF CALIFORNIA

AGENCY NAME
California Department of Aging

BY *(Authorized Signature)* ✍ Rachel de la Cruz — DATE SIGNED *(Do not type)* 8-21-12

PRINTED NAME AND TITLE OF PERSON SIGNING
Rachel de la Cruz, Manager, Contracts and Business Services

ADDRESS
1300 National Drive, Suite 200, Sacramento CA. 95834

California Department of General Services Use Only

☒ Exempt per: Older Californians Act and AG OP 80-111

ARTICLE I. DEFINITIONS

A. DEFINITIONS SPECIFIC TO TITLE III AND TITLE VII PROGRAMS

1. **Program Requirements** means Title III program requirements found in the Older Americans Act (OAA 42) (USC Section 3001-3058); Code of Federal Regulations (45 CFR XIII, 1321); Title 22, California Code of Regulations (CCR), Section 7000 et seq., and California Department of Aging (CDA) Program Memoranda.

2. **Title III B (Supportive Services)** means a variety of services including, but not limited to: personal care, homemaker, chore, adult day care/adult day health, case management, assisted transportation, transportation, legal assistance, information and assistance, outreach, and long-term care ombudsman advocacy, as defined in the National Aging Programs Information Systems (NAPIS) categories and National Ombudsman Reporting System (NORS).

3. **Program Development** means activities that either establish a new service or expand or integrate existing services.

4. **Coordination** means activities that involve the active participation of the Area Agency on Aging (AAA) staff to include liaison with non OAA-funded agencies and organizations for the purpose of avoiding duplication, improving services, resolving problems related to service delivery, and addressing the service needs of the eligible service population.

5. **Priority Services for Title III B** means those services associated with access to services (transportation, outreach, information and assistance, and case management); in-home services including supportive services for families of older individuals who are victims of Alzheimer's disease and related disorders with neurological and organic brain dysfunction, and legal assistance.

6. **Priority Services for Title III E** means services provided to caregivers who care for older individuals with Alzheimer's disease and related disorders with neurological and organic brain dysfunction, and to grandparents or older individuals, who are relative caregivers, who care for children with severe disabilities.

7. **Title III C-1 (Congregate Nutrition Services)** means nutrition services for older individuals in a congregate setting. Services include meals, nutrition and health promotion education, health promotion programs, nutrition risk screening, and opportunities for socialization. Each meal shall provide one-third (1/3) of the Dietary Reference Intakes (DRI) and comply with the current Dietary Guidelines for Americans, 2010.

ARTICLE I. DEFINITIONS (Continued)

8. **Title III C-2 (Home Delivered Nutrition Services)** means nutrition services provided to homebound older individuals including meals, nutrition and health promotion education, and nutrition risk screening. Each meal shall provide one-third (1/3) of the Dietary Reference Intakes (DRI) and comply with the current Dietary Guidelines for Americans, 2010.

9. **Nutrition Services Incentive Program (NSIP)** means the program whose purpose is to provide incentives to encourage and reward effective performance by AAAs in the efficient delivery of nutritious meals to older individuals. The program consists of a cash allotment based on the ratio of the number of meals served by each PSA compared to the total number of meals served in the State in the preceding year.

10. **Title III D (Health Promotion Services)** means the provision of health risk assessments; routine health screening; nutrition counseling; education services; evidence-based health promotion; physical fitness; group exercise; music, art, dance movement therapy; programs for multigenerational participation; home injury control services; screening for the prevention of depression and coordination of mental health services; and education on preventative health services.

11. **Medication Management** means medication screening and education to prevent incorrect medication and adverse drug reactions.

12. **Matching Contributions** means local cash and/or in-kind contributions by the Contractor, subcontractor, or other local resources that qualify as match for the contract funding.

13. **In-kind Contributions** means the value of non-cash contributions donated to support the project or program (e.g., property, service, etc.).

14. **Non-Matching Contributions** means local funding that does not qualify as matching contributions and/or is not being budgeted as matching contributions. (e.g., federal funds, overmatch, etc.).

15. **Program Income** means revenue generated by the Contractor or subcontractor from contract-supported activities. Program income is:

    a. Voluntary contributions received from a participant or other party for services received

    b. Income from usage or rental fees of real or personal property acquired with grant funds or funds provided under this Agreement

ARTICLE I. DEFINITIONS (Continued)

c. Royalties received on patents and copyrights from contract-supported activities

d. Proceeds from the sale of items fabricated under a contract agreement

16. **One-Time-Only Funds** means:

a. Titles III and VII federal funds allocated to the AAA in a state fiscal year that are not expended or encumbered for services and administration provided by June 30 of that fiscal year as reported to CDA in the Financial Closeout Report (CDA 180) (Title 22 CCR 7314)

b. Title III and VII federal funds recovered from an AAA as a result of a fiscal audit determination and resolution by the Department

c. Supplemental Title III and Title VII program funds allocated by the Administration on Aging to the CDA as a result of the federal re-allotment process

17. **Indirect Costs** means costs incurred for a common or joint purpose benefiting more than one cost objective and not readily assignable to the cost objective specifically benefited, without effort disproportionate to the results achieved.

18. **Eligible Service Population** for Title III B, C-1, C-2, D means individuals 60 years of age or older, with emphasis on those in economic and social need with particular attention to low income minority individuals, older individuals with Limited English Proficiency, and older individuals residing in rural areas. [OAA, Section 305 (a)(2)(E)] [Title 22, CCR, Sections 7125, 7127, 7130, and 7135]

19. **Eligible Service Population for Title III E** means an adult family member, or other individual, who is an informal provider of in-home and community care to an older individual or to an individual (of any age) with Alzheimer's disease or a related disorder with neurological and organic brain dysfunction. [OAA 302(3)]

20. **A Grandparent or Older Individual Who is a Relative Caregiver** [OAA 372(a)(2)] means a grandparent or step-grandparent of a child, or a relative of a child by blood, marriage, or adoption, who is 55 years of age or older, and who:

ARTICLE I. DEFINITIONS (Continued)

(a) lives with the child

(b) is the primary caregiver of the child because the biological or adoptive parents are unable or unwilling to serve as the primary caregiver of the child

(c) has a legal relationship with the child, such as legal custody or guardianship, or is raising the child informally

21. **A Child** means an individual who is not more than 18 years of age or is an individual with a severe disability.

22. **Individual with Severe Disabilities** means a person with a severe, chronic disability attributable to mental or physical impairment, that is likely to continue indefinitely and results in substantial functional limitation in three or more of major life activities.

23. **Title III E Family Caregiver Support Program Categories** are:

1. Information Services
2. Access Assistance
3. Support Services
4. Respite Care
5. Supplemental Services

B. DEFINITIONS SPECIFIC TO TITLE VII-A (ALLOTMENTS FOR VULNERABLE ELDER RIGHTS PROTECTION ACTIVITIES)

1. **State Long-Term Care Ombudsman Program** means the CDA program that is recognized by the State Legislature and in compliance with the OAA and the Older Californians Act. The legislative intent of this program is to use volunteers and volunteer programs to effectively assist older individuals residing in long-term care facilities in the assertion of their civil and human rights. [OAA 712(a)(1)(B); W&I 9700, 9701(f)]

2. **Office of the State Long-Term Care Ombudsman** (OSLTCO) means the office established and operated by CDA to carry out the State Long-Term Care Ombudsman Program, both directly and by contract with the Area Agencies on Aging (AAAs). As a program of CDA, the Office is responsible for activities that promote the development, coordination, and utilization of Ombudsman services. The Office establishes and maintains effective communication with programs that provide legal services for the elderly and advocacy services of similar nature that receive funding or official designation from the state. The Office analyzes data, monitors

ARTICLE I. DEFINITIONS (Continued)

government actions, and provides recommendations pertaining to long-term care facilities and services. The Office periodically updates training procedures for Local Ombudsman Programs and provides them with administrative and technical assistance. [OAA 712(a)(1)(A), 712(a)(3) (C&F), 712(h); W&I 9710, 9716, 9717]

3. **State Ombudsman** means the individual who serves as the full-time head of the State Office of the Long-Term Care Ombudsman. The State Ombudsman is appointed by the CDA director and reports directly to this director. With the participation of the AAA, the State Ombudsman develops policies and procedures for the State Ombudsman Program, including AAA responsibilities for the provision of Ombudsman services in their Planning and Service Area (PSA) – including their resolution of concerns with respect to Local Ombudsman Program activity. [OAA 712(a) (2&3), 712(a)(5)(D)(ii), 712(e); W&I 9711]

4. **Local Ombudsman Program** means either a program of the AAA or its subcontractor that is designated by the State Ombudsman to carry out the duties of the State Long-Term Care Ombudsman Program with respect to the planning or service area. The selection is in accordance with policies and procedures established by the State Ombudsman and which meets the State Ombudsman's criteria for designation and concurrence. [OAA 711(3), 712(a)(5)(D); W&I 9701(a)]

5. **Local Ombudsman Coordinator** means the individual selected by the governing board or executive director responsible for the Local Ombudsman Program to represent the Local Ombudsman Program and manage the day-to-day operations, including implementation of federal and State requirements. The Local Ombudsman Coordinator is required to be a State Certified Ombudsman Representative, complete State training for new Coordinators, and participate in State Ombudsman sponsored meetings at least twice each year. The selection is in accordance with policies and procedures established by the State Ombudsman and meet the State Ombudsman's criteria for designation and concurrence. [OAA 712(a)(5)(A), 712(h)(5); 9701(e), 9719]

6. **State Certified Ombudsman Representative** means the volunteer or employee of the Local Ombudsman Program who is individually certified by the State Ombudsman in accordance with policies and procedures established by the State Ombudsman to serve as representative of the State Long-Term Care Ombudsman Program. Prior to certification by the State Ombudsman, the individual is required to pass state and federal criminal background clearance, complete a minimum of 36 hours of training, and complete a mentorship in accordance with policies and

ARTICLE I. DEFINITIONS (Continued)

procedures established by the State Ombudsman. [OAA 711(5), 712(a)(5)(A), 712(h)(5); W&I 9719]

7. **Volunteer Recruitment** means those activities associated with engaging and retaining the services of volunteers to serve as a State Certified Ombudsman Representative. [OAA Section 712(a)(5)(B)(vii)]

8. **Eligible Service Population** means older individuals, 60 years of age or older, who are residents of long-term care facilities (i.e. nursing, skilled nursing, distinct part facilities, residential care facilities for the elderly, and other adult care homes similar to these facilities) regardless of their socio-economic status or area of residence. [OAA Sections 102(35), 321(a)(10), W&I 9701(b). The Local Ombudsman Program may serve residents under 60 years of age if:

   a. A majority of the residents of the facility where the younger person resides are over age 60 and

   b. Such service does not weaken or decrease service to older individuals covered by the OAA. [Policy of the Office of Elder Rights Projection, Administration on Aging; July 15, 1996]

C. DEFINITIONS SPECIFIC TO TITLE VII-B (ALLOTMENTS FOR VULNERABLE ELDER RIGHTS PROTECTION ACTIVITIES – PROGRAMS FOR PREVENTION OF ELDER ABUSE, NEGLECT, AND EXPLOITATION)

Elder Abuse Prevention Programs means activities to develop, strengthen, and carry out programs for the prevention, detection, assessment, and treatment of, intervention in, investigation of, and response to elder abuse, neglect, and exploitation (including financial exploitation) (42 U.S.C. 3058i, OAA Section 721), including:

1. Providing for public education and outreach to identify and prevent elder abuse, neglect, and exploitation

2. Providing for public education and outreach to promote financial literacy and prevent identity theft and financial exploitation of older individuals

3. Ensuring the coordination of services provided by area agencies on aging with services instituted under the State adult protective service program, State and local law enforcement systems, and courts of competent jurisdiction

ARTICLE I. DEFINITIONS (Continued)

4. Promoting the development of information and data systems, including elder abuse reporting systems, to quantify the extent of elder abuse, neglect, and exploitation in the PSA

5. Conducting analyses of local Adult Protective Services and Long-Term Care Ombudsman information concerning elder abuse, neglect, and exploitation and identifying unmet service, enforcement, or intervention needs

6. Conducting training for individuals, including caregivers described in part E of Title III, professionals, and paraprofessionals, in relevant fields on the identification, prevention, and treatment of elder abuse, neglect, and exploitation, with particular focus on prevention and enhancement of self-determination and autonomy

7. Providing technical assistance to programs that provide or have the potential to provide services for victims of elder abuse, neglect, and exploitation and for family members of the victims

8. Conducting special and on-going training, for individuals involved in serving victims of elder abuse, neglect, and exploitation, on the topics of self-determination, individual rights, State and federal requirements concerning confidentiality, and other topics determined by the Department to be appropriate

ARTICLE II. SCOPE OF WORK

A. The Contractor shall:

1. Implement the statutory provisions of the Title III and Title VII Programs (OAA, Section 306) in accordance with State and federal laws and regulations. The Contractor shall make every effort to meet the goals and objectives stipulated in the four-year Area Plan and annual updates of the Area Plan's Goals, Objectives, and Service Unit Plan, herein incorporated into this Agreement by reference. Performance shall not be unilaterally reduced or otherwise changed without prior consultation with, and written approval of, the Department.

2. Establish and maintain an organization that shall have the ultimate accountability for funds received from the Department and for the effective and efficient implementation of the activities as described in the Area Plan and all pertinent State and federal laws and regulations including data reporting requirements.

ARTICLE II. SCOPE OF WORK (Continued)

3. Meet the adequate proportion requirements for priority services as required under the OAA, Section 306(a)(2); and CCR, Section 7312.

4. Maintain staff time records and documentation to identify the allocation of Program Development or Coordination activities to determine the amount of Program Development or Coordination expenditures. Records and documentation shall:

   a. Include a written description for each Program Development or Coordination activity in the staff time records that is of sufficient detail to define the event or type of activity

   b. Be traceable back to the Program Development or Coordination objectives as approved in the Area Plan

5. Keep on file a written record/documentation supporting expenditures of Program Development or Coordination activities for three years or until any audit is resolved, whichever is longer.

6. Meet the requirements under the OAA, Section 301(a)(1) to secure and maintain maximum independence and dignity in a home environment for the eligible service population capable of self-care with appropriate supportive and nutrition services.

7. Remove individual and social barriers to economic and personal independence for the eligible service population to the extent possible as required under OAA, Section 301(a)(2)(B).

8. Provide a continuum of care for the vulnerable eligible service population as required under OAA, Section 301(a)(2)(C).

9. Secure the opportunity for the eligible service population to receive managed in-home services as required under OAA, Section 301(a)(2)(D).

10. Conduct and/or promote activities for the prevention and treatment of elder abuse, neglect, and exploitation, as required under the OAA, Section 721.

11. Enter into contracts with subcontractors that require them to provide services pursuant to Title 22 CCR, Sections 7352 through 7364, and ensure all applicable provisions required within this Agreement are included in the subcontract(s).

ARTICLE II. SCOPE OF WORK (Continued)

12. Review, approve, and monitor subcontractor budgets and expenditures and any subsequent amendments and revisions to budgets. The Contractor shall, to the extent feasible, ensure that all budgeted funds are expended by the end of each fiscal year.

13. Monitor, on an ongoing basis, the subcontractor's use of federal and State funds through reporting, site visits, regular contact, or other means to assure the subcontractor administers federal and State awards in compliance with laws, regulations, and the provisions of contracts and that performance goals are achieved. [OMB Circular A-133.400(d)(3)] Onsite monitoring will be conducted every two years for all programs except Title III C-1 and Title III C-2 which will be conducted every year.

14. Monitor nutrition programs. The AAA Registered Dietician (RD), annually, must physically inspect each food preparation site (central kitchen). Non-food preparation congregate dining sites must be inspected using a standardized procedure developed by the AAA that assures all sites are seen systematically, but not necessarily every year. Generally accepted standards for food safety, AAA policies and procedures must guarantee the following:

    - Inspection of non-food preparation nutrition sites at least every other year
    - Inspection of non-food preparation nutrition sites more often if they are seen to have an increased risk for food safety violations or a history of corrective actions
    - Inspection of central kitchens sites annually

15. Maintain or increase the number of Title III C-1 and C-2 meals served if federal and/or State funds for meal programs increase. This contract shall promote and maintain high standards of food safety and sanitation as required by the California Retail Food Code (CalCode).

16. Provide support and technical assistance to subcontractors and respond in writing to all written requests for direction, guidance, and interpretation of instructions to include client and performance data.

17. Distribute and maintain up-to-date CDA requirements so that all responsible persons have ready access to standards, policies, and procedure.

18. Provide program information and assistance to the public.

ARTICLE II. SCOPE OF WORK (Continued)

19. Maintain a four-year Area Plan, with annual updates, as specified in Title 22 CCR, Sections 7300 through 7320. The Area Plan and annual updates are due by May 1 of each year. The annual update shall be effective during the same term as this Agreement.

20. Maintain a program data collection and reporting system as specified in Exhibit E.

21. Contract Title III case management services only to a public or non-profit agency, as required by the USC 42 Section 3026 (a)(8)(C).

22. Offer to each older individual seeking Title III case management services a list of agencies that provide similar services within the jurisdiction of the AAA as specified in subsection (i), (ii), and (iii), of the USC 42 Section 3026 (a)(8)(C).

23. Include the identity of each designated community focal point in subcontracts as specified in USC 42 Section 3026 (a)(3)(B).

B. The Contractor shall ensure that the Local Ombudsman Program, in accordance with policies and procedures established by the State Ombudsman, will:

1. Provide services to protect the health, safety, welfare and rights of residents. [OAA 712(a)(5)(i); 9701(a)]

2. Ensure residents in the service area of the Local Ombudsman Program have regular, timely access to State Certified Ombudsman Representatives and timely responses to complaints and requests for assistance. [OAA 712(a)(5)(B)(ii)]

3. Identify, investigate, and seek to resolve complaints made by or on behalf of residents that relate to their rights and well-being as residents. Complaint investigations shall be done in an objective manner to ascertain the pertinent facts. Findings shall be reported to the complainant. If a complaint is not investigated; the complainant shall be notified in writing the decision not to investigate and the reasons for the decision. [OAA 712(a)(5)(B)(iii); W&I 9701(a), 9720]

4. Receive and investigate reports of suspected abuse, neglect and exploitation of elder or dependent adults occurring in long-term care facilities. (W&I 15630 et. seq.)

ARTICLE II. SCOPE OF WORK (Continued)

5. Witness advance health care directives and property transfers of more than $100 for residents of skilled nursing facilities. [HSC 1289, PC 4675, PC 4700 et seq.]

6. Collect and submit data in accordance with the statewide uniform reporting system established by the State Ombudsman and the reporting provisions specified in Exhibit E of this contract. [OAA 712(c)].

7. Represent the interests of residents before governmental agencies and seek administrative, legal, and other remedies to protect the rights and well-being of residents. [OAA 712(a)(5)(B)(iv)].

8. Review, comment, and facilitate the ability of the public to comment on laws, regulations, policies, actions, and legislative bills that pertain to the rights and well-being of residents. [OAA 712(a)(5)(B)(v)].

9. Support the development of resident and family councils. [OAA 712(a)(5)(B)(vi)].

10. Carry out other activities that the State Ombudsman determines to be appropriate, including the following services:

    a. Update, periodically, a plan for maintaining an ongoing presence in long-term care facilities. [OAA 712(a)(5)(B)(vii)]

    b. Provide public information and technical support pertaining to long-term care services, including inspection reports, statements of deficiency, and plans of correction for long-term care facilities within the service area. [W&I 9726.1(a)]

    c. Promote visitation programs and other community involvement in long-term care facilities within the service area. [W&I 9726.1(b&d)]

    d. Establish (in addition to support) resident, family and friends' councils. [W&I 9726.1(c)]

    e. Present community education and training programs to long-term care facility staff, human service workers, and the general public about long-term care and residents' rights. [W&I 9726.1(e)]

    f. Refer to the appropriate governmental agency the complaints and concerns of other residents in long-term care facilities that are not eligible to receive the services of the State Long-Term Care Ombudsman Program. [W&I 9720]

ARTICLE II. SCOPE OF WORK (Continued)

C. The Contractor shall:

1. Ensure that the Local Ombudsman Program, in accordance with policies and procedures established by the State Ombudsman, will use Citation Penalties Account funds and Skilled Nursing Facility Quality and Accountability funds to support activities for the overall program.

2. Review and approve claims for Citation Penalties Account funds and Skilled Nursing Facility Quality and Accountability funds.

3. Submit monthly fiscal documents to CDA, as determined by the CDA, for Citation Penalties Account funds and Skilled Nursing Facility Quality and Accountability funds.

D. The Contractor shall perform the following bilingual and linguistic program services for all programs: (GC 11135 -11139.5; Title 22 CCR Sections 98211, 98310-98314, 98324- 98326, 98340, 98370)

1. Needs Assessment

a. The Contractor shall conduct a cultural and linguistic group-needs assessment of the eligible client population in the Contractor's service area to assess the language needs of the population and determine what reasonable steps are necessary to ensure meaningful access to services and activities to eligible individuals. (Title 22 CCR Section 98310, 98314)

The group-needs assessment shall take into account the following four factors:

1. Number or proportion of limited English speaking persons (LEP) eligible to be served or encountered by the program

2. Frequency with which LEP individuals come in contact with the program

3. Nature and importance of the services provided

4. Local or frequently used resources available to the Contractor

This group-needs assessment will serve as the basis for the Contractor's determination of "reasonable steps" and provide documentary evidence of compliance with GC Section 11135 et seq. and sections 98000-98382 of Title 22 of the CCR.

ARTICLE II. SCOPE OF WORK (Continued)

b. The Contractor shall prepare and make available a report of the findings of the group-needs assessment that summarizes:

1. Methodologies used

2. The linguistic and cultural needs of non-English or LEP groups

3. Services proposed to address the needs identified and a timeline for implementation (Title 22 CCR Section 98310)

c. The Contractor shall maintain a record of the group-needs assessment on file at the Contractor's headquarters at all times during the term of this Agreement.
(Title 22 CCR Section 98310, 98313)

2. Provision of Services

a. The Contractor shall take reasonable steps, based upon the group-needs assessment identified in subdivision 1 of this section, to ensure that "alternative communication services" are available to non-English speaking or LEP beneficiaries of services under this Agreement. (Title 22 CCR Section 98211)

b. "Alternative communication services" include, but are not limited to, the provision of services and programs by means of the following:

1. Interpreters or bilingual providers and provider staff

2. Contracts with interpreter services

3. Use of telephone interpreter lines

4. Sharing of language assistance materials and services with other providers

5. Translated written information materials, including but not limited to, enrollment information and descriptions of available services and programs

6. Referral to culturally and linguistically appropriate community service programs

c. Based upon the findings of the group needs assessment, The Contractor shall ensure that reasonable alternative communication services are available to meet the linguistic needs of identified eligible client population groups at key points of contact. Key points of contact include, but are not limited to, telephone contacts, office visits and in-home visits. (Title 22 CCR Section 98211)

ARTICLE II. SCOPE OF WORK (Continued)

d. The Contractor shall self-certify to compliance with the requirements of this section and shall maintain the self-certification record on file at the Contractor's office at all times during the term of this Agreement. (Title 22 CCR Section 98310)

e. The Contractor shall notify its employees of clients' rights regarding language access and the Contractor's obligation to ensure access to alternative communication services where determined appropriate based upon the needs assessment conducted by the Contractor. (Title 22 CCR Section 98324)

f. Noncompliance with this section may result in suspension or termination of funds and/or termination of this Agreement. (Title 22 CCR Section 98370)

3. Compliance Monitoring

a. The Contractor shall develop and implement policies and procedures for assessing and monitoring the performance of individuals and entities that provide alternative communication services to non-English and LEP clients. (Title 22 CCR Section 98310)

b. The Contractor shall monitor, evaluate, and take effective action to address any needed improvement in the delivery of culturally and linguistically appropriate services. (Title 22 CCR Section 98310)

c. The Contractor shall permit timely access to all records of compliance with this section. Failure to provide access to such records may result in appropriate sanctions. (Title 22 CCR Section 98314)

4. Notice to Eligible Beneficiaries of Contracted Services

a. The Contractor shall designate an employee to whom initial complaints or inquiries regarding national origin can be directed. (Title 22 CCR Section 98325)

b. The Contractor shall make available to ultimate beneficiaries of contracted services and programs information regarding the Department's procedure for filing a complaint and other information regarding the provisions of GC, section 11135 et seq. (Title 22 CCR Section 98326)

c. The Contractor shall notify the Department immediately of a complaint alleging discrimination based upon a violation of State or federal law. (Title 22 CCR Sections 98211, 98310, 98340)

ARTICLE I. FUNDS

A. Expenditure of Funds

1. The Contractor shall expend all funds received hereunder in accordance with this Agreement.

2. Any reimbursement for authorized travel and per diem shall be at rates not to exceed those amounts paid by the State in accordance with Department of Personnel Administration's rules and regulations.

- Mileage http://www.dpa.ca.gov/personnel-policies/travel/personal-vehicle-mileage-reimbursement.htm
- Per Diem (meals and incidentals) - http://www.dpa.ca.gov/personnel-policies/travel/meals-and-incidentals.htm
- Lodging http://www.dpa.ca.gov/personnel-policies/travel/short-term-travel.htm

This is not to be construed as limiting the Contractor from paying any differences in costs, from funds other than those provided by this Department, between the Department of Personnel Administration rates and any rates the Contractor is obligated to pay under other contractual agreements. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the State. (CCR, Title 2 Section 599.615 et seq)

Contractor agrees to include these requirements in all contracts it enters into with subcontractors/vendors to provide services pursuant to this Agreement.

3. The Department reserves the right to refuse payment to the Contractor or disallow costs for any expenditure, as determined by the Department to be: out of compliance with this Agreement, unrelated or inappropriate to contract activities, when adequate supporting documentation is not presented, or where prior approval was required but was either not requested or not granted.

B. Accountability for Funds

1. The Contractor shall maintain accounting records for funds received under the terms and conditions of this Agreement. These records shall be separate from those for any other funds administered by the Contractor, and shall be maintained in accordance with Generally Accepted

ARTICLE I. FUNDS (Continued)

Accounting Principles and Procedures and the Office of Management and Budget's Cost Principles.

2. Financial Management Systems
The Contractor shall meet the following standards for its financial management systems, as stipulated in 45 CFR Section 92.20 (governmental) or 45 CFR, Section 74.21 (non-profits):

1. Financial Reporting
2. Accounting Records
3. Internal Control
4. Budgetary Control
5. Allowable Costs
6. Source Documentation
7. Cash Management

C. Unexpended Funds

Upon termination, cancellation, or expiration of this Agreement, or dissolution of the entity, the Contractor shall return to the State immediately upon written demand, any funds provided under this Agreement, which are not payable for goods or services delivered prior to the termination, cancellation, or expiration of this Agreement, or the dissolution of the entity.

D. Availability of Funds

1. It is understood between the parties that this Agreement may have been written before ascertaining the availability or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if this Agreement were executed after that determination was made.

2. This Agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government or the Budget Acts of the appropriate fiscal years for the purpose of these programs. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this Agreement in any manner.

3. Limitation of State Liability

Payment for performance by the Contractor shall be dependent upon the availability of future appropriations by the Legislature or Congress for the purposes of this contract and approval of an itemized Area Plan Budget

ARTICLE I. FUNDS (Continued)

(CDA 122). No legal liability on the part of the State for any payment may arise under this contract until funds are made available, the itemized budget is received and approved by the State, and the Contractor has received an executed contract.

4. Funding Reduction(s)

   a. If funding for any State fiscal year is reduced or deleted by the Department of Finance, Legislature, or Congress for the purposes of this program, the State shall have the option to either:

      - Terminate the Contract pursuant to Exhibit D, Article XII, A

      - Offer a contract amendment to the Contractor to reflect the reduced funding for this contract

   b. In the event that the State elects to offer an amendment, it shall be mutually understood by both parties that (1) the State reserves the right to determine which contracts, if any, under this program shall be reduced and (2) some contracts may be reduced by a greater amount than others, and (3) the State shall determine at its sole discretion the amount that any or all of the contracts shall be reduced for the fiscal year.

E. Interest Earned

1. Contractor may keep interest amounts earned on advances of federal funds up to $100 per year for Local Government Agencies or $250 for non-profit organizations for administrative expenses. Interest earned above the stated limit shall be remitted at least quarterly to the Department's Accounting Section. [45CFR 92.21(i); 45CFR 74.22(l)]

2. Interest earned on advances of federal and non-federal funds shall be identified as non-match cash.

3. Contractor may retain interest on non-federal funds if it reasonably demonstrates that such interest was earned on non-federal funds. If the Contractor fails to adequately demonstrate the source of the interest, then such interest will be considered earned on federal funds and shall be remitted, at least quarterly, to the Department's Accounting Section.

4. Nonprofits shall maintain advances of federal funds in interest bearing accounts, unless (a), (b), or (c) apply.

ARTICLE I. FUNDS (Continued)

(a) The recipient receives less than $120,000 in federal awards per year.

(b) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on federal cash balances.

(c) The depository would require an average or minimum balance so high that it would not be feasible within the expected federal and non-federal cash resources.

F. Program Income

1. Program Income must be reported and expended under the same terms and conditions as the program funds from which it is generated.

2. Program Income must be used to pay for current allowable costs of the program in the same fiscal year that the income was earned (except as noted in 4).

3. For Title III B, III C, III D, III E, VII Ombudsman, and VII Elder Abuse Prevention programs, Program Income must be spent before contract funds (except as noted in 4) and may reduce the total amount of contract funds payable to the Contractor.

4. For Title III B, III C, III D, III E, VII Ombudsman, and VII Elder Abuse Prevention programs, if Program Income is earned in excess of the amount reported in the Area Plan Budget (CDA 122), the excess amount may be deferred for use in the first quarter of the following contract period, which is the last quarter of the federal fiscal year.

5. If Program Income is deferred for use it must be used by the last day of the federal fiscal year and reported when used.

6. Program Income may not be used to meet the matching requirements of this Agreement.

7. Program Income must be used to expand baseline services.

G. One-Time-Only (OTO) Funds

1. OTO funds are non-transferable between funding sources. This means that OTO funds can only be used in the program in which it was accrued.

ARTICLE I. FUNDS (Continued)

2. OTO funds can only be awarded to a subcontractor that has a valid contract with the AAA. All contracts shall be procured either through an open and competitive procurement process pursuant to Title 22 CCR Section 7532 or through a non-competitive award pursuant to Title 22 CCR Section 7360.

3. Titles III and VII federal Program One-Time-Only funds shall only be used for the following purposes:

   a. The purchase of equipment that enhances the delivery of services to the eligible service population.

   b. Home and community-based projects that are approved in advance by the Department, and are designed to address the unmet needs of the eligible service population identified in the Area Plan.

   c. Innovative pilot projects that are approved in advance by the Department, and are designed for the development or enhancement of a comprehensive and coordinated system of services as defined in [45 CFR 1321.53(a) & (b).]

   d. OTO funds can be used to maintain or increase baseline services. However, AAAs shall assure that services funded with OTO funds will not create an expectation of service delivery beyond the current contract period. Expenditures for baseline services do not require advance Department approval.

4. Nutrition Services Incentive Program (NSIP) One-Time-Only funds shall only be used to purchase food used in the Elderly Nutrition Program.

H. Matching Contributions

Matching Contributions means local cash and/or in-kind contributions by the Contractor, subcontractor, or other local resources that qualify as match for the contract funding.

1. Cash and/or in-kind contributions may count as match, if such contributions are used to meet program requirements.

2. Any matching contributions (cash or in-kind) must be verifiable from the records of the Contractor or subcontractor.

3. Matching contributions must be used for allowable costs in accordance with the Office of Management and Budget (OMB) cost principles.

ARTICLE I. FUNDS (Continued)

I. Area Plan Administration

Area Plan Administration may be combined into one cost objective for purposes of documenting charges for salaries and wages funded from federal fund Titles III B, III C-1, III C-2, III E, and III C-1 and III C-2 General Fund administration allocations.

ARTICLE II. BUDGET AND BUDGET REVISION

A. The Contractor shall be compensated for expenses only as itemized in the approved Area Plan Budget (CDA 122) with the exception of budget service category transfers as noted in E.1.(a) below. The contractor shall not be entitled to payment for these expenses until the Area Plan Budget (CDA 122) is reviewed and approved by the Department. The approved Area Plan is hereby incorporated by reference into this Agreement as a part of Exhibit B.

B. The Contractor shall submit electronically the original Area Plan Budget (CDA 122) with the Area Plan and Area Plan annual updates, by May 1, unless otherwise instructed by the Department.

C. The Contractor shall submit electronically a budget revision 30 calendar days after receiving an amended Area Plan Budget Display with changes in funding levels, unless otherwise instructed by the Department.

D. The final date to submit a budget revision is April 30 of the contract period unless otherwise specified by the Department.

E. Budget Service Category Transfers

1. The Contractor may transfer contract funds between budget service categories under the following terms and conditions:

   a. The Contractor shall submit a revised budget to the Department for any service category transfer of funds which exceeds 10 percent of the total budget for each funding source (Title IIIB, C1, C2, D, E, and Title VIIA and B).

   b. The Contractor shall maintain a written record of all budget changes and clearly document service category changes. The record shall include the date of the transfer, the amount, and the purpose. This record shall be available to the Department upon request and shall be maintained in the same manner as all other financial records.

ARTICLE II. BUDGET AND BUDGET REVISION (Continued)

F. Allocation Transfers

1. Requests to transfer federal or State funds shall be submitted to the Department for approval with the original or revised Area Plan Budget (CDA 122).

   a. Transfer of federal baseline funds is allowable between Titles III B and III C in accordance with OAA Section 308(b)(5)(A) and between Titles, III C-1, and III C-2 in accordance with OAA Section 308(b)(4)(A).

   b. Transfer of State funds is allowable between III C-1 General Fund and III C-2 General Fund.

2. Approved transfers and Area Plan Budgets will be incorporated by reference into the current Agreement.

3. Transfer of funds cannot be processed or approved after the end of the specified contract period.

G. Matching Requirements

1. The required minimum administration matching contributions for Title III B, III C, & III E combined is 25 percent.

2. The required minimum program matching contributions for Title III B, III C, & III D is 10 percent.

3. The required minimum program matching contributions for Title III E is 25 percent.

4. Minimum matching requirements are calculated on net costs, which are total costs less program income, non-matching contributions, and State funds.

5. Program matching contributions for Title III B, III C, & III D can be pooled to meet the minimum requirement of 10 percent.

6. Matching contributions generated in excess of the minimum required are considered overmatch.

7. Program overmatch from Title III B, III C, or III D cannot be used to meet the program match requirement for III E.

ARTICLE II. BUDGET AND BUDGET REVISION (Continued)

8. Of the total minimum match required for Title III at least 25 percent must be from local public agencies (e.g. city and county governments, school districts, special districts, and water districts).

9. Expend not more than 10 percent of the total Title III E federal and matching non-federal share to provide support services to grandparents and older individuals who are relative caregivers of a child who is not more than 18 years of age in accordance with OAA Section 373(g)(2)(C).

10. Limit expenditures for Title III E Supplemental Services to 20 percent of the total Title III E federal and matching non-federal share.

H. Program Development or Coordination

The Contractor shall not budget or fund Program Development or Coordination activities as a cost of Title III B Supportive Services until it has first budgeted and spent the total of its Title III B, III C, & III E funds allocated for area plan administration costs. During the contract period, Program Development or Coordination activities and area plan administration activities can occur simultaneously. (See Article IV.C. for reconciliation during the closeout period).

I. Indirect Costs

1. The maximum reimbursement amount allowable for indirect costs is 8 percent of Contractor's direct costs, excluding in-kind contributions and nonexpendable equipment. Indirect costs exceeding the 8 percent maximum may be budgeted as in-kind and used to meet the minimum matching requirements.

   Contractor agrees to include the above requirement in all contracts it enters into with subcontractors/vendors to provide services pursuant to this Agreement.

2. Contractors requesting reimbursement for indirect costs shall retain on file an approved indirect cost rate or an allocation plan documenting the methodology used to determine the indirect costs.

ARTICLE III. PAYMENTS

A. Title III B, III C, III D, IIIE, VII Ombudsman and VII Elder Abuse Prevention

The Contractor shall submit a monthly expenditure report and a request for funds to the online California Aging Reporting System (CARS) Fiscal Module by the 30th of each month as follows, or unless otherwise specified by the Department.

ARTICLE III. PAYMENTS (Continued)

Monthly Fiscal Reporting Due Dates

RFF Month	**July**	**Aug**	**Sept**	**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**June**
RFF Due Date	5/30	6/30	7/30	8/30	9/30	10/30	11/30	12/30	1/30	2/28	3/30	4/30
Expenditure. Report Month	**Apr**	**May**	**June**	**July**	**Aug**	**Sept**	**Oct**	**Nov**	**Dec**	**Jan**	**Feb**	**Mar**
Expenditure Report. Due Date	5/30	6/30	7/30	8/30	9/30	10/30	11/30	12/30	1/30	2/28	3/30	4/30

B. Ombudsman Citation Penalties Account and Skilled Nursing Facility Quality and Accountability Funds.

The Contractor shall submit a monthly expenditure report and a request for funds by the 30th of each month unless otherwise specified by the Department.

C. During the contract period, the Department shall advance funds based on an analysis of current cash needs.

D. Upon execution of this agreement, the Department will make quarterly advances of Nutrition Services Incentive Program (NSIP) funding to the Contractor during the first month of each quarter.

E. The Department may require financial reports more frequently than indicated above or with more detail (or both), upon written notice to the Contractor, until such time as the Department determines that the financial management standards are met.

ARTICLE IV. CLOSEOUT

A. The Area Plan Financial Closeout Report (CDA 180), and Report of Property Purchased with Agreement Funds (CDA 32) shall be submitted annually to the CDA Fiscal Team. All reports are due within 60 calendar days after the end of the fiscal year, unless otherwise specified by the Department. If a contract is terminated prior to the end of the contract period, all reports are due within 30 calendar days following the termination date of the contract.

ARTICLE IV. CLOSEOUT (Continued)

B. Federal funds will be reduced proportionately to maintain the required matching ratios if a Contractor fails to report sufficient match in the CDA 180.

C. During the review and approval of the closeout, administration costs will be increased to the total amount allocated before approving final costs for Program Development or Coordination activities.

State of California
California Department of Aging
CDA 001 (Rev 11/05)

Award #: AP-1213-16
Date: 7/1/2012
Amendment #: 0
Date: 4/11/2013

Exhibit B - Budget Detail, Payment Provisions, and Closeout

AREA PLAN
Budget Display
Fiscal Year 2012/13

County of Inyo

	Baseline	Cumulative Baseline Adjustments	Updated Baseline	Cumulative Transfers	Cumulative OTO	Updated Total	Net Change
Supportive Services							
Federal Title IIIB	107,406	-	107,406	-	-	107,406	-
Total Supportive Services	107,406	-	107,406	-	-	107,406	-
Ombudsman							
Federal Title IIIB	15,260	-	15,260	-	-	15,260	-
Federal Title VIIa	19,513	-	19,513	-	-	19,513	-
Special Deposit (SDF)	1,241	-	1,241	-		1,241	-
SNF Quality & Accountability	16,997	-	16,997	-		16,997	-
Total Ombudsman	53,011	-	53,011	-	-	53,011	-
Congregate Nutrition							
Federal Title IIIC1	141,451	-	141,451	-	-	141,451	-
General Fund C1	58,448	-	58,448	-		58,448	-
NSIP C1	15,976	-	15,976	-	-	15,976	-
Total Congregate Nutrition	215,875	-	215,875	-	-	215,875	-
Home-Delivered Meals							
Federal Title IIIC2	70,479	-	70,479	-	-	70,479	-
General Fund C2	190,286	-	190,286	-		190,286	-
NSIP C2	32,415	-	32,415	-	-	32,415	-
Total Home Delivered Meals	293,180	-	293,180	-	-	293,180	-
Disease Prevention							
Federal Title IIID	2,582	-	2,582	-	-	2,582	-
Total Disease Prevention	2,582	-	2,582	-	-	2,582	-
Family Caregiver							
Federal Title IIIE	17,007	-	17,007	-	-	17,007	-
Total Title IIIE	17,007	-	17,007	-	-	17,007	-
Elder Abuse							
Federal Title VIIb	637	-	637	-	-	637	-
Total Elder Abuse	637	-	637	-	-	637	-
Administration							
Federal Title IIIB	19,197	-	19,197	-	-	19,197	-
Federal Title IIIC1	22,636	-	22,636	-	-	22,636	-
Federal Title IIIC2	11,278	-	11,278	-	-	11,278	-
Federal Title IIIE	7,932	-	7,932	-	-	7,932	-
General Fund C1	108	-	108	-		108	-
General Fund C2	29	-	29	-		29	-
Total Administration	61,180	-	61,180	-	-	61,180	-
Grand Total - All Funds	750,878	-	750,878	-	-	750,878	-

Exhibit B - Budget Detail, Payment Provisions, and Closeout

AREA PLAN
Budget Display
Fiscal Year 2012/13

County of Inyo

	Baseline	Cumulative Baseline Adjustments	Updated Baseline	Cumulative Transfers	Cumulative OTO	Updated Total	Net Change
Funding Summary							
Federal Funds	483,769	-	483,769	-	-	483,769	-
General Fund	248,871	-	248,871	-	-	248,871	-
SNF Quality & Accountability	16,997	-	16,997	-	-	16,997	-
Special Deposit	1,241	-	1,241	-	-	1,241	-
	750,878	-	750,878	-	-	750,878	-

Comments:

The maximum amount of Title III/VII Baseline expenditures allowable for the first quarter is.	108,845
The maximum amount of Title IIIE expenditures allowable for supplemental services is:	6,650
The maximum amount of Title IIIE expenditures allowable for Grandparents is:	3,325
The minimum General Fund to be expended for State Match in Title III is:	18,936

CFDA NUMBER	Title	Year	Award Number	Award Name
93.041	Title VII: Elder Abuse Prevention	2012	12AACAT7SP	Older Americans Act Title VII-Allotments for Vulnerable
		2013	13AACAT7SP	Elder Rights Protection Activities
93.042	Title VII:Ombudsman	2012	12AACAT7SP	Older Americans Act Title VII-Allotments for Vulnerable
		2013	13AACAT7SP	Elder Rights Protection Activities
93.043	IIID: Preventive Health	2012	12AACAT3SP	Older Americans Act Title III-Grants for State & Community
		2013	13AACAT3SP	Programs on Aging
93.044	IIIB: Supportive Services	2012	12AACAT3SP	Older Americans Act Title III-Grants for State & Community
		2013	13AACAT3SP	Programs on Aging
93.045	IIIC1: Congregate Meals	2012	12AACAT3SP	Older Americans Act Title III-Grants for State & Community
		2013	13AACAT3SP	Programs on Aging
93.045	IIIC2: Home-Delivered Meals	2012	12AACAT3SP	Older Americans Act Title III-Grants for State & Community
		2013	13AACAT3SP	Programs on Aging
93.052	IIIE: NFCSP	2012	12AACAT3SP	Older Americans Act Title III-Grants for State & Community
		2013	13AACAT3SP	Programs on Aging
93.053	Nutrition Services Incentive Program	2012	12AACANSIP	Older Americans Act Section 311-Nutrition Services
		2013	13AACANSIP	Incentive Program

ARTICLE I. DEFINITIONS AND RESOLUTIONS OF LANGUAGE CONFLICTS

A. Definitions

1. The term "Agreement" or "Contract" shall mean the Standard Agreement (Std. 213), exhibits A, B, C, D, and E, and an approved Area Plan Budget, which are hereby incorporated by reference, amendments, and any other documents incorporated by reference, unless otherwise provided for in this Article.

2. "State" and "Department," mean the State of California and the California Department of Aging (CDA) interchangeably.

3. "Contractor" means the Area Agency on Aging awarded funds under this Agreement and which is accountable to the State and/or federal government for use of these funds and which is responsible for executing the provisions for services of this Agreement.

4. "Subcontractor" or "vendor" means the legal entity that receives funds from the Contractor to provide direct services identified in this Agreement. Subcontract and/or vendor agreement means a subcontract and/or vendor agreement supported by funds from this Agreement.

5. "Reimbursable item" also means "allowable cost" and "compensable item."

6. "CFR" means Code of Federal Regulations. "CCR" means California Code of Regulations. "GC" means Government Code. "W & I" means Welfare and Institutions Code. "USC" means United States Code. "PCC" means the Public Contract Code.

B. Resolution of Language Conflicts

The terms and conditions of this federal Award and other requirements have the following order of precedence if there is any conflict in what they require:

1. The Older American Act Amendments of 2006 (OAA as amended)
2. Other applicable Federal statutes and their implementing regulations
3. Older Californians Act
4. Title 22 CCR § 7000 et. seq.
5. Standard Agreement (Std. 213), all Exhibits and any amendments thereto;
6. Any other documents incorporated herein by reference
7. Program memos and other guidance issued by the Department

ARTICLE II. ASSURANCES

A. Law, Policy and Procedure, Licenses, and Certificates

ARTICLE II. ASSURANCES (Continued)

The Contractor agrees to administer this Agreement and require any subcontractors to administer their subcontracts in accordance with this Agreement, and with all applicable local, State, and federal laws and regulations including, but not limited to, discrimination, wages and hours of employment, occupational safety, and to fire, safety, health, and sanitation regulations, directives, guidelines, and/or manuals related to this Agreement and resolve all issues using good administrative practices and sound judgment. The Contractor and its subcontractors shall keep in effect all licenses, permits, notices, and certificates that are required by law.

B. Subcontracts

The Contractor shall require language in all subcontracts to require all subcontractors to comply with all applicable State and federal laws.

C. Nondiscrimination

The Contractor shall comply with all federal statutes relating to nondiscrimination. These include those statutes and laws contained in the Contractor Certification Clauses (CCC 307) which is hereby incorporated by reference. In addition, Contractor shall comply with the following:

1. Equal Access to Federally Funded Benefits, Programs and Activities

   The Contractor shall ensure compliance with Title VI of the Civil Rights Act of 1964 (42 USC. Section 2000d; 45 CFR Part 80), which prohibits recipients of federal financial assistance from discriminating against persons based on race, color, religion, or national origin

2. Equal Access to State-Funded Benefits, Programs and Activities

   The Contractor shall, unless exempted, ensure compliance with the requirements of Government Code sections 11135-11139.5, and Section 98000 et seq. of Title 22 of the California Code of Regulations, which prohibit recipients of state financial assistance from discriminating against persons based on race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability (22 CCR 98323) (Chapter 182, Stats. 2006)

3. The Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA (42 U.S.C. Sections 12101 et seq.).

ARTICLE II. ASSURANCES (Continued)

4. The Contractor agrees to include these requirements in all contracts it enters into with subcontractors to provide services pursuant to this Agreement

D. Standards of Work

The Contractor agrees that the performance of work and services pursuant to the requirements of this Agreement shall conform to accepted professional standards.

E. Conflict of Interest

1. The Contractor shall prevent employees, consultants, or members of governing bodies from using their positions for purposes including, but not limited to, the selection of subcontractors, that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as family, business, or other ties. In the event that the State determines that a conflict of interest exists, funds may be disallowed by the State and such conflict may constitute grounds for termination of the Agreement.

2. This provision shall not be construed to prohibit employment of persons with whom the Contractor's officers, agents, or employees have family, business, or other ties, so long as the employment of such persons does not result in a conflict of interest (real or apparent) or increased costs over those associated with the employment of any other equally qualified applicant, and such persons have successfully competed for employment with the other applicants on a merit basis.

F. Covenant Against Contingent Fees

1. The Contractor warrants that no person or selling agency has been employed or retained to solicit this Agreement. There has been no agreement to make commission payments in order to obtain this Agreement.

2. For breach or violation of this warranty, the State shall have the right to terminate this Agreement without liability or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingency fee.

G. Payroll Taxes and Deductions

The Contractor shall promptly forward payroll taxes, insurances, and contributions, including State Disability Insurance, Unemployment Insurance, Old

ARTICLE II. ASSURANCES (Continued)

Age Survivors Disability Insurance, and federal and State income taxes withheld, to designated governmental agencies.

H. Facility Construction or Repair (This section only applies to Title III.)

1. When applicable for purposes of construction or repair of facilities, the Contractor shall comply with the provisions contained in the following and shall include such provisions in any applicable agreements with subcontractors:

   a. Copeland "Anti-Kickback" Act (18 USC 874, 40 USC 276c) (29 CFR, Part 3)

   b. Davis-Bacon Act (40 USC 276a to 276a-7) (29 CFR, Part 5)

   c. Contract Work Hours and Safety Standards Act (40 USC 327-333) (29 CFR, Part 5, 6, 7, 8)

   d. Executive Order 11246 of September 14, 1965, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967, as supplemented in Department of Labor Regulations (41 CFR, Part 60)

2. The Contractor shall not use payments for construction, renovation, alteration, improvement, or repair of privately-owned property which would enhance the owner's value of such property to the benefit of the owner except where permitted by law and by the Department.

3. When funding is provided for construction and non-construction activities, the Contractor or subcontractor must obtain prior written approval from the State before making any fund or budget transfers between construction and non-construction.

I. Contracts in Excess of $100,000

If all funding provided herein exceeds $100,000, the Contractor shall comply with all applicable orders or requirements issued under the following laws:

1. Clean Air Act, as amended (42 USC 1857)

2. Clean Water Act, as amended (33 USC 1368)

3. Federal Water Pollution Control Act, as amended (33 USC 1251, et seq.)

ARTICLE II. ASSURANCES (Continued)

4. Environmental Protection Agency Regulations (40 CFR, Part 15 and Executive Order 11738)

5. Public Contract Code Section 10295.3

J. Debarment, Suspension, and Other Responsibility Matters

1. The Contractor certifies to the best of its knowledge and belief, that it and its subcontractors: (45 CFR 92.35)

   a. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency

   b. Have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State, or local) transaction or contract under a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property

   c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification

   d. Have not within a three-year period preceding this Agreement had one or more public transactions (federal, State, or local) terminated for cause or default

2. The Contractor shall report immediately to the Department in writing any incidents of alleged fraud and/or abuse by either Contractor or subcontractor.

3. The Contractor shall maintain any records, documents, or other evidence of fraud and abuse until otherwise notified by the Department.

4. The Contractor agrees to timely execute any and all amendments to this Agreement or other required documentation relating to their subcontractors debarment/suspension status.

ARTICLE II. ASSURANCES (Continued)

K. Agreement Authorization

1. If a public entity, the Contractor shall submit to the Department a copy of the resolution, order, or motion referencing this Agreement number authorizing execution of this Agreement. If a private nonprofit entity, the Contractor shall submit to the Department an authorization by the board of directors to execute this Agreement, referencing this Agreement number.

2. These documents must also identify the action taken.

3. Documentation in the form of a resolution, order, or motion by the Governing Board of the AAA is required for the original and each subsequent amendment to this Agreement. This requirement may also be met by a single resolution from the Governing Board of the Contractor authorizing the AAA Director or designee to execute the original and all subsequent amendments to this Agreement.

L. Contractor's Staff

1. The Contractor shall maintain adequate staff to meet the contractor's obligations under this Agreement.

2. This staff shall be available to the State for training and meetings which the State may find necessary from time to time.

M. Corporate Status

1. The Contractor shall be a public or private nonprofit entity or Joint Powers Agreement (JPA). If a private nonprofit corporation or JPA, the Contractor shall be in good standing with the Secretary of State of California and shall maintain that status throughout the term of the Agreement.

2. The Contractor shall ensure that any subcontractors providing services under this Agreement shall be of sound financial status. Any private, subcontracting corporation or JPA shall be in good standing with the Secretary of State of California and shall maintain that status throughout the term of the Agreement.

3. Failure to maintain good standing by the contracting corporation or JPA shall result in suspension or termination of this Agreement with the Department until satisfactory status is restored. Failure to maintain good standing by a subcontracting corporation or JPA shall result in suspension or termination of the subcontract by the Contractor until satisfactory status is restored.

ARTICLE II. ASSURANCES (Continued)

N. Lobbying Certification

The Contractor, by signing this Agreement, hereby certifies to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to 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 the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instruction.

3. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts at all tiers (including subgrants, and contracts under grants, loans, and cooperative agreements which exceed $100,000) and that all subrecipients shall certify and disclose accordingly

4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into.

5. This certification is a prerequisite for making or entering into this transaction imposed by 31 USC 1352

6. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure

ARTICLE III. AGREEMENT

A copy of this Agreement is on file and available for inspection at the California Department of Aging, 1300 National Drive, Suite 200, Sacramento, California 95834.

ARTICLE IV. COMMENCEMENT OF WORK

Should the Contractor or subcontractor begin work in advance of receiving notice that this Agreement is approved, that work may be considered as having been performed at risk as a mere volunteer and may not be reimbursed or compensated.

ARTICLE V. SUBCONTRACTS OR VENDOR AGREEMENTS

A. The Contractor shall satisfy, settle, and resolve all administrative, programmatic, and fiscal aspects of the program(s), including issues that arise out of any subcontracts and/or vendor agreements, and shall not delegate or contract these responsibilities to any other entity. This includes, but is not limited to, disputes, claims, protests of award, or other matters of a contractual nature.

B. In the event any subcontractor is utilized by the Contractor for any portion of this Agreement, the Contractor shall retain the prime responsibility for all the terms and conditions set forth, including but not limited to, the responsibility for preserving the State's copyrights and rights in data in accordance with Article XX, of this exhibit, for handling property in accordance with Article VII of this exhibit, and ensuring the keeping of, access to, availability, and retention of records of subcontractors in accordance with Article VI of this exhibit.

C. Funds for this Agreement shall not be obligated in subcontracts and/or vendor agreements for services beyond the ending date of this Agreement, unless all funding under this Agreement is appropriated without regard for fiscal year, and the Department has agreed in writing to permit the specific expenditure for a specified period of time.

D. The Contractor shall have no authority to contract for, or on behalf of, or incur obligations on behalf of the State.

E. Copies of subcontracts, vendor agreements, Memorandums and/or Letters of Understanding shall be on file with the Contractor and shall be made available for review at the request of the Department.

F. The Contractor shall monitor the insurance requirements of its subcontractors and/or vendors in accordance with Article XI, Section E of this exhibit.

G. The Contractor shall require language in all subcontractor and/or vendor agreements to indemnify, defend, and save harmless the Contractor, its officers, agents, and employees from any and all claims and losses accruing to or resulting from any subcontractors, vendors, suppliers, laborers, and any other person, firm, or corporation furnishing or supplying work services, materials, or supplies in connection with any activities performed for which funds from this Agreement were used 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 subcontractor and/or vendor in the performance of this Agreement.

ARTICLE V. SUBCONTRACTS OR VENDOR AGREEMENTS (Continued)

H. The Contractor shall ensure that the subcontractor and/or vendor will complete all reporting and expenditure documents requested by the Department. These reporting and expenditure documents shall be sent to the Contractor in a timely manner and at intervals as determined by the Department.

I. Prior to the awarding of a subcontract to any for-profit entity, the Contractor shall submit the following to the Department for review and approval (per CCR, Title 22, Division 1.8, Section 7362):

1. The RFP or IFB

2. All bid proposals received

3. The proposal or bid evaluation documentation, along with the Contractor's rationale for awarding the subcontract to a for-profit entity

Where a program may be subcontracted to a for-profit organization, the Contractor should include in its contract with the for-profit entity a requirement for performance of a program specific audit of the subcontracted program by an independent audit firm.

J. The Contractor shall require the subcontractor to maintain adequate staff to meet the subcontractor's Agreement with the Contractor. This staff shall be available to the State for training and meetings which the State may find necessary from time to time.

K. If a private nonprofit corporation, the subcontractor shall be in good standing with the Secretary of State of California and shall maintain that status throughout the term of the Agreement.

L. The Contractor shall refer to the guidance in OMB Circular A-133 Section 210 in making a determination of whether a subcontractor and/or vendor relationship exists. If a vendor relationship exists then the Contractor shall follow the Procurement requirements in the applicable OMB guidance and record the vendor expenditures on Page 1 of the closeout under consultant or equipment costs if the Contractor purchased services or property respectively.

ARTICLE VI. RECORDS

A. The Contractor shall maintain complete records (which shall include, but not be limited to, accounting records, contracts, agreements, reconciliation of the "Financial Closeout Report" to the audited financial statements, a summary worksheet of results from the audit resolutions performed for all subcontractors with supporting documentation, letters of agreement, insurance documentation in accordance with this Article, Memorandums and/or Letters of Understanding,

ARTICLE VI. RECORDS

patient or client records, and electronic files) of its activities and expenditures hereunder in a form satisfactory to the State and shall make all records pertaining to this Agreement available for inspection and audit by the State or its duly authorized agents, at any time during normal business hours. All such records must be maintained and made available by the Contractor; (a) until an audit has occurred and an audit resolution has been issued or unless otherwise authorized in writing by the Department's Audit Branch, (b) for such longer period, if any, as is required by applicable statute, by any other clause of this Agreement, or by Sections B, and C of this Article, and (c) for such longer period as the Department deems necessary.

B. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for the same periods as specified in Section A above. The Contractor shall ensure that any resource directories and all client records remain the property of the Department upon termination of this Agreement, and are returned to the Department or transferred to another Contractor as instructed by the Department.

C. In the event of any litigation, claim, negotiation, audit exception, or other action involving the records, all records relative to such action shall be maintained and made available until every action has been cleared to the satisfaction of the State and so stated in writing to the Contractor.

D. Adequate source documentation of each transaction shall be maintained relative to the allowability of expenditures reimbursed by the State under this Agreement. If the allowability of expenditures cannot be determined because records or documentation of the Contractor are nonexistent or inadequate according to Generally Accepted Accounting Principles and Procedures, the expenditures will be questioned in the audit and may be disallowed by the State during the audit resolution process.

E. After the authorized period has expired, confidential records shall be shredded and disposed of in a manner that will maintain confidentiality.

ARTICLE VII. PROPERTY

A. Unless otherwise provided for in this Article, property refers to all assets, , used in operation of this Agreement.

1. Property includes land, buildings, improvements, machinery, vehicles, furniture, tools, and intangibles, etc .

2. Property does not include consumable office supplies such as paper, pencils, toner, file folders, etc.

ARTICLE VII. PROPERTY (Continued)

B. Property meeting all of the following criteria are subject to the reporting requirements:

1. Has a normal useful life of at least 1 year

2. Has a unit acquisition cost of at least $500 (a desktop or laptop setup, including all peripherals is considered a unit, if purchased as a unit)

3. Is used to conduct business under this Agreement

C Additions, improvements, and betterments to assets meeting all of the conditions in Section B above must also be reported. Additions typically involve physical extensions of existing units. Improvements and betterments typically do not increase the physical size of the asset. Instead, improvements and betterments enhance the condition of an asset (e.g., extend life, increase service capacity, and lower operating costs). Examples of assets that might be improved and bettered include roads, bridges, curbs and gutters, tunnels, parking lots, streets and sidewalks, drainage, and lighting systems.

D. Intangibles are property which lack physical substance but give valuable rights to the owner. Examples of intangible property include patents, copyrights, leases, and computer software. By contrast, hardware consists of tangible equipment (e.g., computer printer, terminal, etc.).

Costs include all amounts incurred to acquire and to ready the intangible asset for its intended use. Typical intangible property costs include the purchase price, legal fees, and other costs incurred to obtain title to the asset.

E. The Contractor shall keep track of property purchased with CDA funds, and submit to the Department annually with the Closeout, in electronic form, a cumulative inventory of all property furnished or purchased by either the Contractor or the subcontractor with funds awarded under the terms of this Agreement or any predecessor agreement for the same purpose. The Contractor shall use the electronic version of the Report of Project Property Furnished/Purchased with Agreement Funds (CDA 32), unless otherwise directed by the Department.

The Contractor shall record the following information when property is acquired:

1. Date acquired

2. Property description (include model number)

3. CDA tag number or other tag identifying it as CDA property

4. Serial number (if applicable)

ARTICLE VII. PROPERTY (Continued)

5. Cost or other basis of valuation

6. Fund source

Disposal of Property

1. Prior to disposal of any property purchased by the Contractor or the subcontractor with funds from this Agreement or any predecessor Agreement, the Contractor must obtain approval from the Department for all items with a unit cost of $500 or more. Disposition, which includes sale, trade-in, discarding, or transfer to another agency may not occur until approval is received from the Department. The Contractor shall e-mail to the Department the electronic version of the Request to Dispose of Property (CDA 248). CDA will then instruct the AAA on disposition of the property. Once approval for disposal has been received from CDA, the item(s) shall be removed from the Contractor's inventory report.

2. Contractor must remove all confidential, sensitive, or personal information from CDA property prior to disposal, including removal or destruction of data on computing devices with digital memory and storage capacity. This includes, but is not limited to magnetic tapes, flash drives, personal computers, personal digital assistants (PDAs), cell or smart phones, multi-function printers, and laptops.

G. The Contractor shall immediately investigate and within five (5) days fully document the loss, destruction, or theft of such property.

H. The State reserves title to all State-purchased or financed property not fully consumed in the performance of this Agreement, unless otherwise required by federal law or regulations or as otherwise agreed by the parties.

I. The Contractor shall exercise due care in the use, maintenance, protection, and preservation of such property during the period of the project, and shall assume responsibility for replacement or repair of such property during the period of the project, or until the Contractor has complied with all written instructions from the Department regarding the final disposition of the property.

J. In the event of the Contractor's dissolution or upon termination of this Agreement, the Contractor shall provide a final property inventory to the State. The State reserves the right to require the Contractor to transfer such property to another entity, or to the State.

K. To exercise the above right, no later than 120 days after termination of the Agreement or notification of the Contractor's dissolution the State will issue specific written disposition instructions to the Contractor.

ARTICLE VII. PROPERTY (Continued)

L. The Contractor shall use the property for the purpose for which it was intended under the Agreement. When no longer needed for that use, the Contractor shall use it, if needed, and with written approval of the State for other purposes in this order:

1. Another Department program providing the same or similar service

2. Another Department-funded program

M. The Contractor may share use of the property and equipment or allow use by other programs, upon written approval of the Department. As a condition of the approval, the Department may require reimbursement under this Agreement for its use.

N. The Contractor or subcontractor shall not use equipment or supplies acquired under this Agreement with federal and/or State monies for personal gain or to usurp the competitive advantage of a privately-owned business entity.

O. If purchase of equipment is a reimbursable item, the equipment to be purchased will be specified in the budget.

P. The Contractor shall include the provisions contained in this Article in all its subcontracts awarded under this Agreement.

ARTICLE VIII. ACCESS

The Contractor shall provide access to the federal or State agency, Bureau of State Audits, the Controller General of the United States, or any of their duly authorized federal or State representatives to any books, documents, papers, records, and electronic files of the Contractor or subcontractor which are directly pertinent to this specific Agreement for the purpose of audit, examination, excerpts, and transcriptions. The Contractor shall include this requirement in its subcontracts.

ARTICLE IX. MONITORING AND EVALUATION

A. Authorized State representatives shall have the right to monitor and evaluate the Contractor's administrative, fiscal and program performance pursuant to this Agreement. Said monitoring and evaluation may include, but is not limited to, administrative processes, policies and procurement, audits, inspections of project premises, inspection of food preparation sites, and interviews of project staff and participants.

B. The Contractor shall cooperate with the State in the monitoring and evaluation processes, which include making any Administrative program and fiscal staff available during any scheduled process.

ARTICLE IX. MONITORING AND EVALUATION (Continued)

C. The Contractor shall monitor contracts, subcontracts or grant agreements to ensure compliance with laws, regulations, and the provisions of contracts or grant agreements that may have a direct or material effect on each of its major programs.

D. The Contractor is responsible for maintaining supporting documentation including financial and statistical records, contracts, subcontracts, or grant agreements monitoring reports, and all other pertinent records until an audit has occurred and an audit resolution has been issued or unless otherwise authorized in writing by the Department.

ARTICLE X. AUDITS

A. The Contractors that expend $500,000 or more in Federal Awards shall arrange for an audit to be performed as required by the Single Audit Act of 1984, Public Law 98-502, Single Audit Act Amendments of 1996, Public Law 104-156, and Office of Management and Budget (OMB) Circular A-133, and a copy submitted to the:

California Department of Aging
Attention: Audit Branch
1300 National Drive, Suite 200
Sacramento, California 95834

The copy shall be submitted within 30 days after receipt of the auditor's report or nine months after the end of the audit period, whichever occurs first, or unless a longer period is agreed to in advance by the cognizant or oversight agency.

The contractor shall ensure that State-Funded expenditures are displayed discretely along with the related federal expenditures in the single audit report's "Schedule of Expenditures of Federal Awards" (SEFA) under the appropriate Catalog of Federal Domestic Assistance (CFDA) number as referenced in Section B of this Article.

For State contracts that do not have CFDA numbers, the Contractor shall ensure that the State-funded expenditures are discretely identified in the SEFA by the appropriate program name, identifying grant/contract number, and as passed-through the California Department of Aging.

B. This section B applies only to Title III/VII.

The following closely related programs identified by CFDA number are to be considered as an "Other Cluster" for purposes of determining major programs or whether a program specific audit may be elected. The Contractor shall identify

ARTICLE X. AUDITS (Continued)

the CFDA titles and numbers to the independent auditor conducting the organization's single audit along with each of its subrecipients. The funding source (Federal Grantor) for the following programs is the U.S. Department of Health and Human Services, Administration on Aging.

93.041	Special Programs for the Aging-Title VII, Chapter 3-Programs for Prevention of Elder Abuse, Neglect, and Exploitation (Title VII-B)
93.042	Special Programs for the Aging-Title VII, Chapter 2-Long Term Care Ombudsman services for Older Individuals (Title VII-A)
93.043	Special Programs for the Aging-Title III, Part D-Disease Prevention and Health Promotion Services (Title III-D)
93.044	Special Programs for the Aging-Title III, Part B – Grants for Supportive Services and Senior Centers (Title III-B)
93.045	Special Programs for the Aging-Title III, Part C – Nutrition Services (Title III-C)
93.052	National Family Caregiver Support-Title III, Part E
93.053	Nutrition Services Incentive Program (NSIP)

Cluster of programs means a grouping of closely-related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. "Other Clusters" are as defined by the OMB in the Compliance Supplement or as designated by a State for federal awards provided to its subrecipients that meet the definition of cluster of programs. When designating an "other cluster," a State shall identify the federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with §.400 (d) (1) and §.400 (d) (2), respectively. A cluster of programs shall be considered as one program for determining major programs, as described in §.520, and, with the exception of R&D as described in §.200(c), whether a program-specific audit may be elected. (Federal Office of Management and Budget, (OMB) Circular, A-133, Audits of States, Local Governments, and Non-Profit Organizations).

C. The Contractor shall perform a reconciliation of the "Financial Closeout Report" to the audited financial statements. The reconciliation shall be maintained and made available for Department review.

The Contractor shall have the responsibility for resolving its contracts with subcontractors to determine whether funds provided under this Agreement are expended in accordance with applicable laws, regulations, and provisions of contracts or agreements.

ARTICLE X. AUDITS (Continued)

Contract resolution includes:

1. Ensuring that a subcontractor expending $500,000 or more in Federal Awards during the subcontractor's fiscal year has met the audit requirements of OMB Circular A-133 as summarized in D

2. Issuing a management decision on audit findings within six months after receipt of the subcontractor's single audit report and ensuring that the subcontractor takes appropriate and timely corrective action

3. Reconciling expenditures reported to the Department to the amounts identified in the single audit or other type of audit, if the subcontractor was not subject to the single audit requirements. For a subcontractor who was not required to obtain a single audit and who did not obtain another type of audit, the reconciliation of expenditures reported to the Department must be accomplished through the performance of alternative procedures (e.g., expense verification reviews/fiscal monitoring assessments)

4. When alternative procedures are used, the Contractor shall perform financial management system testing per existing federal requirements (45 CFR, Subpart C, Part 92.20 and 45 CFR, Part 74.21) which state in part that financial reporting must be accurate, current, and complete; and, accounting records must adequately identify the source and application of funds and must be supported by source documentation. The Contractor shall document system and expense testing to show an acceptable level of reliability, including a review of actual source documents

5. Determining whether the results of the reconciliations performed necessitate adjustment of the Contractor's own records

D. The Contractor shall ensure that the subcontractor single audit reports meet OMB Circular A-133 requirements:

1. Performed timely – not less frequently than annually and a report submitted timely. The audit is required to be submitted within 30 days after receipt of the auditor's report or nine months after the end of the audit period, whichever occurs first.

2. Properly procured – use procurement standards provided for in OMB Circular A-133 and provide maximum opportunities to small and minority audit firms.

3. Performed in accordance with Generally Accepted Government Auditing Standards – shall be performed by an independent auditor and be organization-wide.

ARTICLE X. AUDITS (Continued)

4. All inclusive – includes an opinion (or disclaimer of opinion) of the financial statements; a report on internal control related to the financial statements and major programs; an opinion (or disclaimer of opinion) on compliance with laws, regulations, and the provisions of contracts or grant agreements; and the schedule of findings and questioned costs.

5. Performed in accordance with provisions applicable to this program as identified in OMB Circular A-133 Compliance Supplement.

E. Requirements identified in D of this Article shall be included in contracts/agreements with the subcontractor. Further, the subcontractor shall be required to include in its contract with the independent auditor that the auditor will comply with all applicable audit requirements/standards, the Department shall have access to all audit reports and supporting work papers, and the Department has the option to perform additional work, as needed.

F. The Contractor shall prepare a summary worksheet of results from the contract resolutions performed of all subcontractors. The summary worksheet shall include, but not limited to, contract amount; amount resolved; variances; whether an audit was relied upon or the Contractor performed an independent expense verification review (alternative procedures) of the subcontractor in making a determination; whether audit findings were issued; and, if applicable, issuance date of the management letter; and any communication or follow-up performed to resolve the findings.

G. Unless prohibited by law, the cost of audits completed in accordance with provisions of the Single Audit Act Amendments of 1996, are allowable charges to Federal Awards. The cost may be considered a direct cost or an allocated indirect cost, as determined in accordance with the provisions of applicable OMB cost principle circulars.

H. The Contractor may not charge to Federal Awards the cost of any audit under the Single Audit Act Amendments of 1996 not conducted in accordance with the Act. The Contractor may not charge to Federal Awards the cost of auditing a non-federal entity which has Federal Awards expended of less than $500,000 per year, and is thereby exempted under OMB Circular A-133, Subsection __200(d). However, this does not prohibit the Contractor from charging Federal Awards for the cost of conducting a limited-scope audit to monitor its subcontractor to address compliance requirements provided the subcontractor is not required to obtain a single audit. These costs must be charged as an Administrative expense of the Contractor.

I. The Contractor shall cooperate with and participate in any further audits which may be required by the State.

ARTICLE XI. INSURANCE

A. Prior to commencement of any work under this Agreement, the Contractor shall provide for the term of this Agreement, the following insurance:

1. General liability of not less than $1,000,000 per occurrence for bodily injury and property damage combined. Higher limits may be required by the Department in cases of higher than usual risks

2. Automobile liability including non-owned auto liability, of not less than $1,000,000 for volunteers and paid employees providing services supported by this Agreement

3. If applicable, or unless otherwise amended by future regulation, contractors and subcontractors shall comply with the Public Utilities Commission (PUC) General Order No. 115-F which requires higher levels of insurance for charter-party carriers of passengers and is based on seating capacity as follows:

   - $750,000 if seating capacity is under 8
   - $1,500,000 if seating capacity is 8 – 15
   - $5,000,000 if seating capacity is over 15

4. Professional liability of not less than $1,000,000 as it appropriately relates to the services rendered. Coverage shall include medical malpractice and/or errors and omissions

B. The insurance will be obtained from an insurance company acceptable to the Department of General Services, Office of Risk and Insurance Management, or be provided through partial or total self-insurance acceptable to the Department of General Services.

C. Evidence of insurance shall be in a form and content acceptable to the Department of General Services, Office of Risk and Insurance Management. Insurance obtained through commercial carriers shall meet the following requirements:

1. The Certificate of Insurance shall provide that the insurer will not cancel the insured's coverage without 30 days prior written notice to the State, or ten (10) days written notice if the reason for cancellation is for non-payment of insurance premium.

2. The Certificate of Insurance shall provide the statement: "The Department of Aging, State of California, its officers, agents, employees, and servants are included as additional insureds, with respect to work performed for the State of California under this Agreement." Professional liability coverage is exempt from this requirement.

ARTICLE XI. INSURANCE (Continued)

3. The Department shall be named as the certificate holder and the address must be listed on the certificate.

D. The insurance provided herein shall be in effect at all times during the term of this Agreement. In the event the insurance coverage expires during the term of this Agreement, the Contractor agrees to provide the Department, at least thirty (30) days prior to the expiration date, a new certificate of insurance evidencing insurance coverage as provided herein for a period not less than the remaining agreement term or for a period not less than one (1) year. In the event the Contractor fails to keep in effect at all times said insurance coverage, the Department may, in addition to any other remedies it may have, terminate this Agreement.

E. The Contractor shall require its subcontractors or vendors under this Agreement, other than units of local government which are similarly self-insured, to maintain adequate insurance coverage for general liability, worker's compensation liabilities, and if appropriate, auto liability including non-owned auto and professional liability, and further, the Contractor shall require its subcontractors and vendors to hold the Contractor harmless. The subcontractor's Certificate of Insurance shall also name the Contractor, not the State, as the certificate holder and additional insured. The Contractor shall maintain certificates of insurance for all its subcontractors.

F. A copy of each appropriate Certificate of Insurance referencing this Agreement number, or letter of self-insurance, shall be submitted to the Department with this Agreement.

G. The Contractor shall be insured against liability for Worker's Compensation or undertake self-insurance in accordance with the provisions of the Labor Code and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement (Labor Code Section 3700).

H. The entity providing Ombudsman services must be insured or self-insured for professional liability covering all Ombudsman activities including, but not limited to, investigation of patient complaints.

ARTICLE XII. TERMINATION

A. Termination Without Cause

The Department may terminate performance of work under this Agreement, in whole or in part, without cause, if the Department determines that a termination is in the State's best interest. The Department may terminate the Agreement upon 90 days written notice to the Contractor. The Notice of Termination shall specify the extent of the termination and shall be effective 90 days from the delivery of

the notice. The parties agree that if the termination of the contract is due to a reduction or deletion of funding by the Department of Finance, Legislature or Congress, the Notice of Termination shall be effective 30 days from the delivery of the notice. The Contractor shall submit to the Department a Transition Plan as specified in Exhibit E. The parties agree that for the terminated portion of the Agreement, the remainder of Agreement shall be deemed to remain in effect and is not void.

B. Termination for Cause

The Department may terminate, in whole or in part, for cause the performance of work under this Agreement. The Department may terminate the Agreement upon 30 days written notice to the Contractor. The Notice of Termination shall be effective 30 days from the delivery of the Notice of Termination unless the ground for termination is due to threat to life, health or safety of the public and in that case the termination shall take effect immediately. The Contractor shall submit to the Department a Transition Plan as specified in Exhibit E. The grounds for termination for cause shall include but are not limited to the following:

1. In case of threat of life, health or safety of the public, termination of the Agreement shall be effective immediately

2. A violation of the law or failure to comply with any condition of this Agreement

3. Inadequate performance or failure to make progress so as to endanger performance of this Agreement

4. Failure to comply with reporting requirements

5. Evidence that the Contractor is in an unsatisfactory financial condition as determined by an audit of the Department or evidence of a financial condition that endangers performance of this Agreement and/or the loss of other funding sources

6. Delinquency in payment of taxes or payment of costs for performance of this Agreement in the ordinary course of business

7. Appointment of a trustee, receiver, or liquidator for all or a substantial part of the Contractor's property, or institution of bankruptcy, reorganization or the arrangement of liquidation proceedings by or against the Contractor

8. Service of any writ of attachment, levy of execution, or commencement of garnishment proceedings against the Contractor's assets or income

ARTICLE XII. TERMINATION (Continued)

9. The commission of an act of bankruptcy

10. Finding of debarment or suspension

11. The Contractor's organizational structure has materially changed

12. The Department determines that a Contractor may be considered a "high risk" agency as described in 45 CFR 92.12 local government and 45 CFR 74.14 for non-profit organizations. If such a determination is made, the Contractor may be subject to special conditions or restrictions

C. Contractor's Obligation After Notice of Termination

After receipt of a Notice of Termination, and except as directed by the Department, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any funds due under this clause.

The Contractor shall:

1. Stop work as specified in the Notice of Termination

2. Place no further subcontracts for materials, or services, except as necessary to complete the continued portion of the contract

3. Terminate all subcontracts to the extent they relate to the work terminated

4. Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts (the approval or ratification of which will be final for purposes of this clause)

D. Effective Date

Termination of this Agreement, shall take effect immediately in the case of an emergency such as threat to life, health, or safety of the public. The effective date for Termination with Cause or for funding reductions is 30 days and Termination without Cause is 90 days subsequent to written notice to the Contractor. The notice shall describe the action being taken by the Department, the reason for such action and, any conditions of the termination, including the date of termination. Said notice shall also inform the Contractor of its right to appeal such decision to the Department and the procedure for doing so.

ARTICLE XII. TERMINATION

E. Voluntary Termination of Area Plan Agreement

Pursuant to Title 22, Section 7210 the Contractor may voluntarily terminate its contract prior to its expiration either by mutual agreement with the Department or upon 30 days written notice to the Department.

In case of voluntary termination, the Contractor shall allow the Department up to 180 days to transition services. The Contractor shall submit a Transition Plan in accordance with Exhibit E.

F. In the event of a termination, the Department will present written notice to the Contractor of any condition, such as, but not limited to, transfer of clients, care of clients, return of unspent funds, and disposition of property, which must be met prior to termination.

ARTICLE XIII. REMEDIES

The Contractor agrees that any remedy provided in this Agreement is in addition to and not in derogation of any other legal or equitable remedy available to the Department as a result of breach of this Agreement by the Contractor, whether such breach occurs before or after completion of the project.

ARTICLE XIV. DISSOLUTION OF ENTITY

The Contractor shall notify the Department immediately of any intention to discontinue existence of the entity or to bring an action for dissolution.

ARTICLE XV. REVISIONS OR MODIFICATIONS

A. No amendment or variation of the terms of this Agreement shall be valid unless made in writing, and approved as required. No oral understanding or agreement not incorporated in this Agreement is binding on any of the parties.

B. The State reserves the right to revise, waive, or modify the Agreement to reflect any restrictions, limitations, or conditions enacted by Congress or the Legislature or as directed by the Executive Branch of State Government.

ARTICLE XVI. NOTICES

A. Any notice to be given hereunder by either party to the other may be effected by personal delivery in writing or by registered or certified mail, overnight mail, postage prepaid, return receipt requested, or overnight mail, provided Contractor retains receipt, and shall be communicated as of actual receipt.

ARTICLE XVI. NOTICES (Continued)

B. Any notice given to the CDA for a contractor's change of legal name, main address, or name of Director shall be addressed to the Director of the Department on the Contractor's letterhead.

C. All other notices with the exception of those identified in Article VII. B shall be addressed to the California Department of Aging, AAA Based Teams, 1300 National Drive, Suite 200, Sacramento, California, 95834. Notices mailed to the Contractor shall be to the address indicated on the coversheet of this Agreement.

D. Either party may change its address by written notice to the other party in accordance with this Article.

ARTICLE XVII. DEPARTMENT CONTACT

A. The name of the Department's contact to request revisions, waivers, or modifications affecting this Agreement, will be provided by the State to the Contractor upon full execution of this Agreement.

B. The contractor shall submit the name of its Agency Contract Representative (ACR), for this Agreement by submitting an Agency Contract Representative form to the CDA's Contracts and Business Services Section. This form requires the ACR's address, phone number, e-mail address, and FAX number to be included on this form. For any change in this information, the Contractor shall submit an amended Agency Contract Representative form to the same address. This form may be requested from the Contracts and Business Services Section.

ARTICLE XVIII. INFORMATION INTEGRITY AND SECURITY

A. Information Assets

The Contractor shall have in place operational policies, procedures, and practices to protect State information assets, i.e., public, confidential, sensitive and/or personal information as specified in State Administrative Manual, Section 5310, GC Section 11019, Department of Finance (DOF) Management Memo 06-12, and DOF Budget Letter 06-34.

Information assets include (but are not limited to):

- Information collected and/or accessed in the administration of the State programs and services
- Information stored in any media form, paper or electronic

ARTICLE XVIII. INFORMATION INTEGRITY AND SECURITY (Continued)

B. Encryption on Portable Computing Devices

The Contractor is required to encrypt (or use an equally effective measure), any data collected under this Agreement that is confidential, sensitive, and/or personal including data stored on portable computing devices (including but not limited to, laptops, personal digital assistants, and notebook computers) and/or portable electronic storage media (including but not limited to, discs and thumb/flash drives, and portable hard drives).

C. Disclosure

1. The Contractor shall ensure that personal, sensitive and confidential information is protected from inappropriate or unauthorized access or disclosure in accordance with applicable laws, regulations and State policies. The requirement to protect information shall remain in force until superseded by laws, regulations or policies.

2. The Contractor shall protect from unauthorized disclosure names and other identifying information, concerning persons receiving services pursuant to this Agreement, except for statistical information not identifying any participant.

3. "Identifying information" shall include, but not be limited to, name, identifying number, social security number, state driver's license or state identification number, financial account numbers, symbol or other identifying characteristic assigned to the individual, such as finger or voice print or a photograph.

4. The Contractor shall not use the identifying information in paragraph 3 above for any purpose other than carrying out the Contractor's obligations under this Agreement. The Contractor and its subcontractor are authorized to disclose and access identifying information for this purpose as required by the Older Americans Act.

5. The Contractor shall not, except as otherwise specifically authorized or required by this Agreement or court order, disclose any identifying information obtained under the terms of this Agreement to anyone other than CDA without prior written authorization from CDA. The Contractor may be authorized, in writing, by a participant to disclose identifying information specific to the authorizing participant.

6. The Contractor may allow a participant to authorize the release of information to specific entities, but shall not request or encourage any participant to give a blanket authorization or sign a blank release, nor shall the Contractor accept such blanket authorization from any participant.

ARTICLE XVIII. INFORMATION INTEGRITY AND SECURITY (Continued)

D. Training/Education

1. The Contractor must provide ongoing education and training, at least annually, to all employees and subcontractors who handle personal, sensitive, or confidential information. The Contractor's employees, subcontractors, and volunteers must complete the required Security Awareness Training module located at www.aging.ca.gov within 30 days of the start date of the Contract/Agreement or within 30 days of the start date of any new employee, subcontractor or volunteer. The Contractor must maintain certificates of completion on file and provide them to CDA upon request. Training may be provided on an individual basis or in groups. A sign-in sheet is acceptable documentation for group training in lieu of individual certificates. If internet access is not available, a hardcopy of the training module may be provided to employees and/or volunteers for their completion.

2. The Contractor may substitute CDA's Security Awareness Training program with its own Security Training provided such training meets or exceeds CDA's training requirement. Contractors/Vendors shall maintain documentation of training and education provided to their staff, volunteers, and/or subcontractors.

3. All employees and volunteers who handle personal, sensitive, or confidential information relating to CDA's programs must participate in Security Awareness Training.

E. Health Insurance Portability and Accountability Act (HIPAA)

The Contractor agrees to comply with the privacy and security requirements of the HIPAA to the extent applicable and to take all reasonable efforts to implement HIPAA requirements. Contractor will make reasonable efforts to ensure that subcontractors comply with the privacy and security requirements of HIPAA.

F. Contractor Confidentiality Statement

The Contractor shall sign and return a Contractor/Vendor Confidentiality Statement CDA 1024 form with this Agreement. This is to ensure that Contractor/Vendors are aware of, and agree to comply with, their obligations to protect CDA information assets from unauthorized access and disclosure.

ARTICLE XVIII. INFORMATION INTEGRITY AND SECURITY (Continued)

G. Security Incident Reporting

A security incident occurs when CDA information assets are accessed, modified, destroyed, or disclosed without proper authorization, or are lost, or stolen. The Contractor must report all security incidents to the appropriate CDA Program Manager immediately upon detection. A Security Incident Report form (CDA 1025) must be submitted to the CDA Information Security Officer within five (5) business days of the date the incident was detected.

H. Notification of Security Breach to Data Subjects

1. Notice must be given by the contractor or subcontractor to any data subject whose personal information could have been breached.

2. Notice must be given in the most expedient time possible and without unreasonable delay except when notification would impede a criminal investigation, or when necessary measures to restore system integrity are required.

3. Notice may be provided in writing, electronically, or by substitute notice in accordance with State law, regulation, or policy.

I. Software Maintenance

The Contractor shall apply security patches and upgrades and keep virus software up-to-date on all systems on which State data may be used.

J. Electronic Backups

The Contractor shall ensure that all electronic information is protected by performing regular backup of automated files and databases, and ensure the availability of information assets for continued business.

K. Provisions of this Article

The provisions contained in this Article shall be included in all contracts of both the contractor and its subcontractors.

ARTICLE XIX. COPYRIGHTS AND RIGHTS IN DATA

A. Copyrights

1. If any material funded by this Agreement is subject to copyright, the State reserves the right to copyright such material and the Contractor agrees not to copyright such material, except as set forth in subdivisions (b) and (c) of this section.

2. The Contractor may request permission to copyright material by writing to the Director of the Department. The Director shall consent to or give the reason for denial to the Contractor in writing within 60 days of receipt of the request.

3. If the material is copyrighted with the consent of the Department, the State reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, prepare derivative works, publish, distribute and use such materials, in whole or in part, and to authorize others to do so, provided written credit is given the author.

4. The Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this contract for the acquisition, operation, or maintenance of computer software in violation of copyright laws.

B. Rights in Data

1. The Contractor shall not publish or transfer any materials, as defined in item 2 below, produced or resulting from activities supported by this Agreement without the express written consent of the Director of the Department. That consent shall be given or the reasons for denial shall be given and any conditions under which it is given or denied within 30 days after the written request is received by the Department. The Department may request a copy of the material for review prior to approval of the request. This subsection is not intended to prohibit contractors from sharing identifying client information authorized by the participant or summary program information which is not client-specific.

2. As used in this Agreement, the term "subject data" means writings, sound recordings, pictorial reproductions, drawings, designs or graphic representations, procedural manuals, forms, diagrams, workflow charts, equipment descriptions, data files and data processing or computer programs, and works of any similar nature (whether or not copyrighted or copyrightable) which are first produced or developed under this Agreement. The term does not include financial reports, cost analyses, and similar information incidental to contract administration, or the

ARTICLE XIX. COPYRIGHTS AND RIGHTS IN DATA (Continued)

exchange of that information between Area Agencies on Aging to facilitate uniformity of contract and program administration on a statewide basis.

3. Subject only to the provisions of Article XIX and Article XX of this Exhibit, the State may use, duplicate, or disclose in any manner, and have or permit others to do so subject to State and federal law all subject data delivered under this Agreement.

4. Materials published or transferred by Contractor shall: (a) state "The materials or product were a result of a project funded by a contract with the California Department of Aging"; (b) give the name of the entity, the address, and telephone number at which the supporting data is available; and (c) include a statement that "The conclusions and opinions expressed may not be those of the California Department of Aging and that the publication may not be based upon or inclusive of all raw data."

ARTICLE I. ASSURANCES SPECIFIC TO THIS AGREEMENT

A. General Assurances. The Contractor shall assure that the following conditions are met:

1. Services are provided only to the defined Eligible Service Population.

2. If the Contractor makes any award of funds to a public or private nonprofit agency, for the following purposes: (1) acquiring, altering, leasing, or renovating a facility, including a mobile facility, for use as a multipurpose senior center or (2) constructing a facility, including a mobile facility, for use as a multipurpose senior center, the Contractor shall adhere to the program requirements and to 45 CFR Part 74, "Procurement Standards," procurement by contractors and subcontractors for nonprofit organizations, and 45 CFR Part 92.36, procurement for State and local governments, as applicable.

3. The Contractor shall comply with the standards and guidelines for procurement of supplies, equipment, construction, and services as provided in 45 CFR, Part 92.36, "Procurement Standards."

4. The Contractor assures that when an existing facility has been altered (with funds made available by this Agreement) and is used as a multipurpose senior center, the period of time in which such facility shall be used as a center is as follows:

   a. Not less than three (3) years from the date the Agreement terminates where the amount of the Agreement, including the non-federal share, does not exceed $30,000

   b. If the Agreement amount exceeds $30,000, the fixed period of time shall be not less than three (3) years from the date of Agreement plus one (1) year for each additional $10,000, or part thereof, to a maximum of $75,000

   c. For Agreement amounts which exceed $75,000, the fixed period of time shall be no less than ten (10) years.

5. Any multipurpose senior center constructed with funds made available by this Agreement shall be used for that purpose for at least 20 years after completion of that construction.

6. Any facility to be used as a senior center and acquired with funds made available by this Agreement shall be used for that purpose for at least ten (10) years from the date of acquisition.

ARTICLE I. ASSURANCES SPECIFIC TO THIS AGREEMENT (Continued)

7. Any agency awarded Title III funds for senior center acquisition or construction will have a completed and notarized Notice of Assurances to the State of California of the Use of Property and the United States' Right of Recapture (CDA 214) recorded with the county recorder. The Contractor shall periodically validate continuing use of such facility as a senior center during the recapture period.

8. CDA funds will be made available only for the support of activities specified in an approved and current Area Plan that is in compliance with State and federal laws and regulations.

9. The Contractor and/or subcontractor shall make use of trained volunteers to expand the provision of FCSP activities in accordance with OAA Title III, Part E, Section 373(d)

10. An individual's receipt of services under the In-Home Supportive Services Program shall not be the sole cause for denial of any services provided by the AAA or its contractors.

11. Funds made available under Title III E shall be budgeted and expended in accordance with the five federal support service components specified in OAA Title III, Part E, Section 373(b); and distinguished between "caregiver" and "grandparent" support services, as required for National Aging Programs Information Systems (NAPIS).

12. Funds made available under Title III E shall enable comprehensive and multifaceted systems of support services that include the five federal support service components for both "family caregiver" and "grandparent caregiver" [OAA Title III, Part E, Sections 373(a) and (b)], unless the AAA has documented through the Area Plan process that one or more of these components is being addressed by other sources.

13. Funds made available under this Agreement shall supplement, and not supplant, any federal, State, or local funds expended by a State or unit of general purpose local government to provide Title III (excluding III E), Title VII services.

14. Funds made available under Title III E shall supplement and not supplant other services that may directly or indirectly support unpaid caregiving, such as Medicaid waiver programs (e.g., MSSP, etc.) or other caregiver services such as those provided through Department of Social Services Kinship Support Service Programs, California Community Colleges Foster and Kinship Care Education Programs, Department of Developmental

ARTICLE I. ASSURANCES SPECIFIC TO THIS AGREEMENT (Continued)

Services Regional Centers, Department of Mental Health Caregiver Resource Centers and other Title III funded providers.

15. Contractor assures that voluntary contributions shall be solicited in accordance with the following requirements: [OAA Section 315(b)]:

    a. Any Contractor for any Title III or Title VII services shall not use means tests

    b. Any Title III or Title VII client that does not contribute toward the cost of the services received shall not be denied services

    c. Methods used to solicit voluntary contributions for Title III and Title VII services shall be non-coercive

    d. Each service provider will:

        (i) Provide each recipient with an opportunity to voluntarily contribute to the cost of the service
        (ii) Clearly inform each recipient that there is no obligation to contribute and that the contribution is purely voluntary;
        (iii) Protect the privacy and confidentiality of each recipient with respect to the recipient's contribution or lack of contribution
        (iv) Establish appropriate procedures to safeguard and account for all contributions

16. Any Title III and Title VII service shall not implement a Cost Sharing program unless so notified by the CDA.

17. The Contractor shall comply with the OAA Section 306(a)(17), which requires an AAA to include in its Area Plan information on how it will coordinate activities and develop long-range emergency preparedness plans with local and state emergency response agencies, relief organizations, local and state governments, and any other institutions that have responsibility for disaster relief service delivery.

18. The Contractor, at a minimum, shall identify and make contact with their local Office of Emergency Services (OES) to define their respective roles and responsibilities. This contact shall include a discussion of the types of clients served by the AAA and how OES will address their needs in the community.

ARTICLE I. ASSURANCES SPECIFIC TO THIS AGREEMENT (Continued)

19. The Contractor shall furnish annually, or whenever a change occurs, the name of its Disaster Coordinator to the CDA Disaster Coordinator.

20. The Contractor shall assure that its Information and Assistance staff have written procedures in place and are trained at least annually on how to handle emergencies. As specified in Title 22, Division 1.8, Chapter 4, Article 2, Section 7547, the training shall consist of:

    a. Familiarity with telephone numbers of fire, police, and ambulance services for the geographic area served by the provider. These telephone numbers shall be posted near the telephone for easy access when an emergency arises

    b. Techniques to obtain vital information from older individuals and persons with disabilities who require emergency assistance

    c. Making written emergency procedure instructions available to all staff that have contact with older individuals or persons with disabilities

21. The Contractor shall not require proof of age or citizenship as a condition of receiving services.

22. The Contractor shall develop a policy and procedure to ensure that SNP meals are only received by eligible individuals.

23. The Contractor shall annually assess the Title III C-2 client's nutrition risk using the Determine Your Nutritional Risk checklist published by the Nutrition Screening Initiative. [OAA §339(2)(J)] [OAA §207(a)(3)]

B. Assurances Specific to the Ombudsman Program:

The Contractor shall assure the following:

1. Representatives of the Local Ombudsman Program and members of their immediate family shall be free of actual and perceived conflicts of interest and not stand to gain financially through the following:

    a. Remuneration (in cash or in kind) received directly or indirectly under a compensation arrangement with a long-term care facility [OAA Section 712(f)]

    b. An action or potential action brought on behalf of individuals the Program serves [OAA Section 712(a)(5)((C)(ii)]

ARTICLE I. ASSURANCES SPECIFIC TO THIS AGREEMENT (Continued)

2. Representatives of the Local Ombudsman Program shall have access to long-term care facility residents and their medical and social records, with documentation of consent in accordance to section (3)(a), between the hours of 7:00 a.m. and 10:00 p.m. seven days a week. [OAA 712(b)(1); W&I 9722 and 9724; CCR 8020(a)] Authorization is required by the State Ombudsman for entry outside of these hours and for access to resident records when a legal guardian refuses to give permission and there is reason to believe the guardian is not acting in the best interests of the resident. [OAA 712(b)(1)(B)(ii); W&I 9724(c and d); CCR 8020(a)]

3. Representatives of the Local Ombudsman Program shall not carry out the responsibilities of the Program until the State Ombudsman accepts them for certification. [OAA 712(h)(5)(B)]

4. All records and files maintained by the local Ombudsman Program relating to any complaint or investigation shall remain confidential unless disclosure is authorized pursuant to OAA 705(a)(6)(C); OAA 712(d)(2) and W&I 9725.

5. The Local Ombudsman Program shall enter into a Memorandum of Understanding (MOU) with the Legal Services Provider (LSP) which will address conflict of interest, provision of legal advice, procedures for referral, and other technical assistance. The LSP may assist the State in providing legal representation to the Program when an Ombudsman Representative has been subpoenaed or in a suit or other legal action threatened or brought against the performance of the official duties of the Ombudsman Representative. [OAA 712(h)(7); W&I 9717(c); Statewide Standards for Legal Assistance in California].

6. Each Local Ombudsman Program shall maintain a separate budget. The Local Ombudsman Coordinator shall be responsible for managing the day-to-day operation of the Program, including managing all paid staff and volunteers in the Program. The Local Ombudsman Coordinator shall determine budget priorities, develop or participate in budget preparation, and be informed of budget allocations by the Contractor specific to the Ombudsman Program.

7. The Local Ombudsman Program Coordinator shall provide the Office of the State Long-Term Care Ombudsman (OSLTCO) with an organizational chart that includes:

ARTICLE I. ASSURANCES SPECIFIC TO THIS AGREEMENT (Continued)

a. all local staff who are wholly or partly funded by Ombudsman Program resources
b. their titles/roles within the Program
c. the number of hours per week charged to the Local Ombudsman Program for each position

The Coordinator shall inform the OSLTCO of any staffing changes.

8. The Local Ombudsman Program Coordinator shall inform the OSLTCO of issues with local Ombudsman representatives, complex cases, situations with potential legal implications, changes in staffing, emerging regional issues with statewide impact, breaches of confidentiality, and conflict of interest issues.

9. Representatives of the Local Ombudsman Program shall conduct interviews/investigations in a confidential manner and the Program shall have office space and telecommunications that protect the confidentiality of all complaint-related communications and records.
[OAA 705(a)(6)(C), W&I 9725, W&I 25633(b)(2)(B)]

10. Each Local Ombudsman Program shall have information systems sufficient to run State-approved database systems and to receive and send confidential e-mail messages to and from the CDA.
[OAA 712(C); W&I 9716].

C. Assurances Specific to Legal Services Providers (LSPs) in accordance with OAA 731. The Contractor shall assure that the following conditions are met:

1. LSPs will coordinate with state-designated providers of Long-Term Care Ombudsman services by developing and executing a memorandum of understanding which will address conflict of interest, provision of legal advice, procedures for referral and other technical assistance

2. LSPs may provide direct legal assistance to residents of the long-term care facilities where the clients are otherwise eligible and services are appropriate

3. Where both legal and ombudsman services are provided by the same agency, providers must develop and follow policies and procedures to protect the integrity, resources, and confidentiality of both programs

ARTICLE I. ASSURANCES SPECIFIC TO THIS AGREEMENT (Continued)

4. LSPs may assist the state in providing legal representation to the ombudsman program when an ombudsman or the program is named as a party or witness, in a subpoena, civil suit or other legal action challenging the performance of the official duties of the ombudsman

5. LSPs are to coordinate with the local Legal Services Corporation (LSC) program, if the provider is not an LSC-funded program

6. LSPs are to coordinate with the network of other service providers, including but not limited to, other LSPs, LTC ombudsman, HICAP, senior information and assistance, Adult Protective Services, law enforcement, case management services and focal points

7. LSPs are to coordinate legal assistance activities with the statewide Hotline and private Bar, including groups within the private Bar furnishing services to older individuals on a pro bono or reduced fee basis

8. LSPs are to use the Uniform Reporting System developed by the CDA in December 2007 to collect data on legal services provided

9. Waiver of this section of the contract may be obtained from the CDA pursuant to Exhibit D, Article XV., of this Agreement entitled, Revisions, Waivers, or Modifications

ARTICLE II. REPORTING PROVISIONS

A. The Contractor shall submit program performance reports to the CDA Data Team for: Title III B, Title III C-1, Title III C-2, Title III D, Title III E, and Title VII B in accordance with CDA requirements [W&I Code 9102 (a)(5].

B. The Contractor shall have written procedures to assure that all submitted performance data is timely, complete, accurate, and verifiable.

1. Quarterly, the Contractor shall submit data reports for Older Americans Act funded programs as follows:

Quarter	Reporting Period	Due Date
Quarter 1	July 1 - September 30	October 31
Quarter 2	October 1- December 31	January 31
Quarter 3	January 1- March 31	April 30
Quarter 4	April 1 – June 30	July 31

ARTICLE II. REPORTING PROVISIONS (Continued)

2. Annually, the Contractor shall submit performance reports as follows, or as instructed by CDA:

Reporting Period	Due Date
July 1 – June 30	September 30

3. For reports that will be submitted late, 10 calendar days prior to the report due date, the Contractor shall submit to the Data Team (DataTeam.Reports@aging.ca.gov) a written explanation including the reasons for the delay and the estimated date of submission.

4. For web-based California Aging Report System (CARS) reports, the Contractor shall approve all data within 10 calendar days of receipt of notification of passed status. If data in the CARS report is not correct and approvable within 10 days, the Contractor will make a notation in the comments area of the CARS report and submit the data using the approved status button.

C. Reporting Requirements specific to Title III B, Title III C-1, Title III C-2, Title III D Title III E, and Title VII B services.

The Contractor shall submit program data reports electronically as follows:

1. Upload the National Aging Program Information System (NAPIS) State Program Report (SPR) to CARS at https://ca.getcare.com.

2. Submit the California Legal Services (Title III B) Report (CDA 1022) via email to DataTeam.Reports@aging.ca.gov.

3. Submit performance data reports quarterly.

4. Submit NAPIS SPR reports annually.

D. The Contractor shall verify the accuracy of all data submitted to CDA by reviewing and responding to the Annual Data Error Report and Annual Performance Data Verification of State Form, in accordance with CDA requirements.

1. The Contractor shall, in accordance with CDA requirements, correct and/or explain all logic and questionable errors in the Annual Data Error Report.

ARTICLE II. REPORTING PROVISIONS (Continued)

a. The Contractor shall correct all logic errors identified in the Annual Data Error Report.

b. The Contractor shall correct and/or explain all questionable errors identified in the Annual Data Error Report.

c. The Contractor shall return the Annual Data Error Report to CDA, verifying that corrections have been made, via e-mail to DataTeam.Reports@aging.ca.gov.

d. The Annual Data Error Reports are due to CDA by a date specified by the Department which can vary from year to year.

2. The Contractor shall verify all quarterly and annual NAPIS SPR and CDA 1022 data for accuracy in accordance with CDA requirements.

a. The Contractor shall review all NAPIS SPR and CDA 1022 data for accuracy and make necessary corrections.

b. As a result of the verification process, the Contractor shall complete the Annual Performance Data Verification form indicating corrections submitted. The AAA Director shall review and approve all corrections.

c. The AAA Director shall complete and initial the Annual Performance Data Verification form.

d. The Contractor shall return the completed Annual Performance Verification form to CDA via e-mail to DataTeam.Reports@aging.ca.gov (electronic signatures accepted).

E. Reporting Provisions Specific to the Ombudsman Program

The Contractor shall take the following actions, or shall require its subcontractor, the Local Ombudsman Program, to enter data into the Internet-based National Ombudsman Reporting System (NORS) utilizing the OmbudsManager or other software provided by CDA as required. NORS data entry must be timely, complete, accurate, and verifiable.

1. Data entry for quarterly NORS reports must be completed no later than one month following the end of the reporting quarter, i.e., October 31, January 31, April 30, and July 31, with copies of the aggregate data sent to the corresponding AAA.

ARTICLE II. REPORTING PROVISIONS (Continued)

2. On or before the reporting dates, the Local Ombudsman Program must submit the Quarterly OmbudsManager Reporting Form, (OSLTCO S301) indicating that data for the quarter has been completed or the reason for any delay, to the Ombudsman Program mailbox (stateomb@aging.ca.gov) with a copy to the AAA.

F. The Contractor shall have written reporting procedures specific to each program which include:

1. Collection and reporting of program data for the Contractor and subcontractor

2. Ensuring accuracy of all data from the Contractor and subcontractor

3. Verification of Contractor and subcontractor data prior to submission to the CDA Data Team

4. Procedures for the Contractor and subcontractor on correcting data errors

5. A methodology for calculating and reporting:

a) total estimated unduplicated clients in each non-registered service
b) total estimated unduplicated clients in all non-registered services
c) total estimated unduplicated clients across all registered and non-registered services; and

6. Performance data monitoring process

G. The Contractor shall orient and train staff and subcontractor's staff regarding program data collection and reporting requirements. The Contractor shall have cross-trained staff in the event of planned or unplanned prolonged absences to ensure timely and accurate submission of data.

H. Reporting Provisions Specific to Title VII B: Elder Abuse Prevention

1. The Contractor shall complete and submit the Elder Abuse Prevention Quarterly Activity Report (CDA 1037), as specified on the form, to the State Ombudsman mailbox (stateomb@aging.ca.gov) on the following reporting due dates:

ARTICLE II. REPORTING PROVISIONS (Continued)

Quarter	Reporting Period	Due Date
Quarter 1	July 1 - September 30	October 31
Quarter 2	October 1- December 31	January 31
Quarter 3	January 1- March 31	April 30
Quarter 4	April 1 – June 30	July 31

2. The Contractor shall also enter the quarterly aggregate number of "Elder Abuse Prevention, Education and Training Sessions" and "Elder Abuse Prevention Educational Materials" into CARS on a quarterly basis.

3. The Contractor shall also report in CARS the total Elder Abuse Prevention, Education and Training sessions and Elder Abuse Prevention, Education Materials from the Elder Abuse Prevention Quarterly Activity Report.

ARTICLE III. APPEAL PROCESS

A. The Contractor may appeal an adverse determination as defined in Title 22 CCR, Section 7702 using the appeal process established by the CDA in Title 22 CCR, Sections 7700 through 7710. Such appeal shall be filed within 30 days of CDA's notice of adverse determination.

B. Subcontractors of the Contractor may appeal the Contractor's final adverse determination relating to Title III and VII programs using the appeal process established in Title 22 CCR, Sections 7700 through 7710.

C. Any dispute regarding an existing direct service contract or the procurement of the direct service contract shall be resolved locally, consistent with W & I Code Section 9535(k), and as specified in the procurement documents and contracts of the Contractor.

D. Appeal costs or costs associated with any court review are not reimbursable.

ARTICLE IV. TRANSITION PLAN

A. The Contractor shall submit a transition plan to the State within 15 days of delivery of a written Notice of Termination (Pursuant to Article XII, Exhibit D of this Agreement) for a service funded either by Title III or Title VII. The transition plan must be approved by the State and shall at a minimum include the following:

1. Description of how clients will be notified about the change in their service provider

ARTICLE IV. TRANSITION PLAN (Continued)

2. A plan to communicate with other organizations that can assist in locating alternative services

3. A plan to inform community referral sources of the pending termination of the service and what alternatives, if any, exist for future referrals

4. A plan to evaluate clients in order to assure appropriate placement

5. A plan to transfer any confidential medical and client records to a new contractor

6. A plan to dispose of confidential records in accordance with applicable laws and regulations

7. A plan for adequate staff to provide continued care through the term of the contract [Title 22, Section 7206(e)(4)]

8. A full inventory and plan to dispose or, transfer, or return to the State all equipment purchased during the entire operation of the contract

9. Additional information as necessary to effect a safe transition of clients to other community service providers

B. The Contractor shall implement the transition plan as approved by the State. The State will monitor the Contractor's progress in carrying out all elements of the transition plan.

C. If the Contractor fails to provide and implement a transition plan as required by Article XII of Exhibit D of this Agreement, the Contractor will implement a transition plan submitted by CDA to the Contractor following the Notice of Termination.

ARTICLE V. OBLIGATIONS UPON TERMINATION SPECIFIC TO THE OMBUDSMAN PROGRAM

A. Transition of Local Ombudsman Services

1. The Contractor shall, upon notice of termination of Ombudsman services, do the following:

a. If Ombudsman services are subcontracted, notify CDA in writing within three working days of a subcontractor's intent to terminate its contract to provide Ombudsman services

ARTICLE V. OBLIGATIONS UPON TERMINATION SPECIFIC TO THE OMBUDSMAN PROGRAM (Continued)

b. Within one working day, notify CDA of any change in local Ombudsman services

2. The Contractor shall, upon notice of termination, implement one of the following options to ensure continuity of Ombudsman services in accordance with federal and State mandates:

a. Continue the provision of mandated Ombudsman services as a subcontract with a provider selected in response to a Request for Proposal. The Contractor shall require the subcontractor to utilize experienced State Certified Ombudsman Representatives and a local Program Coordinator selected by the subcontractor and designated by the State Ombudsman as the local Ombudsman Program Coordinator. The Department shall allow the contractor up to 180 days to transition services to a new subcontractor

b. Continue the provision of mandated Ombudsman services as a direct service the contractor, utilizing experienced State Certified Ombudsman Representatives and a local Program Coordinator selected by the Contractor and designated by the State Ombudsman as the local Coordinator. The Department shall allow the contractor up to 180 days to transition services from the subcontractor to the contractor

B. Transition Plan

1. The Contractor shall submit a Transition Plan within 15 days from delivery of the following:

a. Written notice to the Contractor of the subcontractor's intent to terminate Ombudsman services

b. Written notice to the subcontractor of the Contractor's intent to terminate the subcontract for Ombudsman services

c. Written notice to the Contractor of the State Termination of the Contract, in whole or, from time to time, in part related to the provision of Ombudsman services

2. The Contractor shall identify in the Transition Plan which option it has chosen to ensure that there will be no break in continued services, based on the following:

ARTICLE V. OBLIGATIONS UPON TERMINATION SPECIFIC TO THE OMBUDSMAN PROGRAM (Continued)

a. Continue the mandated Ombudsman provisions as a direct service of the Contractor, utilizing experienced State Certified Ombudsman Representatives and a Local Program Coordinator selected by the Contractor and designated by the State Ombudsman to represent the Local Ombudsman Program

b. Continue the mandated Ombudsman provisions as a subcontracted service with a subsequent provider selected in response to a Request for Proposals requiring the utilization of experienced State Certified Ombudsman Representatives, and designated by the State Ombudsman to carry out Ombudsman duties with respect to the planning or service area

3. The Transition Plan shall at a minimum include the following:

a. Details of how the Contractor shall maintain an adequate level of State Certified Ombudsman Representatives to ensure continuity of services during the transition to a subsequent Local Ombudsman Program

b. Details of how the Contractor shall notify all the impacted facilities and community referral sources of the change in the parties providing Local Ombudsman Program services

c. Details of how the Contractor shall deliver to the subsequent Local Ombudsman Program of a full inventory of updated confidential client records, public facility records, and records documenting Ombudsman certification and training

d. A description of how the subsequent Local Ombudsman Program will be assisted in assessing the status of all active clients records at the point of transfer to ensure timely continuation of Ombudsman services

e. A description of how residents and their families will be notified about the changes in their Ombudsman services provider

C. The Contractor shall implement the transition plan as approved by the OSLTCO. The OSLTCO will monitor the Contractor's progress in carrying out all elements of the Transition Plan.

ARTICLE V. OBLIGATIONS UPON TERMINATION SPECIFIC TO THE OMBUDSMAN PROGRAM (Continued)

D. If the Contractor fails to provide and implement the Transition Plan as required above, the Contractor agrees to implement a Transition Plan submitted by the OSLTCO to the Contractor. This Transition Plan may utilize State Certified Ombudsman Representatives from either the terminating subcontractor or from a neighboring Local Ombudsman Program.

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 ☐ Closed Session ☐ Informational

FROM: Inyo County Planning Department

FOR THE BOARD MEETING OF: September 4, 2012

SUBJECT: Correspondence to the State Mining and Geology Board

DEPARTMENTAL RECOMMENDATION: Review correspondence from the State Mining and Geology Board (SMGB) regarding the County's surface mining operations and the response from other counties to similar correspondence, and review draft correspondence from the Planning Director to SMGB in response, provide input, and authorize the Planning Director to sign.

SUMMARY DISCUSSION: The State Mining and Geology Board (SMGB) has submitted correspondence to the County expressing concern about potential conflicts of interest pertaining the County's surface mining operations and offering to assume inspection responsibilities for 12 mine identifications (ID) (refer to Attachment 3). The referenced operations entail the County's 12 pits that are primarily utilized to maintain County roads. Apparently, SMGB has transmitted similar correspondence to a number of other California counties, several of which have declined the offer (refer to Attachment 2). Staff has drafted correspondence (Attachment 1) responding to SMGB and declining the offer as well, and requests the Board's input and authorization for the Planning Director to sign.

ALTERNATIVES: The Board may consider directing staff to incorporate input and return with another draft at a future Board meeting. The Board may also consider directing staff not to respond to SMGB; this is not recommended since SMGB has indicated that it anticipates scheduling inspections for the County's mine IDs in the fall of 2012.

***OTHER AGENCY INVOLVEMENT*:** SMGB, California Office of Mine Reclamation, and other California counties

***FINANCING*:** General fund resources are utilized to monitor the County's surface mining operations under existing staffing levels. Significant resources could be necessary to fund SMGB inspections if the oversight responsibilities are transferred. Staff estimates that these costs could exceed $5,000 per mine ID, or more than $48,000 per year based on the current number of mine IDs operated by the County.

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.)*
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (M*ust be reviewed and approved by the auditor-controller prior to submission to the board clerk.)*
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)

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

Date: 8-28-12

Attachments

1. Draft Correspondence
2. Correspondence from Other Counties
3. SMGB Correspondence

September 4, 2012

Stephen M. Testa, Executive Officer
State Mining and Geology Board
California Department of Conservation
801 K Street, Sacramento, CA 95814

Mr. Testa:

I am receipt of your correspondence dated June 22, 2012 expressing concern about potential conflict of interest in Inyo County's mine operations. I concur with the attached responses to similar correspondence from you received by other California counties that your concern is unwarranted and that you have interpreted the subject regulations out of context. Contrary to your correspondence, it is appropriate for Inyo County to continue to conduct annual mine inspections for the mining operations listed. Therefore, I decline your invitation to schedule any inspections of these mining operations.

Thank you. If you have any questions, please contact me at (760) 878-0268 or email me at jhart@inyocounty.us.

Sincerely,

Joshua Hart, AICP
Planning Director

Attachments

cc: Board of Supervisors
Planning Commission
CAO
County Counsel
Public Works Department
Road Department
Regional Council of Rural Counties
California Association of Counties
County of Lassen
County of Mono
County of Trinity
County of Tehama
County of San Diego

Attachment 1

County of Lassen
221 South Roop St., Ste 4
Susanville, CA 96130
(530) 251-8333

County of Mono
Post Office Box 715
Bridgeport CA. 93517
(760) 932-5510

County of Trinity
11 Court St.
Weaverville, CA 96093
(530) 623-1217

County of Tehama
727 Oak Street
Red Bluff, CA 96080
(530) 527-4655

March 2, 2012

Stephen M. Testa
Executive Officer
State Mining and Geology Board
801 K Street, Suite 2015
Sacramento, CA 95814

VIA US MAIL and FACSIMILE
(916) 445-0738

RE: Inspection of County-Operated Surface Mines

Dear Mr. Testa:

The undersigned Counties have each received correspondence from your office asserting that California Code of Regulations, title 14, section 3504.5, subdivision (c) precludes County lead agencies from conducting Surface Mining and Reclamation Act (SMARA)[1] inspections of surface mines operated by other County departments, regardless of the functional separation between these departments or the measures taken to ensure impartiality. This novel assertion is unsupported by either the text of the regulation or its history, by the past or present practices of the Department of Conservation, or by the relevant provisions of SMARA – and the Department's recent efforts to enforce this new policy statewide, without due regulatory process, constitutes illegal underground rulemaking in violation of the Administrative Procedure Act (APA).[2]

The regulation in question provides that "[a] surface mine inspection shall not be performed by any person who holds a financial interest in or has been employed by the surface mining operation in any

[1] (Pub. Resources Code, §§ 2710 et seq.)

[2] (Govt. Code, §§ 11340 et seq.)

capacity, including as a consultant or as a contractor, during the year preceding the inspection."[3] SMARA generally defines "person" to include "any city, county, district, or the state or any department or agency thereof,"[4] but as with all of SMARA's definitions, this one applies only "[u]nless the context otherwise requires"[5] – and context unambiguously requires otherwise here. The plain language of the rule clearly contemplates conflicts of interest on the part of *individual inspectors* – not lead agencies themselves – as does the text of Public Resources Code section 2774, subdivision (b),[6] which the regulation was, by its own terms, intended to implement.[7]

Further, as you are certainly aware, the current version of Section 3504.5(c) was adopted in 2003, and has never previously been interpreted – by the Department or anyone else – in the manner you now advocate. There is good reason for this. The regulatory history makes it clear that this creative application was never contemplated or intended when the rule was adopted. The documents describing the purpose and effect of the regulation all refer solely ensuring that "the *inspector* has no conflicts . . ."[8] There is absolutely no hint of any effect upon the well-established practices of lead agencies inspecting County-operated mines. Moreover, the Notice of Proposed Rulemaking expressly asserted that the measure "does not impose any new mandates on local agencies" and "does not impose any additional cost obligations on local agencies . . ."[9] By contrast, your recent letters demand that lead agencies pay

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[3] (Cal. Code Regs., tit. 14, § 3504.5, subd. (c).)

[4] (Pub. Resources Code, § 2004; Cal. Code Regs., tit. 14, § 3501.)

[5] (Pub. Resources Code, § 2001.)

[6] The relevant portions of that statute provide that "[t]he lead agency may cause an inspection to be conducted by a state licensed geologist, state licensed civil engineer, state licensed landscape architect, or state licensed forester, who is experienced in land reclamation and who has not been employed by a surface mining operation within the jurisdiction of the lead agency in any capacity during the previous 12 months." (Pub. Resources Code, § 2774, subd. (b).)

[7] The Department's position also depends on the implicit assumption that each public entity constitutes a *single, indivisible* "person" for purposes of SMARA in general, and Section 3504.5 in particular. However, SMARA's own definition suggests otherwise. Public Resources Code section 2004 refers to constituent "department[s]" and "agenc[ies]," as well as the larger public entities of which they are part, within the definition of "person." The Department has identified no reason why the "person" operating the public surface mines in question must be the County as a whole, rather than (as more fits operational reality) the County *department* or *agency* actually engaged in such operation. That is certainly not the only legally tenable interpretation of Section 3504.5(c). In this regard, we note that while your letter of December 16, 2011 asserted that "[i]n its role as a SMARA lead agency, the SMGB does not inspect any surface mining operations on property owned or leased by the State of California . . .," this does not appear entirely accurate. Numerous marine sand mining operations are conducted on land owned by the State of California and leased to private operators, for which the Department (through SMGB) serves as lead agency and routinely conducts SMARA inspections. (See, e.g., SMGB Jan. 16, 2006 Agenda Item No. 9, SMGB Jan. 11, 2007 Agenda Item Nos. 6-7, and SMGB Jan. 14, 2010 Agenda Item Nos. 4-5.) The Department has never attempted to articulate why the State of California (unquestionably a "person" under SMARA) may conduct inspections of surface mines in which the State of California holds an interest, but that Counties may not. This logical discrepancy further suggests that the Department's new interpretation of Section 3504.5(c) is erroneous.

[8] (Mining and Geology Bd., Final Statement of Reasons for Cal.Code Regs., tit 14, §3504.5 (Dec. 2002) p. 1. See also Office of Administrative Law, Notice of Approval of Regulatory Action for Cal.Code Regs., tit 14, §3504.5 (Apr. 2003) ["This rulemaking action . . . provides that an inspection shall not be conducted by *someone* with a financial interest in the operation . . ."].)

[9] (Mining and Geology Board, Notice of Proposed Rulemaking for Cal.Code Regs., tit 14, §3504.5 (Mar. 2002) p. 1.)

thousands of dollars annually to the Department or consultants for performance of SMARA inspections, a mandate that appears nowhere in the regulation or its history.

Additionally, as indicated in San Diego County's letter dated September 8, 2011 (attached for your reference), SMARA grants lead agencies the authority to adopt ordinances regulating the permitting and inspection of surface mining operations within their jurisdictions. Each of the signatory Counties has adopted an ordinance providing for SMARA inspections to be conducted or arranged *by County staff.*[10] There is nothing in Section 3504.5(c) or SMARA itself suggesting either the authority or the intent to usurp the lead agency's responsibilities in this regard.

Finally, even if the Department had the authority to promulgate such a limitation upon lead agencies – which is not apparent – any such action would require compliance with the APA. Your correspondence with numerous Counties across the state, and your own presentations to the SMGB,[11] make it clear that the Department intends this to be a rule of general application, purportedly to implement the relevant provisions of SMARA.[12] The APA prohibits state agencies from taking such action by fiat, and instead requires an open and public process under which the propriety and legality of such proposed requirements may be determined, and a method of funding any resulting mandate upon local agencies may be identified. "Underground regulations" adopted without APA compliance are void and without legal effect.[13] The Department's present attempt to prohibit County lead agencies from inspecting surface mines operated by other County Departments plainly falls into this category, and these efforts are consequently improper.

For all of these reasons, the Counties signatory to this letter decline your invitation to have the Department conduct SMARA inspections at the Counties' expense (or to hire a rotating panel of consultants as suggested in recent correspondence). Rather, the Counties will continue their current SMARA inspection practices, which include strict separation between the Departments exercising lead agency functions and those operating surface mines, and effectively ensure the absence of any actual conflict. Any further efforts by the Department to implement or enforce the Department's new interpretation of Section 3504.5(c) may compel the Counties to take appropriate legal action, including submitting an underground regulation petition to the Office of Administrative Law and/or seeking appropriate declaratory and injunctive relief.

Please do not hesitate to contact any of us if you have further questions.

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[10] (Lassen County Code, § 9.60.110; Mono County Ord. No. 94-02; Trinity County Ord. No. 315, § 30.1, subd. (p); Tehama County Code, § 13.28.130.)

[11] (SMGB Sept. 8, 2011 Agenda Item No. 14.)

[12] (See Govt. Code, § 11342.600 ["'Regulation' means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure"]; § 11340.5, subd. (a) ["No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter"].) Of particular relevance here, the APA includes administrative directives that embellish or supplement existing duly adopted regulations – as the Department is unabashedly seeking here to embellish Section 3504.5(c). (*Union of American Physicians & Dentists v. Kizer* (1990) 223 Cal.App.3d 490, 501-502.)

[13] (*County of San Diego v. Bowen* (2008) 166 Cal.App.4th 501, 520; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 800.)

Very truly yours,

COUNTY OF LASSEN

By: _____

Title: _____

COUNTY OF MONO

By: _____

Title: _____

COUNTY OF TRINITY

By: _____

Title: _____

COUNTY OF TEHAMA

By: _____

Title: _____

ERIC GIBSON
DIRECTOR

County of San Diego

DEPARTMENT OF PLANNING AND LAND USE

5201 RUFFIN ROAD, SUITE B, SAN DIEGO, CALIFORNIA 92123-1666
INFORMATION (858) 694-2960
TOLL FREE (800) 411-0017
www.sdcounty.ca.gov/dplu

September 8, 2011

Mr. Stephen M. Testa, Executive Officer
Department of Conservation
State Mining and Geology Board
801 K Street, Suite 2015
Sacramento, CA 95814

STATE MINING AND RECLAMATION ACT (SMARA) INSPECTIONS
SAN DIEGO COUNTY

Dear Mr. Testa:

We are in receipt of your letter dated June 15, 2011 in which you state that there may be a potential conflict of interest concerning the inspection of eight surface mining operations in the County of San Diego and that such inspections should be performed by the State Mining and Geology Board (SMGB) staff. The County of San Diego (County) does not concur that Section 3504.5(c) of Title 14 of the California Code of Regulations prohibits its inspections of County owned and/or operated mine sites, and will continue to conduct the inspection of its mines.

We believe that the State regulations must be read in the context of the overall statutory framework of SMARA, which gives a lead agency the authority to adopt ordinances regulating the permitting and inspection of surface mining operations within its jurisdiction. San Diego County has adopted surface mining regulations within Chapter 7 of Title 8 of the County Code. Consistent with SMARA, Section 87.710 requires the County Official to complete an annual inspection of each surface mining site in the County, and specifies the remedies that are available if violations are found.

We appreciate the Department of Conservation's interest in our inspection program. We will continue to coordinate with and provide our completed inspection reports to the Office of Mine Reclamation. If you have additional questions about SMARA mine

inspections in San Diego County, please contact Jim Bennett, County Groundwater Geologist at (858) 694-3820 or jim.bennett@sdcounty.ca.gov.

Sincerely,

ERIC GIBSON, Director
Department of Planning and Land Use

cc: Jim Bennett, Department of Planning and Land Use
Mike Robinson, Department of Public Works

STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

801 K Street • Suite 2015 • Sacramento, California 95814

PHONE: 916 / 322-1082 • FAX: 916 / 445-0738 • TDD: 916 / 324-2555 • INTERNET: conservation.ca.gov/smgb

VACANT, CHAIR
BRIAN BACA, VICE CHAIR

TOM BARRY
JOHN LANE
CHARLIE WYATT

JELISAVETA GAVRIC
DAN REDING

June 22, 2012

VIA CERTIFIED MAIL: 7006 2150 0000 6804 8014

Joshua Hart, Director
Planning Department
County of Inyo
P.O. Box L
Independence, CA 93526

Re: Potential Conflict of Financial Interest Pertaining to the Conduct of SMARA Mine Inspections for Twelve Surface Mining Operations, County of Inyo

Dear Mr. Hart:

It has come to our attention through the Department of Conservation's Office of Mine Reclamation (OMR) that a potential conflict of interest may exist which contradicts Title 14, Division 2, Chapter 8, Subchapter 1, Section 3504.5(c) of the California Code of Regulations (CCR). Specifically, CCR Section 3504.5(c) states:

> *"A surface mine inspection shall not be performed by any person who holds a financial interest in or has been employed by the surface mining operation in any capacity, including as a consultant or as a contractor, during the year preceding the inspection."*

Based on a review of records maintained by OMR, the County of Inyo (County) maintains a financial interest either as a land owner and/or operator for the following surface mining operations:

- Diaz (CA Mine ID #91-14-0066)
- Lone Pine (CA Mine ID #91-14-0067)
- Independence (CA Mine ID #91-14-0068)
- Sunland (CA Mine ID #91-14-0069)
- Big Pine (CA Mine ID #91-14-0070)

- Tecopa Hot Springs (CA Mine ID #91-14-0071)
- Homewood Canyon (CA Mine ID #91-14-0077)
- Midway Pit (CA Mine ID #91-14-0078)
- Stockwell (CA Mine ID #91-14-0079)
- Papoose (CA Mine ID #91-14-0081)
- Tecopa Mixing Table (CA Mine ID #91-14-0082)
- Jashua (CA Mine ID #91-14-0125)

Should this be the case, then there is an apparent conflict of interest on the part of the County.

Assuming we have the foregoing facts correct, it would be inappropriate for the County to continue to conduct annual mine inspections for the above surface mining operations. Such inspections should be performed by State Mining and Geology Board (SMGB) staff, and upon acceptance by the SMGB, such inspection reports would be forwarded to the County. The County would be invoiced and responsible for the cost of conducting such inspections.

Please confirm that our understanding of the apparent financial interest held by the County for the above surface mining operations is correct. Should such information be correct, SMGB staff would anticipate scheduling a convenient time to conduct inspections during the fall of 2012.

On behalf of the SMGB, I would appreciate a prompt response. Should you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

Stephen M. Testa
Executive Officer

cc: Rick Thalhammer, Deputy Attorney General
Jim Pompy, Assistant Director, Office of Mine Reclamation
Bob Brown, Inyo County Road Department

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
21

☐ Consent ☒ Departmental ☐ Correspondence Action ☐ Public Hearing

☐ Scheduled Time for XX a.m. ☐ Closed Session ☐ Informational

FROM: Inyo County Planning Department

FOR THE BOARD MEETING OF: September 4, 2012

SUBJECT: Cost, Energy and Service Efficiencies Action Plan: DRAFT Energy Action Plan.

DEPARTMENTAL RECOMMENDATION:

Request the Board of Supervisors: Provide input to staff on the DRAFT Energy Action Plan.

SUMMARY DISCUSSION:

Planning Staff has worked with the consultant team Salas O'Brien to develop an Energy Action Plan (EAP). This EAP has been developed on the premise that the County recognizes the costs related to inefficient energy use and the advantages associated with energy efficiency. The County recognizes that improvements in energy efficiency decreases energy costs and increases productivity, which allows better customer service for its citizens. Inyo County also embraces the idea of energy efficiency as a means to greater energy independence in the US and that many small changes can add up to a large one. The County will leverage energy efficiency and conservation with the utility incentive programs available through various partners such as Southern California Edison, the California Energy Commission and Los Angeles Department of Water and Power. The primarily goal of the plan remains consistent with the County's existing Energy Conservation Policy, which sets a target to reduce energy usage 5%-10%, by setting the goal at 10%, and adds language to strive to meet this reduction by 2016. The Board received a presentation on the Energy Action Plan Template in April 2012, which was used to develop this plan.

The EAP provides an analysis of County facilities over 4,500 square feet, energy performance and observations from maintenance staff as to why the buildings are performing as they are. It also offers suggestions for improvements for better energy efficiency for these specific buildings as well as all County facilities in general.

The EAP outlines the policies, strategies and programs that will guide energy reduction and it will be a cost benefit driven program.

The Energy Action Plan:

- ✓ Establishes a long term vision and plan for energy efficiency in the County.
- ✓ Identifies the County's reduction goals and milestones.
- ✓ Provides policies and procedures the County can implement to assist in reducing energy.
- ✓ Offers strategies the County can use to assist in achieving energy reduction goals.
- ✓ Serves as an educational tool that can be used by other organizations.
- ✓ Records the baseline energy usage (kWh) at County facilities over 4,500 square feet.

- ✓ Displays the highest users (facilities) that the County can target for energy efficiency and the lowest users (facilities) to learn from, and encourage continued success.
- ✓ Presents potential funding mechanisms to complete energy efficiency projects.

ANALYSIS
The Energy Action Plan incorporates the policies developed in the policies and procedures reports for: Benchmarking, Advanced Program Code and Commissioning/Retro-Commissioning.

These policies include:

Benchmarking
Goal: Use the Energy Star Portfolio Manager as an energy use evalaution and benchmarking tool to help the County reduce its energy consumption.

Policy:

1. All county facilities over 4,500 sf will have an energy use and cost evaluation that will be used to establish a baseline for each facility.
2. County facilities that meet the criteria, of the Energy Star Portfolio Manager, will also receive a benchmark rating.
3. The baselines and benchmarks established with the Portfolio Manager will be used to set target energy use and costs reductions.
4. Annual reports will be created to track the progress from baseline conditions to current conditions.
5. The County may choose to apply for the Energy Star distinction for buildings that qualify.

Advance Program Code
Goal: Advance Program Code policies will be adopted to ensure that new and existing county buildings function in a manner that promotes energy efficiency, and optimizes equipment operation, which will lead to cost savings.

Policy: Energy reduction programs and strategies will be evaluated for fiscal soundness. If a particular program or strategy has an obvious long-term cost savings benefit to the County it will be considered. This analysis will be based on the cost of incorporating energy reduction strageies and materials in a project compared to the estimated savings these strategies and materials will provide, and will be performed during the project planning stage. An energy efficiency project should result in enough savings to eventually cover its initial costs. The acceptable payback period is about 10 years, which assumes that annual cost savings due to the project are about 10%. Programs and strategies that do not show the ability to save the County money in energy costs may not be acceptable even if they show the abilty to reduce energy use. The final determinations will be made by the Board of Supervisors.

1. Energy Star:
    a. The county will use the Portfolio Manager rating system of 75-points or higher for its facilities.

b. County buildings will be reevaluated every year for performance and rating.

c. The county will evaluate facilities that rate 75-points or higher on the Portfolio Manager system and depending on the budget, may apply for Energy Star certification.

d. Buildings that cannot be benchmarked using Portfolio Manager will be evaluated by energy use per square foot.

2. CALGreen
The County's current building stock is made up of older buildings. Buildings that were evaluated with the Portfolio Manager have a building date range from 1921 to 2000. The median built date for these buildings is 1970. Due to the age of the County's building stock, and the lack of plans for new County builidings, as well as very limited funding, the County has chosen to update its facilties by first following the mandatory Title 24 part 6, California Energy Code and part 11 Califonia Green Building Standards (CALGreen) requirements, as both were adopted/updated after all of these facilities were built. As individual energy reduction projects are completed and are up to current standards, additional voluntary measures will be considered.

   a. New building and the remodeling/upgrading of existing County facilities, as they are programed, will be conducted with energy use and building standards based on mandatory Energy and CALGreen codes. The County may also choose to evaluate these projects based on costs that are derived from a plans and specifications analysis with both mandatory requirements and with voluntary Tier I requirements. If the Board of Supervisors finds that the likely higher costs of voluntary Tier I standards, provides energy cost savings that justify the higher costs to the building or upgrade plans, they may choose to approve it.

   b. Once a new building is completed, or an existing one is upgraded, and after at least one full year of operation, it will be analyzed with Portfolio Manger. If, for the specific prior project, the use of CALGreen mandatory standards did not achieve a subsequent 75-point rating from the Portfolio Manager, then voluntary Tier I standards, based on CALGreen codes, will be considered for the next project (voluntary Tier I standards require a 15% higher energy efficiency rating as mandatory). This consideration will be based on costs that are derived from a plans and specifications analysis with both mandatory requirements and with voluntary Tier I requirements. If the Board of Supervisors finds that the likely higher costs of voluntary Tier I standards, provides energy cost savings that justify the higher costs to the building or upgrade plans, they may choose to approve it. The Board may also choose to analyze projects with CALGreen volunatry Tier II standards (voluntary Tier II standards require a 30% higher energy efficiency rating than mandatory) to achieve even higher energy performance/cost savings.

3. County planning and public works staff will research and apply for grants to fund energy reduction programs.

4. The county will provide an information based program to the community providing resources and infromation about third party rating systems:

5. The County will publish information on Energy Star rankings, comparisons, and on energy star rated products.

6. The County will provide links on their website to resources for rebates and other energy based programs.

7. The County may consider an incentive program for private projects that try to meet the 15% better than mandatory requirements to be consistent with voluntary CALGreen Tier I standards.

Commissioning/Retro-Commissioning (CX/RCx)

Goal: Commissioning and retro-commissioning policies will be adopted to ensure that county buildings function in a manner that promotes energy efficiency, cost savings, and optimizes equipment operation and occupant comfort. These findings will help to identify ways to ensure County facilities operate efficiently, which will lower overall energy use and provide cost savings to the county.

Policy:

Commissioning and retro-commissioning will be conducted, as funding is available, on County facilities to ensure that they function in a manner that promotes energy efficiency, cost savings, and optimizes equipment operation and occupant comfort. Based on the results of commissioning and retro-commissioning, the County's facilities may be updated to operate more efficiently, which will lower overall energy use, increase occupant comfort and productivity and provide cost savings to the county.

1. New facilities may be commissioned and existing County facilities retro-comissioned as appropriate. The basis for comissioning/retro-comissioning may be one or more of the folowing:

    a. The relative building energy efficiency (benchmark comparison). The County has established a 75-point rating from the Energy Star Portfolio manager as its facilities goal.

    b. The size of a specific building (buildings should be 10,000sf for CX/RCx, per CALGreen).

    c. The total energy use or cost of a specific building.

    d. The number of comfort (or other) complaints from occupants.

    e. As a part of a major renovation of a specific buidling.

2. Retro-commissioning will be based on mandatory CALGreen guidelines. Buildings that show the least efficiency through benchmarking will be identified for retro-commissioning. The depth and timing of retro-comissioning will be based on the above criteria and on available funding.

3. New County owned or County occupied buildings will be considered for comissioning, as funding allows, prior to occupancy and/or as a part of the design process. Commissioning of planned new buildings will be based on the mandatory CALGreen standards.

4. New County buildings may be commissioned, during the planning and construction stages, as funding allows.

5. Exsisting buildings, and new facilities built after 2013, may be considered for retro-commissioning at least once every 10-years. Results will be reported to the County as a part of the continuous benchmarking and reporting policy.

6. Depending on funding availability, the County will implement appropriate system modifications and efficiency projects identified during commissioning.

Other Policies, Projects, and Programs

- ✓ Continue the cool roof program, by replacing roofs, as funding is available, with cool roof systems.
- ✓ Continue the window replacement program, by replacing windows, as funding is available, with energy efficient models.
- ✓ Continue the lighting project at all County facilities, by replacing bulbs, as funding is available, with more energy efficient models.
- ✓ Continue an occupancy sensor power strip program.
- ✓ Equip all facilities with programmable thermostats to ensure that heating and cooling is regulated properly.
- ✓ Consider the energy efficiency/costs of a building before leasing.
- ✓ Continue to pursue funding for roof-top solar projects and look into net-metering programs offered by SCE and LADWP for these projects.
- ✓ When possible, combine office spaces into a central, energy efficient, facility.
- ✓ Evaluate whether a compressed work schedule program, such as a 4-10 work week, would be feasible for a continued high level of service provision and County employees.
- ✓ Analyze the possibility of opening customer service locations one day a week in Lone Pine, Bishop and in Southeast County to reduce the need for customers to travel to Independence and cut down on vehicle miles. Allow County employees who live in these areas to work at the service locations, to cut down on their travel miles, as well.
- ✓ Conduct further review of the Green House Gas analysis and the costs the County incurs for its current vehicle fleet. As vehicles need to be replaced consider upgrading the fleet to include economy, highbred and electric vehicles.
- ✓ Set a goal to have a specific percentage of the vehicle fleet, based on fuel costs savings, be economy, highbred and electric vehicles.
- ✓ Continue to evaluate the possibility of setting up electric vehicle charging stations at facilities throughout the County. This would provide the powering for any future electric vehicles the County adds to its fleet, as well as, provide a valuable service to Inyo County citizens and visitors.
- ✓ Design a program and scheduling scheme for ride sharing between employees for work related trips. This program could be as simple as leaving designated, fuel efficient, vehicles at county facilities and setting up an online signup sheet.
- ✓ Encourage employees who take vehicles home to use the most fuel efficient available.
- ✓ Evaluate the feasibility of setting up a funding program to pay for future energy efficiency projects with the savings from completed projects.
- ✓ Consider setting up a revolving loan program for employees to buy computers and eventually set up a system where employees can access the County system, allowing them to work from home. This can provide the opportunity to cut back on vehicle travel. It can also allow for continued work and communications during emergencies.
- ✓ These polices should be reevaluated annually, along with the yearly energy use analyses by planning and public works staff to see if they are achieving the County's energy reduction goals. Any proposed policy adjustments will need to be considered by the Board of Supervisors.

The DRAFT Energy Action Plan has been sent to the project stakeholders for review and comment. The stakeholders have had no substantive comments to date. Staff held a meeting with two staff members of the Big Pine Paiute Tribe on August 8, 2012. The Big Pine Paiute Tribe Plans to develop an Energy Action Plan for their facilities. They had no comments about the draft Plan. Staff provided a training session for them on the use of the Portfolio Manager. Staff presented the Energy Action Plan to the Bishop City Council on August 13, 2012. The City of Bishop intends to develop an Energy Action Plan for their facilities using the County's as a model. Council members were very interested in the LED lighting program that Inyo County public works staff is currently working on. They had no substantive comments on the draft Energy Action Plan for staff. Staff also held a workshop with the Inyo County Planning Commission on August 22, 2012 and presented the draft Energy Action Plan. The Planning Commission was interested in the results from the Portfolio Manager, primarily why the juvenile detention center had the poorest energy performance. They were also curious if energy reduction projects would be done by County maintenance staff or if they would be contracted out, and if, in general, these types of projects would require specialized training. The Planning Commission had no substantive comments for staff about the Energy Action Plan.

NEXT STEPS:

Staff has scheduled presentations of the draft plan for:

- The Big Pine Civic Club on September 10th.
- Inyo Associates on September 17th.
- The Bishop Chamber of Commerce on September 20th.

Staff will also remain available for any other groups that request presentations of the Plan. Comments that are received will be considered and the Plan will be updated as appropriate. The Final version of the Energy Action Plan will be sent to Southern California Edison staff on September 17th, although comments received after may still be included. The Final version will be presented to the Board of Supervisors for approval on October 9, 2012. Staff will also be developing an Energy Reduction and Climate chapter for the General Plan that will focus on policies for the community. These will be based on the results and policies developed in this Energy Action Plan for County facilities. The General Plan chapter will be completed in time for the General Plan update that is currently in process.

ALTERNATIVES:

Direct staff to change the policies developed in the Policy and Procedure reports, and use these to update the Energy Action Plan.

OTHER AGENCY INVOLVEMENT:

Other local agencies are participating as stakeholders in the process, currently the City of Bishop and the Big Pine Paiute Tribe plan to develop their own Energy Action Plans.

FINANCING:

This project is being funded by Southern California Edison under the auspicious of the California Public Utilities Commission.

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.)*
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (M*ust be reviewed and approved by the auditor-controller prior to submission to the board clerk.)*
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)

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

Date: 8-28-12

Attachments:

A. DRAFT Energy Action Plan.
B. DRAFT Benchmarking Policy and Procedures report.
C. DRAFT Advanced Program Code Standards Policy and Procedures report.
D. DRAFT Commissioning and Retro-Commissioning Policy and Procedures report.
E. DRAFT Greenhouse Gas Emissions report.

Attachment A

Draft Energy Action Plan

Strategic Plan Task 4.1.2: Deliverable 3.B.3

Funded by:
Southern California Edison Company
Local Government Strategic Plan Strategies Program

2010 – 2012 Program Period
under the auspices of the California Public Utilities Commission

Prepared for:

Inyo County, California
PO Drawer L, 168 North Edwards Street
Independence, California 93526

Prepared by:

Salas O'Brien
305 South 11th Street
San Jose, California 95112, and

The Inyo County Planning Department
PO Drawer L, 168 North Edwards Street
Independence, California 93526

DRAFT

July 2012

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EXECUTIVE SUMMARY

The County of Inyo recognizes the costs related to inefficient energy use and the advantages associated with energy efficiency. The County recognizes that improvements in energy efficiency decreases energy costs and increases productivity, which allows better customer service for its citizens. Inyo County also embraces the idea of energy efficiency as a means to greater energy independence in the US and that many small changes can add up to a large one. The County will leverage energy efficiency and conservation with the utility incentive programs available through various partners such as Southern California Edison, the California Energy Commission and Los Angeles Department of Water and Power.

This Energy Action Plan (EAP) outlines the strategies and programs that will guide energy reduction. The EAP will be a cost benefit driven program.

The Energy Action Plan:

- ✓ Establishes a long term vision and plan for energy efficiency in the County.
- ✓ Identifies the County's reduction goals and milestones.
- ✓ Provides policies and procedures the County can implement to assist in reducing energy.
- ✓ Offers strategies the County can use to assist in achieving energy reduction goals.
- ✓ Serves as an educational tool that can be used by other organizations.
- ✓ Records the baseline energy usage (kWh) at County facilities over 4,500 square feet.
- ✓ Displays the highest users (facilities) that the County can target for energy efficiency and the lowest users (facilities) to learn from, and encourage continued success..
- ✓ Presents potential funding mechanisms to complete energy efficiency projects.

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SECTION 1 – INTRODUCTION

Purpose – The purpose of this document is to outline a strategy to reduce energy use and costs throughout the County of Inyo.

Goals – The County of Inyo aims to:

a. Understand and manage energy throughout the County and its facilities.
b. Raise consciousness of County staff and all occupants of County facilities relative to energy use and energy efficiency.
c. Deliver education and outreach to the community focusing on energy efficiency.
d. Remain consistent with the County's existing Energy Conservation Policy, which sets a target to reduce energy usage 5%-10% and strive to meet this reduction by 2016.
e. Once this target is met, evaluate whether to set a higher target.

Energy Efficiency and Cost Savings

Reducing energy use in facilities can significantly reduce the cost to operate and maintain them. The Center for Sustainable Energy, California[1] states that the benefits of energy efficiency include:

- ✓ Reducing operating costs.
- ✓ Lowering maintenance costs.
- ✓ Extending the life of equipment.
- ✓ Enhance indoor air quality.

California has set state standards of energy efficiency through Title 24[2] and CALGreen but encourages local governments to exceed the required standards. The County of Inyo has created a set of policies that focus on programs to promote energy reduction at its facilities and realize energy cost savings. Once these policies are approved by the Board of Supervisors, detailed implementation plans can be created along with distribution materials to inform internal and external stakeholders about the program and its associated impacts.

1.1 Energy Planning and Projects in the County of Inyo

General History and Energy Efficiency Projects:

- ✓ ***Energy Conservation Policy***
  In 2001 the Inyo County Board of Supervisors adopted an Energy Conservation Policy that included a goal to reduce energy use at county facilities from 5%-10% during the following 12 months. Although this goal was not revisited to see if it had been met, the Board of Supervisors agreed to have the policy recirculated in 2005, indicating their commitment to energy reduction.

- ✓ ***Renewable Energy Ordinance***
  In August 17, 2010, the Board of Supervisors of the County approved Title 21 of the Inyo County Code to encourage and regulate the development of renewable energy resources within Inyo County.

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[1] Energy efficiency, (n.d.). *California Center for Sustainable Energy.* Retrieved March 2, 2012, from http://energycenter.org/index.php/technical-assistance/energy-efficiency

[2] Title 24 is the California Building Standards code and is explained in greater depth later in this document.

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✓ ***Death Valley Solar Projects***

Death Valley National Park has installed PV for use at all the park's facilities and is in the process of connecting to California's electric grid. Xanterra's Furnace Creek Resort located in Death Valley has installed a PV system that provides the electricity for all of its facilities, including the historic the Inn at Furnace Creek, the Ranch at Furnace Creek, Furnace Creek Golf Course, and employee offices and housing.

✓ ***Brightsource Energy, LLC Solar Projects***

Companies affiliated with Brightsource Energy, LLC, have proposed two solar thermal power plants in the Charleston View area, in southeast Inyo County. Each facility will consist of an array of mirrors situated around an approximately 700-foot tower accommodating a boiler and related facilities. The mirrors will reflect sunlight to the boiler at the top of the tower, and heated water from the boiler will circulate to a generating station.

✓ ***Window Replacement***

Recently, the County upgraded all the windows at the Water Department building in Independence with energy efficient models. The window replacement project was funded by the water department from the water department budget.

✓ ***Roof Replacement***

A cool roof installation was completed for the following facilities:

- Annex Building Roof – completed a roof replacement in 2011.
- Admin Building – added a cool roof elastomeric application.
- Statham Hall – completed a cool roof coating in 2006.

Cool roofs reflect and emit the sun's heat back to the sky instead of transferring it to the building. Because cool roofs reduce air-conditioning use during the day's hottest periods, the associated energy savings occur when the demand for electricity is at its peak.

✓ ***Occupancy Sensor Power Strips***

16 smart plug occupancy sensor power strips were installed at Inyo County facilities that are served by SCE. This program was funded by the California Public Utilities Commission (CPUC) and implemented by the Eastern Sierra Energy Initiative. These devices use infrared sensors to detect motion. When a workspace is unoccupied for 30-minutes the power strip shuts off leaving power to only the devices that need it.

✓ ***Small Business, Direct Install Programs***

Each business received, for free, an energy use evaluation, up to $10,000 of equipment and the actual installation. The program provided 170 installs in Inyo County, including Bishop, and reported a savings of 528,905 kilowatt hours on an investment of $235,701. This program was funded by the CPUC and implemented by SCE and the Eastern Sierra Energy Initiative.

✓ ***Lighting Replacement***

The County is currently undertaking an energy efficiency upgrade which will include the removal and disposal of existing lighting system components and replacement with new energy efficient fixtures and components. It consists of the removal and replacement of existing T-12 fluorescent fixtures and tubes and replacement with T-8 tubes and fixtures Funding was provided by the California Energy Commission (CEC) through its Energy Efficiency Block Grant.

✓ ***Inyo County's Rooftop Solar Project***

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Presently, the County is working on funding opportunities for a rooftop solar project for the Annex building and Courthouse property, located in Independence. The project will include Photovoltaic panels on the ground, as well on roofs.

- ✓ ***Comprehensive Mobile Home Program (CMHP)***
  Currently, assessment and installations of water and energy saving products will be provided to mobile homes. These products include: low-flow showerheads, faucet aerators, and HVAC fan motor upgrades. The installation goal is about 100 installations for Inyo County and the City of Bishop. This program is being funded by the California Public Utilities Commission (CPUC) and implemented by the Eastern Sierra Energy Initiative and Synergy Companies.

- ✓ ***Community Development Block Grant (CDBG) – Clean Air Projects Program (CAPP)***
  The County is in the process of receiving money from the CDBG CAPP program. This money is unrestricted in the types of clean air projects it can be used for, including energy efficiency projects. Projects proposed for this funding include, HVAC upgrades at the Annex building in Independence, Statham Hall in Lone Pine and the Legion Hall in Independence. These upgrades are expected to have a payback time of 5-7 years and could result in up to 20% reduction in energy use costs (based on savings for the Annex building).

- ✓ ***LED Street Light Replacement***
  The County Public Works department is presently working with LADWP and the Lighting Districts of Big Pine, Independence and Lone Pine to update existing street lights with LED bulbs. This project is currently in the preliminary planning stages and the lighting will be funded by the capital improvement funds of the individual lighting districts. The actual work will be performed by LADWP staff.

- ✓ ***Analysis of County Vehicle Fleet***
  The office of the County Administrator has begun an analysis of the County's vehicle fleet. This will include a study of fuel/energy cost savings options.

1.2 Other Agency Activities, Goals, and Standards

In addition to energy policies, and the standards and goals developed in this Energy Action Plan, there are numerous activities, goals and standards at the Federal, State, Local, and Utility level. These include:

State Of California

- ✓ **Assembly Bill 32** encourages local governments to reduce greenhouse gas emissions to 1990 levels by 2020 (about 15% reductions). The California Air Resources Board (ARB) partnered with the California Climate Action Registry (CCAR), The Climate Registry (TCR), and Local Governments for Sustainability (ICLEI) to create a set of methodologies and data sources to inventory GHG emissions and to quantify the impact of programs implemented by local governments.

- ✓ **Title 24** requirements were established to reduce energy consumption throughout California. This includes keeping equipment and technology updated to increase efficiency. Many local governments are establishing "reach codes" to exceed Title 24 Requirements by a certain percentage.

- ✓ **CALGreen:** The 2010 California Green Building Standards Code (CALGreen) became effective January 1, 2011. There are both mandatory and voluntary measures for residential

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and nonresidential buildings. The voluntary measures have two "tiers" of standards that local governments can require or base their standards on.

- ✓ **Senate Bill X 1-2** The California Renewable Energy Resources Act will require all California electricity providers to reach at least 33% renewable sources by 2020 while controlling how this will impact rates. This will involve placing limits on the cost of renewables. The bill will also "streamline" permitting for renewable energy projects.

Local Utilities

- ✓ **Southern California Edison (SCE)** is in the process of conducting strategic plan activities in relation to energy efficiency specifically related to local governments. SCE is funding multiple projects throughout California to promote long-term, sustainable changes.

Local Agencies

- ✓ **Mammoth Lakes Sustainable Communities Planning Grant & Incentives Program** will update the town's zoning code to incorporate the recent changes in the General Plan which encourage "smart growth and sustainability." Although this is in a separate county, Mammoth Lakes has adopted a procedure to allow for various incentives in exchange for provision of community benefits. Some incentives include financial incentives such as rebates of planning fees, incentives in regards concessions to requirements of building envelopes, height, and square footage.

1.3 General Approach

Any Energy Action Plan requires a wide range of strategies to reach the intended goals. After reviewing the annual energy costs of the organization's facilities, the County has decided to take the steps described below to reach these goals.

a. Continue to use the Energy Star Portfolio Manager, utility manager system, to track and analyze energy use.
b. Determine how and where energy is being consumed throughout County facilities.
c. Establish benchmarks with the Portfolio Manager and set goals based on the Energy Star rating system.
d. Document and publish baseline energy use and provide updates on an annual basis.
e. Maintain the website that has been created for the Cost, Energy and Service Efficiencies Action Plan to provide information on programs and incentives for energy reduction in residential and commercial facilities.
f. Implement the policies that have been developed as part of this planning process to reach energy reduction goals.
g. Continue to hold meetings with the Planning Commission, Board of Supervisors and the Boards and Commissions of Inyo County entities and project stakeholders to review the progress in reaching energy reduction goals and refine them as needed.

SECTION 2 – COUNTY OF INYO'S ENERGY USE

The County has evaluated the level of current energy use at its facilities. This information was used to develop the policies and implementation strategies to reduce energy use. This section describes the process that was used to acquire past and current energy data to identify the facilities with the greatest energy usage.

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2.1 Utility Manager System

Purpose – The key to success in managing energy use for the County is the implementation and maintenance of a Utility Manager System (UMS). The UMS provides a consistent platform to evaluate energy use and cost patterns of facilities. The purpose of the utility manager is to provide efficient access to the actual, on-going, energy use at specific County facilities. Objectives of this program are to:

a. Develop energy benchmarks[3] for each facility.
b. Track energy use on a continuous basis and summarize on an annual basis.
c. Compare energy benchmarks to other facilities and to other energy industry standards.
d. Measure success in reducing energy use.
e. Afford easy access to the information in order to integrate energy consciousness into the ongoing actions and activities of the County and its stakeholders.

Description – After reviewing several utility manager systems, the County chose the Energy Star Portfolio Manager (ESPM). It is a free online program that is currently being used to track Inyo County's energy use. Data for facilities that get electricity from Southern California Edison (SCE) is automatically entered each month. Data for facilities that get electricity from the Los Angeles Department of Water and Power (LADWP) and the data for propane gas (Amerigas) is entered manually. Buildings are then compared to each other with respect to various metrics used to monitor energy consumption and energy efficiency and can also be compared to similar buildings throughout the country, as well as, receive an "Energy Star Rating." If this rating is above 75, the building is considered highly efficient and qualifies to receive energy star recognition.

Why Energy Star Portfolio Manager? – The ESPM is free, and is accessible to anyone or any organization through easy, but password protected internet access. It is also well maintained and well supported by the US Environmental Protection Agency. ESPM support includes on-line training documents and an account representative available through email or phone. Like any software system, it requires dedicated time to be implemented to its highest and best potential. Once setup, the ESPM is fairly simple and straight forward, making it easier for other local entities to follow the County's lead in Energy planning.

2.2 County of Inyo's Baseline Energy Use

Annual Energy costs

It is important to identify where and how energy is being consumed, in order to evaluate which facilities offer the highest potential to reduce energy use and save money. To accomplish this, the first step is to identify the specific County facilities to be evaluated. Then, obtain the utility bills for all of the energy use at each of the target facilities (electricity, gas, propane, etc.).

Currently, the County purchases energy from the following entities:

- ✓ Southern California Edison and Los Angeles Department of Water and Power (LADWP) provide electricity.
- ✓ Amerigas provides propane.

[3] Energy Benchmarking is the process of comparing energy use metrics of a building against similar facilities to help understand the relative energy efficiency of the building.

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- ✓ The County also uses significant gasoline and diesel in the motor pool and other vehicle fleets.

Table 1 shows the costs of annual energy use for County facilities by electricity and propane gas. In developing Table 1, the County is establishing a baseline from which all future energy efficiency will be compared.

Table 1. Gross Annual Energy Cost for Inyo County Facilities
All benchmarked county facilities (SCE & DWP Accounts)

Year	Electricity Costs	Propane Costs	Gas & Diesel Costs	Total Energy Costs
2009*	$ 40,870	$ -	$ -	$ 40,870
2010*	$ 275,097	$ 55,913	$ -	$ 331,010
2011	$ **325,683	$ 137,455	$ 847,092	$** 1,310,230

**Partial: Do not have data for all facilities, vehicles, and months.*
*** Bishop Library costs estimated.*

Table 2, below, illustrates the costs, shown in Table 1, for 2011 including the vehicle fleet, broken down by fuel type. The table illustrates the percentage spent on gas versus electricity.

Table 2. 2011 Total Inyo County Energy Usage
All benchmarked county facilities (SCE & DWP Accounts)

Energy Type (Unit)	Annual Consumed	Annual kBtu	Annual Cost	Percent of Total Facility Cost
Electricity (kWh)	2,197,000	7,496,470	$ 320,420	25%
Propane (Gallons)	72,567	6,712,429	$ 137,969	11%
Unleaded (Gallons)	189,847	21,642,555	$ 665,733	51%
Diesel (Gallons)	47,197	6,112,012	$ 181,359	14%
TOTALS	**N/A**[4]	14,208,900	$ 458,388	100%

Through the Energy Star Portfolio Manager and development of Tables 1 and 2, the County has defined the baseline year of 2011. It was developed by using 12 months of energy use data.

2.3 Where Energy is Consumed

Table 3 illustrates the electricity use at individual facilities. It shows both the total usage and the use per square foot. The use per square foot is included to normalize each building, making them comparable, and highlighting the buildings that are the least efficient. This chart also highlights the most efficient buildings.

[4] This column cannot be summed the since the units of electricity, propane, gas and diesel are different

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Table 3. 2011 Inyo County Energy Usage by Location				
Facility	Use per square foot ($/sf)	(kBtu/sf)	Total Energy Usage (kBtu)	Annual Cost
Juvenile Detention Center	$4.63	172.9	1,668,532	$ 45,348
County Services Bldg. (S. St)	$3.64	74.5	412,499	$ 20,106
Courthouse & Annex	$3.45	115.3	4,108,024	$ 124,480
HHS - Grove St Bishop	$3.41	N/A	N/A	$ 29,527
Bishop Senior Center	$3.41	105.6	528,035	$ 17,777
Inyo County Jail	$3.18	112.7	408,9643	$ 115,041
Administration - Bishop	$2.67	48.4	253,027	$ 14,122
Administration - Indy	$2.06	36.3	191,742	$ 11,068
Eastern California Museum	$1.94	48.4	284,828	$ 10,785
HHS & Probation (Main St.)	$1.81	38.7	334,518	$ 15,413
Road Shop Independence	$1.59	57.1	650,398	$ 18,745
Water Department Building	$1.51	39.7	272,270	$ 10,863
Airport Terminal	$1.40	N/A	N/A	$ 7,034
Big Pine Legion Hall	$1.00	37	210,690	$ 5,360
Bishop Library/Offices	$0.58	54.1	281,768	$ 2,840
Airport Hangers 1, 4, 6, 7, 8	$0.16	6.6	387,439	$ 9,879

Table 4 illustrates the costs associated with the County vehicle fleets. This data is taken form the fiscal year (FY) 2010-2011.

Table 4. Inyo County Vehicle Fleet FY2010-11				
Fleet	Unleaded (gallons)	Deisel (gallons)	Cost	Percentage of Total Vehicle Cost
Waste Management	*34,687**	N/A	$ 123,000	15%
Road Department	25,186	47,197	$ 272,342	32%
Motor Pool	129,974	N/A	$ 451,750	53%
TOTALS	38,160	47,197	$ 847,092	100%

** This number was estimated based on total cost and average gasoline rate per gallon.*

Figures 1a and 1b illustrate the annual electricity use by the individual facilities. It was generated using the Energy Star Portfolio Manager.

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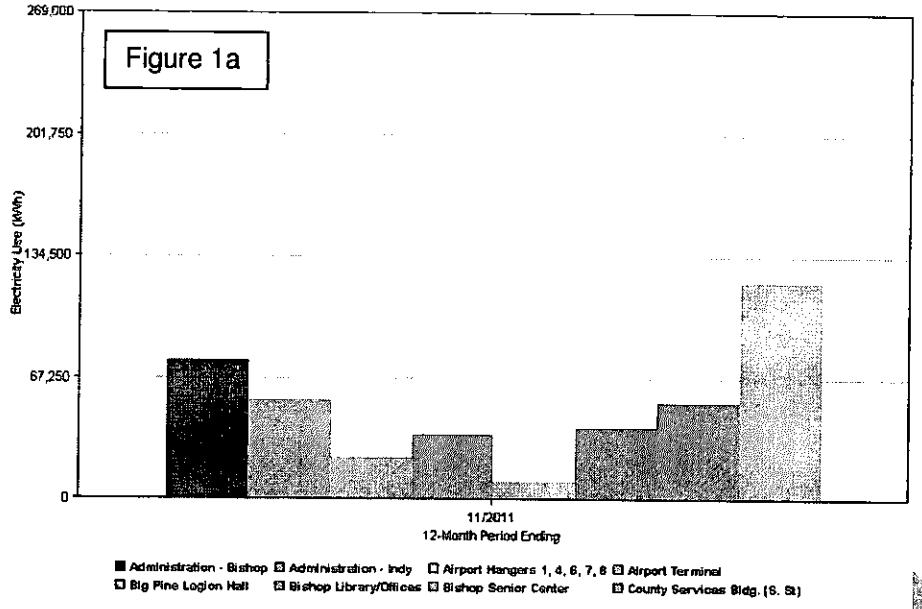
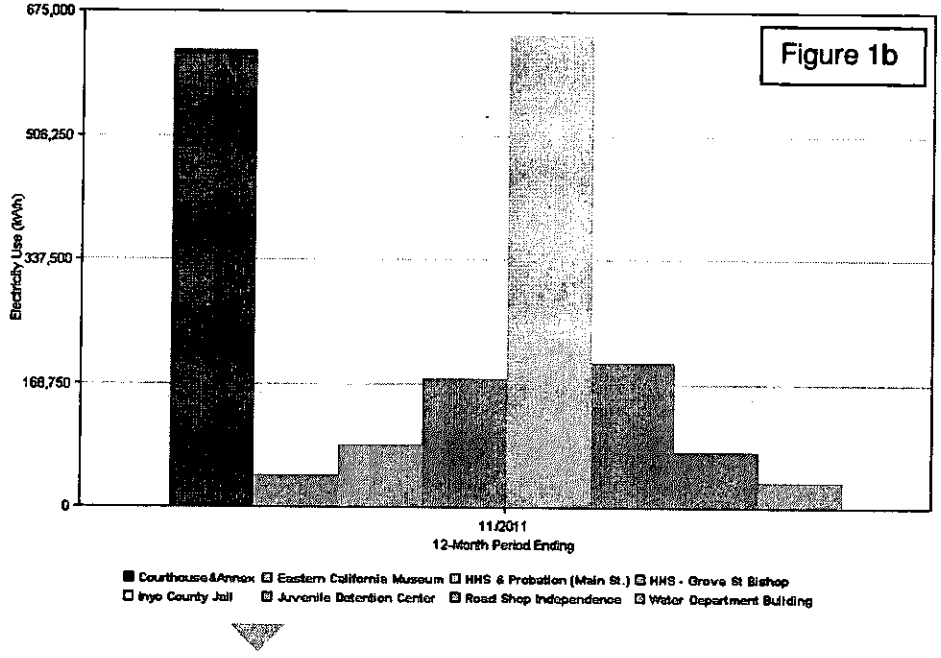
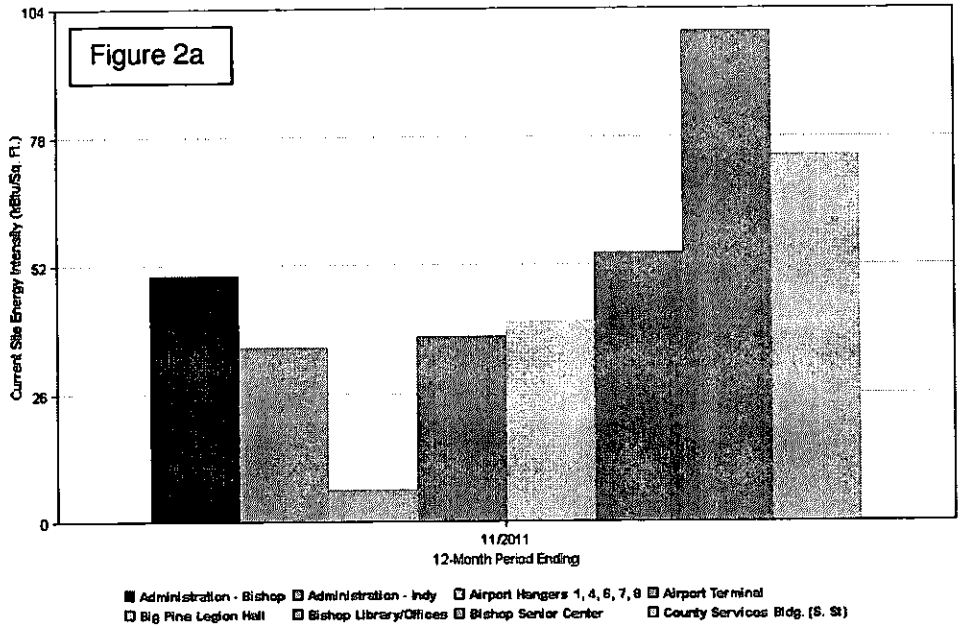
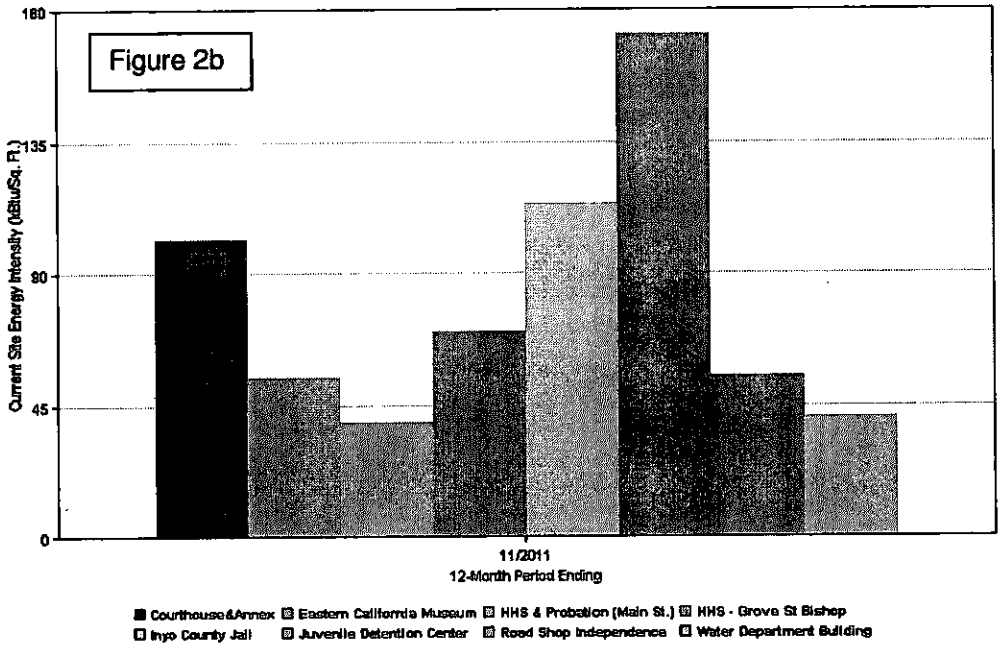


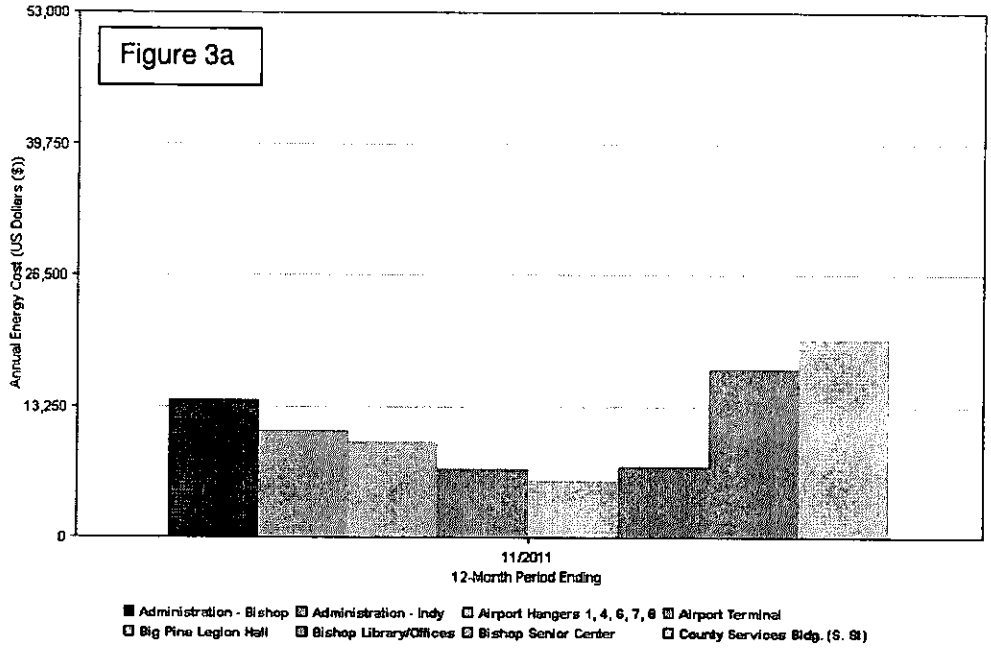


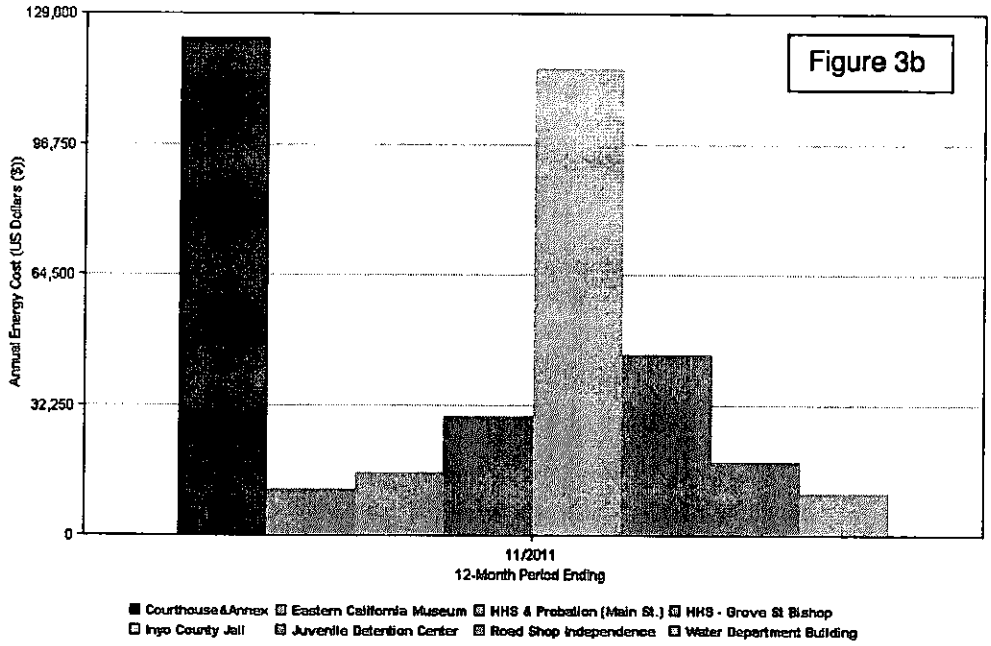
Figures 2a and 2b illustrate annual electricity use per square foot using the same data as above. By dividing the electricity use by the facility size normalizes the data and makes it possible to compare the efficiency of each building. It is important to note that although Figure 1b suggests the Inyo County Jail uses the most total electricity annually, Figures 2b shows that Juvenile Detention Center uses the most electricity per square foot.



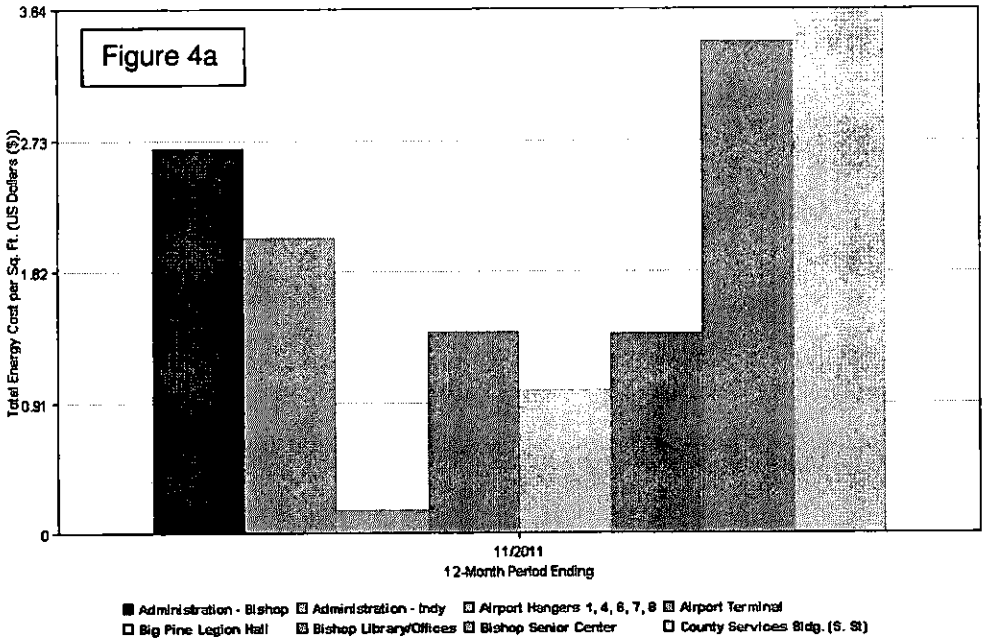


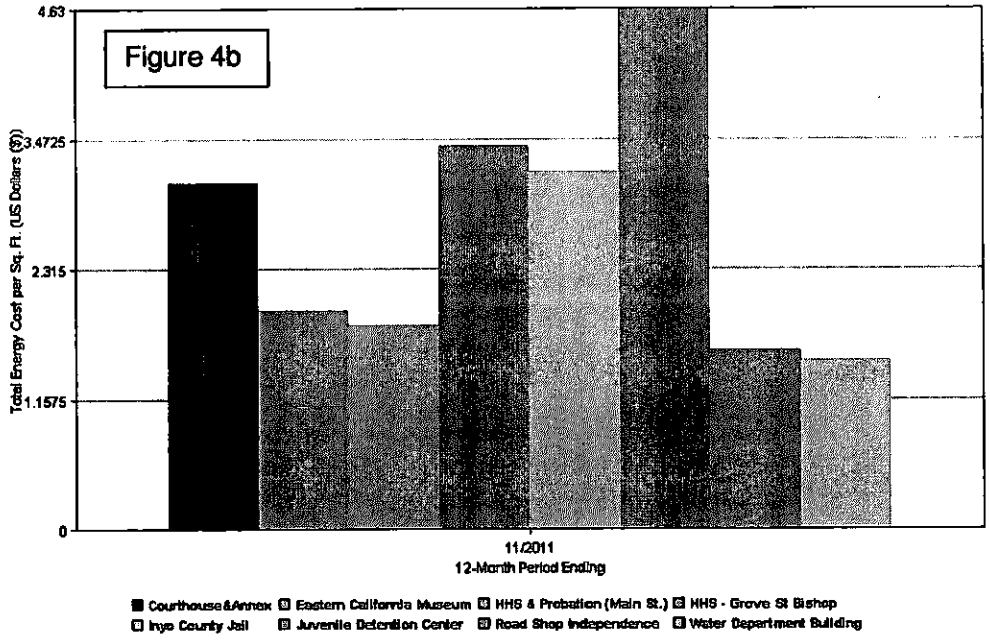
Figures 3a and 3b illustrate the annual cost of each facility using the same data as above. This often holds the most meaning to local governments and organizations because it highlights areas that could potentially save money.





Figures 4a and 4b illustrate the cost per square foot of the County facilities. This may be significantly different than Figure 2 due to tiered pricing.





2.4 Identifying Highest Cost and Least Efficient Facilities

The facility descriptions below are based on the compiled 2011 energy data with background information obtained from interviews with maintenance and operations staff. The facilities are listed from least to most efficient electrical use. Each description lists the annual cost of energy; cost per square foot; the kilowatt hours per square foot; and, the gallons of propane used per square foot (the buildings are ordered by cost per square foot, highest to lowest).

1 **Juvenile Detention Center, Indy** $45,348 $4.63/sf 20.5 kwh/sf 1.1 gal/sf

Issues:

a) This facility contains a non-commercial kitchen which is constantly being used. Most appliances may not be energy efficient.
b) Facility uses 100% outside air which requires significantly more energy compared to a conventional building which uses only 30% outside air.

Potential Energy Measures (policy or project):

a) Kitchen equipment could be replaced by Energy Star equipment.
b) Balancing codes issues, the system should be retro-commissioned, and the system should be modified to allow for a mix of return air.

2 **County Services Building, S Street, Bishop** $20,106 $3.64/sf 21.8 kwh/sf No Propane

Issues:

a) The equipment appears to be improperly sized for the facility and runs continuously.
b) Although there are economizers, the building is heated and cooled by a heat pump.

Potential Energy Measures (policy or project):

a) Load calculations should accompany a retro-commissioning of the major HVAC equipment and systems.
b) Heat pumps employ electric heating override, which in the Inyo County climate results in the over-reliance on low efficiency (high cost) electric heating. A policy could be considered to move towards high efficiency, propane or natural gas fired heating as the heat pumps are replaced with "gas pack" HVAC equipment.

3 **Courthouse, Annex and HHS, Indy** $115,041 $3.45/sf 17.7 kwh/sf 0.6 gal/sf

Recent Updates: The annex building has a new cool roof and has recently had a lighting retrofit. Electricity usage may decrease in the future due to these improvements.

Issues:

a) The courthouse uses 32 window-mounted air conditioners, running almost 24-hours a day during the hot season, which are not efficient.
b) There is very little insulation inside the building.
c) The existing HVAC equipment requires maintenance and upgrades.

Potential Energy Measures (policy or project):

a) Window air conditioners provide the least energy efficient means of cooling. Although expensive, the County should consider more conventional commercial grade package HVAC. In the interim, consider installing programmable thermostats on each of the A/C units.
b) The building insulation should be upgraded to mandatory CalGreen standards.
c) The County should develop an equipment replacement schedule and plan to ensure that improvements and emergency replacements are accomplished with the most energy efficient equipment.

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4 HHS Grove St., Bishop $29,527 $3.41/sf 20.6 kwh/sf No Propane

Issues:

a) This is a county leased facility and none of the equipment has been replaced in the last 20 years. Most of the equipment is at or near the end of its "design" its expectancy.
b) The entire facility only uses low efficiency (high cost) electric heating.
c) The facility is poorly ducted which results in poor air flow distribution.
d) Insulation is currently only R8

Potential Energy Measures (policy or project):

a) The County may want to work with the landlord to ensure that when the equipment is replaced, it is replaced with high efficiency (energy star rated) systems.
b) Although potentially expensive, in conjunction with 'a' above, as the equipment is replaced, it should be replaced with high efficiency, propane or natural gas fired heating as the heat pumps are replaced with "gas pack" HVAC equipment.
c) Depending on the amount of complaints, the County may want to work with the landlord to ensure that when the equipment is replaced or retro-commissioned it meets current mandatory CalGreen and Energy Star ventilation standards.
d) The County should consider energy efficiency/cost when choosing buildings to lease.
e) Insulation should be considered as an improvement project. It should meet mandatory CalGreen standards (R-30 and above).

5 Bishop Senior Center, $17,777 $3.41/sf 10.7 kwh/sf 10.7 gallons/sf

Issues:

a) Although some equipment upgrades have been done at this site, it still has the least efficient propane use. A daily lunch program is prepared in the building which may contribute to the high propane use.

Potential Energy Measures (policy or project):

a) SCE may have funding to perform an energy audit of this facility to provide an assessment and recommendations.

6 Inyo County Jail, Independence $45,348 $3.18/sf 20.5 kwh/sf 1.1 gal/sf

Issues:

a) High electricity use may be due to the use of heavy-duty laundry equipment.

Potential Energy Measures (policy or project):

a) A laundry system audit should be considered.

7 Administration, Bishop $14,122 $2.67/sf 14.7 kwh/sf No Propane

Issues:

a) This facility has all electric heating supplied by one package unit with resistive central heating.
b) This building also has AC with 3 thermostats.

Potential Energy Measures (policy or project):

a) Electrical heating is the most expensive form of heating. Although expensive, the County could consider an upgrade to propane or natural gas heating.
b) Consider installing programmable thermostats on each of the A/C units.

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8 Administration, Independence $11,068 $2.06/sf 10.4 kwh/sf No Propane

Issues:

a) This facility uses heat pumps to heat and cool the building, which uses electric heating override (electric resistive backup).
b) There is one AC package central unit.

Potential Energy Measures (policy or project):

a) Heat pumps employ electric heating override, which in the Inyo climate, results in the over-reliance on low efficiency (high cost) electric heating. A policy could be enacted to move towards high efficiency, propane or natural gas fired heating as the heat pumps are replaced with "gas pack" HVAC equipment.
b) Consider retro-commissioning the A/C package (central) unit. Ensure that there is a programmable thermostat that controls the system.

9 Eastern CA Museum, Independence $10,785 $1.94/sf 7.5 kwh/sf 0.25 gal/sf

Issues:

a) The main building was built in 1969 with a new wing added in 2000. It does not have windows.
b) Due to the use of the building, temperature control is required 24 hours per day, seven days a week.
c) It has an air conditioning unit that is rated at SEER 10 and 90+ heat split systems.

Potential Energy Measures (policy or project):

a) Because this building has low energy intensity, it is not considered to be a candidate for retro-commissioning or energy retrofit(s). However, because it does require 24 hours per day temperature control, the baseline vs. current energy use should be carefully reviewed each year.
b) Upgrade AC unit to a SEER 13.

10 HHS & Probation, Bishop $15,413 $1.81/sf 9.8 kwh/sf 0.06 gallons/sf

Issues:

a) This facility has package units to cool the building.
b) It also has 5 to 6 heat pumps, but only one has been updated in the past 5 years.
c) This building has individual programmable thermostats.

Potential Energy Measures (policy or project):

a) SCE may have an incentive program for upgrading the package unit.
b) Heat pumps employ electric heating override, which in the Inyo County climate results in the over-reliance on low efficiency (high cost) electric heating. A policy could be enacted to move towards high efficiency, propane or natural gas fired heating as the heat pumps are replaced with "gas pack" HVAC equipment.

11 Road Shop, Independence $18,745 $1.59/sf 6.7 kwh/sf 0.37 gallons/sf

Issues:

a) This facility is made up of a mechanic shop and offices, all of which are refrigerated.
b) It has split units, suspended heaters, and is swamp cooled.

Potential Energy Measures (policy or project):

a) Because this building has low energy intensity, it is not considered to be a candidate for retro-commissioning or energy retrofit(s). However, because it does require 24/7 temperature control, the baseline vs. current energy use should be carefully reviewed each

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year.

12 Water Department Independence $10,863 $1.51/sf 5.2 kwh/sf 0.23 gallons/sf

Current Use:

a) This facility is currently swamp cooled but the occupants have requested AC. Windows have recently been replaced. Energy usage may decrease in the future due to these improvements.

b) Users are energy conscious and rarely use overhead lights. Users also have task lighting with individual desk lamps.

13 Airport Terminal, Bishop $7,034 $1.40/sf 7.2 kwh/sf 0.15 gallons/sf

Issues:

a) This facility has a split system with 80% efficiency on gas, and 8 SEER for cooling.

Potential Energy Measures (policy or project):

a) SCE may have HVAC incentive programs available to upgrade the split system to higher efficiency units.

14 Big Pine Legion Hall $5,360 $1.00/sf 1.7 kwh/sf 0.34 gallons/sf

Issues:

a) This facility is a community center that offers a senior program.
b) It is swamp cooled.
c) There is currently an old heater and propane meter that requires upgrades.
d) Temperature is controlled by a Honeywell Manual Thermostat

Potential Energy Measures (policy or project):

a) Because this building has low energy intensity, it is not considered to be a candidate for retro-commissioning or energy retrofit(s).
b) When the heater is replaced, an Energy Star rated heater should be considered.
c) A programmable thermostat should be considered.

15 Bishop Library/Offices $2,840 $0.58/sf 7.6 kwh/sf 0.3 gallons/sf

Issues:

a) This facility has two split systems, 8 SEER, 15T Cooling 10T heating, and 80% heating.
b) It was built in the 1950s.
c) The building has very little insulation.
d) There is a programmable system that is not in use.
e) This facility is open only weekends and evenings.

Potential Energy Measures (policy or project):

a) A cool roof is scheduled to be installed at this site, which will help with the insulation and energy efficiency.
b) Because this building has low use, and correspondingly low energy intensity, it may not be cost effective to construct an energy retrofit. However, new HVAC systems should be considered as they have SEER's of 16 (they are twice as efficient), mandatory CalGreen standards for insulation and a programmable thermostat should be considered.

16 Airport Hangers 1, 4, 6, 7, 8, Bishop $9,879 $0.16/sf 0.4 kwh/sf 0.06 gal/sf

Update: The hangers are large warehouses with no occupants. The area is used for storage and has very low energy consumption. It is one of the most efficient facilities in the county.

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Potential Energy Measures (policy or project):

d) Because this building has low energy intensity, it is not considered to be a candidate for retro-commissioning or energy retrofit(s).

SECTION 3 –TARGET REDUCTION STRATEGY

The County's target reduction goal is to reduce energy usage *5%-10%* and strive to meet this reduction by the year *2016*. To accomplish this goal, the following strategies will be employed.

3.1 Organization's Facilities Strategy

Implementation of the Benchmarking, Advance Program Code, and Commissioning/Retro-Commissioning (Cx/RCx) Policies (see Appendices, B, C and D for full policy and procedures reports) will provide the guidance and structure the County can follow to achieve energy efficiency goals.

Benchmarking

Goal: Use the Energy Star Portfolio Manager as an energy use evalaution and benchmarking tool to help the County reduce its energy consumption.

Policy:

1. All county facilities over 4,500 sf will have an energy use and cost evaluation that will be used to establish a baseline for each facility.
2. County facilities that meet the criteria, of the Energy Star Portfolio Manager, will also receive a benchmark rating.
3. The baselines and benchmarks established with the Portfolio Manager will be used to set target energy use and costs reductions.
4. Annual reports will be created to track the progress from baseline conditions to current conditions.
5. The County may choose to apply for the Energy Star distinction for buildings that qualify.

Advance Program Code

Goal: Advance Program Code policies will be adopted to ensure that new and existing county buildings function in a manner that promotes energy efficiency, and optimizes equipment operation, which will lead to cost savings.

Policy:

1. Energy reduction programs and strategies will be evaluated for fiscal soundness. If a particular program or strategy has an obvious long-term cost savings benefit to the County it will be considered. This analysis will be based on the cost of incorporating energy reduction strageies and materials in a project compared to the estimated savings these strategies and materials will provide, and will be performed during the project planning stage. An energy efficiency project should result in enough savings to eventually cover its initial costs. The acceptable payback period is about 10 years, which assumes that annual cost savings due to the project are about 10%. Programs and strategies that do not show the ability to save the County money in energy

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costs may not be acceptable even if they show the abilty to reduce energy use. The final determinations will be made by the Board of Supervisors.

2. Energy Star:

   a. The county will use the Portfolio Manager rating system of 75-points or higher for its facilities.

   b. County buildings will be reevaluated every year for performance and rating.

   c. The county will evaluate facilities that rate 75-points or higher on the Portfolio Manager system and depending on the budget, may apply for Energy Star certification.

   d. Buildings that cannot be benchmarked using Portfolio Manager will be evaluated by energy use per square foot.

3. CALGreen
   The County's current building stock is made up of older buildings. Buildings that were evaluated with the Portfolio Manager have a building date range from 1921 to 2000. The median built date for these buildings is 1970. Due to the age of the County's building stock, and the lack of plans for new County buildings, as well as very limited funding, the County has chosen to update its facilties by first following the mandatory Title 24 part 6, California Energy Code and part 11 Califonia Green Building Standards (CALGreen) requirements, as both were adopted/updated after all of these facilities were built. As individual energy reduction projects are completed and are up to current standards, additional voluntary measures will be considered.

   a. New building and the remodeling/upgrading of existing County facilities, as they are programed, will be conducted with energy use and building standards based on mandatory Energy and CALGreen codes. The County may also choose to evaluate these projects based on costs that are derived from a plans and specifications analysis with both mandatory requirements and with voluntary Tier I requirements. If the Board of Supervisors finds that the likely higher costs of voluntary Tier I standards, provides energy cost savings that justify the higher costs to the building or upgrade plans, they may choose to approve it.

   b. Once a new building is completed, or an existing one is upgraded, and after at least one full year of operation, it will be analyzed with Portfolio Manger. If, for the specific prior project, the use of CALGreen mandatory standards did not achieve a subsequent 75-point rating from the Portfolio Manager, then voluntary Tier I standards, based on CALGreen codes, will be considered for the next project (voluntary Tier I standards require a 15% higher energy efficiency rating as mandatory). This consideration will be based on costs that are derived from a plans and specifications analysis with both mandatory requirements and with voluntary Tier I requirements. If the Board of Supervisors finds that the likely higher costs of voluntary Tier I standards, provides energy cost savings that justify the higher costs to the building or upgrade plans, they may choose to approve it. The Board may also choose to analyze projects with CALGreen volunatry Tier II standards (voluntary Tier II standards require a 30% higher energy efficiency rating than mandatory) to achieve even higher energy performance/cost savings.

4. County staff will research and apply for grants to fund energy reduction programs.

5. The county will provide an information based program to the community providing resources and infromation about third party rating systems:

a. The County will publish information on Energy Star rankings, comparisons, and on energy star rated products..

b. The County will provide links on their website to resources for rebates and other energy based programs.

6. The County may consider an incentive program for private projects that voluntarily try to meet the 15% better than mandatory requirements to be consistent with voluntary CALGreen Tier I standards.

Commissioning/Retro-Commissioning (CX/RCx)

Goal: Commissioning and retro-commissioning policies will be adopted to ensure that county buildings function in a manner that promotes energy efficiency, cost savings, and optimizes equipment operation and occupant comfort. These findings will help to identify ways to ensure County facilities operate efficiently, which will lower overall energy use and provide cost savings to the county.

Policy:

Commissioning and retro-commissioning will be conducted, as funding is available, on County facilities to ensure that they function in a manner that promotes energy efficiency, cost savings, and optimizes equipment operation and occupant comfort. Based on the results of commissioning and retro-commissioning, the County's facilities may be updated to operate more efficiently, which will lower overall energy use, increase occupant comfort and productivity and provide cost savings to the county.

1. New facilities may be commissioned and existing County facilities retro-comissioned as appropriate. The basis for comissioning/retro-comissioning may be one or more of the folowing:

   a. The relative building energy efficiency (benchmark comparison). The County has established a 75-point rating from the Energy Star Portfolio manager as its facilities goal.

   b. The size of a specific buidling (buildings should be 10,000sf for CX/RCx, per CALGreen).

   c. The total energy use or cost of a specific building.

   d. The number of comfort (or other) complaints from occupants.

   e. As a part of a major renovation of a specific buidling.

2. Retro-commissioning will be based on mandatory CALGreen guidelines. Buildings that show the least efficiency through benchmarking will be identified for retro-commissioning. The depth and timing of retro-comissioning will be based on the above criteria and on available funding.

3. New County owned or County occupied buildings will be considered for comissioning, as funding allows, prior to occupancy and/or as a part of the design process. Commissioning of planned new buildings will be based on the mandatory CALGreen standards.

4. New County buildings may be Commissioned, during the planning and construction stages, as funding allows.

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5. Exsisting buildings, and new facilities built after 2013, may be considered for retro-commissioning at least once every 10-years. Results will be reported to the County as a part of the continuous benchmarking and reporting policy.

6. Depending on funding availability, the County will implement appropriate system modifications and efficiency projects identified during commissioning.

3.2 Outreach Strategy

This EAP was developed from the EAP-template created specifically for this planning effort. It is available to anyone via the County's website. Creating the EAP illustrates the County's desire to 'lead by example' in energy planning efforts and hopefully will inspire other entities operating in the County to create their own EAPs. Outreach to County departments, stakeholder groups and the greater community was detailed in the Public Participation Plan and conducted through of a series of public meetings, one-on-one meetings, and conference calls. In addition, a website, accessible through the County's planning website, allows for public comment on deliverables as they are developed and will continue to be used for updates and information on incentive programs.

SECTION 4 – ACTION STEPS

Section 3 explained the policy implementation strategies that the County will use to reach the target goal(s). This section explains specific projects in greater depth.

- The County will use the EPA's Portfolio Manager to benchmark energy use and to track EAP program success. The baseline year is 2011.

Benchmarking, Advance Program Code and Cx/RCx policies have been established using the State of California's mandatory Title 24, Part 11 CalGreen regulations. These policies will be used to guide new building and the remodeling and upgrading of existing County facilities. Mandatory regulations will be followed as a matter of course, in the event that the mandatory requirements do not get the County to its reduction goals, voluntary measures may be considered by the Board of Supervisors.

4.1 Facility Energy Efficiency Projects

Potential Future Projects
Below is summary of the energy projects the County may consider in order to further increase energy efficiency.

1. **Energy Star Certification**
   Based on the Energy Star Portfolio Manager, the County may pursue Energy Star certification for the following facilities: the Bishop Airport Hangers, HHS & Probation building in Bishop, and the Water Department Building in Independence. These have Energy Star ratings greater than 75 and are considered within the top 25 percent for energy efficiency in the nation compared with similar buildings.

2. **RCx Projects:**
   Based on the square footage (10,000sf is necessary) of the County facilities, the current facilities that may possibly undergo RCx are as follows:

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Facility	City	Energy Use (kWh)	Size (sf)
Airport Hangers 1, 4, 6, 7, 8	Bishop	23,105	58,854
Courthouse & Annex	Independence	614,567	35,620
Inyo County Jail	Independence	636,518	36,296
Road Shop Independence	Independence	76,785	11,389
Juvenile Detention Center	Independence	93,526	9,650

3. Other Policies, Projects, and Programs

- ✓ Continue the cool roof program, by replacing roofs, as funding is available, with cool roof systems.
- ✓ Continue the window replacement program, by replacing windows, as funding is available, with energy efficient models.
- ✓ Continue the lighting project at all County facilities, by replacing bulbs, as funding is available, with more energy efficient models.
- ✓ Continue an occupancy sensor power strip program.
- ✓ Equip all facilities with programmable thermostats to ensure that heating and cooling is regulated properly.
- ✓ Consider the energy efficiency/costs of a building before leasing.
- ✓ Continue to pursue funding for roof-top solar projects and look into net-metering programs offered by SCE and LADWP for these projects.
- ✓ When possible, combine office spaces into a central, energy efficient, facility.
- ✓ Evaluate whether a compressed work schedule program, such as a 4-10 work week, would be feasible for a continued high level of service provision and County employees.
- ✓ Analyze the possibility of opening customer service locations one day a week in Lone Pine, Bishop and in Southeast County to reduce the need for customers to travel to Independence and cut down on vehicle miles. Allow County employees who live in these areas to work at the service locations, to cut down on their travel miles, as well.
- ✓ Conduct further review of the Green House Gas analysis and the costs the County incurs for its current vehicle fleet. As vehicles need to be replaced consider upgrading the fleet to include economy, hybrid and electric vehicles.
- ✓ Set a goal to have a specific percentage of the vehicle fleet, based on fuel costs savings, be economy, hybrid and electric vehicles.
- ✓ Continue to evaluate the possibility of setting up plugs for electric vehicles at facilities throughout the County. This would provide the powering for any future electric vehicles the County adds to its fleet, as well as, provide a valuable service to Inyo County citizens and visitors.
- ✓ Design a program and scheduling scheme for ride sharing between employees for work related trips. This program could be as simple as leaving designated, fuel efficient, vehicles at county facilities and setting up an online signup sheet.
- ✓ Encourage employees who take vehicles home to use the most fuel efficient available.
- ✓ Evaluate the feasibility of setting up a funding program to pay for future energy efficiency projects with the savings from completed projects.
- ✓ Consider setting up a revolving loan program for employees to buy computers and eventually set up a system where employees can access the County system, allowing them to work from

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home. This can provide the opportunity to cut back on vehicle travel. It can also allow for continued work and communications during emergencies.

- ✓ These polices should be reevaluated annually, along with the yearly energy use analyses by planning and public works staff to see if they are achieving the County's energy reduction goals. Any proposed policy adjustments will need to be considered by the Board of Supervisors.

4.2 Funding of Projects

The California Energy Commission released a document in January of 2000 titled "How to Finance Public Sector Energy Efficiency Projects." It outlines what criteria a project should meet, ways to finance that project, and specific organizations in California that are available to help with funding. *http://www.energy.ca.gov/reports/efficiency_handbooks/400-00-001A.PDF*

Other potential funding resources are as follows:

- ✓ **SCE On-Bill Financing** is a 0 percent interest, no-fees loan program for energy efficiency projects. The program offers zero-interest loans for the installation of qualified energy efficiency equipment. Government and institutional loans have a minimum of $5,000 and a maximum of $250,000 and can be paid off in up to 10 years.
  http://www.sce.com/business/onbill/about-on-bill.htm

- ✓ **U.S Small Business Administration** (SBA) has the 504 Loan Program available to organizations that meet the SBA requirements. Specifically, the Energy Conservation Loan is to be used on projects that conserve energy use solar thermal of PV cells.
  http://www.energystar.gov/index.cfm?c=sb_state.sba_loans

- ✓ **California Energy Commission** (CEC) Energy Efficiency Financing Program is a loan program with 3% interest for local governments and public institutions. It can be used to fund energy efficiency projects involving: lighting systems, pumps and motors, streetlights and LED traffic signals, automated energy management systems/controls, building insulation, energy generation including renewable and combined heat and power projects, heating and air conditioning modifications, and Waste water treatment equipment.
  http://www.energy.ca.gov/efficiency/financing/index.html

Rebates/Incentives

- ✓ **SCE** has multiple rebate/incentive programs and Energy Management Solutions. The Express Solutions available offer cash rebates to cover costs of upgrading to higher efficiency equipment. This includes lighting, air conditioning, food service equipment, refrigeration, and agricultural equipment. SCE also has Customized solutions that are for more specialized efficiency improvements. As mentioned above there is also a tired rate system based on the amount of energy that they consume. The following resources provide additional information regarding this program.
  http://www.sce.com/business/ems/customized-solutions/default.htm
  http://www.sce.com/business/ems/express_solutions.htm?from=express_solutions

- ✓ **LADWP** offers rebate and incentive programs including a Consumer Rebate Program, Low Income Refrigerator Exchange Program, and the Green Power Program. Most notably there is a solar rebate program that covers part of the costs of installing solar panels. The website also offers guides on energy efficiency.
  http://www.ladwp.com/ladwp/cms/ladwp001950.jsp

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- ✓ **California's State Energy Program** has a municipal finance program that will provide local governments with program start-up and ongoing costs, interim financing, interest rate buy-down, and property owner rebates. The program expects the local government to then use those funds to offer rebates to the community for energy efficiency projects. The CEC also has a Wind and Fuel cell Renewable Rebates Program.

Acceptable payback periods

Before implementing an energy efficiency project it is important to determine its feasibility. This includes both the ease of implementation and the payback period. An energy efficiency project should result in enough savings to eventually cover its initial costs. An acceptable payback period is about 10 years, which assumes that annual cost savings due to the project are 10%. Acceptable payback periods can differ depending on the funding available to the organization. The payback will be affected by the local utility provider's billing rates. SCE has a tiered structure which operates on a "the more you use, the more you pay" concept. The Utilities' current rates range from $0.11 to $0.21 per Kwh.

The County may consider pursuance of projects based on the following:

- ✓ "Low hanging fruit" – There are often simple operational changes that can be made to lighting, plug[5] loads or HVAC[6] equipment by simply turning them off when not in use. Payback can be as soon as 6 months.
- ✓ Scheduled capital maintenance or repair projects often offer the best return on investment by upgrading to the **most** energy efficient option. Even though the initial cost can be higher, the upgrade can pay back in 1 – 4 years.
- ✓ Lighting projects often pay back in the range of 2-5 years.
- ✓ Heating, ventilation, and air conditioning (HVAC) projects often pay back in about 4-12 years and can also improve comfort.

4.3 Policies

The County of Inyo will implement the policies described in Section 3.1 with the goal to increase energy efficiency and cost savings. Implementing flexible, streamlined programs will allow the County to comply with state and federal regulations as well as reduce energy costs. These policies include:

- ✓ **Benchmarking Policy** – *See Appendix B for more details.*
- ✓ **Advance Program Code Policy** – *See Appendix C for more details.*
- ✓ **Commissioning (Cx)/retro-commissioning (RCx) Policy** - *See Appendix D for more details.*

In additon:

- ✓ **Conduct energy savings analysis for GHG inventory**

  An energy efficiency savings analysis provides the foundation for an annual greenhouse gas inventory. This plan will include management structure to oversee energy programs, goals to reduce energy and greenhouse gas, and specific programs to achieve those goals.

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[5] Plug loads refer to anything that is plugged in. Often times computers, copiers, printers, fax machines are left on all night and all weekend. These "vampires" waste significant power.

[6] HVAC is the abbreviation which refers to equipment associated with comfort heating, comfort cooling, and fresh air ventilation. This accounts for 20% to 40% of the energy used in most buildings or residences. HVAC = heating, ventilating and air conditioning.

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4.4 Tracking & Reporting

Tracking
The Portfolio Manager will track energy usage, reduction, costs, and changes in the baseline. SCE facilities will be entered monthly using the automated benchmarking system while DWP buildings will be entered manually. County planning and public works staff will continue to use the Portfolio Manager to track the county's energy use and will report on conditions. This will be used to evaluate whether reduction targets need to be adjusted and if implementation measures are working.

Reporting
Some of the potential reporting methods are:

- ✓ Annual reports to the Board of Supervisors.
- ✓ Reports will outline the changes in energy use and cost.
- ✓ Energy Star benchmarking.

CONCLUSIONS

The County of Inyo will use the Energy Star Portfolio Manager as an energy use evaluation and benchmarking tool to help the County reduce its energy consumption. The County will benchmark all facilities that are 4,500sf or greater. The data taken from the ESPM will help the County form a strategy to increase energy efficiency by highlighting the least efficient facilities and areas that need improvement.

Requiring energy reduction standards for County owned buildings will result in cost savings to the County. It will also set an example for others operating or living in the county to reduce their energy use. Creating a combined incentive and informational based outreach program can involve the community in energy efficiency efforts and encourage energy reduction behaviors by all citizens.

The county may commission new buildings and retro-commission existing buildings that are identified through benchmarking or other key criteria. This policy will improve energy efficiency and reduce operations and maintenance costs. If funding is available, and depending on the severity of the occupant complaints and the potential to save money, commissioning will be completed by a certified professional working in conjunction with the M&O staff.

Any required system modifications that are identified through the commissioning process will be addressed based on the available budget. The CAL-Green commissioning and retro-commissioning standards will be followed. Staff training will primarily be with M&O staff and will include SCE guidelines for commissioning/retro-commissioning.

Requiring energy reduction standards for County owned buildings will result in cost savings to the County. It will also set an example for others operating or living in the county to reduce their energy use. Creating a combined incentive and informational based outreach program can involve the community in energy efficiency efforts and encourage energy reduction behaviors by all citizens.

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APPENDICES

Appendix A: Public Participation Plan

Appendix B: Benchmarking Policy

Appendix C: Advance Program Code Policy

Appendix D: Commissioning/Retro-commissioning Policy

Appendix E: CALGreen Guidelines – Appendix A5: Nonresidential Voluntary Measures

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Attachment B

Benchmarking Policy and Procedures

Strategic Plan Task 3.1.1: Deliverable 2.A.2

Funded by
Southern California Edison Company
Local Government Strategic Plan Strategies Program

2010 – 2012 Program Period
under the auspices of the California Public Utilities Commission

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July, 2012

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Introduction to Inyo County's ENERGY USE

Benchmarking is the process of comparing energy use metrics of a building. Setting the benchmark allows for energy use comparisons against similar facilities to help understand the relative energy efficiency of the building. In addition, benchmarking reveals progress in achieving energy reductions. Inyo County has acquired and deployed EPA's Portfolio Manager System which will be used to evaluate existing and projected energy use for all qualifying county facilities. These benchmarks will set a baseline of energy consumption and costs that will be used to develop strategies for energy reduction and provide direction for cost savings.

Inyo County facilities that are larger than 4,500 square feet (sf) will be entered into the Energy Star Portfolio Manager to be evaluated for energy use baselines and benchmarking.

Inyo County may consider publishing the energy data in an online database that is accessible to the public to provide an easy way for County staff and the public to review the data, see the progress of this planning effort, as well as communicate achievements in meeting energy reduction goals.

Even though some buildings cannot be given a benchmarking score with the Portfolio Manager, it can still provide plenty of baseline information for non-benchmarked buildings that will help the County understand its energy performance.

Benchmarking Goals, Policies, and Responsibilities

Goal: Use the Energy Star Portfolio Manager as an energy use evalaution and benchmarking tool to help the County reduce its energy consumption.

Policy:

1. All county facilities over 4,500 sf will have an energy use and cost evaluation that will be used to establish a baseline for each facility, please see Appendix A for a list of county facilities that will be evaluated.

   County planning department and consultant team staff will provide utility use and cost data. County staff will enter Los Angeles Department of Water and Power (DWP) data into the Portfolio Manager and the consultant team staff will set up the automatic utility use and cost data upload to Portfolio Manager from Southern California Edison (SCE).

2. County facilities that meet the criteria, of the Energy Star Portfolio Manager, will also receive a benchmark rating.

   The Portfolio Manager results will be evaluated and reported by the consultant team staff. The Board of Supervisors will be advised about which buildings qualify for an Energy Star rating and can use this information to decide whether to have staff apply for this distinction.

3. The baselines and benchmarks established with the Portfolio Manager will be used to set the County's energy use and costs reductions.

Consultant team and County planning department staff will present the benchmarking results to the stakeholders, the County Planning Commission and Board of Supervisors and suggest target energy reduction goals. The Board of Supervisors will approve all energy reduction targets.

4. Annual reports will be created to track the progress from baseline conditions to current conditions.

   County plannning and public works department staff will continue to use the Portfolio Manager to track the county's energy use and will report on conditions. This information will be used to evaluate whether reduction targets need to be adjusted and if implementation measures are working.

5. The County may choose to apply for the Energy Star distinction for buildings that qualify.

   The County Board of Supervisors will receive the initial report on the facilities performance and will continue to receive updates from planning department staff. They will use this information to decide whether to have staff apply for Energy Star distinctions for those buildings that qualify.

Benchmarking with the Utility Manager System

Purpose – The primary tool for developing baselines and benchmarking is a Utility Manager System (UMS). A UMS provides a consistent platform to evaluate energy use and costs. The utility manager will provide efficient access to the actual, on-going, energy use at specific County facilities. It will be used to:

a. Develop energy baselines and benchmarks[1] for County facilities.
b. Track energy use on a continuous basis and summarize on an annual basis.
c. Compare energy benchmarks to other County facilities and to other energy-industry standards.
d. Measure success in reducing energy use.
e. Afford easy access to the information in order to integrate energy consciousness into the ongoing actions and activities of the County and its stakeholders.

Why Energy Star Portfolio Manager? – The Energy Star Portfolio Manager (ESPM) is free, and accessible to anyone or any organization through easy, but password protected, internet access. It is also well maintained and well supported by the US Environmental Protection Agency. ESPM support includes on-line training documents and an account representative who is available through both email and phone. The ESPM can be automatically populated with data from Southern California

[1] Energy Benchmarking is the process of comparing energy use metrics of a building against similar facilities to help understand the relative energy efficiency of the building.

Edison; and other utility company data, such as the Los Angeles Department of Water and Power, can also be entered into ESPM with relative ease. The County of Inyo is currently using the ESPM to evaluate County facilities. Like any software system, it requires dedicated time to be implemented to its highest potential. Once setup, the ESPM is fairly simple and straight forward, making it easy for other entities to develop their own energy reduction programs based on the County's example. Using the ESPM for benchmarking automatically lets the user know if a particular facility qualifies for an Energy Star distinction. This is based on a rated system of 1-100. Buildings of similar use and size are evaluated against each other. Those that rate at 75 or higher are considered top performers and can apply for an Energy Star award.

Inyo County's Baseline Energy Use

The first step in an energy reduction program is to identify where and at what rates energy is being consumed. To accomplish this, the first step is to identify specific County facilities to be evaluated, and then obtain the utility bills for each of the target facilities including: electricity, gas, propane, etc. Table 1 shows the costs of annual energy use for County facilities by electricity and propane gas. Table 2, illustrates the costs, shown in Table 1, for the most recent calendar year, also by electricity and propane gas.

Table 1. Gross Annual Energy Cost for Inyo County
SCE Facilities

Year	Electricity Costs	Propane Costs	Total Energy Costs
2009*	$ 39,322.40	$ -	$ 39,322.40
2010*	$ 273,227.84	$ 55,913.27	$ 329,141.11
2011	$ 320,419.70 **	$ 137,968.38	$ 458,388.08 **

**Partial: Do not have data for all facilities and months.*
***Excluding Bishop Library.*

Table 2. 2011 Total Inyo County Energy Usage All county facilities (SCE & DWP Accounts)				
Energy Type (Unit)	**Annual Consumed**	**Annual kBtu**	**Annual Cost**	**Percent of Total Annual Cost**
Electricity (kWh)	2,197,000	7,496,470	$ 320,419.70	70%
Propane (Gallons)	72,567	6,712,429	$ 137,968.38	30%
TOTALS	**N/A**[2]	14,208,900	$ 458,388.08	100%

In developing Tables 1 and 2, the County is establishing a baseline from which all future energy efficiency will be compared.

Where Energy is Consumed

Table 3 illustrates the energy use at individual facilities. It shows both the total use and the use per square foot. The use per square foot is to normalize each building making them comparable and highlighting which buildings are the least efficient.

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[2] This column cannot be summed the units of electricity, vs. propane, are different

Table 3. 2011 Inyo County Energy Usage by Location			
Facility	**Use per square foot (kBtu/sq. ft.)**	**Total Energy Usage (kBtu)**	**Annual Cost**
Administration - Bishop	48.4	253027.2	$ 14122.48
Administration - Indy	36.3	191742	$ 11068.2
Airport Hangers 1, 4, 6, 7, 8	6.6	387439.2	$ 9879.46
Airport Terminal	N/A	N/A	$ 7,034.00
Big Pine Legion Hall	37	210689.8	$ 5359.85
Bishop Library/Offices	54.1	281767.7	$ 2839.38
Bishop Senior Center	105.6	528034.9	$ 17776.69
County Services Bldg. (S. St)	74.5	412499.2	$ 20106.23
Courthouse&Annex	115.3	4108024.3	$ 124479.86
Eastern California Museum	48.4	284827.5	$ 10784.73
HHS & Probation (Main St.)	38.7	334517.8	$ 15413.35
HHS - Grove St Bishop	N/A	N/A	$ 29,526.79
Inyo County Jail	112.7	4089643.4	$ 115040.84
Juvenile Detention Center	172.9	1668532.1	$ 45348.01
Road Shop Independence	57.1	650398.1	$ 18745.2
Water Department Building	39.7	272270.9	$ 10863.01

**Propane cost only.*

Figures 1a and 1b illustrates the annual electricity use by the individual facilities. It was generated using the Energy Star Portfolio Manager.

Figure 1a

Energy Performance Graph November 2011

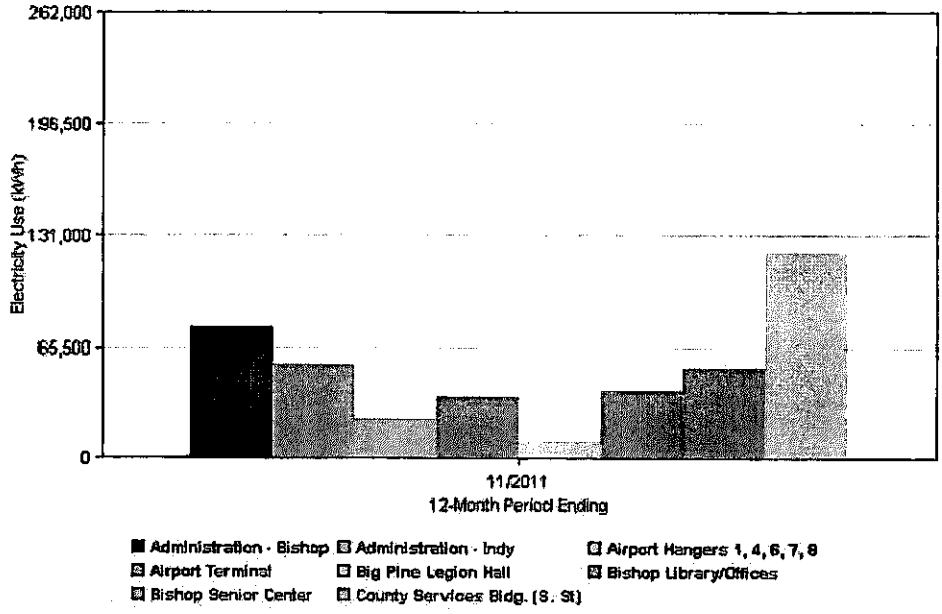
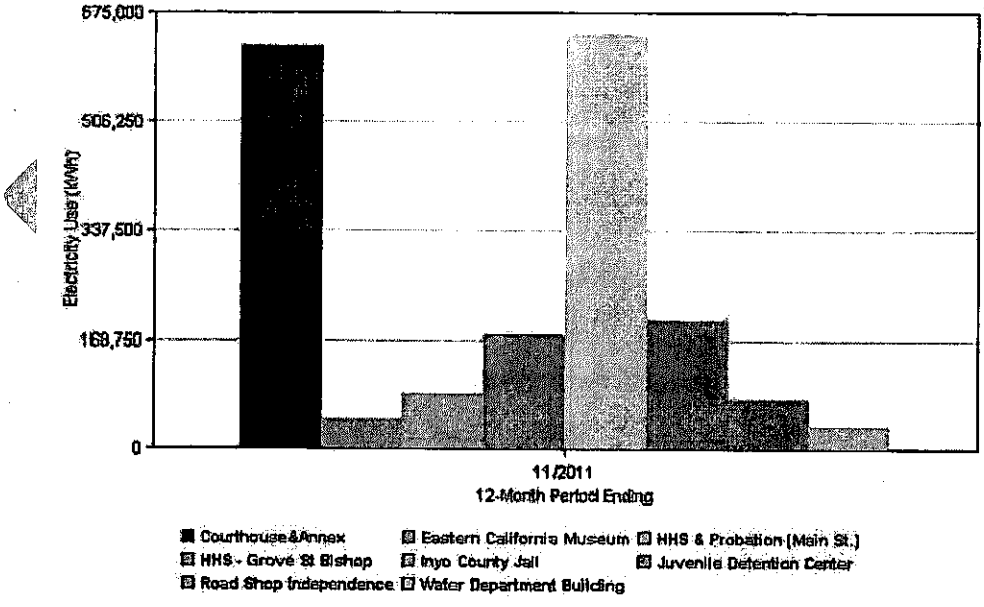


Figure 1b

Energy Performance Graph November 2011



Figures 2a and 2b illustrates annual electricity use per square foot using the same data as above. By dividing the electricity use by the facility size normalizes the data and makes it possible to compare the efficiency of each building. It is important to note that although Figure 1 suggests the Inyo

County Jail uses the most total electricity annually, Figures 2b shows that Juvenile Detention Center uses the most electricity per square foot.

Figure 2a Energy Performance Graph November 2011

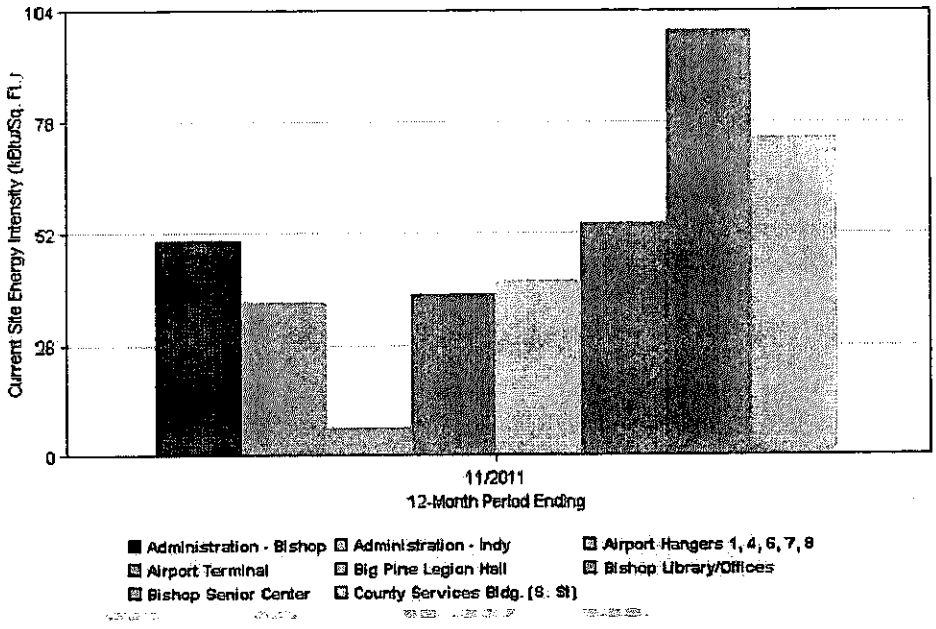


Figure 2b Energy Performance Graph November 2011

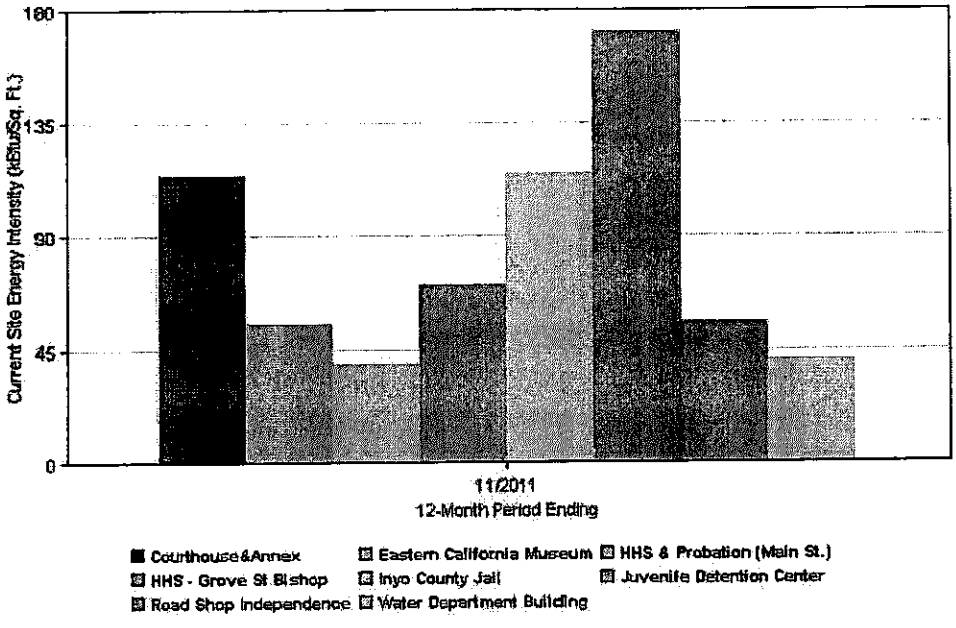


Figure 3 illustrates the annual cost of each facility using the same data as above. This often holds the most meaning to local governments and organizations because it highlights areas that could potentially save money.

Figure 3

Energy Performance Graph November 2011

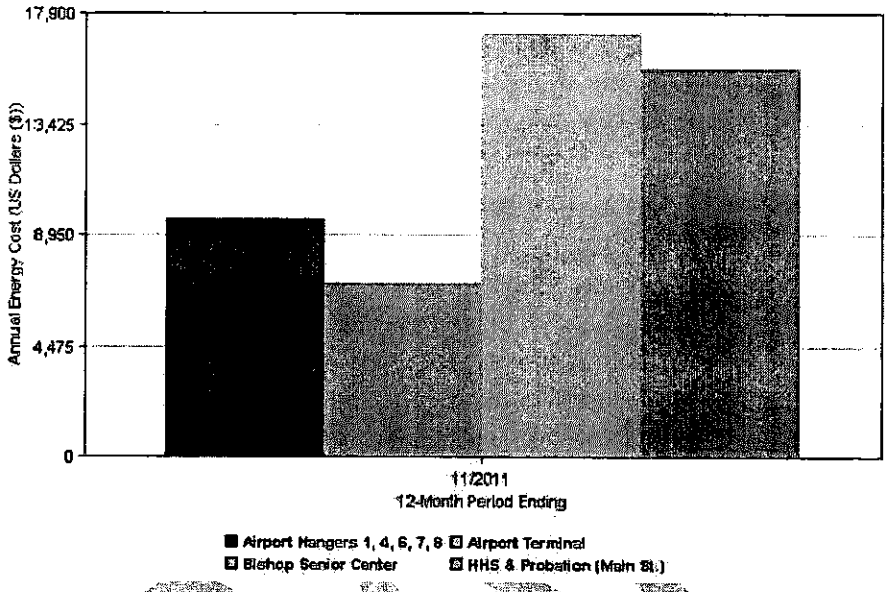
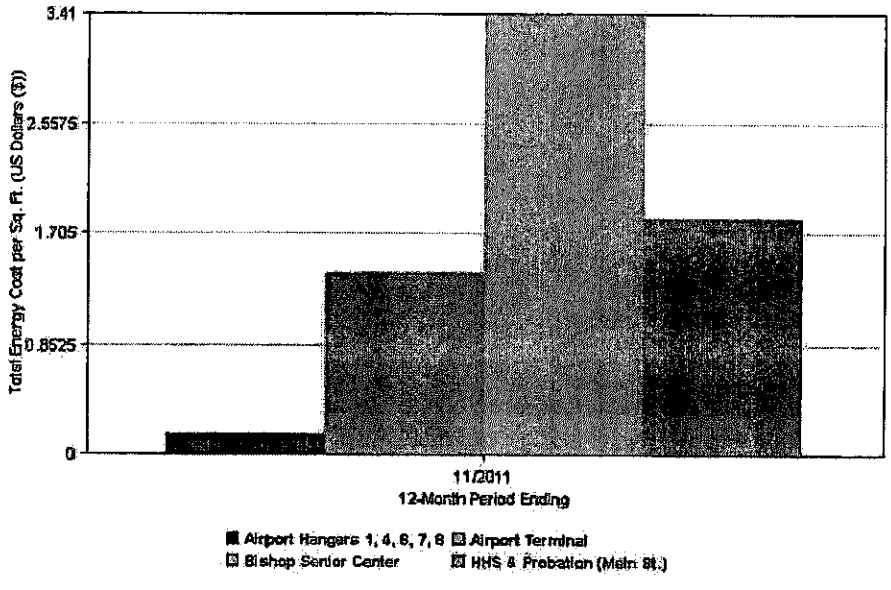


Figure 4 illustrates the cost per square foot of the County facilities. This may be significantly different than Figure 2 due to tiered pricing.

Figure 4

Utility Cost Report Graph November 2011



Staff Training

In order to establish current conditions and continue to use the ESPM to evaluate the County's progress in meeting energy reduction goals, additional planning department, public works and maintenance and operations staff will need to be trained in the proper use of the ESPM.

The project manager (planning staff), maintenance and operations manager, public work's engineering technician, and any other appropriate staff will undergo training using the documentation provided on the EPA website; this should be followed by a refresher. Both trainings should include a "tour" of the entire EPA Portfolio Manager website, including training and presentations. The refresher training should include a review of the actual database. Training subjects should include: use and access of the system; monitoring and report capabilities; guidelines for energy management; and, financial calculators for project evaluation. This training can be self-guided on the ESPM website and staff should be able to work training sessions into their schedules. If staff needs additional training help beyond the website, planning staff that is already trained on the Portfolio Manager can provide training and answer questions as needed. Planning staff will also monitor the training of the maintenance and operations manager, public work's engineering technician, and any other appropriate staff to ensure that all staff that needs to be trained on the ESPM gets the necessary training.

Conclusion

The County of Inyo will use the ESPM as an energy use evaluation and benchmarking tool to help the County reduce its energy consumption. The County will benchmark all facilities that are 4,500sf or greater. The data taken from the ESPM will help the County form a strategy to increase energy efficiency by highlighting the least efficient facilities and areas that need improvement. The preliminary results presented above, show that about 80% of the County's energy costs are from propane while about 20% are from electricity. The Juvenile Detention center has the highest energy use per square foot (kBtu/sf) followed by the Courthouse and the County Jail. The Energy Action Plan will develop and highlight projects to increase energy efficiency and will be based on the results of the Benchmarking efforts.

Appendix A – List of Benchmarked County Facilities

Facility	City	Zip Code	Size (sf)
Administration - Bishop	Bishop	93514	5,224
Administration - Indy	Independence	93526	5,277
Airport Hangers 1, 4, 6, 7, 8	Bishop	93514	58,854
Airport Terminal	Bishop	93514	4,729 (entered as 5,000)
Big Pine Legion Hall	Big Pine	93526	5,688
Bishop Library/Offices	Bishop	93514	5,206
Bishop Senior Center	Bishop	93514	4,600 (entered as 5,000)
County Services Bldg. (S. St)	Bishop	93514	5,536
Courthouse & Annex	Independence	93526	35,620
Eastern California Museum	Independence	93526	5,882
HHS & Probation (Main St.)	Bishop	93514	8,641
HHS - Grove St Bishop	Bishop	93514	8,554
Inyo County Jail	Independence	93526	36,296
Juvenile Detention Center	Independence	93526	9,650
Road Shop Independence	Independence	93526	11,389
Water Department Building	Independence	93526	6,864

Attachment C

Draft Policy for Advanced Program Code Standard Policy Development

Strategic Plan Task 3.2.2, Deliverable 2.D.3

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Introduction to Advanced Program Code

There are numerous energy efficiency standards including but not limited to CALGreen, LEED and Energy Star. Implementation of these types of standards can help the county achieve a reduction in energy use, by providing proven methods and criteria that have been effective for other jurisdictions.

As part of the County's Cost, Energy, and Service Efficiencies Action Plan effort, the use of the Energy Star Portfolio Manager has been implemented. With Portfolio Manager, and in conjunction with the established Benchmarking Policies and Procedures, the County's energy use is being tracked. All existing and new facilities that meet the criteria established by the Benchmarking Policies will be evaluated. Any implementation of an Advanced Program Code will be based on the data and analysis generated by the Portfolio Manager. The analysis will provide a means for the County to rate and rank its facilities by energy use patterns and then use this information to develop and direct the Advanced Program Code policy.

The development of energy efficiency standards will be based on California Green Building Standards Code, Title 24, Part 11 (CALGreen). It will provide a defined set of energy reduction goals for county facilities. The County may also create a resource and incentive program for the non-county facilities using a "lead by example" approach.

Advanced Program Code Goals, Policies, and Responsibilities

Goal: Advance Program Code policies will be adopted to ensure that new and existing county buildings function in a manner that promotes energy efficiency, and optimizes equipment operation, which will lead to cost savings.

Policy:

1. Energy reduction programs and strategies will be evaluated for fiscal soundness. If a particular program or strategy has an obvious long-term cost savings benefit to the County it will be considered. This analysis will be based on the cost of incorporating energy reduction strageies and materials in a project compared to the estimated savings these strategies and materials will provide, and will be performed during the project planning stage. An energy efficiency project should result in enough savings to eventually cover its initial costs. The acceptable payback period is about 10 years, which assumes that annual cost savings due to the project are about 10%. Programs and strategies that do not show the ability to save the County money in energy costs may not be acceptable even if they show the abilty to reduce energy use. The final determinations will be made by the Board of Supervisors.

2. Energy Star:

    a. The county will use the Portfolio Manager rating system of 75-points or higher for its facilities.

    b. County buildings will be reevaluated every year for performance and rating.

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c. The county will evaluate facilities that rate 75-points or higher on the Portfolio Manager system and depending on the budget, may apply for Energy Star certification.

d. Buildings that cannot be benchmarked using Portfolio Manager will be evaluated by energy use per sq. ft.

3. CALGreen

The County's current building stock is made up of older buildings. Buildings that were evaluated with the Portfolio Manager have a building date range from 1921 to 2000. The median built date for these buildings is 1970. Due to the age of the County's building stock, and the lack of plans for new County buildings, as well as very limited funding, the County has chosen to update its facilties by first following the mandatory Title 24 part 6, California Energy Code and part 11 Califonia Green Building Standards (CALGreen) requirements, as both were adopted/updated after all of these facilities were built. As individual energy reduction projects are completed and are up to current standards, additional voluntary measures will be considered.

a. New building and the remodeling/upgrading of existing County facilities, as they are programed, will be conducted with energy use and building standards based on mandatory Energy and CALGreen codes. The County may also choose to evaluate these projects based on costs that are derived from a plans and specifications analysis with both mandatory requirements and with voluntary Tier I requirements. If the Board of Supervisors finds that the likely higher costs of voluntary Tier I standards, provides energy cost savings that justify the higher costs to the building or upgrade plans, they may choose to approve it.

b. Once a new building is completed, or an existing one is upgraded, and after at least one full year of operation, it will be analyzed with Portfolio Manger. If, for the specific prior project, the use of CALGreen mandatory standards did not achieve a subsequent 75-point rating from the Portfolio Manager, then voluntary Tier I standards, based on CALGreen codes, will be considered for the next project (voluntary Tier I standards require a 15% higher energy efficiency rating as mandatory). This consideration will be based on costs that are derived from a plans and specifications analysis with both mandatory requirements and with voluntary Tier I requirements. If the Board of Supervisors finds that the likely higher costs of voluntary Tier I standards, provides energy cost savings that justify the higher costs to the building or upgrade plans, they may choose to approve it. The Board may also choose to analyze projects with CALGreen volunatry Tier II standards (voluntary Tier II standards require a 30% higher energy efficiency rating than mandatory) to achieve even higher energy performance/cost savings.

4. County staff will research and apply for grants to fund energy reduction programs.

5. The county will provide an information based program to the community providing resources and infromation about third party rating systems:

a. The County will publish information on Energy Star rankings, comparisons, and on energy star rated products..

b. The County will provide links on their website to resources for rebates and other energy based programs.

6. The County may consider an incentive program for private projects that voluntarily try to meet the 15% better than mandatory requirements to be consistent with voluntary CALGreen Tier I standards.

Staff Training

County planning staff that is already trained on the Portfolio Manager System will stay up-to-date on changes in the program and will help with additional public works and maintenance and operations staff training. Planning and public works staff will also learn, and keep up with changes in the CALGreen and Energy Star requirements. In addition, some recurring, policy-related, training should be taken by planning and public works staff in order to be well informed of new standards, programs and technologies for energy reduction.

Conclusion

Requiring energy reduction standards for County owned buildings will result in cost savings to the County. It will also set an example for others operating or living in the county to reduce their energy use. Creating a combined incentive and informational based outreach program can involve the community in energy efficiency efforts and encourage energy reduction behaviors by all citizens.

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Appendix A: Understanding the CALGreen Code

Understanding the CALGreen Code

Subject: The "CALGreen Codes" is an acronym for the 2010 triennial edition of the California Code of Regulations, Title 24, Part 11. It became effective in California on January 1, 2011.

Summary: The "CALGreen Code" requires that every new building constructed in the California reduce water consumption by 20% from the calculate baseline use, divert 50% of the construction waste from landfills and install low pollutant-emitting materials. It also requires separate water meters for nonresidential buildings, indoor and outdoor water use, with a requirement for moisture-sensing irrigation systems for larger landscape projects and mandatory inspection of energy systems (e.g., heat furnaces, air conditioners and mechanical equipment) for nonresidential buildings over 10,000 square feet to ensure that all systems are working at their maximum capacity and according to their design efficiencies.

Exemptions: There are exemptions of this code. For example, for multi-family structures 4 stories and higher are exempt from the CAL Green Code requirements.

Examples: The Code also outlines several more stringent voluntary provisions to encourage local communities to take further action to green their buildings to reduce greenhouse gas emissions, improve energy efficiency and conserve our natural resources. The voluntary measures for both residential and non-residential fall into 5 basic categories with 2 tiers of compliance. These are some examples of both:

1. **Planning and Design:** e.g., Use of "cool roof" materials, 20% permeable paving requirements, top soil protection, reuse of existing materials, building orientation, storm water management, limiting turf areas, utilization of CA drought tolerant plants and trees,

2. **Energy Efficiency:** e.g., Exceed 2008 Title 24 E.E.S. by 15%, HVAC commissioning plan, 90% use of Energy Star qualified hardware, installation of solar water heating systems, use of ducts with R-6 or higher insulation value, duct leakage testing, specific minimum efficiency factors (EF) on HVAC equipment above current Title 24, alternative fuels

3. **Water Efficiency:** e.g., 20% reduction in water use, maximum flow rates on plumbing fixtures & kitchen sinks, dishwashers shall be Energy Star qualified with max. 5.8 gallons of water per cycle, use of waterless urinals or toilets, water efficient designs for outdoor water use or irrigation; automatic irrigation/rain water capture/drought tolerant landscape, gray water system use (or capability).

4. **Material Conservation and Resource Efficiency:** e.g., reduction in the use of cement, use of pre-manufactured building systems, minimize use of paints or stains, not less than 10% to 15% recycled content value use, construction waste reduction, permanent overhangs or awnings.

5. **Environmental Quality:** e.g., Fireplace shall be direct vent sealed-combustion type, duct opening shall be sealed during construction, adhesives, sealants and caulks shall be compliant with VOC limits in the code, toxic compound limits, carpets and carpet systems shall be compliant with VOC limits, wood material shall comply with low formaldehyde emissions standards, 80% resilient flooring installed, vapor retarder and capillary break is installed at slab on grade foundations, higher than MERV 6 filters are installed on central air or ventilation systems, trained and certified HVAC installers or commissioning organization.

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Enforcement: Like the existing building code provisions that regulate construction projects throughout the state, the mandatory CALGreen provisions will be inspected and verified by local state and building departments.

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Appendix B – Additional Rating System Descriptions

- **Energy Star** was introduced by the US Environmental Protection Agency (EPA) in 1992 for both public and private buildings. It uses The National Energy Performance Rating system which rates buildings' energy use compared to similar buildings across the nation. It uses a 1-100 scale indicating that a rating of 50 would be an average performance while a rating of 75 suggests a high performance (better than 75% of like buildings nationwide). The rating is calculated using the Portfolio Manager. Buildings within a county or town can be entered into the Portfolio Manager which tracks and assesses energy use. The manager starts by determining a baseline of all buildings, and then benchmarks by comparing buildings within the county to each other and to outside buildings. It also evaluates facility systems and equipment while looking for potential improvement. The Portfolio Manager essentially helps in creating an energy action plan by identifying the necessary steps to reach the county's goals and to set a timeline. The Manager can then set tracking to measure energy use throughout the project and evaluate the progress.

    - Buildings that rate 75 points or higher are eligible to receive Energy Star. This does not, however, take into account differing climates or specialized activities that may require more energy.
    - The rating system within Energy Star only looks at energy use.
    - Different building types require different data but most call for:
        - Zip code
        - Gross floor area
        - Weekly operating hours
        - Number of workers on main shift
        - Number of personal computers
        - Percent of gross floor area that is air conditioned
        - Percent of gross floor area that is heated

  http://www.energystar.gov/

- **Leadership in Energy and Environmental Design (LEED)** is an international green building certification system that was developed by the U.S. Green Building Council in 2000. The rating system is based off of five categories:
    - Sustainable sites (site selection)
    - Water efficiency
    - Energy and Atmosphere
    - Materials and resources
    - Indoor environmental quality

  LEED certification provides an independent, third party evaluation of the energy efficiency and overall "green" design of a building. There is also LEED-EB for existing buildings which provides standards for buildings not undergoing major renovations to achieve Certification. One of the requirements for LEED EB is that the building become Energy Star rated.

  The ratings are based on a points system which varies for each kind of project (new construction, existing building, etc.). Points are given in each of the five categories based on standards. High scoring buildings can then receive a Certification or higher based on the brackets below:

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  - Certified 40 - 49 Points
  - Silver 50 - 59 Points
  - Gold 60 - 79 Points
  - Platinum 80-110 Points

  www.usgbc.org/LEED/

- **Build it Green** is a non-profit organization based out of Berkeley, CA that provides guideline and a certification program for California. It is often used in conjunction with LEED. The guidelines differ for new homes, remodels, and multifamily developments. Project deign categories include the use of natural resources, water use, energy use, indoor air quality, and community planning. Build it Green uses the **GreenPoint Rated** program, first developed in Alameda County, which is a sustainable building rating system for homes. Homes that score the minimum point requirements in each category and have a total of 50 point or higher can be designated GreenPoint Rated. All rated residences exceed California's minimum building and energy codes. Similar to LEED and Energy Star, homes are compared to like residences to receive a rating.
  http://www.builditgreen.org/

- **CALGreen** Tier 1&2 are voluntary by state law unless made mandatory by local governments. Additional efficiency building measures are necessary to meet the threshold of each level. This is a "better than code" program that would encourage higher energy efficiency than is required by California law.
  - Tier 1: Exceed the *California Energy Code* based on the 2008 energy standards requirements by 15 percent.
  - Tier 2: Exceed the *California Energy Code* based on the 2008 energy standards requirements by 30 percent.

  Both tiers require additional non-energy prerequisites, as well as a certain number of elective measures in each green building category (energy efficiency, water efficiency, resource conservation, indoor air quality and community). If a local government chooses to go beyond the baseline Code by adopting one of the tiers, it will be up to each city to decide whether the tier will be voluntary or mandatory, and how the additional measures will be enforced.

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Attachment D

Draft Policy for Commissioning/ Retro-Commissioning

Strategic Plan Task 3.2.4: Deliverable 2.E.3

Funded by:
Southern California Edison Company
Local Government Strategic Plan Strategies Program

2010 – 2012 Program Period
under the auspices of the California Public Utilities Commission

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July, 2012

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Introduction to Cx/RCx

Commissioning (CX) and retro-commissioning (RCx) are processes that look at how and why a building's mechanical and electrical systems (building infrastructure) are operated and maintained. In the case of a new building, commissioning considers how the infrastructure is installed and designed, and evaluates whether the building is operating as it was designed.

As a process, rather than a set of prescriptive measures, commissioning and retro-commissioning adapt to meet the specific needs of each building. Since occupant comfort complaints and high energy use often go hand-in-hand, retro-commissioning can help to correct both. For this reason, the following are primary incentives for the County to consider retro-commissioning:

- Improve employee, tenant or occupant comfort, safety, and health, and improve the indoor environment through a systematic evaluation of building systems, equipment, and controls.
- Optimize energy efficiency through operating the building as originally intended (or designed) and through the identification and implementation of improvement upgrades.
- Reduce operations, maintenance, and repair costs by implementing improvements to operational requirements and effective maintenance procedures.
- Improve maintenance and operations personnel's skills and awareness through training and certifications as appropriate to maintain buildings in optimal operating conditions.
- Gain acceptance from the Board of Supervisors and at all levels of management for the retro-commissioning process as a standard building operating method. Use project successes and maintenance staff expertise as leverage to implement a process for retro-commissioning.

Cx/RCx Goals and Policies, Responsibilities

Goal: Commissioning and retro-commissioning policies will be adopted to ensure that county buildings function in a manner that promotes energy efficiency, cost savings, and optimizes equipment operation and occupant comfort. These findings will help to identify ways to ensure County facilities operate efficiently, which will lower overall energy use and provide cost savings to the county.

Policy:

Commissioning and retro-commissioning will be conducted, as funding is available, on County facilities to ensure that they function in a manner that promotes energy efficiency, cost savings, and optimizes equipment operation and occupant comfort. Based on the results of commissioning and retro-commissioning, the County's facilities may be updated to operate more efficiently, which will lower overall energy use, increase occupant comfort and productivity and provide cost savings to the county.

1. New facilities may be commissioned and existing County facilities retro-comissioned as appropriate. The basis for comissioning/retro-comissioning may be one or more of the folowing:

    a. The relative building energy efficiency (benchmark comparison). The County has established a 75-point rating from the Energy Star Portfolio manager as its facilities goal.

    b. The size of a specific buidling (buildings should be 10,000sf for CX/RCx, per CALGreen).

c. The total energy use or cost of a specific building.

d. The number of comfort (or other) complaints from occupants.

e. As a part of a major renovation of a specific buidling.

2. Retro-commissioning will be based on mandatory CALGreen guidelines. Buildings that show the least efficiency through benchmarking will be identified for retro-commissioning. The depth and timing of retro-comissioning will be based on the above criteria and on available funding.

3. New County owned or County occupied buildings will be considered for comissioning, as funding allows, prior to occupancy and/or as a part of the design process. Commissioning of planned new buildings will be based on the mandatory CALGreen standards.

4. New County buildings may be Commissioned, during the planning and construction stages, as funding allows.

5. Exsisting buildings, and new facilities built after 2013, may be considered for retro-commissioning at least once every 10-years. Results will be reported to the County as a part of the continuous benchmarking and reporting policy.

6. Depending on funding availability, the County will implement appropriate system modifications and efficiency projects identified during commissioning.

Analysis of Facilities

Commissioning and retro-commissioning programs have been established for buildings over 10,000 sq.ft. The County may consider retro-commissioning based on benchmarking results (under 75-points), the current facilities that meet this criteria are:

Facility	City	Energy Use (kWh)	Size (sf)
Airport Hangers 1, 4, 6, 7, 8	Bishop	23,105	58,854
Courthouse & Annex	Independence	614,567	35,620
Inyo County Jail	Independence	636,518	36,296
Road Shop Independence	Independence	76,785	11,389
Juvenile Detention Center	Independence	93526	9,650

Although the Juvenile Detention Center is below 10,000 sq ft, based on the benchmarking results, it is the facility that uses the most electricity per square-foot.

Staff Training

Training and organizational needs will mostly focus on maintenance and operations staff. At its core, there is no part of commissioning or retro-commissioning that is new. It is, simply, ensuring that facilities

are operating in the way they were designed to be operated, and that the current needs of the occupants are met by the available systems. Meeting these design standards can be difficult due to the time involved; the availability of facility drawings and equipment information; and, the budget.

A comprehensive training program for maintenance and operations staff should be focused on specific equipment and systems. The maintenance and operations manager, facilities and public works staff should undergo training using the SCE retro-commissioning program available at: http://www.sce.com/rcx/resources.htm, which includes a Statewide RCx Policy Manual and many other resources.

Conclusion

Depending on available funding, the county may commission new buildings and retro-commission existing buildings that are identified through benchmarking or other key criteria. This policy can improve energy efficiency and reduce operations and maintenance costs. If funding is available, and depending on the severity of the occupant complaints and the potential to save money, commissioning may be completed by a certified professional working in conjunction with the maintenance and operations staff.

Any required system modifications that are identified through the commissioning process will be addressed based on the available budget. The mandatory CAL-Green commissioning and retro-commissioning standards will be followed (see appendix B). Staff training will primarily be with maintenance and operations staff and will include SCE guidelines for commissioning/retro-commissioning.

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Appendix A – List of Benchmarked County Facilities

Facility	City	Zip Code	Size (sf)
Administration - Bishop	Bishop	93514	5,224
Administration - Indy	Independence	93526	5,277
Airport Hangers 1, 4, 6, 7, 8	Bishop	93514	58,854
Airport Terminal	Bishop	93514	4,729 (entered as 5,000)
Big Pine Legion Hall	Big Pine	93526	5,688
Bishop Library/Offices	Bishop	93514	5,206
Bishop Senior Center	Bishop	93514	4,600 (entered as 5,000)
County Services Bldg. (S. St)	Bishop	93514	5,536
Courthouse & Annex	Independence	93526	35,620
Eastern California Museum	Independence	93526	5,882
HHS & Probation (Main St.)	Bishop	93514	8,641
HHS - Grove St Bishop	Bishop	93514	8,554
Inyo County Jail	Independence	93526	36,296
Juvenile Detention Center	Independence	93526	9,650
Road Shop Independence	Independence	93526	11,389
Water Department Building	Independence	93526	6,864

Appendix B – CALGreen (excerpt from Chapter 5)

Appendix C – LEED-EB Energy and Atmosphere, Prerequisite 2.1, 2.2, and 2.3

Appendix D – LEED-NC Energy and Atmosphere, Prerequisite 1

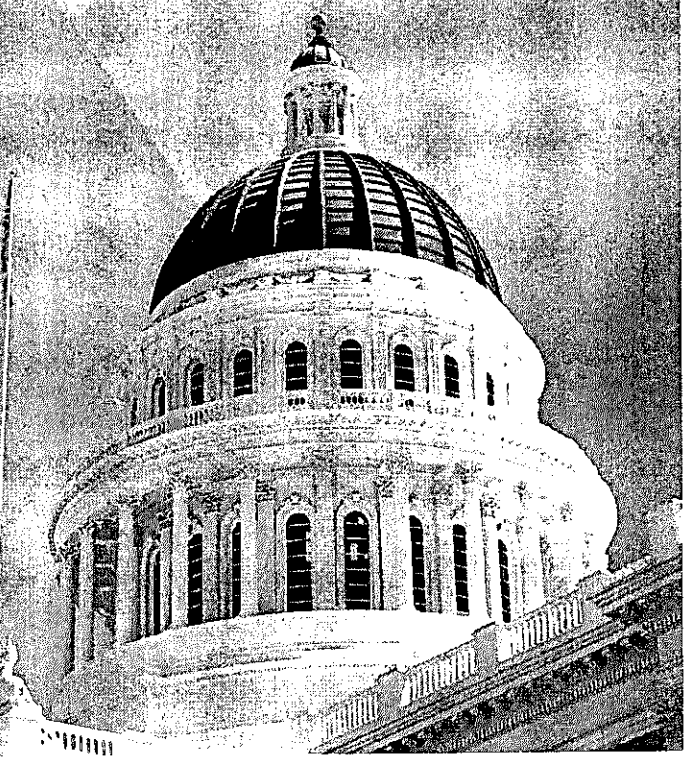
CALIFORNIA 2010 GREEN BUILDING STANDARDS CODE

CALGreen

California Code of Regulations
Title 24, Part 11

California Building Standards Commission

CBSC



CALIFORNIA GREEN BUILDING STANDARDS CODE – MATRIX ADOPTION TABLE
CHAPTER 5 – NONRESIDENTIAL MANDATORY MEASURES
DIVISION 5.4 – MATERIAL CONSERVATION AND RESOURCE EFFICIENCY

Adopting agency	BSC	SFM	HCD			DSA		OSHPD				CSA	DPH	AGR	DWR	CEC	CA	SL	SLC
			1	2	1-AC	AC	SS	1	2	3	4								
Adopt entire CA chapter	X																		
Adopt entire chapter as amended (amended sections listed below)																			
Adopt only those sections that are listed below							X												
Chapter/Section																			
5.401.1							X												
5.402.1 Definitions							X												
5.402.1 ADJUST							X												
5.402.1 BALANCE							X												
5.402.1 TEST							X												
5.407							X												
5.408.1–5.408.3							X												
5.410.1							X												
5.410.1.1							X												

CHAPTER 5
NONRESIDENTIAL MANDATORY MEASURES

Division 5.4 – MATERIAL CONSERVATION AND RESOURCE EFFICIENCY

SECTION 5.401
GENERAL

5.401.1 Scope. The provisions of this chapter shall outline means of achieving material conservation and resource efficiency through protection of buildings from exterior moisture, construction waste diversion, employment of techniques to reduce pollution through recycling of materials, and building commissioning or testing and adjusting.

SECTION 5.402
Definitions

5.402.1 Definitions. The following words and terms shall, for the purposes of this chapter and as used elsewhere in this code, have the meanings shown herein.

ADJUST. To regulate fluid flow rate and air patterns at the terminal equipment, such as to reduce fan speed or adjust a damper.

BALANCE. To proportion flows within the distribution system, including submains, branches and terminals, according to design quantities.

BUILDING COMMISSIONING. A systematic quality assurance process that spans the entire design and construction process, including verifying and documenting that building systems and components are planned, designed, installed, tested, operated and maintained to meet the owner's project requirements.

TEST. A procedure to determine quantitative performance of a system or equipment.

SECTION 5.403
FOUNDATION SYSTEMS
(Reserved)

SECTION 5.404
EFFICIENT FRAMING TECHNIQUES
(Reserved)

SECTION 5.405
MATERIAL SOURCES
(Reserved)

SECTION 5.406
ENHANCED DURABILITY AND REDUCED MAINTENANCE
(Reserved)

SECTION 5.407
WATER RESISTANCE AND MOISTURE MANAGEMENT

5.407.1 Weather protection. Provide a weather-resistant exterior wall and foundation envelope as required by *California Building Code* Section 1403.2 (Weather Protection) and *California Energy Code* Section 150, (Mandatory Features and Devices), manufacturer's installation instructions or local ordinance, whichever is more stringent.

5.407.2 Moisture control. Employ moisture control measures by the following methods.

5.407.2.1 Sprinklers. Design and maintain landscape irrigation systems to prevent spray on structures.

5.407.2.2 Entries and openings. Design exterior entries and/or openings subject to foot traffic or wind-driven rain to prevent water intrusion into buildings.

Notes:

1. Use features such as overhangs and recesses, and flashings integrated with a drainage plane.
2. Use nonabsorbent floor and wall finishes within at least two feet around and perpendicular to such openings.

SECTION 5.408
CONSTRUCTION WASTE REDUCTION, DISPOSAL AND RECYCLING

5.408.1 Construction waste diversion. Establish a construction waste management plan for the diverted materials, or meet local construction and demolition waste management ordinance, whichever is more stringent.

5.408.2 Construction waste management plan. Where a local jurisdiction does not have a construction and demolition waste management ordinance, submit a construction waste management plan for approval by the enforcement agency that:

1. Identifies the materials to be diverted from disposal by efficient usage, recycling, reuse on the project or salvage for future use or sale.
2. Determines if materials will be sorted on-site or mixed.
3. Identifies diversion facilities where material collected will be taken.
4. Specifies that the amount of materials diverted shall be calculated by weight or volume, but not by both.

5.408.2.1 Documentation. Documentation shall be provided to the enforcing agency which demonstrates compliance with Section 5.408.2, Items 1 thru 4. The waste management plan shall be updated as necessary and shall be accessible during construction for examination by the enforcing agency.

Exception: [DSA-SS] Jobsites in areas where there is no mixed construction and demolition debris (C&D) processor or recycling facilities within a feasible haul distance shall meet the requirements as follows:

1. The enforcement agency having jurisdiction shall at its discretion, enforce the waste management plan and make exceptions as deemed necessary.

5.408.2.2 Isolated jobsites. The enforcing agency may make exceptions to the requirements of this section when jobsites are located in areas beyond the haul boundaries of the diversion facility.

Notes:

1. Sample forms found in Chapter 8 may be used to assist in documenting compliance with the waste management plan.
2. Mixed construction and demolition debris (C&D) processors can be located at the California Department of Resources Recycling and Recovery (CalRecycle).

5.408.3 Construction waste reduction of at least 50 percent. Recycle and/or salvage for reuse a minimum of 50 percent of the non-hazardous construction and demolition debris, or meet a local construction and demolition waste management ordinance, whichever is more stringent. Calculate the amount of materials diverted by weight or volume, but not by both.

Exceptions:

1. Excavated soil and land-clearing debris
2. Alternate waste reduction methods developed by working with local agencies if diversion or recycle facilities capable of compliance with this item do not exist.

5.408.4 Excavated soil and land clearing debris. 100 percent of trees, stumps, rocks and associated vegetation and soils resulting primarily from land clearing shall be reused or recycled. For a phased project, such material may be stockpiled on site until the storage site is developed.

SECTION 5.409
LIFE CYCLE ASSESSMENT
(Reserved)

SECTION 5.410
BUILDING MAINTENANCE AND OPERATION

5.410.1 Recycling by occupants. Provide readily accessible areas that serve the entire building and are identified for the depositing, storage and collection of non-hazardous materials for recycling, including (at a minimum) paper, corrugated cardboard, glass, plastics and metals.

5.410.1.1 Sample ordinance. Space allocation for recycling areas shall comply with Chapter 18, Part 3, Division 30 of the *Public Resources Code.* Chapter 18 is known as the California Solid Waste Reuse and Recycling Access Act of 1991 (Act).

Note: A sample ordinance for use by local agencies may be found in Appendix A of the document at the CalRecycle's web site.

5.410.2 Commissioning. For new buildings 10,000 square feet and over, building commissioning shall be included in the design and construction processes of the building project to verify that the building systems and components meet the owner's or owner representative's project requirements. Commissioning shall be performed in accordance with this section by trained personnel with experience on projects of comparable size and complexity. Commissioning requirements shall include:

1. Owner's or Owner representative's project requirements
2. Basis of design
3. Commissioning measures shown in the construction documents
4. Commissioning plan
5. Functional performance testing
6. Documentation and training
7. Commissioning report

All building systems and components covered by Title 24, Part 6, as well as process equipment and controls, and renewable energy systems shall be included in the scope of the Commissioning Requirements.

5.410.2.1 Owner's or Owner representative's Project Requirements (OPR). The expectations and requirements of the building appropriate to its phase shall be documented before the design phase of the project begins. This documentation shall include the following:

1. Environmental and sustainability goals
2. Energy efficiency goals
3. Indoor environmental quality requirements
4. Project program, including facility functions and hours of operation, and need for after hours operation
5. Equipment and systems expectations
6. Building occupant and operation and maintenance (O&M) personnel expectations

5.410.2.2 Basis of Design (BOD). A written explanation of how the design of the building systems meets the OPR shall be completed at the design phase of the building project, and updated as necessary during the design and construction phases. The Basis of Design document shall cover the following systems:

1. Heating, ventilation, air conditioning (HVAC) systems and controls
2. Indoor lighting system and controls
3. Water heating system
4. Renewable energy systems
5. Landscape irrigation systems
6. Water reuse systems

5.410.2.3 Commissioning plan. Prior to permit issuance a commissioning plan shall be completed to document how the project will be commissioned and shall be started during the design phase of the building project. The Commissioning Plan shall include the following:

1. General project information
2. Commissioning goals
3. Systems to be commissioned. Plans to test systems and components shall include:
   a. An explanation of the original design intent
   b. Equipment and systems to be tested, including the extent of tests
   c. Functions to be tested
   d. Conditions under which the test shall be performed
   e. Measurable criteria for acceptable performance
4. Commissioning team information
5. Commissioning process activities, schedules and responsibilities. Plans for the completion of commissioning requirements listed in Sections 5.410.2.4 through 5.410.2.6 shall be included

5.410.2.4 Functional performance testing. Functional performance tests shall demonstrate the correct installation and operation of each component, system and system-to-system interface in accordance with the approved plans and specifications. Functional performance testing reports shall contain information addressing each of the building components tested, the testing methods utilized, and include any readings and adjustments made.

5.410.2.5 Documentation and training. A Systems Manual and Systems Operations Training are required, including Occupational Safety and Health Act (OSHA) requirements in *California Code of Regulations* (CCR), Title 8, Section 5142, and other related regulations.

5.410.2.5.1 Systems manual. Documentation of the operational aspects of the building shall be completed within the Systems Manual and delivered to the building owner or representative and facilities operator. The Systems Manual shall include the following:

1. Site information, including facility description, history and current requirements
2. Site contact information
3. Basic operations and maintenance, including general site operating procedures, basic troubleshooting, recommended maintenance requirements, site events log
4. Major systems
5. Site equipment inventory and maintenance notes

6. A copy of all special inspection verifications required by the enforcing agency or this code
7. Other resources and documentation

5.410.2.5.2 Systems operations training. The training of the appropriate maintenance staff for each equipment type and/or system shall be documented in the commissioning report and shall include the following:

1. System/equipment overview (what it is, what it does and with what other systems and/or equipment it interfaces)
2. Review and demonstration of servicing/preventive maintenance
3. Review of the information in the Systems Manual
4. Review of the record drawings on the system/equipment

5.410.2.6 Commissioning report. A complete report of commissioning process activities undertaken through the design, construction and reporting recommendations for postconstruction phases of the building project shall be completed and provided to the owner or representative.

5.410.4 Testing and adjusting. Testing and adjusting of systems shall be required for buildings less than 10,000 square feet.

5.410.4.2 Systems. Develop a written plan of procedures for testing and adjusting systems. Systems to be included for testing and adjusting shall include at a minimum, as applicable to the project:

1. HVAC systems and controls
2. Indoor and outdoor lighting and controls
3. Water heating systems
4. Renewable energy systems
5. Landscape irrigation systems
6. Water reuse systems

5.410.4.3 Procedures. Perform testing and adjusting procedures in accordance with industry best practices and applicable standards on each system as determined by the building official.

5.410.4.3.1 HVAC balancing. In addition to testing and adjusting, before a new space-conditioning system serving a building or space is operated for normal use, the system shall be balanced in accordance with the procedures defined by the Testing Adjusting and Balancing Bureau National Standards; the National Environmental Balancing Bureau Procedural Standards; or Associated Air Balance Council National Standards or as approved by the building official.

5.410.4.4 Reporting. After completion of testing, adjusting and balancing, provide a final report of testing signed by the individual responsible for performing these services.

5.410.4.5 Operation and maintenance (O & M) manual. Provide the building owner or representative with detailed operating and maintenance instructions and copies of guaranties/warranties for each system. O & M instructions shall be consistent with OSHA requirements in CCR, Title 8, Section 5142, and other related regulations.

5.410.4.5.1 Inspections and reports. Include a copy of all inspection verifications and reports required by the enforcing agency.

EA Credit 2.1: Existing Building Commissioning—Investigation and Analysis

2 points

Intent

Through a systematic process, to develop an understanding of the operation of the building's major energy-using systems, options for optimizing energy performance and a plan to achieve energy savings.

Requirements

OPTION 1. Commissioning Process

- Develop a retrocommissioning, recommissioning or ongoing commissioning plan for the building's major energy-using systems.
- Conduct the investigation and analysis phase.
- Document the breakdown of energy use in the building.
- List the operating problems that affect occupants' comfort and energy use, and develop potential operational changes that will solve them.
- List the identified capital improvements that will provide cost-effective energy savings and document the cost-benefit analysis associated with each.

OR

OPTION 2. ASHRAE Level II Energy Audit

- Conduct an energy audit that meets the requirements of American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), Level II, Energy Survey and Analysis.
- Document the breakdown of energy use in the building.
- Perform a savings and cost analysis of all practical measures that meet the owner's constraints and economic criteria, along with a discussion of any effect on operations and maintenance procedures.
- List the identified capital improvements that will provide cost-effective energy savings and document the cost-benefit analysis associated with each.

Potential Technologies & Strategies

Based on the building operating plan and systems narrative, confirm that all building systems and equipment are functioning as appropriate according to the equipment schedule. Conduct testing and analysis to ensure that building systems and equipment are functioning correctly. Identify opportunities to make no- or low-cost capital improvements to enhance building performance.

EA Credit 2.2: Existing Building Commissioning—Implementation

2 points

Intent

To implement minor improvements and identify planned capital projects to ensure that the building's major energy-using systems are repaired, operated and maintained effectively to optimize energy performance.

Requirements

Implement no- or low-cost operational improvements and create a capital plan for major retrofits or upgrades.

Provide training for management staff that builds awareness and skills in a broad range of sustainable building operations topics. This could include energy efficiency and building, equipment and systems operations and maintenance.

Demonstrate the observed and/or anticipated financial costs and benefits of measures that have been implemented.

Update the building operating plan as necessary to reflect any changes in the occupancy schedule, equipment run-time schedule, design set points and lighting levels.

Potential Technologies & Strategies

Implement no- and low-cost operational improvements that will immediately enhance building performance. Develop a capital plan for the completion of any major retrofits identified through the investigation and analysis phase.

EA Credit 2.3: Existing Building Commissioning—Ongoing Commissioning

2 points

Intent

To use commissioning to address changes in facility occupancy, use, maintenance and repair. Make periodic adjustments and reviews of building operating systems and procedures essential for optimal energy efficiency and service provision.

Requirements

Implement an ongoing commissioning program that includes elements of planning, system testing, performance verification, corrective action response, ongoing measurement and documentation to proactively address operating problems.

Create a written plan that summarizes the overall commissioning cycle for the building by equipment or building system group. The ongoing commissioning cycle must not exceed 24 months. This plan must include a building equipment list, performance measurement frequency for each equipment item and steps to respond to deviation from expected performance parameters.

Complete at least half of the scope of work in the first commissioning cycle (as indicated by the percentage of the plan's total budget) prior to the date of application for LEED 2009 for Existing Buildings: Operations & Maintenance. Only work completed within 2 years prior to application may be included to show progress in the ongoing commissioning cycle.

Update the building operating plan and/or systems narrative as necessary to reflect any changes in the occupancy schedule, equipment run-time schedule, design set points, lighting levels or system specifications.

Potential Technologies & Strategies

Develop an ongoing commissioning program that addresses the ongoing changes and maintenance needs in an existing building.

ENERGY & ATMOSPHERE

EA Prerequisite 1: Fundamental Commissioning of Building Energy Systems

Required

Intent

To verify that the project's energy-related systems are installed, and calibrated to perform according to the owner's project requirements, basis of design and construction documents.

Benefits of commissioning include reduced energy use, lower operating costs, fewer contractor callbacks, better building documentation, improved occupant productivity and verification that the systems perform in accordance with the owner's project requirements.

Requirements

The following commissioning process activities must be completed by the project team:

- Designate an individual as the commissioning authority (CxA) to lead, review and oversee the completion of the commissioning process activities.
  - The CxA must have documented commissioning authority experience in at least 2 building projects.
  - The individual serving as the CxA must be independent of the project design and construction management, though the CxA may be an employee of any firm providing those services. The CxA may be a qualified employee or consultant of the owner.
  - The CxA must report results, findings and recommendations directly to the owner.
  - For projects smaller than 50,000 gross square feet (5,000 gross square meters), the CxA may be a qualified person on the design or construction team who has the required experience.
- The owner must document the owner's project requirements. The design team must develop the basis of design. The CxA must review these documents for clarity and completeness. The owner and design team must be responsible for updates to their respective documents.
- Develop and incorporate commissioning requirements into the construction documents.
- Develop and implement a commissioning plan.
- Verify the installation and performance of the systems to be commissioned.
- Complete a summary commissioning report.

Commissioned Systems

Commissioning process activities must be completed for the following energy-related systems, at a minimum:

- Heating, ventilating, air conditioning and refrigeration (HVAC&R) systems (mechanical and passive) and associated controls
- Lighting and daylighting controls
- Domestic hot water systems
- Renewable energy systems (e.g., wind, solar)

Potential Technologies & Strategies

Engage a CxA as early as possible in the design process. Determine the owner's project requirements, develop and maintain a commissioning plan for use during design and construction and incorporate commissioning requirements in bid documents. Assemble the commissioning team, and prior to occupancy verify the performance of energy consuming systems. Complete the commissioning reports with recommendations prior to accepting the commissioned systems.

Owners are encouraged to seek out qualified individuals to lead the commissioning process. Qualified individuals are identified as those who possess a high level of experience in the following areas:

- Energy systems design, installation and operation
- Commissioning planning and process management
- Hands-on field experience with energy systems performance, interaction, start-up, balancing, testing, troubleshooting, operation and maintenance procedures
- Energy systems automation control knowledge

Owners are encouraged to consider including water-using systems, building envelope systems, and other systems in the scope of the commissioning plan as appropriate. The building envelope is an important component of a facility that impacts energy consumption, occupant comfort and indoor air quality. While this prerequisite does not require building envelope commissioning, an owner can achieve significant financial savings and reduce risk of poor indoor air quality by including it in the commissioning process.

The LEED Reference Guide for Green Building Design and Construction, 2009 Edition provides guidance on the rigor expected for this prerequisite for the following:

- Owner's project requirements
- Basis of design
- Commissioning plan
- Commissioning specification
- Performance verification documentation
- Commissioning report

Attachment E

Energy Savings Analysis for County Greenhouse Gas Inventory

Draft Report

Strategic Plan Task 4.1.4: Deliverable 3.D.3

Funded by
Southern California Edison Company
Local Government Strategic Plan Strategies Program

2010 – 2012 Program Period
under the auspices of the California Public Utilities Commission

Prepared for:

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July, 2012

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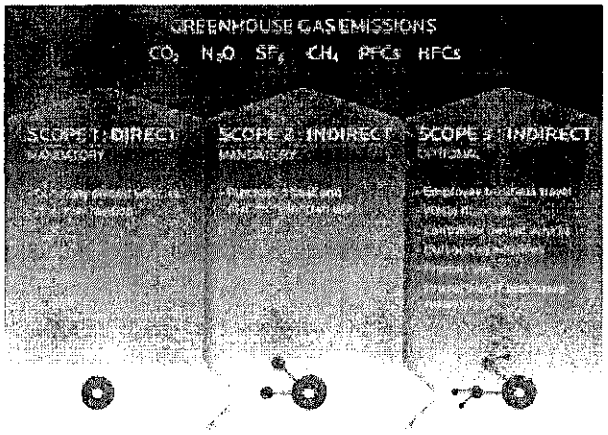
Introduction

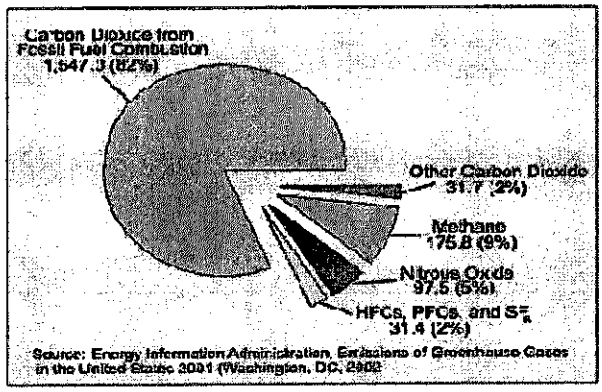
The greenhouse gas aspects of the Energy Action Plan are being developed in conformance with California Air Resource Board (CARB), as well as national and international standards. Because the focus of the County is on energy efficiency and energy savings, building on established standards allows the EAP to take advantage of the many direct links between energy savings and greenhouse gas savings.

The Greenhouse Gas Protocol (GHG Protocol) is the most widely used international accounting tool for government and business leaders to understand, quantify, and manage greenhouse gas emissions. The Greenhouse Gas Protocol Corporate Accounting and Reporting Standard was developed by the World Resource Institute (WRI) and World Business Council for Sustainable Development (WBCSD). It provides a step-by-step guide for organizations to use in quantifying and reporting their GHG emissions. Although the county is not currently regulated by the CARB, when and if greenhouse gas reporting and benchmarking becomes mandatory, the procedures and metrics will already be in place by applying these protocols.



Calculating the County's carbon footprint involves establishing operational boundaries, identifying emissions associated with operations, categorizing these as direct or indirect emissions, and choosing the scope of accounting and reporting. In order to best follow current CARB reporting requirements, this document will target all Scope 1 and Scope 2 requirements. Likewise, it is important to note that, of the 6 compounds comprising the County's carbon footprint, CO2 is the only compound which will be involved with this reporting. A brief review of the definition of the 6 types of GHG compounds provides insight into why only CO2 emissions are being considered:

1. **CO2 – Carbon Dioxide** - Gas that is emitted upon humans or animals exhaling, and is inhaled by plants. It is also noted that CO2 is used in a typical soda drink. Predominantly, however, CO2 is a byproduct from combustion (i.e. is emitted from automobiles, transportation, heating, and electric power production and, as a result, electrical power usage).
2. **N2O – Nitrous Oxide** - Colorless, non-flammable gas also known as "laughing gas". Gas used in surgery and dentistry for analgesic effects.
3. **SF6 – Sulfur Hexafluoride** – Inorganic, colorless, odorless, and non-flammable greenhouse gas that is used for the casting of magnesium, and a filling for insulated glazing of windows.
4. **CH4 - Methane** – Colorless, gas emitted by humans and animals. Methane can be used as a fuel to generate electricity.
5. **PFCs – Perfluorocarbons** – Organofluorine compounds that contain only fluoride and carbon bonded together.. These are commonly found in the textile industry.
6. **HFCs – Hydroflourocarbons**- Hydrogen, fluoride, and carbon compounds that do not harm the ozone layer if they contain chlorine, or bromine. Used as refrigerants in place of CFC's. Note that, although the County employs refrigerants, most are HCFC's and are in amounts well below CARB thresholds for monitoring or regulation.



Source: Energy Information Administration, Emissions of Greenhouse Gases in the United States 2001 (Washington, DC, 2002

As may be noted from the above, aside from CO2, the other five compounds are very specific to processes or businesses not impacted by County operations.

Project Scope

As stated in the introduction, the County has included scopes 1 and 2 in the greenhouse gas inventory. The Greenhouse Gas Protocol defines Scope 1 as county owned vehicles and fuel combustion. In the case of Inyo County this includes:

- ✓ the three vehicle fleets[1]: the motor pool, the road department, and the waste management fleets.
- ✓ all of the heating systems (furnaces, boilers, hot water heaters). This corresponds directly to all propane use described and quantified in the EAP.

Scope 2 is defined as purchased electricity and heat. For Inyo County, this includes all electric use (i.e. as described in the EAP). Purchased heat refers to steam or hot water which can be available in large central heating or cooling "loops" in large cities. Inyo county has no purchased heat.

Note that, the GHG Inventory, in order to correspond directly to the EAP, excludes County facilities less than 4,500 square feet.

Methodology

The County used a calculation based methodology to estimate the greenhouse gas emissions from government activities. The year 2011 was used as the baseline year for this study. The electrical and propane data are from January to December of 2011 while the vehicle fleet data is the fiscal year 2010-2011 which is form July 2010 to June 2011.

The total consumption of electricity, propane, unleaded gasoline, and diesel fuel was then multiplied by the conversion factors listed in Table 1. This created an estimate of the metric tonnes of greenhouse gas that the county emits annually.

Table 1. Conversion factors[2]				
1	kWh	=	*1*	kWh/lb-ghg
1	Gallon (Propane)	=	*12.7*	gallon/lb-ghg
1	Gallon (Diesel)	=	*22.4*	gallon/lb-ghg
1	Gallon (Unleaded)	=	*19.6*	gallon/lb-ghg
1	MT (Tonnes)	=	*2205*	lbs

Results

The County of Inyo emitted an estimated 3,618 MT in 2011. Table 2 illustrates the results broken out by energy type.

Table 2. Overall GHG Emissions for 2011		
Electricity	1037	MT (Tonnes)
Propane	418	MT (Tonnes)
Unleaded gasoline	1684	MT (Tonnes)
Diesel	479	MT (Tonnes)
Total GHG	**3618**	**MT (Tonnes)**

Figure 1 illustrates the percentage that each energy type contributes to the total greenhouse gas emissions of the County.

---

[1] See Appendix B for itemized vehicle counts for the motor pool, the road department, and the waste management fleet, respectively.

[2] Scope 1 and 2 greenhouse gases are directly proportional to electric, propane, gasoline and diesel usage. However conversion factors can vary. These are provided so that future GHG inventories employ consistent factors, or adjust the baseline to recognized or required conversion factors.

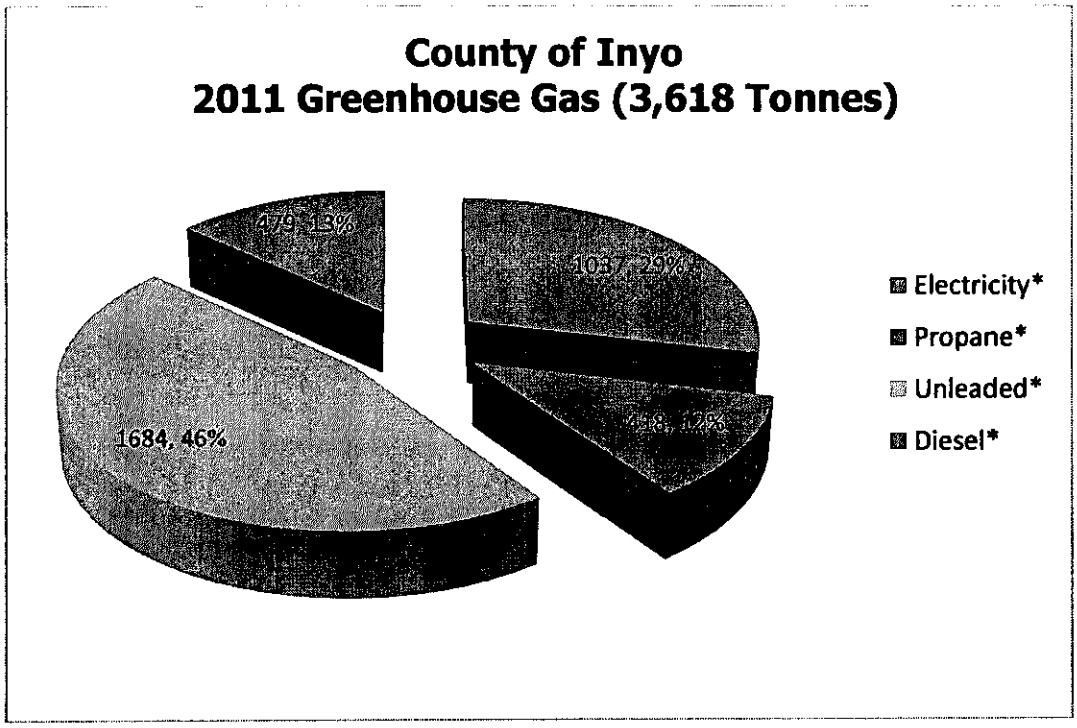


Table 3 illustrate the greenhouse gas emissions in 2011 by facility and energy type.

Table 3. 2011 Inyo Facilities Usage				
Building:	**Electricity (kWh)**	**Propane (Gallons)**	**Electricity GHG (MT)**	**Propane GHG (MT)**
Administration - Bishop	74,349	N/A	34	N/A
Administration - Indy	54,977	N/A	25	N/A
Airport Hangers 1, 4, 6, 7, 8	22,953	3,378	10	19
Airport Terminal	35,976	728	16	4
Big Pine Legion Hall	9,836	1,932	4	11
County Services Bldg. (S. St)	121,245	N/A	55	N/A
Bishop Library/Offices	41,787	1,495	19	9
Courthouse & Annex	620,560	21,717	281	125
Eastern California Museum	43,541	1,483	20	9
Bishop Senior Center	53,440	3,777	24	22
HHS & Probation (Main St.)	81,935	550	37	3
Inyo County Jail	638,054	20,815	289	120
Water Department Building	37,004	1,607	17	9
Juvenile Detention Center	195,488	10,879	89	63
Road Shop Independence	78,388	4,206	36	24
HHS - Grove St Bishop	176,793	N/A	80	N/A

Table 4 illustrates the greenhouse gas emissions produced by the county vehicle fleet for the fiscal year 2010 to 2011.

Table 4. FY 2010-2011 Vehicle Fleet Consumption								
Fuel	**Annual Cost**	**Annual Gallons**	**Period**	**# of Vehicles**	**Average mpg**	**Highest mpg**	**Lowest mpg**	**$/gallon**
Waste Management Unleaded	$123,000	*$34,687*	FY10-11	4	17	20	11	*$3.55*
Waste Management Diesel			FY10-11	30	NA	NA	NA	NA
Motor Pool Unleaded	$451,750	129,974	FY10-11	219	16.629	27	11	$3.48
Motor Pool Diesel		NA	FY10-11	11	17.64	17	10	NA
Road Department Unleaded	$90,983	25,186	FY10-11	47	NA	NA	10	$3.61
Road Department Diesel	$181,359	47,197	FY10-11	66	NA	NA	NA	$3.84
Totals	**$847,092**	**237,044**		**377**				**$3.57**

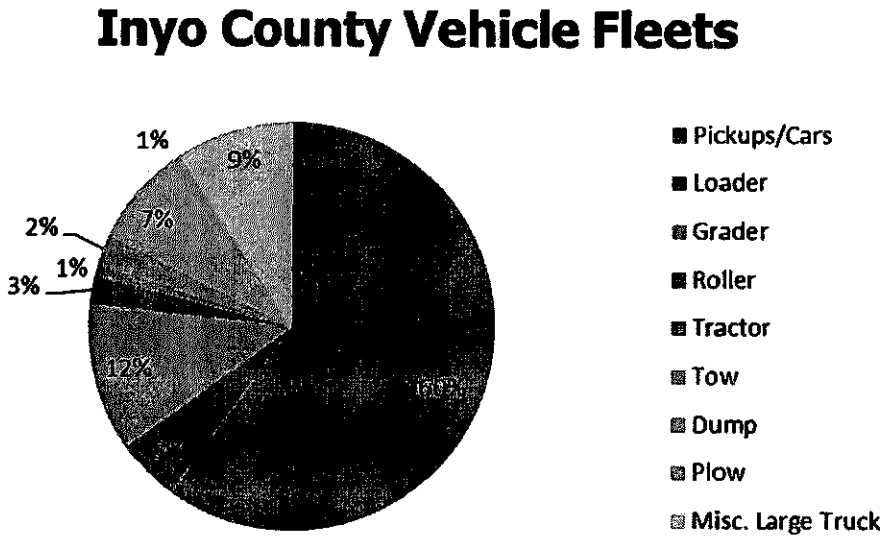
*Values have been estimated based on the average cost per gallon and the total annual cost.

Table 6 illustrates the mean, median, and range of the city and highway miles per gallon for the county Motor Pool which contains the majority of the county owned pickups and cars. These values were found based on each vehicles year, make, and model.

Table 6. Miles per Gallon Data for County Vehicle Fleets									
Fleet	**Mean CMPG***	**Lowest City**	**Highest City**	**Median CMPG**	**Mean HMPG****	**Median HMPG**	**Lowest Highway**	**Highest Highway**	**$/Gallon**
Motor Pool	17	11	27	16	23	23	14	35	3.48

*City mile per gallon
**Highway mile per gallon

Figure 2 summarizes the makeup of the County vehicle fleet. Note that most of the vehicles are large trucks with relatively low MPG ratings.



California State Perspective

This section provides a perspective of Inyo County related to the state as a whole. The State's emissions range annually and from 2000 to 2009 they ranged from 453 million metric tonnes (MMT) in 2009 to 485 MMT in 2007. Executive Order S-3-05, signed on June 1, 2005, outlines the State's emission reductions targets:

- Reduce emissions to 2000 levels by 2010
- Reduce emissions to 1990 levels by 2020
- Reduce emissions to 80 percent below 1990 levels by 2050

These targets can only be met with the corporation of local governments. The majority of Greenhouse gas emissions in the state (as well as Inyo County) come from transportation.

Table 7 illustrates the emissions by California in million metric tonnes (MMT) from 2000 to 2009. This data was taken from the California Air Resources Board (CARB), see Appendix A: California Greenhouse Gas Inventory for 2000-2009.

Table 7. GHG Emissions (MMT) for California, 2000-20009

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Average 2000-2009
Transportation	171.71	174.79	181.28	179.39	193.18	186.07	186.64	187.08	177.97	172.92	181.10
Electric Power	105.96	122.90	109.70	113.69	116.27	109.02	105.72	115.08	121.22	103.58	112.31
Commercial and Residential	42.92	40.99	42.96	41.32	42.67	41.04	41.66	41.92	41.54	42.95	42.00
Industrial	96.62	93.34	94.29	91.58	93.49	92.75	92.31	89.78	87.09	81.36	91.26
Recycling and Waste	6.55	6.65	6.61	6.71	6.68	7.00	7.09	7.06	7.26	7.32	6.89
High GWP	10.76	11.29	11.89	12.59	13.34	13.88	14.54	14.81	15.77	16.32	13.52
Agriculture	28.95	29.10	32.26	30.67	32.34	32.61	33.75	32.91	33.68	32.13	31.84
Forestry	0.19	0.19	0.19	0.19	0.19	0.19	0.19	0.19	0.19	0.19	0.19
Totals	463.66	479.25	479.18	476.14	498.16	482.56	481.90	488.83	484.72	456.77	

Figure 3 illustrates the annual greenhouse gas emissions for the State of California from 2000 to 2009. Note that the emissions vary annually and range from 453 MMT to 485 MMT. 2009 emissions decrease due to large decreases in both transportation and electric power. All of the data from the State of California came from the CARB website (see Appendix A: California Greenhouse Gas Inventory for 2000-2009).

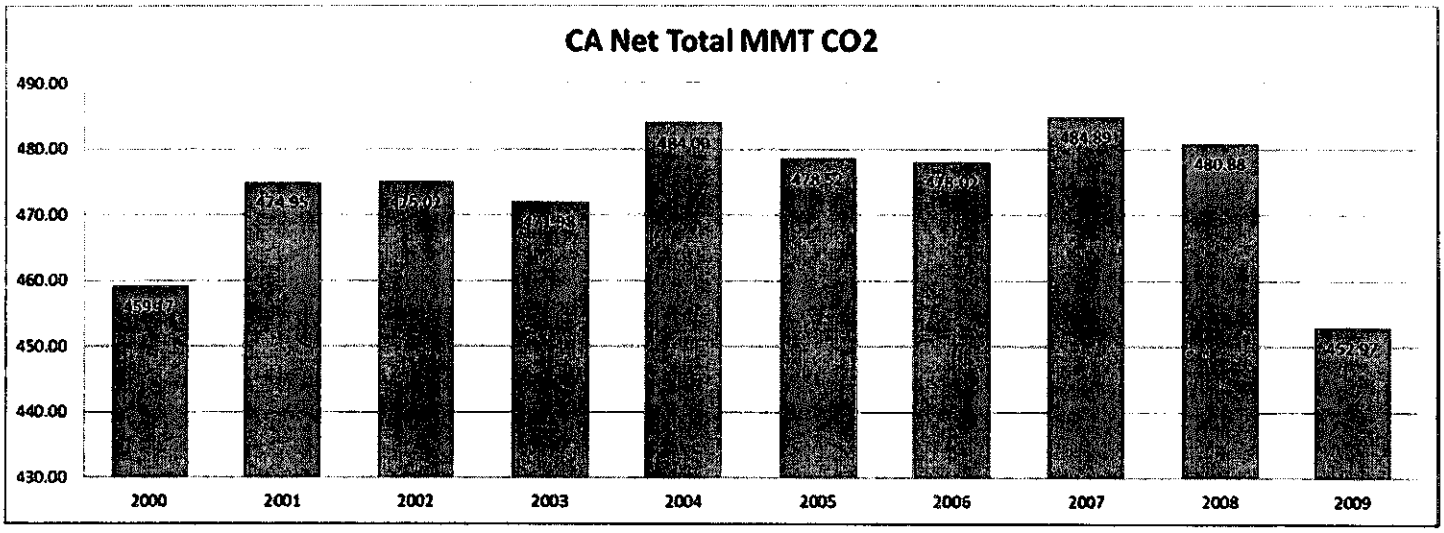


Figure 4 summarizes the greenhouse gas emissions in California by source. Note that similar to Inyo County, transportation is the largest source of emissions for the state as a whole. Electricity is also the second highest cause of emissions in the County.

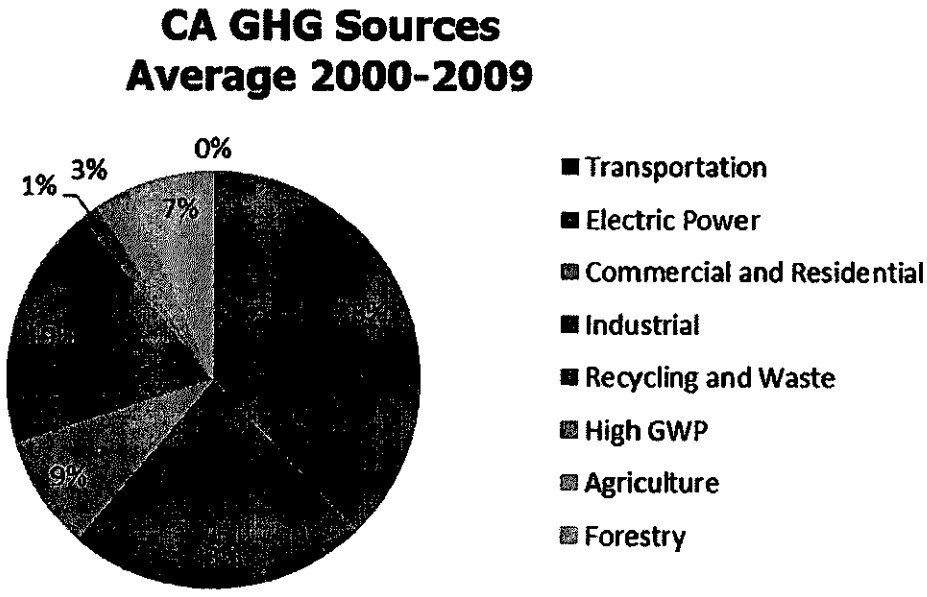
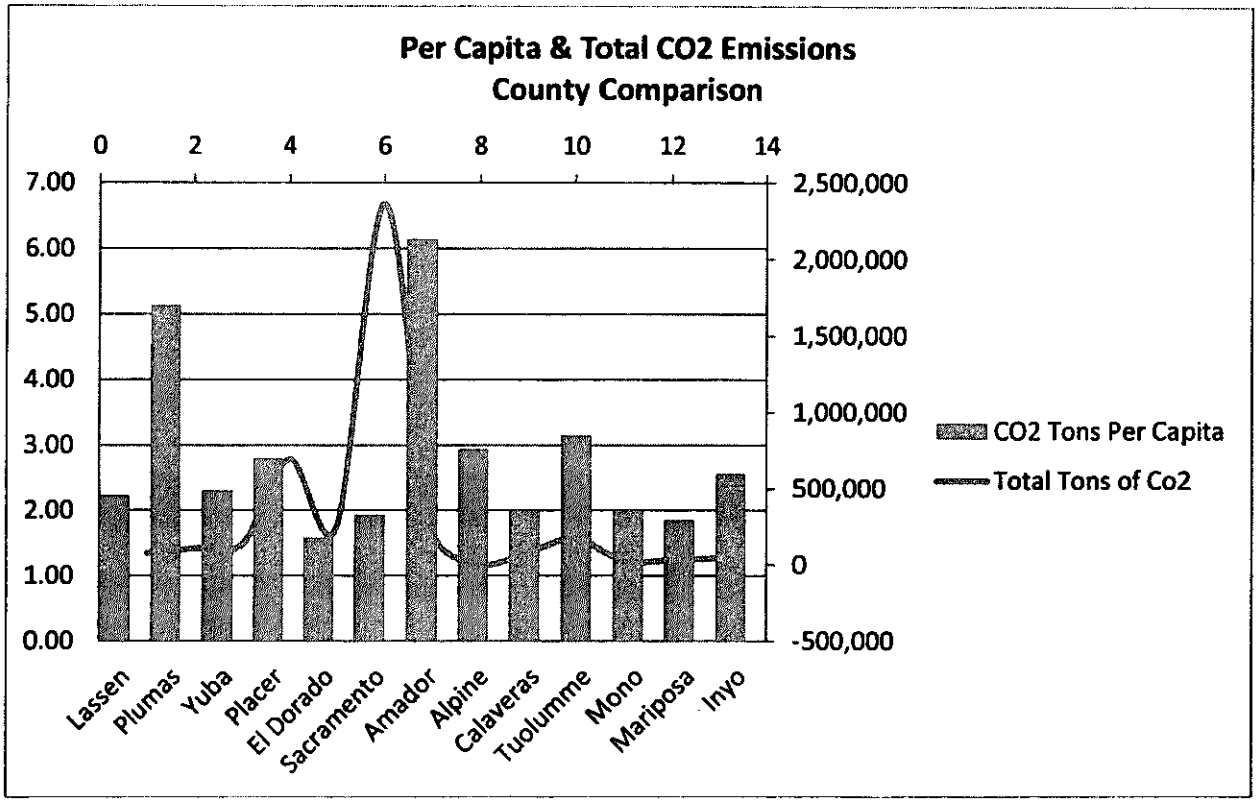


Figure 5 shows the tons per capita and tons of CO2 in nearby counties. This data was compiled from http://www.climateatlas.org/geoclip/countyCO2.htm . Based on the data, Inyo is currently below average when compared to these other counties.



Discussion & Recommendations

This inventory, 2011, will serve as the county's baseline data for measuring changes in greenhouse gas emissions and for identifying the largest sources of emissions due to county activity.

The results indicate that the majority (59%) of greenhouse gas emissions in the county come from its vehicle fleet. This does not, however, include county facilities smaller than 4,500 square feet which may alter the results. The vehicle fleet has mostly cars and trucks with an average highway MPG of 23 and city MPG of 17. The cars range from 1952 to 2012 models. The rest of the fleet is made up of large trucks and tractors that use mostly diesel fuel.

The facilities with the highest emissions are the least energy efficient. Any energy reduction projects within the county will reduce the resultant greenhouse gas emissions.

The energy and cost reduction goals of the county will directly effect the greenhouse gas emissions. If energy and cost reduction goals are met, the emissions will decrease proportionately. The county would like to focus on energy and cost reduction rather than setting a specific emissions reduction target.

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
22

☐ Consent ☒ Departmental ☐ Correspondence Action ☐ Public Hearing

☐ Scheduled Time for ☐ Closed Session ☒ Informational

FROM: Planning Department and Planning Commission

FOR THE BOARD MEETING OF: September 4, 2012

SUBJECT: Zoning Code Update Workshop

DEPARTMENTAL RECOMMENDATION: Conduct a workshop regarding code enforcement and special event permit issues related to the Zoning Code Update and provide input.

SUMMARY DISCUSSION: One of the follow-up actions from the 2001 General Plan was to update the Zoning Code. Staff worked with Willdan to prepare updated Zoning Code sections, which were provided for review by the Board and the Planning Commission in a series of workshops last year. Staff incorporated this input into a comprehensive Zoning Code update and has prepared a related General Plan update.

The Planning Commission and the Board of Supervisors conducted a joint workshop on July 10, 2012 regarding the draft documents and directed staff to address two issues further before proceeding with public outreach and environmental review: (1) Code Enforcement and (2) Special Event Permits. The Planning Commission conducted a workshop on August 22, 2012 regarding these two issues and provided input.

Code Enforcement

Under current practice, staff responds to written complaints regarding zoning violations and works with property owners to rectify such issues. If no resolution can be reached, staff notifies the District Attorney (DA) of the violation. Based on previous input from the Planning Commission and the Board, staff had crafted a proposal to create a Code Enforcement Committee with the power to levy fines, and transfer enforcement to the Office of County Counsel. This proposal was presented on July 10, and staff was directed to bring the issue back for more detailed review and consideration of alternatives. Attachment 1 includes the concept presented on July 10, and has been updated to incorporate input received at the workshop as well as the Planning Commission's August 22 workshop. The primary changes involve adding provisions regarding the County's intent to work proactively to bring before leading to hard enforcement actions, means to enforce if necessary, clarifying language regarding fines, make-up of the Committee, and means to avoid a Committee meeting if the violator agrees to pay a fine.

Based on the discussion on July 10, the following alternatives may be considered to replace or augment the current proposal:

- ***Code Enforcement Committee Membership***: variations in the make-up of any Code Enforcement Committee could be considered. Staff has revised the draft language to indicate that the County Administrator will appoint a Committee of three. A hearing officer could also be employed, such as a member of the Planning Commission (who does not represent the district in which the violation has occurred) or an individual or panel with

expertise in land use issues. Any decision of the Committee could be appealed to the Planning Commission and then the Board of Supervisors under the current proposal.

- ***Code Enforcement Committee Procedures***: under the current proposal, the Committee would set operational procedures with limited direction from the Code. Staff believes that this is warranted to provide the Committee with flexibility in the many various code enforcement cases typical in Inyo County. More detailed procedures could be codified, such as setting location and time, rules for speaking, and others.
- ***Tickets***: the Planning Director and/or designee could issue tickets for violators, either upon confirmation of a complaint or later if attempts to bring the violation into conformity fail.
- ***Outsourcing***: the County could hire an outside firm to conduct code enforcement. A variety of models are available, ranging from completely outsourcing the activities, authorizing the County to maintain some oversight (such as override power in extenuating circumstances), or limiting the firm's involvement to penalty collection. Profit motive could be an issue for outsourcing, including from any potential firm's ability to make a profit due to the low number of cases in Inyo County as well as the firm's motivation to issue and collect fines.
- ***Amount of Fine/Ticket***: the amount of the fine could vary based on how the code is crafted. Under the current proposal, the fines are flexible; in egregious cases, fines up to $1,000 could be levied. If greater certainty is deemed warranted, the flexibility could be eliminated.
- ***Enforcement***: enforcement could continue to be vested in the DA's office to eliminate transferring the burden to prosecute violations to County Counsel.
- ***Rectification***: in cases in which the violation cannot be cured through other means, the County could correct the violation itself and recover its costs by billing the property owner, and if payment is not forthcoming, record a lien against the property, seize the property, or otherwise collect payment.

Special Event Permits

The Board and the Commission have discussed special event permit issues extensively. Although the proposed section could be eliminated, there appears to be a desire to regulate special events in some manner. Based on the discussion from July 10, staff has incorporated the requirements of Inyo County Code Chapter 5.12 (Outdoor Festivals) into the special event section (refer to Attachment 2), in consultation with the Sheriff.

At its August 22 workshop, the Planning Commission discussed issues related to minor commercial events in residential zones, such as small commercial parties, and the current proposal clarifies these issues, including allowing special event permits for a limited number of such events in Residential (R) and Open Space zoning districts. Clarification has also been added to exempt County sponsored events and events at County facilities from the permit requirements, as well as more specific language to recover County costs and other County permit requirements. Discussion with the Treasurer/Tax Collected reveals that there have been issues regarding special events and fee collection; references have been added to address these issues.

The Commission also discussed special event permit fees; staff will need to update the fees schedule for special events (as well as a variety of other issues in the proposed Code). At this time, staff believes that a scaled fee schedule may be appropriate for special event permits, such

as a flat fee for minor special event permits in R zones. However, this system could result in the County not covering its costs in the event of appeals or unusual situations.

OTHER AGENCY INVOLVEMENT: None directly; other County departments and/or outside agencies may be affected during implementation.

FINANCING: Resources from the County's general fund are being utilized for staff to process the updated Zoning Code. Funds for Willdan to prepare the draft Code were allocated from geothermal royalties by operating transfer to the General Fund/Planning Department 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.)*
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (M*ust be reviewed and approved by the auditor-controller prior to submission to the board clerk.)*
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)

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

Date: 8-25-12

Attachments

1. Proposed Code Enforcement Provisions
2. Proposed Special Event Permit Provisions

Attachment 1
Draft Code Enforcement Zoning Code Regulations

18.01.040 ENFORCEMENT

1. It is the purpose and intent of the County to investigate alleged violations of this Title and to work proactively with property owners and affected persons to bring confirmed violations into conformance with this Title. Furthermore, except under extraordinary circumstances that could reasonably in the near future affect life, property, and/or the public safety, the County will work to educate persons about the requirements of this Title, work with property owners with confirmed violations to remove the violation or if appropriate obtain necessary permits to legalize the violation, provide for flexible timelines to rectify confirmed violations based on the specific circumstances of the situation, and minimize fines.

2. The County Administrator, County Counsel, District Attorney, Planning Director, Code Enforcement Officer, Building Official, Public Works Director, or their designee, any duly authorized law enforcement officer, and any official charged with the issuance of licenses and permits shall enforce the provisions of this Title.

3. All officials and employees of the County vested with the authority or duty to issue permits shall conform to the provisions of this Title and shall not issue a permit, certificate or license for uses, purposes, buildings or structures in conflict with the provisions of this Title. Any such permit, certificate or license issued in conflict with the provisions of this Title shall be null and void.

4. Whenever an authorized official is notified in writing that a violation of this Title exists on any property located within the County, he or she shall notify the property owner on which the violation is located and direct that the violation be abated in a manner consistent with this Title.

5. Remedies

All remedies provided for herein shall be cumulative and not exclusive. The conviction and punishment of any person, hereunder, shall not relieve such person from the responsibility of correcting prohibited conditions or removing prohibited buildings, structures or improvements, nor prevent the enforced correction or removal thereof.

6. Continuing Violations

A continuing violation of this Title is deemed a separate violation for each and every day that such violation exists. Any of the violations set forth in this Title constitutes a criminal act and is punishable pursuant to ordinances of the county and the laws of the state; provided however, that the county retains any and all civil remedies including the right of civil injunction for the prevention of the violation and for the recovery of money damages therefor.

18.01.050 GENERAL PENALTY

Except as otherwise provided in this Title, any person violating any provisions or failing to comply with any of the mandated requirements of this Title shall be investigated by the Planning Director and, if a

violation does exist, the Planning Director shall notify the owner of the property involved to show cause why the violation should not cease. If the violation should continue beyond a reasonable period of time required for abatement, typically three months, the Planning Director shall notify the property owner by certified mail or other appropriate means to confirm receipt that a fine will be levied in the amount of $1,000.00 per violation, that such fine shall be paid within 30 days of receipt of the notification, and that the property owner may request reconsideration of the fine by the Code Enforcement Committee.

If the property owner requests, or if the fine is not paid within 30 days, or if the violation is not abated, the case shall then be forwarded to a Code Enforcement Committee.

1. The Code Enforcement Committee consists of up to three members designated by the County Administrator. The Committee shall meet as needed to review code enforcement violations. Such meetings shall be open to the public.

2. If a violation has been investigated by the Planning Director, and the property owner notified, and the violation has not been corrected or the initial fine imposed by the Planning Director not submitted, or if the property owner requests reconsideration of the fine, the Planning Director shall forward relevant information to the Code Enforcement Committee for review. The Committee will provide notice to the property owner of its scheduled review of the violation at least ten (10) days prior to meeting to considering the violation. The Committee will consider all of the information presented by the Planning Director, the property owner, and other interested parties. Unless the Committee finds that no violation exists or extraordinary circumstances warrant additional time to correct the violation, the property owner will be required to pay a $1,000.00 fine per violation. In the event the Committee finds that additional time to correct the violation is warranted, the Committee shall identify a reasonable period of time to correct the violation, which shall be reported to the property owner. If the violation is not corrected within the specified time period, the Committee shall meet again upon ten (10) days notice to consider the violation anew. The Committee may impose additional fines as specified by this Chapter, including fines in addition to those imposed by the Planning Director.

If the violation continues beyond a reasonable time, typically three months from the decision of the Code Enforcement Committee, the violation shall be referred to the Office of County Counsel for further action.

18.01.052 ALTERNATIVE ENFORCEMENT PROCEDURES

Nothing in this chapter shall prevent the County from initiating a civil or criminal proceeding or pursuing any other legal or equitable remedy as an alternative or in addition to the proceedings set forth in this chapter.

18.01.054 RECORDATION OF JUDGMENT LIENS

When and if the County obtains a judgment for fines from the person who caused the violation and/or the property owner, it may collect on the judgment through any lawful means, including but not limited to recordation of a judgment lien in accordance with applicable legal requirements.

Attachment 2
Draft Special Event Zoning Code Regulations

18.02.100 SPECIAL EVENT PERMIT

1. Purpose and Intent

A special event permit is intended to allow for the short-term placement of activities with appropriate regulations so that such activities will be compatible with the surrounding areas.

2. Authority

Authority for approval of special event permits shall be vested with the Planning Director. A special event permit shall not be required for events that occur in permitted or conditionally permitted theaters, stadia, meeting halls, or other permanent public assembly facilities. A special event may be subject to additional permits, other County department approvals, licenses, and inspections as required by this Title or any other applicable laws and regulations.

3. Permitted Special Events

Table 2.A below identifies those special events subject to the issuance of a special event permit, as well as the maximum number of days and occurrences per 12-month period such events may be permitted pursuant to a special event permit.

Table 2A
Special Event Criteria

Uses	Zones	Maximum Days Per 12-Month Period	Maximum Occurrences Per 12-Month Period
Non-commercial meetings	All Zones	48	48
Small commercial events (such as garage sales and commercial parties) in R and OS Zones	R and OS Zones	18	12
Commercial circus with tent	Public, Commercial, and Industrial	20	4
Commercial or non-commercial carnival, fair, concert, exhibit, festival, Outdoor Festival, or similar event outdoors or in temporary enclosure(s)	Public, Open Space Commercial, and Industrial	20	6
Commercial and non-commercial holiday sales, such as pumpkin or Christmas tree sales, and incidental sales of Christmas lights, tree stands and decoration, but excluding gift items	Public, Open Space, Commercial, and Industrial	30	4

4. Applications for Special Event Permits

Applications for special event shall be on a form prescribed by the Planning Department and shall include the consent of the property owner. Information necessary to process the permit is generally based on the size, duration, and frequency of the special event. Information needed to process the application may include site plans, emergency access and evacuation plans, parking and traffic control plans, lighting plans, sanitation plans, medical plans, potable water plans, proof of consultation with safety agencies (such as the Sheriff, fire protection agencies, Public Works Department, Environmental Health Department, and Treasurer/Tax Collector), proof of insurance, and other information as appropriate.

5. Criteria for Special Event Permit Issuance

The Planning Director shall consider the following criteria in rendering its decision relative to a special event permit application:

a. The operation of the requested special event at the location proposed and within the time period specified will not jeopardize, endanger, or otherwise constitute a menace to the public health, safety, or general welfare;

b. The proposed site is adequate in size and shape to accommodate the special event without being materially detrimental to the use and enjoyment of other properties located adjacent to and in the vicinity of the site;

c. The proposed site is adequately served by streets or highways having sufficient width and improvements to accommodate the kind and quantity of traffic that the special event will or could reasonably be expected to generate; and

d. Adequate temporary parking to accommodate vehicular traffic to be generated by the special event will be available either on site or at alternate locations acceptable to the Planning Agency.

6. Specific Requirements for Outdoor Festivals

In addition to the findings and conditions specified herein, the following requirements apply to Outdoor Festivals.

a. Approval in writing on a form prescribed by the Planning Director shall be obtained from the Sheriff, Environmental Health Department, Treasurer/Tax Collector, and Public Works Department for those aspects of the event within each department's jurisdiction prior to issuance of the Special Event Permit.

b. A copy of the Acceptance of Conditions Form shall be kept at the Outdoor Festival for the duration of the event and made available for inspection upon request.

7. Conditions of Approval

In approving an application for a special event permit, the Planning Agency may impose conditions that are deemed necessary to ensure that the permit will be applied in accordance with the criteria outlined above. These conditions may involve any factors affecting the operation of the special event, and may include, but are not limited to:

a. Provision of temporary parking facilities, including vehicular ingress and egress;

b. Regulation of nuisance factors such as, but not limited to, prevention of glare or direct illumination of adjacent properties, noise, vibration, smoke, dust, dirt, odors, gases, and heat;

c. Regulation of temporary buildings, structures, and facilities, including placement, height and size, location of equipment and open spaces, including buffer areas and other yards;

d. Provision of sanitary and medical facilities;

e. Provision of solid waste collection and disposal;

f. Police and fire concerns;

g. Provision of security and safety measures;

h. Regulation of signs;

i. Regulation of operating hours and days, including limitation of the duration of the special event to a shorter time period than that requested;

j. Submission of a performance bond or other surety device to assure that any temporary facilities or structures used for the proposed special event will be removed from the site within a reasonable time following the event and that the property will be restored to its former conditions;

k. Submission of a site plan indicating any information required by this Code;

l. Liability insurance of the type and in the amount required by the County; and

m. Fees to cover County costs, including law enforcement and emergency medical response, as well as other permits and associated fees and taxes required by the County and/or the State, including as required by Chapters 5.04 and 5.08; and

n. A requirement that the approval of the requested special event permit is contingent upon compliance with this Title and with other applicable provisions of other ordinances;

o. Other conditions that will ensure the operation of the proposed special event in an orderly and efficient manner and in accordance with the intent and purpose of this Chapter.

8. Violations-Remedies for Outdoor Festivals

a. It is unlawful for any licensee, employee, agent or persons associated with a Special Event Permit to do any of the following:

i. Conduct or operate an Outdoor Festival without first securing a Special Event Permit to do so;

ii. Sell tickets to an Outdoor Festival without a Special Event Permit first having been obtained;

iii. Operate, conduct or carry on any Outdoor Festival in such a manner as to create a public or private nuisance;

iv. Exhibit, show or conduct within the place of an Outdoor Festival any obscene, indecent, vulgar or lewd exhibition, show, play, entertainment or exhibit, no matter by what name designated;

v. Allow any person on the premises of the permitted Outdoor Festival to cause or create a disturbance in, around or near any place of the Outdoor Festival, by offensive or disorderly conduct;

vi. Knowingly allow any person at the permitted Outdoor Festival to use, sell or be in possession of any narcotic or dangerous drug while in and around or near a place of the Outdoor Festival.

b. Any of the violations set forth in subsection a of this section constitutes a criminal act and is punishable pursuant to ordinances of the county and the laws of the state; provided however, that the county retains any and all civil remedies including the right of civil injunction for the prevention of the violation and for the recovery of money damages therefor.

9. Notice

At least 10 (ten) days prior to making a decision regarding a Special Event Permit, the Planning Director shall issue a notice describing the application and the anticipated date of the decision. The notice shall be distributed as specified by Section [redacted] except that no hearing shall be required. The Notice for Outdoor Festivals shall be distributed to the County Administrator, Sheriff, Public Works Department, Environmental Health Department, any fire protection agencies with jurisdiction, and other agencies as may be appropriate based on the location and size of the proposed Outdoor Festival.

10. Acceptance of Conditions

A special event permit shall not become effective for any purpose unless an "Acceptance of Conditions" form has been signed by the applicant and returned to the Planning Department and no appeal consistent with the provisions of this Title has been filed.

11. Cancellation of a Special Event Permit

a. Noncompliance with the conditions set forth in approving the special event permit shall be grounds for the Planning Director to cancel and void any such special event permit.

c. The Planning Director shall give notice of such an action to the permittee. The permittee may appeal such a decision to the Planning Commission by filing an appeal consistent with this provisions of this Title.

12. Exceptions

The following uses and activities are exempt from the permit requirements of this subsection.

a. Non-commercial gatherings or parties in compliance with County noise regulations;

b. Up to six (6) days per 12-month period per parcel in R and OS zones of garage sales, non-commercial outdoor gatherings or parties with temporary tents or play equipment, and/or other similar temporary outdoor activities, uses, and structures common in residential neighborhoods in compliance with the Building Code, County noise regulations, and other relevant rules and regulations;

c. Irregularly scheduled small commercial parties inside of residences, with minimal outdoor activities, in R and OS zones in compliance with County noise regulations with no potentially significant impacts on parking, traffic, air quality, or other environmental resources;

d. Temporary outdoor uses, activities, and structures associated with an established permitted, conditionally permitted, and/or legal non-conforming uses in non-R zones consistent with the Building Code, County noise and environmental health regulations, and other applicable rules and regulations. Examples include, but are not limited to, outdoor retail sales and dining in C zones, commercial gatherings or parties in C and M zones, and laydown of equipment, shipments, and other materials prior to storage in C and M zones; and

e. Public voting places; and

f. Events at County facilities with appropriate authorization or events operated or sponsored by the County.

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
26-27-28
23-24-29
30-31-32
33-34

☐ Consent ☐ Departmental ☐ Correspondence Action ☐ Public Hearing

☐ Scheduled Time for X Closed Session ☐ Informational

FROM: COUNTY COUNSEL

FOR THE BOARD MEETING OF: SEPTEMBER 4, 2012

SUBJECT: ISSUES TO BE DISCUSSED IN CLOSED SESSION

DEPARTMENTAL RECOMMENDATION:

26. ***CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION [Pursuant to Government Code § 54956.9(a)] -*** *Center for Biological Diversity, a non-profit public interest corporation; Public Employees for Environmental Responsibility, a national non-profit alliance of local, state, and federal resource professions, v. Inyo County and Inyo County Board of Supervisors,* Inyo County Superior Court Case No. SICVPT 12-53821.

27. ***CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION [Pursuant to Government Code§ 54956.9(a)].*** *City of Los Angeles, Department of Water and Power of the City of Los Angeles v. Inyo County Board of Supervisors, et al.* Inyo County Superior Court Case No. 12908; Blackrock 94 Dispute Resolution

28. ***CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION [Pursuant to Government Code § 54956.9(c)].*** - Decision Whether to Initiate Litigation (one case).

23. ***PERSONNEL [PURSUANT TO GOVERNMENT CODE § 54957] - Public Employee Performance Evaluation Title:*** Interim Director of Public Works

24. ***PERSONNEL [Pursuant to Government Code § 54957].*** Public Employee Appointment - Title: Director Public Works

29. ***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: Labor Relations Administrator, Sue Dishion, Information Services Director, Brandon Shults, and Planning Director Josh Hart.

30. ***CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code § 54957.6].*** Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: Elected Officials Assistant Association (EOAA) - Negotiators: Chief Probation Officer Jeff Thomson and Labor Relations Administrator Sue Dishion

31. ***CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code § 54957.6].*** - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: Inyo County Correctional Officers Association (ICCOA) - Negotiators:Labor Relations Administrator Sue Dishion.

32. ***CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code §54957.6].*** - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: ICEA - Negotiators: Labor Relations Administrator Sue Dishion, Director Child Support Services Susanne Rizo, and Chief Probation Officer Jeff Thomson.

33. ***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.

34. ***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 8.29.12

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received) _____ Date: 8.29.12
(The Original plus 20 copies of this document are required)