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.

April 16, 2013

8:30 a.m. ***CLOSED SESSION -***

1. ***CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Pursuant to Government Code §54956.9(a)*** – *Jesse Edwin Jason v. County of Inyo*, Unfair Practice Charge No. SA-CE-814-M.

PLEDGE OF ALLEGIANCE

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

2. ***PUBLIC COMMENT***

3. ***COUNTY DEPARTMENT REPORTS*** *(Reports limited to two minutes)*

4. ***INTRODUCTIONS*** – The following employees will be introduced to the Board of Supervisors: Ms. Brandi Cox, Child Support Services Officer; Ms. Lori Miller, Health and Human Services Office Assistant; Ms. April Eagan, Health and Human Services Prevention Specialist; and Ms. Nicole Tinlin; Health and Human Services Account Technician.

5. ***WILD IRIS*** – Request Board approve proclamations declare April as A) Child Abuse Prevention Month and B) Sexual Assault Awareness Month.

9:30 a.m.

6. ***DEPARTMENT OF WATER AND POWER*** – Request Board receive a presentation from Martin L. Adams, Director of Water Operations, City of Los Angeles Department of Water and Power, regarding LADWP's proposed Owens Lake Master Project Plan.

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

AGRICULTURAL COMMISSIONER

7. Request approval to use the weight truck for the Mule Pulling Contest, Sunday, May 26, 2013, during the Mule Days events at the Tri-county Fairgrounds.

HEALTH AND HUMAN SERVICES

8. ***Mental Health*** – Request approval of the County Mental Health Plan Agreement between the County of Inyo and the State Department of Health Care Services, as the MediCal Managed Care Plan for Inyo County for the period of May 1, 2013 through April 30, 2018, in the amount of $3,485,263, contingent upon the Board's adoption of future budgets; and authorize the Mental Health Director to sign.

9. ***Eastern Sierra Agency on Aging*** – Request approval of Amendment 31 to the Agreement with the County of Mono for the provision of Eastern Sierra Area Agency on Aging (ESAAA) services to Mono County resident senior citizens, increasing the Contract by $1,205 for a total amount not to exceed $289,906 for the period of October 1, 2012 through June 30, 2016, contingent upon the Board's adoption of future budgets and authorize the Chairperson to sign.

PLANNING

10. ***LAFCO*** – Request Board ratify and approve Amendment No. 1 to the Contract between the County of Inyo and the Inyo Local Agency Formation Commission (LAFCO) increasing the Contract by $1,500 to a total amount of $10,242; and authorize the Chairperson to sign, contingent upon the appropriate signatures being obtained.

PROBATION

11. Request approval of Amendment No. 1 to the Contract between the County of Inyo and Dr. Keith Andersen for professional services, extending the ending date from May 10, 2013 to June 13, 2013; and authorize the Chairperson to sign, contingent upon the appropriate signatures being obtained.

PUBLIC WORKS

12. Request Board A) award and approve the Contract for the Heater Replacement Project at the Independence American legion Hall and Big Pine Town Hall, to Mojave Desert Heating and Cooling, Inc., in the amount of $14,900; and authorize the Chairperson to sign, contingent upon the appropriate signatures being obtained; and B) authorize the Interim Public Works Director to execute all other Contract documents, including contract change orders, to the extent permitted by Public Contract Code §20142 and other applicable law.

13. Request approval to submit a California Federal Lands Access Program Grant Application for Whitney Portal Road and authorize the Interim Public Works Director to sign documents related to the grant application.

SHERIFF'S DEPARTMENT

14. Request Board declare RoboteX, Inc., as a sole source provider of mechanized entry devices and approve the purchase of a Mechanized Entry Device from RoboteX, Inc., in an amount not to exceed $15,903, including sales tax and shipping.

15. Request approval of the License Agreement with the Los Angeles Department of Water and Power for installation, operation, and maintenance of electronic communication equipment on Mazourka Peak for the period of July 1, 2012 through June 30, 2017, at the rate of $500 per year, plus a 3% annual increase, and a prorated share of any site, access, road maintenance or other fees charges by the Forest Service or California Department of Forestry, contingent upon the Board's adoption of future budgets; and authorize the Chairperson to sign.

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

16. ***AUDITOR – CONTROLLER*** - Request Board A) change the authorized strength by deleting one full-time Fiscal Supervisor, Range 67 ($3,852-$4,676) and adding one full-time Administrative Analyst at Range 66 ($3,757 – $4,574); and B) find that consistent with the adopted Authorized Position Review Policy: (a) the availability of funding for the position of Administrative Analyst comes from the General Fund as certified by the Auditor/Controller and concurred with by the County Administrator; (b) and where if the County was facing layoffs, the position could be filled by internal candidates meeting the qualifications for the position, but since no layoffs are pending, an open recruitment would be appropriate to ensure qualified applicants apply; and (c) approve the hiring of one Administrative Analyst, at Range 66; and d) approve the hiring of an Account Technician I, II, or III, if an internal candidate is successful leaving an additional vacancy.

17. ***DISTRICT ATTORNEY*** – Request Board amend the FY 2012-13 District Attorney Budget Unit 022400 by increasing unanticipated revenue in Restitutions *(Revenue Code #4676)* by $15,000 and increasing appropriations in Special Appropriations *(Object Code #5321)* by $15,000. *(4/5's vote required.)*

18. ***DISTRICT ATTORNEY*** – Request Board A) authorize acceptance of the Inyo County Justice Grant Anti-Drug Abuse Enforcement Team Program Grant from the Board of State and Community Corrections for FY 2012-13 in the amount of $87,617; B) authorize the District Attorney to sign any necessary documentation to accept and utilize the grant on behalf of the County; and C) amend the FY 2012-13 OES-DSTF Budget Unit 620312, increasing estimated revenue in State Grants *(Revenue Code #4498)* by $68,715 and Internal Charges *(Revenue Code #4821)* by $30,308 and increasing appropriations as recommended by staff in the amount of $99,023. *(4/5's vote required.)*

19. ***PUBLIC WORKS – COUNTY ADMINISTRATOR*** – Request Board discussion on possible changes to the SolarCity photovoltaic installation contract; and if the Board is in agreement with staff recommendations *(specific recommendations will be provided during the discussion)*; (a) authorize the CAO to sign any contract amendments with SolarCity for the installation or solar photovoltaic systems, contingent upon the appropriate signatures being obtained; (b) authorize the Interim Public Works Director to sign all other contract documents, including change orders, to the extent permitted pursuant to Section 20142 of the Public Contract Code and other applicable law; and (c) amend the FY County budget as appropriate to facilitate the funding of authorized contract amendments (*specific recommendations will be provided as may be appropriate) (4/5's vote required).*

20. ***PROBATION*** – Request Board A) amend the FY 2012-13 Juvenile Institutions Budget Unit 023100 by increasing estimated revenue in State Other (*Revenue Code #4499)* by $89,000 and increasing appropriations in Professional Services *(Object Code #5265)* by $89,000; *(4/5's vote required);* and B) declare Allvest Information Services, Inc., dba Assessments.com as a sole source provider consulting training and software programming services; and approve the Contract between the County of Inyo and Assessments.com for consulting, training, and software programming services for the period of May 1, 2013 through December 31, 2013, in an amount not to exceed $89,000, contingent upon the Board's adoption of future budgets and continued BPAI grant Extension Funding; and authorize the Chairperson to sign, contingent upon the appropriate signatures being obtained.

21. ***HEALTH AND HUMAN SERVICES – Eastern Sierra Area Agency on Aging*** – Request approval of the minimum percentages of funding for the Title IIIB federal funds as recommended by the Advisory Council including 5% for in-home services, 10% for legal services and 50% for access; and approve the annual 2013-14 Area Plan Update for Services for Planning and Services Area 16 (Inyo and Mono Counties); and authorize the Chairperson to sign the transmittal letter.

22. ***HEALTH AND HUMAN SERVICES – Emergency Medical Care Committee*** – Request Board appoint two people to complete unexpired terms ending December 31, 2014. *(Notice of vacancy resulted in requests for appointment being received from John Scully Almeida of Sierra Lifeflight, Carl Dennett of Southern Inyo Fire Protection District, Michael Dillon, M.D. of Northern Inyo Hospital; and Marty Fortney of the Big Pine Fire Department who applied as a member at large.)*

23. ***PLANNING*** – Request Board find that consistent with the adopted Authorized Position Review Policy: A) the availability of funding for the position of Senior or Associate Planner comes from the Planning Department Budget as certified by the Planning Director and concurred with by the Auditor-Controller and County Administrator; B) and where if the County was facing layoffs, the position could be filled by internal candidates meeting the qualifications for the position, but since no layoffs are pending, an open recruitment would be appropriate to ensure qualified applicants apply; and C) approve the hiring of one Senior Planner at Range 76 ($4,997 – $6,074) or Associate Planner at Range 74 ($4,547 - $5,266) depending upon qualifications.

24. ***PLANNING – Yucca Mountain*** – Request Board A) approve the Facility Service/Use Agreement with the U.S. Geological Survey for storage and digital imaging of a supply of geologic samples; and authorize the Chairperson to sign; B) authorize the payment of $27,000 for the above services; and C) amend the FY 2012-13 Yucca Mountain Budget Unit 620605 by increasing appropriations in Professional and Special Services *(Object Code #5265)* by $7,000 and decreasing appropriations in Travel *(Object Code #5331)* by $7,000. *(4/5's vote required.)*

25. ***PLANNING*** – Request Board review draft correspondence regarding the National Forest System Land Management Planning Directives, provide input and authorize the Chairperson to sign.

26. ***PLANNING*** – Request Board review the draft Initial Study and Mitigated Negative Declaration for the Owens Lake Solar Demonstration Project, and potentially provide input for staff to draft correspondence for the Chairperson's signature.

27. ***COUNTY ADMINISTRATOR – Emergency Services*** - Request Board discuss and consider Staff's recommendation regarding continuation of the local emergency, The Death Valley Roadeater Emergency, that resulted in flooding in the eastern portion of Inyo County during the month of August 2012, per Resolution #2012-32.

28. ***COUNTY ADMINISTRATOR – Personnel – COUNTY COUNSEL*** – Request Board consider options for filling vacancy created by the anticipated resignation of the Auditor-Controller and provide direction to staff.

29. ***CLERK OF THE BOARD*** – Request approval of the Minutes of the Board of Supervisors Meetings of A) March 19, 2013; and B) March 26, 2013.

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

11:30 a.m. 30. ***PLANNING*** – Request Board approve a resolution titled "A Resolution of the Board of Supervisors of the County of Inyo, State of California, Declaring Its Intent to Vacate That Portion of McKenzie Street in Darwin Townsite and Setting and Providing Notice of a Public Hearing on Said Vacation."

31. ***COUNTY ADMINISTRATOR – Integrated Waste Management*** – Request Board conduct a workshop with staff regarding recycling and diversion and a program overview of Solid Waste.

1:00 p.m. 32. ***PLANNING*** – Request Board A) conduct a ***public hearing*** regarding Appeal No. 2013-01 (Michael A. Dorame and Loretta M. Dorame and Zinda Edgar) appealing the Planning Commission's approval of Conditional Use Permit 2012-04/Branson; and B) deny the appeal.

2:30 p.m. 33. ***CHILD SUPPORT SERVICES*** – Request Board approve a proclamation honoring the Bishop Paiute Tribe's adoption of Ordinance 2012-03.

CORRESPONDENCE - ACTION

BOARD MEMBERS AND STAFF REPORTS

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

34. ***PUBLIC COMMENT***

CLOSED SESSION

35. ***CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION [Pursuant to Government Code §54956.9(d)(1)]*** - *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.

36. ***CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION [Pursuant to Government Code §54956.9(d)(1)]*** – *Peter Waasdorp; Kathy Waasdorp, v. County of Inyo; Skylene Katherine Milos, and Does 1-50, inclusive;* Inyo County Superior Court Case No. SICVCV13-54910.

37. ***PERSONNEL [Pursuant to Government Code §54957].*** Public Employee Appointment – Title - County Counsel.

38. ***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.

39. ***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: Information Services Director Brandon Shults, and Labor Relations Administrator Sue Dishion.

40. ***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:Information Services Director Brandon Shults, and Labor Relations Administrator Sue Dishion.

41. ***CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code §54957.6]*** - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: ICEA - Negotiators: Information Services Director Brandon Shults, and Labor Relations Administrator Sue Dishion.

42. ***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: Information Services Director Brandon Shults, Chief Probation Officer Jeff Thomson, and Labor Relations Administrator Sue Dishion.

43. ***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: Information Services Director Brandon Shults, and Labor Relations Administrator Sue Dishion.

REPORT ON CLOSED SESSION AS REQUIRED BY LAW

CORRESPONDENCE - INFORMATIONAL

44. ***INTEGRATED WASTE MANAGEMENT*** – Letters from Bishop Disposal Inc. and Preferred Septic and Disposal, Inc., requesting rate increases. *(Staff will bring these requests forward for Board discussion on May 7, 2013.)*

45. ***LICENSES*** – Applications for Alcoholic Beverage Licenses for Ranch House Café in Olancha, Browns Millpond Campground, and Browns Supply Inc., at Schober Lane & Highway 395.

46. ***SHERIFF*** – Sheriff and Jail Overtime Report for the month of March, 2013.

47. ***AUDITOR-CONTROLLER*** - Notice that in accordance with Section 26905 and 26921 of the Government Code and your orders of February 5, 1950 and January 3, 1956, an actual count of money in the hands of the Treasurer was made on April 5, 2013 and that the count showed the funds to be in balance, pending written verification of inactive accounts.

TO: Inyo County Board of Supervisors, Pat Gunsolley

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FROM: Randi Case

DATE: 4/1/2013

RE: Child Abuse Prevention Month & Sexual Assault Awareness Month

Pat:

Once again, we want to thank the Board Members for their continued support in declaring April as Child Abuse Prevention Month and Sexual Assault Awareness Month. Wild Iris will be recognizing these awareness months by executing different outreach campaigns throughout Inyo County. Wild Iris would like to request the attached proclamations be adopted by the Board.

If you have availability at your April 16, 2013 meeting, we would appreciate these proclamations be added to the agenda. Please respond to this email or call the Bishop Office to confirm if this request has been accepted at 760.873.6601.

Thank You,

Randi Case
Crisis Counselor/Educator

PROCLAMATION
OF THE BOARD OF SUPERVISORS
COUNTY OF INYO, STATE OF CALIFORNIA
RECOGNIZING THE MONTH OF APRIL 2013
SEXUAL ASSAULT AWARENESS MONTH

WHEREAS, Sexual Assault Awareness Month is intended to draw attention to the fact that sexual violence is widespread and has public health implications for every community member of Inyo County; and

WHEREAS, rape, sexual assault, and sexual harassment impact our community as seen by statistics indicating that one in six women and one in thirty-three men will have experienced sexual assault in their lifetime; and

WHEREAS, we must work together to educate our community about what can be done to prevent sexual assault and how to support survivors; and

WHEREAS, staff and volunteers of anti-violence programs at Wild Iris encourage every person to speak out when witnessing acts of violence however small; and

WHEREAS, with leadership, dedication, and encouragement, there is compelling evidence that we can be successful in reducing sexual violence in Inyo County through prevention education, increased awareness, and holding perpetrators who commit acts of violence responsible for their actions; and

WHEREAS, Wild Iris strongly supports the efforts of national, state, and local partners, and of every citizen to actively engage in public and private efforts, including conversations about what sexual violence is, how to prevent it, how to help survivors connect with services, and how every segment of our society can work together to better address sexual violence.

NOW THEREFORE, **BE IT PROCLAIMED** this 16th day of April 2013 that the Inyo County Board of Supervisors designate the month of April, 2013 as Sexual Assault Awareness Month and calls upon all citizens, community agencies, faith groups, medical facilities, and businesses to increase their participation in efforts to support victims and families, thereby preventing sexual assault and strengthening the communities in which we live.

_____
Chairperson, Inyo County Board of Supervisor

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

by: _____
Patricia Gunsolley, Assistant

PROCLAMATION
OF THE BOARD OF SUPERVISORS
COUNTY OF INYO, STATE OF CALIFORNIA
RECOGNIZING THE MONTH OF APRIL 2013
AS CHILD ABUSE PREVENTION MONTH

WHEREAS, the public cares deeply about child abuse, and a majority report that child abuse is a very important moral issue to them; and

WHEREAS, preventing child abuse and neglect is a community issue that depends on involvement among people throughout Inyo County; and

WHEREAS, child abuse and neglect not only directly harm children, but also increases the likelihood of long-term physical and mental health problems, alcohol and substance abuse, continued family violence and criminal behavior; and

WHEREAS, child maltreatment occurs when people find themselves in stressful situations, without community resources, and don't know how to cope; and

WHEREAS, the majority of child abuse cases stem from situations and conditions that are preventable in an engaged and supportive community; and

WHEREAS, child abuse and neglect can be reduced in Inyo County by making sure each family has the support they need in raising their children in a safe, nurturing environment; and

WHEREAS, effective child abuse prevention programs succeed because of partnerships created among social service agencies, schools, faith communities, civic organizations, law enforcement agencies, and the business community; and

WHEREAS, Wild Iris has set an important example of how forging collaborative relationships between service agencies and organizations serves to improve the quality of service for those profoundly and directly affected by child abuse, thus providing a model for how the rest of the community might work together to speak out and find solutions to end child abuse; and

WHEREAS, Wild Iris requests public support and assistance as it continues its efforts to bring real hope for ending child abuse in Inyo County and creating a future where all children can live free from abuse.

NOW THEREFORE, **BE IT PROCLAIMED** this 16th day of April 2013 that the Inyo County Board of Supervisors, designate the month of April 2013, as Child Abuse Prevention Month in Inyo County and calls upon all citizens, community agencies, faith groups, medical facilities and businesses to increase their participation in efforts to support families, thereby preventing child abuse and strengthening the communities in which we live.

_____
Chairperson, Inyo County Board of Supervisor

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

by: _____
Patricia Gunsolley, Assistant

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
7

☒ Consent ☐ Departmental ☐ Correspondence Action ☐ Public Hearing

☐ Scheduled Time for ☐ Closed Session ☐ Informational

FROM: George L. Milovich, Agricultural Commissioner

FOR THE BOARD MEETING OF: **April 16, 2013**

SUBJECT: Use of Weight Truck at 2013 Mule Days Event

DEPARTMENTAL RECOMMENDATION:

We request that the Board of Supervisors approve the use of the weight truck for the Mule Pulling Contest, Sunday, May 26th, 2013, during the Mule Days events at the Tri-County Fairgrounds.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

This is a sanctioned contest, therefore requiring certified weights. We are the only entity in the region with this type of equipment and certified standards.

ALTERNATIVES:

Not participate and have the Mule Days Committee hire this type of service from outside the Eastern Sierra region (Bakersfield, CA or Reno, NV) or cancel this event.

OTHER AGENCY INVOLVEMENT:

FINANCING:

As always, our time and equipment will be donated.

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: 4/4/13

AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
8

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

FROM: HEALTH & HUMAN SERVICES - Community Mental Health

FOR THE BOARD MEETING OF: April 16, 2013

SUBJECT: Approve the County Mental Health Plan Contract Agreement with the Department of Health Care Services in the amount not to exceed $3,485,263 for the time period of May 1, 2013 through April 30, 2018.

DEPARTMENTAL RECOMMENDATION:

Request Board approve the County Mental Health Plan Agreement between Inyo County Mental Health and the State Department of Health Care Services (DHCS) as the MediCal Managed Care Plan for Inyo County for a period, beginning May 1, 2013 and ending April 30, 2018 in the amount not to exceed $3,485,263, contingent upon the adoption of future budgets; and authorize the Mental Health Director to sign.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

This contract is the standard agreement between the County of Inyo and DHCS. The Agreement designates Inyo County Mental Health as the Specialty Mental Health Managed Care Plan for Medi-Cal beneficiaries and delineates the obligations under this Plan. The last year has been a transition year as the Department of Mental Health (DMH) was subsumed under the DHCS. During the transition period, there was a short term three party contract with both DMH and DHCS until business could be completed for FY 11-12 and a long term agreement with DHCS could be negotiated. The new contract with DHCS is for a five year term. 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. These requirements include extensive provisions in such areas as compliance, quality improvement, utilization management, beneficiary protection, certification and monitoring of providers, documentation, access, and cultural competency to name a few. The Division has an extensive Quality Improvement (QI) Work Plan that describes the process for assuring such things as access, timeliness, array of services, authorization, and documentation. Our QI Committee ensures communication between the Mental Health Advisory Board, our Business Analysis work group, and our staff/consumer training forum (Q2). There is also a lengthy section on Privacy and Security Provisions that includes provisions for electronic information exchange. 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 $3,485,263 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 for a five year period. The contract thoroughly describes the payment provisions and contingencies. While there is a maximum amount reflected in the contract, it is clear that Federal Financial Participation (FFP) cannot be limited for services delivered.

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 and receive revenue for services provided.

OTHER AGENCY INVOLVEMENT:

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

FINANCING:

100% Federal funds. These funds are budgeted in Mental Health (045200) as revenue in the Mental Health MediCal object code (4748). Approximate revenues for the remainder of FY 12/13 revenue = $116,174; FY 13/14 = $697,054; FY 14/15 = $697,054; FY 15/16 = $697,054; FY 16/17 = $697,054 and FY 17/18 = $580,873. However, it is stated in the agreement that nothing in this contract shall limit our ability to submit claims for appropriate FFP reimbursement based on our actual costs. If the costs submitted were to exceed the contracted amount, an amendment to the contract would be initiated to cover all allowable costs. Additionally if our costs were lower than the contracted amounts we would only receive funding to cover the actual costs. No County General funds are used in the Mental Health 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: yes 3/19/2013 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: 3/20/13 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: 3/25/13 Date:

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received) Jean Turner by JB Date: 4-2-13

STATE OF CALIFORNIA

STANDARD AGREEMENT

STD 213_DHCS (Rev. 01/13)

REGISTRATION NUMBER	AGREEMENT NUMBER
	12-89366

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

STATE AGENCY'S NAME (Also known as DHCS, CDHS, DHS or the State)

Department of Health Care Services

CONTRACTOR'S NAME (Also referred to as Contractor)

Inyo County Mental Health

2. The term of this Agreement is: May 1, 2013 through April 30, 2018

3. The maximum amount of this Agreement is: $ 3,485,263

Three million, four hundred eighty-five thousand, two hundred sixty-three

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

Exhibit A – Scope of Work	2 pages
Exhibit A Attachment I – Service, Administrative and Operational Requirements	56 pages
Exhibit A Attachment II – Definitions	2 pages
Exhibit B – Budget Detail and Payment Provisions	6 pages
Exhibit C * – General Terms and Conditions	GTC 610
Exhibit D (F) – Special Terms and Conditions (Attached hereto as part of this agreement) Notwithstanding Provisions 2, 3, 4, 6 ,8, 12, 14, 22, 25, 29, and 30 which do not apply to this agreement.	X pages
Exhibit E – Additional Provisions	11 pages
Exhibit F – Privacy and Information Security Provisions	28 pages

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

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 Director

ADDRESS

162 J Grove Street
Bishop, CA 93514

STATE OF CALIFORNIA

AGENCY NAME

Department of Health Care Services

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

PRINTED NAME AND TITLE OF PERSON SIGNING

Andrew Young, Chief, Contract Management Unit

ADDRESS

1501 Capitol Avenue, Suite 71.5195, MS 1403, P.O. Box 997413,
Sacramento, CA 95899-7413

California Department of General Services Use Only

[X] Exempt per: W&I Code § 14703

Exhibit A
Scope of Work

1. Service Overview

Contractor agrees to provide to the California Department of Health Care Services (DHCS) the services described herein.

The Contractor will provide or arrange for the provision of specialty mental health services to eligible Medi-Cal beneficiaries of Inyo County within the scope of services defined in this contract.

2. Project Representatives

A. The project representatives during the term of this Agreement will be:

Department of Health Care Services	**Inyo County Mental Health**
Erika Cristo Telephone: (916) 650-0486 Fax: (916) 440-7620 Email: Erika.Cristo@dhcs.ca.gov	Gail Zwier, PhD, Director Telephone: (760) 872-2590 Fax: (760) 873-3277 Email: gzwier@inyocounty.us

B. Direct all inquiries to:

Department of Health Care Services	**Inyo County Mental Health**
Mental Health Services Division/Program Policy Unit Attention: Dee Taylor 1500 Capitol Avenue, MS 2702 P.O. Box Number 997413 Sacramento, CA, 95899-7413 Telephone: (916) 552-9536 Fax: (916) 440-7620 Email: Dee.Taylor@dhcs.ca.gov	Attention: Gail Zwier 162 J Grove Street Bishop, CA, 93514 Telephone: (760) 872-2590 Fax: (760) 873-3277 Email: gzwier@inyocounty.us

C. 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 Agreement.

3. General Authority

This Contract is entered into in accordance with the Welfare and Institutions (Welf. & Inst.) Code § 14680 through §14726. Welf. & Inst. Code § 14712 directs the California Department of Health Care Services (Department) to implement and administer Managed Mental Health Care for Medi-Cal eligible residents of this state through contracts with mental health plans. The Department 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

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interpretations, the contract provision shall be interpreted in a manner that is consistent with applicable law and regulation.

4. See the following pages for a detailed description of the services to be performed.

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Service, Administrative and Operational Requirements

1. Provision of Services

A. The Contractor shall provide, or arrange and pay for, all medically necessary covered Specialty 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 Specialty 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 Specialty 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 the California Code of Regulations (Cal. Code Regs.), title (tit.) 9, §§1820.205, 1830.205, and 1830.210.

C. The Contractor shall make all medically necessary covered Specialty Mental Health Services available in accordance with Cal. Code Regs., tit. 9, §§ 1810.345 and 1810.405, and 42 Code of Federal Regulations (C.F.R.) § 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 Cal. Code Regs., tit. 9, §1810.253, 24 hours a day, and 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 Cal. Code Regs., tit. 9, § 1810. 405(e).

E. The Contractor shall provide out-of-plan services in accordance with Cal. Code Regs., tit. 9, §§1830.220 and 1810.365. The timeliness standards specified in Cal. Code Regs., tit. 9, 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 Cal. Code Regs., tit. 9, §1830.225 and 42 C.F.R. § 438.6(m).

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

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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 Attachment, entitled "Emergency Psychiatric Condition Reimbursement", the Contractor shall consider the following ICD-9 diagnosis 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

Availability of Services

A. Pursuant to 42 C.F.R. § 438.206(a) and (b), 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 meet the following requirements:

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1) 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.

2) Require subcontracted providers to have hours of operation during which services are provided to Medi-Cal beneficiaries that 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.

3) Make services available to beneficiaries 24 hours a day, 7 days a week, when medically necessary.

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

5) Monitor network providers regularly to determine compliance with timely access requirements;

6) Take corrective action if there is a failure to comply with timely access requirements.

Adequate Capacity and Standards

C. Documentation of adequate capacity and services. Pursuant to 42 C.F.R. § 438.207(b), the Contractor must, when 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.

D. Consistent with 42 C.F.R. § 438.207(c)(2), 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.

Coordination and Continuity of Care

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1) Maintain and monitor a network of appropriate providers that is supported by written agreements for subcontractors and that is sufficient to provide adequate access to all services covered under this contract. In establishing and monitoring the network, the Contractor must consider the following:

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

   b) The expected utilization of services, taking into account the characteristics and mental health needs of beneficiaries.

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

   d) The numbers of network providers who are not accepting new beneficiaries.

   e) 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.

   f) To the extent required by Cal. Code Regs., tit. 9, §1830.220, for inpatient services, if the Contractor is unable to provide necessary medical services covered under the contract to a particular beneficiary, the Contractor must adequately and timely cover these services out of network for the beneficiary, for as long as the Contractor is unable to provide them.

   g) Pursuant to 42 C.F.R. § 438.206(b)(5) and consistent with Cal. Code Regs., tit. 9, §1830.220, the Contractor shall require that out-of-network providers coordinate authorization and payment with the Contractor. As is consistent with Cal. Code Regs., tit. 9, §1810.365, the Contractor must ensure that the 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.

   h) The Contractor shall demonstrate that its providers are credentialed as required by 42 C.F.R. § 438.214.

Access to Services

B. Timely Access. In accordance with 42 C.F.R. § 438.206(c)(1), the Contractor shall comply with the requirements set forth in Cal. Code Cal. Code Regs., tit. 9, §1810.405, including the following:

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E. Coordination of health care services. The Contractor must implement procedures to:

1) Coordinate the services that the Contractor either furnishes or arranges to be furnished to the beneficiary with services that the beneficiary receives from any other Medi-Cal managed care plan or MHP in accordance with Cal. Code Regs., tit. 9 §1810.425.

2) Ensure that, in the course of coordinating care, each beneficiary's privacy is protected in accordance with all federal and state privacy laws, including but not limited to 45 C.F.R. § 160 and § 164, to the extent that such provisions are applicable.

3) Enter into a Memorandum of Understanding (MOU) with any Medi-Cal managed care plan serving the Contractor's beneficiaries in accordance with Cal. Code Regs., tit. 9, § 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. The MHP shall monitor the effectiveness of its MOU with Physical Health Care Plans.

Authorization of Services

F. Pursuant to 42 C.F.R. § 438.210(b), the Contractor shall implement mechanisms to assure authorization decision standards are met. The Contractor shall:

1) Have in place, and follow, written policies and procedures for processing requests for initial and continuing authorizations of services.

2) Have mechanisms in effect to ensure consistent application of review criteria for authorization decisions, and shall consult with the requesting provider when appropriate.

3) Have any decision to deny a service authorization request or to authorize a service in an amount, duration, or scope that is less than requested be made by a health care professional who has appropriate clinical expertise in treating the beneficiary's condition or disease.

4) Have decisions made within the timeframes outlined for service authorizations in 42 C.F.R. § 438.210(d), and notices of action related to such decisions provided within the timeframes set forth in 42 C.F.R. § 438.404(c).

5) Provide that 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.

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G. The Contractor shall act on an authorization request for treatment for urgent conditions within one hour of the request per Cal. Code Regs., tit. 9, § Cal. Code Regs., tit. 9, § 1810.405(c).

H. Pursuant to 42 C.F.R. § 431.201, the Contractor shall define service authorization request in a manner that at least includes a beneficiary's request for the provision of a service.

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 42 C.F.R. § 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 Cal. Code Regs., tit. 9, § Section 1810.237.1) which are related to an emergency medical condition or post-stabilization care. The Contractor shall apply the definitions contained in 42 C.F.R. § 438.114. To the extent that there is a conflict between the definitions in 42 C.F.R. § 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 Contractor may not limit what constitutes an emergency medical condition on the basis of lists of diagnoses or symptoms.

4) The attending emergency physician, or the provider actually treating the beneficiary, is responsible for determining when the beneficiary is

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sufficiently stabilized for transfer or discharge, and that determination is binding on the Contractor.

D. The Contractor shall comply with 42 C.F.R. § 438.114(d)(ii,) and Cal. Code Regs., tit. 9, § Cal. Code Regs., tit. 9, §1820.225, regarding prior payment authorization for an emergency admission, whether voluntary or involuntary.

E. The Contractor shall comply with Cal. Code Regs., tit. 9, § 1830.215, regarding payment authorizations.

4. Provider Selection and Certification

A. The Contractor shall comply with Cal. Code Regs., tit. 9, § 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 42 C.F.R. §§ 455.104, 455.105, 1002.203, 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 fewer 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 42 C.F.R. § 438.12(a)(1), 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. Pursuant to 42 C.F.R. § 438.12(a)(2), in all contracts with providers the Contractor must comply with the requirements in 42 C.F.R. § 438.214.

F. 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;

G. Contractor shall only use licensed, registered, or waivered providers acting within their scope of practice for services which require a license, waiver, or registration, consistent with Welfare and Institutions Code Section 5751.2 and Cal. Code Regs., tit. 9, § 1840.314(d).

H. Consistent with 42 C.F.R. § 438.214, the contractor shall have written policies and procedures for selection, retention, credentialing and recredentialing of providers; the provider selection policies and procedures must not discriminate against

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particular providers that serve high-risk populations or specialize in conditions that require costly treatment.

I. The Contractor shall certify, or use another mental health plan's certification documents to certify, the organizational providers that subcontract with the Contractor to provide covered services in accordance with Cal. Code Regs., tit. 9, §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 Cal. Code Regs., tit. 9, § 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.

J. 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; or 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.

K. 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.

L. 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

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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 14 of this Attachment, and applicable state and federal standards.

7) The organizational provider has sufficient staff to allow the Contractor to claim federal financial participation (FFP) for the services that the organizational provider delivers to beneficiaries, as described in Cal. Code Regs., tit. 9, § 1840.344 through § 1840.358, as appropriate and 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 Cal. Code Regs., tit. 9, § 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.

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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.

M. 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 Section 8 of this exhibit.

N. 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 Section 8 of this exhibit.

O. 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.

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

Q. 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.

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

R. 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 FFP 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 FFP 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 Department 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.

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C. If the Contractor receives any requests by subpoena from attorneys, insurers, or beneficiaries for copies of bills, the Contractor shall provide the Department 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, 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 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).

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G. The Contractor shall also provide the Department 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, pursuant to this section, shall be sent to: State 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 section(s) and provider list in accordance with 42 C.F.R. § 438.10 and Cal. Code Regs., tit. 9, §1810.360. The Contractor shall establish criteria to update its booklet and provider list.

Pursuant to 42 C.F.R. § 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 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 from out-of-network providers.

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

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i. What constitutes an emergency medical condition, emergency services, and post-stabilization services, with reference to the definitions in 42 C.F.R. § 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 42 C.F.R. § 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 42 C.F.R. § 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 42 C.F.R. § 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 42 C.F.R. § 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 Cal. Code Regs., tit. 9, § 1810.360, materials explaining the beneficiary problem resolution and fair hearing processes required by Cal. Code Regs., tit. 9, § 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 42 C.F.R. § 438.10(c)(3).

C. Pursuant to 42 C.F.R. § 438.10(c)(4) and (5) and Cal. Code Regs., tit. 9, § 1810.410, the Contractor must make oral interpretation and sign language services available free of charge to each beneficiary. This applies to all non-English languages and not just those identified as prevalent. The Contractor must notify

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beneficiaries that oral interpretation is available for any language and written information is available in prevalent languages and how to access those services.

D. Pursuant to 42 C.F.R. § 438.10(g) and Cal. Code Regs., tit. 9, § 1850.205(c)(1), the booklet shall include grievance, appeal and fair hearing procedures and timeframes, as provided in 42 C.F.R. §§ 438.400 through 438.424, using a Department-developed or Department-approved description that must include the following:

1) For State Fair Hearing

   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.

7) The appeal rights that the Department has chosen to make available to providers in Cal. Code Regs., tit. 9, § 1850.315, to challenge the Contractor's failure to cover a service.

8) Advance Directives, as set forth in 42 C.F.R. § 438.6(i)(22).

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

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

   b) Physician incentive plans as set forth in 42 C.F.R. § 438.6(h).

E. 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 Cal. Code Regs., tit. 9, § 1810.360.

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F. 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.

G. 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.

H. The Contractor shall ensure written materials are produced in a format that is easily understood and available in alternative formats and in an appropriate manner that takes into consideration the special needs of those who, for example, are visually limited or have limited reading proficiency as required by 42 C.F.R. § 438.10(d)(1). Pursuant to 42 C.F.R. § 438.10(d)(2), the Contractor shall inform beneficiaries that information is available in alternate formats and how to access those formats.

I. 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.

J. 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.

K. As required by 42 C.F.R. § 438.10(f)(4), when there is a change that the State defines as significant 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.

L. Consistent with 42 C.F.R. § 438.10(f)(5), the Contractor must make a good faith effort to give written notice of termination of a contracted provider, within 15 days after receipt or issuance of the termination notice, to each beneficiary who was seen on a regular basis by the terminated provider.

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8. Requirements for Day Treatment Intensive and Day Rehabilitation

A. The Contractor shall require providers to request 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 authorization for mental health services, as defined in Cal. Code Regs., tit. 9, § 1810.227, provided concurrently with day treatment intensive or day rehabilitation, excluding services to treat emergency and urgent conditions as defined in Cal. Code Regs., tit. 9, §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 payment authorization function to providers. When the Contractor is the day treatment intensive or day rehabilitation provider, the Contractor shall assure that the 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 Cal. Code Regs., tit. 9, §§ 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 milieu, and shall actively involve staff and beneficiaries. Relevant discussion items include, but are not limited to: the day's schedule, any current event, individual issues that beneficiaries 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

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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 beneficiaries in the overall program. For example, beneficiaries 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 beneficiaries on strategies for symptom reduction, increasing adaptive behaviors, and reducing subjective distress.

3) Process groups. These groups, facilitated by staff, shall assist each beneficiary 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 shall help beneficiaries identify barriers related to their psychiatric and psychological experiences. Through the course of group interaction, beneficiaries identify skills that address symptoms and increase adaptive behaviors.

5) Adjunctive therapies. These are therapies in which both staff and beneficiaries participate. These therapies may utilize self-expression, such as art, recreation, dance, or music as the therapeutic intervention. Participants do not need to have any level of skill in the area of self-expression, but rather be able utilize the modality to develop or enhance skills directed toward achieving beneficiary plan goals. Adjunctive therapies assist the beneficiary in attaining or restoring skills which enhance community functioning including problem solving, organization of thoughts and materials, and verbalization of ideas and feelings. Adjunctive therapies provided as a component of day rehabilitation or day treatment intensive are used in conjunction with other mental health services in order to improve the outcome of those services consistent with the beneficiary's needs identified in the client plan.

E. Day treatment intensive shall additionally include:

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1) Psychotherapy. Psychotherapy means the use of psychological methods within a professional relationship to assist the beneficiary or beneficiaries to achieve a better psychosocial adaptation, to acquire a greater human realization of psychosocial potential and adaptation, to modify internal and external conditions that affect individual, groups, or communities in respect to behavior, emotions and thinking, in respect to their intrapersonal and interpersonal processes. Psychotherapy shall be provided by licensed, registered, or waivered staff practicing within their scope of practice. Psychotherapy does not include physiological interventions, including medication intervention.

2) Mental Health Crisis Protocol. The Contractor shall ensure that there is an established protocol for responding to beneficiaries 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 beneficiary'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 beneficiary is linked to an outside crisis service.

3) Written Weekly Schedule. The Contractor shall ensure that a weekly detailed schedule is available to beneficiaries and as appropriate to their families, caregivers or significant support persons and identifies when and where the service components of the program will be provided and by whom. The written weekly schedule will specify the program staff, their qualifications, and the scope of their services.

F. Staffing Requirements. Staffing ratios shall be consistent with the requirements in Cal. Code Regs., tit. 9, § 1840.350, for day treatment intensive, and Cal. Code Regs., tit. 9, § 1840.352 for day rehabilitation. For day treatment intensive, staff shall include at least one staff person whose scope of practice includes psychotherapy.

1) 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).

2) 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.

3) The Contractor shall require day treatment intensive and day rehabilitation programs to maintain documentation that enables

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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). The Contractor shall require that there is 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.

G. If a beneficiary is unavoidably absent and does not attend all of the scheduled hours of the day rehabilitation or day treatment intensive program, 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. The Contractor shall require that a separate entry be entered in the beneficiary record documenting the reason for the unavoidable absence and the total time (number of hours and minutes) the beneficiary actually attended the program that day. In cases where absences are frequent, it is the responsibility of the Contractor to ensure that the provider re-evaluates the beneficiary's need for the day rehabilitation or day treatment intensive program and takes appropriate action.

H. Documentation Standards. The Contractor shall ensure day treatment intensive and day rehabilitation documentation meets the documentation standards described in Section 11 of this exhibit. The documentation shall include the date(s) of service, signature of the person providing the service (or electronic equivalent), the person's type of professional degree, licensure or job title, date of signature and the total number of minutes/hours the beneficiary actually attended the program. For day treatment intensive these standards include daily progress notes on activities and a weekly 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 services.

I. 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 beneficiary, or one contact per month with the legally responsible adult for a beneficiary who is a minor. This contact may be face-to-face, or by an alternative method (e.g., e-mail, telephone, etc.). Adult beneficiaries may decline this service component. The contacts should focus on the role of the support person in supporting the beneficiary'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.

J. Written Program Description. The Contractor shall ensure there is a written program description for day treatment intensive and day rehabilitation. The written program description must describe 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 written program description for compliance with this section with prior to the date the provider begins delivering day treatment intensive or day rehabilitation.

K. 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.

L. Continuous Hours of Operation. The Contractor shall ensure that the provider applies the following when claiming for day treatment intensive and day rehabilitation services:

1) A half day shall be billed for each day in which the beneficiary receives face-to-face services in a program with services available four hours or less per day. Services must be available a minimum of three hours each day the program is open.

2) A full-day shall be billed for each day in which the beneficiary receives face-to-face services in a program with services available more than four hours per day.

3) Although the beneficiary must receive face to face services on any full-day or half-day claimed, all service activities during that day are not required to be face-to-face with the beneficiary.

4) The requirement for continuous hours or operation does not preclude short breaks (for example, a school recess period) between activities. A lunch or dinner may also be appropriate depending on the program's schedule. The Contractor shall not conduct these breaks toward the total hours of operation of the day program for purposes of determining minimum hours of service.

9. Therapeutic Behavioral Services

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 Cal. Code Regs., tit. 9, § 1810.215. TBS are intensive, one-to-one services designed to help beneficiaries and their parents/caregivers manage specific behaviors using short-term measurable goals based on the beneficiary's needs. TBS are available to beneficiaries in accordance with the Department of Mental Health Information Notice 08-38, the TBS Coordination of Care Best Practices Manual, version 2 (October 2010), and the TBS Documentation Manual, version 2 (October 2009).

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

A. In accordance with Cal. Code Regs., tit. 9, § 1830.220, 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 counties of origin.

B. The Contractor shall use the standard forms issued by the Department, or the electronic equivalent of those forms generated from the Contractor's Electronic Health Record System, 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. 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.

D. 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 Adoption Assistance Program (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).

E. 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 in MEDS.

F. The Contractor shall comply with timelines specified in Cal. Code Regs., tit. 9, § 1830.220(b)(4)(A)(1-3), when processing or submitting authorization requests for

children in a foster care, AAP, or Kinship Guardian Assistance Payment (Kin-GAP) aid code living outside his or her county of origin.

G. The Contractor shall submit changes to its procedures for serving beneficiaries placed outside their counties of origin pursuant to Welf. & Inst. Code § 14716 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 Cal. Code Regs., tit. 9, § 1830.220, when a beneficiary requires services or is placed in a county not covered by the Contractor's normal procedures.

11. Documentation Standards

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. The Contractor may monitor performance so that the documentation of care provided will satisfy the requirements set forth below. The documentation standards for beneficiary care are minimum standards to support claims for the delivery of specialty mental health services. All standards shall be addressed in the beneficiary record; however, there is no requirement that the records have a specific document or section addressing these topics.

A. Assessment

1) The Contractor shall ensure that the following areas are included, as appropriate, as part of a comprehensive beneficiary 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;

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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, the history must 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 related to the beneficiary's mental health needs and functional impairments as a result of the mental health diagnosis;

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) The Contractor shall ensure that Client Plans:

a) Have specific observable and/or specific quantifiable goals/treatment objectives related to the beneficiary's mental health needs and functional impairments as a result of the mental health diagnosis;

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b) Identify the proposed type(s) of intervention/modality including a detailed description of the intervention to be provided;

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 Cal. Code Regs., tit. 9, § 1830.205(b)); have interventions that are consistent with the client plan goal;

e) Be consistent with the qualifying diagnoses;

f) 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; or

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, or

e) A registered nurse, including but not limited to nurse practitioners, and clinical nurse specialists.

g) Include documentation of the beneficiary's participation in and agreement with the client plan, as described in Cal. Code Regs., tit. 9, § 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

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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) There shall be documentation in the client plan that a copy of the client plan was offered to the beneficiary.

3) The client plan shall be updated at least annually, or when there are significant changes in the beneficiary's condition.

A. Progress Notes

1) The Contractor shall ensure that progress notes 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 beneficiary's progress in treatment include:

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

b) Documentation of beneficiary 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;

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e) Documentation of 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; and

h) The signature of the person providing the service (or electronic equivalent); the person's type of professional degree, licensure, or job title.

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.

B. Other

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

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2) All entries in the beneficiary 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 beneficiary record.

3) The Contractor shall have a written definition of what constitutes a long term care beneficiary.

4) Contractor shall require providers to obtain and retain a written medication consent form signed by the beneficiary agreeing to the administration of psychiatric medication. This documentation shall include, but not be limited to, the reasons for taking such medications; reasonable alternative treatments available, if any; the type, range of frequency and amount, method (oral or injection), and duration of taking the medication; probable side effects; possible additional side effects which may occur to beneficiaries taking such medication beyond three (3) months; and that the consent, once given, may be withdrawn at any time by the beneficiary.

12. Cultural Competence Plan

The Contractor shall comply with the provisions of the Contractor's Cultural Competence Plan submitted in accordance with Cal. Code Regs., tit. 9, § 1810.410, and approved by the Department. The Contractor shall update the Cultural Competence Plan and submit these updates to the Department for review and approval annually.

13. Implementation Plan

The Contractor shall comply with the provisions of the Contractor's Implementation Plan pursuant to Cal. Code Regs., tit. 9, § 1810.310 as approved by the Department, including the administration of beneficiary problem resolution processes as required by Cal. Code Regs., tit. 9, § 1850.205 through § 1850.208. The Contractor shall obtain written approval by the Department prior to making any changes to the Implementation Plan as approved by the Department. The Contractor may implement the changes after thirty (30) calendar days if the Department does not respond in writing within thirty calendar (30) days as provided in Cal. Code Regs., tit. 9, § 1810.310.

14. Additional Provisions

A. Books and Records

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This provision is a supplement to provision number seven (Audit and Record Retention) in Exhibit D(F) which is attached hereto as part of this agreement.

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, 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 § 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 § 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 all policy letters issued by the Department. The Contractor shall also comply with Department of Mental Health (DMH) Letters and Information Notices issued to all Mental Health Plans as defined in Cal. Code

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Regs., tit. 9, § 1810.226 as such DMH Letters and Information Notices remain in effect unless amended, repealed, or readopted by the Department. DMH letters and Information Notices shall provide specific details of procedures established 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.

15. Beneficiary Problem Resolution Processes

A. General Provisions

The Contractor shall represent the Contractor's position in fair hearings, as defined in Cal. Code Regs., tit. 9, § 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 42 C.F.R. § 438.228 and Cal. Code Regs., tit. 9, § 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, 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 42 C.F.R. 438 Subpart F and Cal. Code Regs., tit. 9, §§ 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.

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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 Cal. Code Regs., tit. 9, § 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 Cal. Code Regs., tit. 9, § 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 C.F.R. § 438.406(a)(1), 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) Pursuant to 42 C.F.R. § 438.406(a)(2), the Contractor shall acknowledge receipt of each grievance appeal, and request for expedited appeal to the beneficiary in writing.

c) Consistent with 42 C.F.R. § 438.402(b)(1)(ii), 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, such as a legal guardian, 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.

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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 Cal. Code Regs., tit. 9, § 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 pursuant to 42 C.F.R. § 438.406(a)(3)(i).

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 pursuant to Title per 42, C.F.R. § 438.406(a)(3)(ii).

4) Pursuant to record keeping and review requirements in 42 C.F.R. § 438.416, and to facilitate monitoring consistent with Cal. Code Regs., tit. 9, §§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;

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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 including 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 42 C.F.R. §§ 438.400, 438.402, 438.406 and Cal. Code Regs., tit. 9, § 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 Cal. Code Regs., tit. 9, § 1810.230.5; and

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

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1) Consistent 42 C.F.R. § 438.408 and Cal. Code Regs., tit. 9, §§ 1850.205 and 1850.207, the appeal process shall, at a minimum:

   a) Allow a beneficiary to file an appeal orally or in writing pursuant to 42 C.F.R. § 438.402(b)(3)(ii);

   b) Pursuant to 42 C.F.R. § 438.402(b)(3)(ii), 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 42 C.F.R. § 438.408(b) and (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 Cal. Code Regs., tit. 9, §1810.230.5;

   d) Consistent with 42 C.F.R. § 438.408(f), 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; and

   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 42 C.F.R. § 438.408(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;

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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:

i. 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; and

ii. 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.

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 Cal. Code Regs., tit. 9, § §§ 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 Cal. Code Regs., tit. 9, § 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 42 C.F.R. § 438.410(a), and Cal. Code Regs., tit. 9, §§ 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 42 C.F.R. § 438.402(b)(3), allow the beneficiary to file the request for an expedited appeal orally without requiring that the request be followed by a written appeal.

3) Pursuant to 42 C.F.R. § 438.410(b), 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 42 C.F.R. § 438.408(b)(3),resolve an expedited appeal and notify the affected parties in writing, no later than three working days after

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the Contractor receives the appeal. Pursuant to 42 C.F.R. § 438.408(c) 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 Cal. Code Regs., tit. 9, § 1810.230.5.

5) Pursuant to 42 C.F.R. § 438.408(d)(2), 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 42 C.F.R. § 438.410(c), if the Contractor denies a request for expedited appeal resolution:

   a) Transfer the expedited appeal request to the timeframe for appeal resolution as required by Cal. Code Regs., tit. 9, § 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 Cal. Code Regs., tit. 9, § 1810.230.5.

E. Beneficiary Problem Resolution Processes Established by Providers

Nothing in the Cal. Code Regs., tit. 9, §§ 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 42 C.F.R. Subpart F, Cal. Code Regs., tit. 9, §1850.205 and § 1850.209, and depending on processes delegated, Cal. Code Regs., tit. 9, §§ 1850.206, 1850.207, and/or 1850.208; and

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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 Cal. Code Regs., tit. 9, § 1810.216.6. Fair hearings must comply with 42 C.F.R. §§ 431.220(a)(5), 438.408(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.

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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 42 C.F.R. § 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 described in 42 C.F.R. § 438.410(a), and Cal. Code Regs., tit. 9, §§ 1810.216.4 and 1810.216.6, to be used when the Contractor determines, or the beneficiary and/or the beneficiary's provider certifies, that the following the timeframe for a fair hearing as established in 42 C.F.R. § 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 shall have a right to file for continuation of specialty mental health services pending the outcome of a fair hearing pursuant to Cal. Code Regs., tit. 22., § 51014.2, and Cal. Code Regs., tit. 9, § 1850.215.

2) The Contractor shall continue to provide specialty mental health services pending the outcome of a fair hearing in accordance with Cal. Code Regs., tit. 22, § 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 Cal. Code Regs., tit. 9, § 1850.205.

I. Provision of Notice of Action

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1) Consistent with 42 C.F.R. § 438.400(b) and Cal. Code Regs., tit. 9, § 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 Cal. Code Regs., tit. 9, §§ 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.

2) Pursuant to 42 C.F.R. § 438.404(a), the Notice of Action (NOA) shall be in writing and shall meet the language and format requirements of 42 C.F.R. § 438.10(c) and (d) to ensure ease of understanding. The Notice of Action shall contain the items specified in 42 C.F.R. § 438.404 (b) and Cal. Code Regs., tit. 9, § 1850.210.

3) The Contractor shall provide a beneficiary with an NOA when the Contractor denies or modifies a Contractor payment authorization request from a provider for a specialty mental health service to the beneficiary.

4) 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 Cal. Code. Regs., tit. 22, § 51014.1.

5) A NOA 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.

6) A NOA 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.

7) Except as provided in subsection 6 below, a NOA is not required when the denial or modification is a denial or modification of a request for Contractor

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payment authorization for a specialty mental health service that has already been provided to the beneficiary.

8) A NOA 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.

9) The Contractor shall deny the Contractor payment authorization request and provide the beneficiary with a NOA 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 Cal. Code Regs., tit. 9, §§ 1820.220 or 1830.215.

10) The Contractor shall provide the beneficiary with a NOA 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 Cal. Code Regs., tit. 9, §§ 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 NOA.

11) The Contractor shall provide a beneficiary with a NOA 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.

12) The Contractor shall comply with the requirements of 42 C.F.R. § 438.404(b), and Cal. Code Regs., tit. 9, § 1850.210, regarding the content of NOAs and with the following timeframes for mailing of NOAs:

    a) The written NOA 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 Cal. Code Regs., tit. 22, § 51014.1.

    b) The written NOA 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 NOA 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.

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13) When a NOA would not be required as described in (3)-(5) above, the Contractor shall provide a beneficiary with an NOA when the Contractor or its providers determine that the medical necessity criteria in Cal. Code Regs., tit. 9, §§1830.205(b)(1),(b)(2),(b)(3)(C), or 1830.210(a) have not been met and that the beneficiary is not entitled to any specialty mental health services from the Contractor. A NOA 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 NOA 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 Cal. Code Regs., tit. 9, § 1850.210(f)(1), and shall specify the information contained in Cal. Code Regs., tit. 9, § 1850.212(b).

14) For the purpose of this Section, each reference to a Medi-Cal managed care plan in Cal. Code Regs., tit. 22, § 51014.1, shall mean the Contractor.

15) For the purposes of this Section, "medical service", as used in Cal. Code Regs., tit. 22, § 51014.1, shall mean specialty mental health services that are subject to prior authorization by a Contractor pursuant to Cal. Code Regs., tit. 9, §§ 1820.100 and 1830.100.

16) The Contractor shall retain copies of all Notices of Action issued to beneficiaries under this Section in a centralized file accessible to the Department.

J. Contents of a NOA

1) The NOA issued pursuant to Section I of this contract and 42 C.F.R. § 438.404(b) and Cal. Code Regs., tit. 9, §§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;

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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 NOA issued pursuant to Cal. Code Regs., tit. 9, §§ 1850.210(g) and 1850.212(b), relating to denials for lack of medical necessity, shall specify the following:

a) The reason that the medical necessity criteria were not met, including a citation to the applicable regulation;

b) The beneficiary's options for obtaining care from sources other than the Contractor, if applicable;

c) The beneficiary's right to request a second opinion on the determination;

d) The beneficiary's right to file an appeal or expedited appeal with the Contractor; and,

e) 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. The time period in which the request for a fair hearing or expedited fair hearing must be filed; and,

iii. 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;

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K. Consistent with 42 C.F.R. § 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; or

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) If payment is denied, the Contractor shall give notice to the beneficiary on the date of the action.

L. Pursuant to Cal. Code Regs., tit. 9, § 1810.375(a), the Contractor is required to submit to the Department a report that summarizes beneficiary grievances, appeals and expedited appeals filed from July 1 of the previous year through June 30 of that year by October 1 of each year. The report shall include the total number of grievances, appeals and expedited appeals by type, by subject areas established by the Department, and by disposition.

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16. Subcontracts

A. This provision is a supplement to provision number five (Subcontract Requirements) in Exhibit D(F) which is attached hereto as part of this agreement. As allowed by provision five in Exhibit D(F), the Department hereby, and until further notice, waives its right to prior approval of subcontracts and approval of existing subcontracts.

B. No subcontract terminates the legal responsibility of the Contractor to the Department to assure that all activities under this contract are carried out.

C. All subcontracts shall be in writing.

D. All inpatient subcontracts shall require that subcontractors maintain necessary licensing and certification.

E. 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 E, Section 3.

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, 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

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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 monitors the subcontractor and the subcontractor's obligation to provide a corrective action plan if deficiencies are identified.

17. 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 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.

18. Program Integrity Requirements

A. The Contractor shall comply with the provisions of 42 C.F.R. §§ 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 42 C.F.R. § 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.

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C. Pursuant to 42 C.F.R. § 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. FFP is not available for amounts expended for providers excluded by Medicare, Medicaid, or the State Children's Health 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 C.F.R. § 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.

F. Service Verification. To assist the Department in meeting its obligation under 42 C.F.R. § 455.1(a)(2), the Contractor shall have a way to verify whether services were actually furnished to beneficiaries.

19. Disclosures

A. Disclosure of 5% or More Ownership Interest:

1) Pursuant to 42 C.F.R. § 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 42 C.F.R. §

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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 the 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 42 C.F.R. § 455.101. 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.

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.

a) Disclosures to 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);

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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) 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. (42 C.F.R. § 455.106(a)(1), (2).)

Exhibit A Attachment I
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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. (42 C.F.R. § 455.106(a)(1), (2).) For this purpose, the word "agent" has the meaning described in 42 C.F.R. § 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 the 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 (PSA) 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 PSA. The County Mental Health Director or his or her authorized designee shall certify annually that Contractor is in compliance with the PSA 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. Advance Directives. The Contractor shall maintain written policies and procedures on advance directives in compliance with the requirements of 42 C.F.R. §§ 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 42 C.F.R. § 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 42 C.F.R. § 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 42 C.F.R. § 438.6(h), the Contractor shall comply with the requirements set forth in 42 CFR §§ 422.208 and 422.210.

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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) 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) If required to conduct beneficiary survey, survey results shall be disclosed to the Department and, upon request, to beneficiaries, per the Social Security Act (SSA) 1903(m)(2)(A)(x); 42 C.F.R. §§ 422.208; 422.210;438.6(h); and SSA 1876(i)(8)(A)(ii)(II).

C. Sharing of Information with Beneficiaries. The Contractor shall not prohibit nor otherwise restrict, a licensed, waivered, or registered professional, as defined in Cal. Code Regs., tit. 9, §§ 1810.223 and 1810.254, who is acting within the lawful scope of practice (pursuant to 42 C.F.R. § 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:

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1) The beneficiary's health status, medical care, or treatment options, including any alternative treatment that may be self-administered;

2) Information on the beneficiary needs in order to decide among all relevant treatment options;

3) The risks, benefits, and consequences of treatment not receiving 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 42 C.F.R. § 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. 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:

a) To the Department:

a) Prior to executing this contract;

b) Whenever it adopts the policy during the term of the contract;

b) Consistent with the provisions of 42 C.F.R. § 438.10:

a) To potential beneficiaries before and during enrollment; and

b) To beneficiaries within 90 days after adopting the policy with respect to any particular service.

F. Beneficiary Liability for Payment. Pursuant to Cal. Code Regs., tit. 9, § 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 42 C.F.R. § 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

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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. Health Information System. Pursuant to 42 C.F.R. § 438.242 and consistent with Cal. Code Regs., tit. 9, § 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.

1) The Contractor's health information system shall, at a minimum:

a) Collect data on beneficiary and provider characteristics as specified by the Department, and on services furnished to beneficiaries as specified by the Department;

b) Ensure that data received from providers is accurate and complete by:

i. Verifying the accuracy and timeliness of reported data;

ii. Screening the data for completeness, logic, and consistency; and

iii. Collecting service information in standardized formats to the extent feasible and appropriate.

c) Make all collected data available to the Department and, upon request, to CMS.

2) Consistent with Cal. Code Regs., tit. 9, § 1810.376(c), the Contractor's health information system is not required to collect and analyze all elements in electronic formats.

H. Cost Sharing. Pursuant to 42 C.F.R. § 438.108, any cost sharing imposed on Medicaid beneficiaries shall be in accordance with 42 C.F.R. §§ 447.50 through 447.60.

22. 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

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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 Cal. Code Regs., tit. 9, § 1810.440(a)(6) and 42 C.F.R. § 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, beneficiary 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 42 C.F.R. § 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.

4) 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.

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Service, Administrative and Operational Requirements

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 Cal. Code Regs., tit. 9, § 1810.440(a)(5) and 42 C.F.R. § 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 the 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; and

5) Evidence of compliance with the requirements for cultural competence and linguistic competence specified in Cal. Code Regs., tit. 9, § 1810.410.

23. 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 beneficiaries.

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.

Exhibit A Attachment I
Service, Administrative and Operational Requirements

C. The QI Program shall be accountable to the Contractor's Director as described in Cal. Code Regs., tit. 9, § 1810.440(a)(1).

D. Operation of the QI program shall include substantial involvement by a licensed mental health staff person, as described in Cal. Code. Regs., tit. 9, § 1810.440(a)(4).

E. The QI Program shall include active participation by the Contractor's practitioners and providers, as well as beneficiaries and family members, in the planning, design and execution of the QI Program, as described in Cal. Code. Regs., tit. 9, § 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 42 C.F.R. § 438.240(b)(1) and (d). 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, beneficiaries 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; and

8) Reviewing beneficiary grievances, appeals, expedited appeals, fair hearings, expedited fair hearings, provider appeals, and clinical records review as required by Cal. Code Regs., tit. 9, § 1810.440(a)(5).

24. 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 Cal. Code Regs., tit. 9, § 1810.440(b)(1)-(3).

Exhibit A Attachment I
Service, Administrative and Operational Requirements

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.

25. Practice Guidelines

The Contractor shall comply with 42 C.F.R. § 438.236(b) and Cal. Code Regs., tit. 9, § 1810.326 which requires the adoption of practice guidelines.

A. Such guideline shall meet the following requirements:

1) They are based on valid and reliable clinical evidence or a consensus of health care professionals in the applicable field;

2) They consider the needs of the beneficiaries;

3) They are adopted in consultation with contracting health care professionals; and

4) They are reviewed and updated periodically as appropriate.

B. Contractor shall disseminate the guidelines to all affected providers and, upon request, to beneficiaries and potential beneficiaries.

C. Contractor shall take steps to assure that decisions for utilization management, beneficiary education, coverage of services, and any other areas to which the guidelines apply shall be consistent with the guidelines.

Exhibit A Attachment II
Definitions

The definitions contained in Cal. Code Regs., tit. 9, § 1810.100 et. seq. shall apply in this contract.

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

B. "Contractor" means Inyo County Mental Health.

C. "Covered Specialty 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 described in California's Medicaid State Plan and as defined in Cal. Code Regs., tit. 9, § 1810.247, to the extent described in Cal. Code Regs., tit. 9, § 1810.345. Covered Specialty Mental Health Services also include psychiatric inpatient hospital services as defined in Cal. Code Regs., tit. 9, § 1810.238, and Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Supplemental Specialty Mental Health Services as defined in Cal. Code Regs., tit. 9, § 1810.215. Psychiatric nursing facility services are not included.

D. "Department" means the California Department of Health Care Services (DHCS).

E. "Director" means the Director of DHCS.

F. "HHS" means the United States Department of Health and Human Service

G. "PIHP" means Prepaid Inpatient Health Plan as described in 42 C.F.R. § 438.2. A PIHP is an entity that:

1) Provides medical services to beneficiaries under contract with the Department of Health Care Services, 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.

H. "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.

Exhibit A Attachment II
Definitions

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.

Exhibit B
Budget Detail and Payment Provisions

1. Payment Provisions

This program may be funded using one or more of the following funding sources: funds distributed to the counties from the Mental Health Subaccount, the Mental Health Equity Subaccount, and the Vehicle License Collection Account of the Local Revenue Fund, funds from the Mental Health Account and the Behavioral Health Subaccount of the Local Revenue Fund 2011, funds from the Mental Health Services Fund, and any other funds from which the Controller makes distributions to the counties in compliance with applicable statute and regulations including Welf. & Inst. Code §§ 5891, 5892 and 14705(a)(2). These funding sources may be used by the Contractor to pay for services and then certify as public expenditures in order to be reimbursed federal funds.

2. Budget Contingency Clause

This provision is a supplement to provision number nine (Federal Contract Funds) in Exhibit D(F) which is attached hereto as part of this agreement.

A. Federal Budget

If federal funding for FFP reimbursement in relation to this contract is eliminated or substantially reduced by Congress, the Department and the Contractor each shall have the option either to cancel this contract or to propose a contract amendment to address changes to the program required as a result of the elimination or reduction of federal funding.

B. Delayed Federal Funding

Contractor and Department agree to consult with each other 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.

3. Federal Financial Participation

Nothing in this contract shall limit the Contractor's ability to submit claims for appropriate FFP reimbursement based on actual, total fund expenditures for any covered services or quality assurance, utilization review, Medi-Cal Administrative Activities and/or administrative costs. In accordance the Welf. & Inst. Code § 14705(c), the Contractor shall ensure compliance with all requirements necessary for Medi-Cal reimbursement for these services and activities. Claims for FFP reimbursement shall be submitted by the Contractor to the Department for adjudication throughout the fiscal year. Pursuant to the Welf. & Inst. Code § 14705(d), the Contractor shall certify to the state that it has incurred public expenditures prior to requesting the reimbursement of federal funds.

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4. Cost Reporting

A. 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 the Welf. & Inst. Code § 14705(c), and/or 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 Contractor'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 which can be accessed through the Department's Information Technology Web Services (ITWS) for the applicable year, as well as any instructions that are incorporated by reference thereto; 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 the Welf. & Inst. Code § 14171.

B. In accordance with Welf. & Inst. Code § 5655 , 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 Welf.& Inst. Code § 14712(e), may withhold payments of additional funds until the cost report that is due has been submitted.

C. Upon receipt of an amended cost report, which includes reconciled units of service, and a certification statement that has been signed 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 Department shall preliminarily settle the cost report. After completing its preliminary settlement, the Department shall so notify the Contractor if additional FFP is due to the Contractor. The Department shall submit a claim to the federal government for the related FFP within 30 days contingent upon sufficient budget authority. If funds are due to the State, the Department shall invoice the Contractor and the Contractor shall return the overpayment to the Department.

5. Audits and Recovery of Overpayments

A. Pursuant to Welf. & Inst. Code § 14707, in the case of federal audit exceptions, the Department will follow federal audit appeal processes unless the Department, in

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Budget Detail and Payment Provisions

consultation with the California Mental Health Director's Association, determines that those appeals are not cost beneficial.

1) Whenever there is a final federal audit exception against the State resulting from a claim for federal funds for an expenditure by individual counties that is not federally allowable, the department may offset federal reimbursement and request the Controller's office to offset the distribution of funds to the Contractor from the Mental Health Subaccount, the Mental Health Equity Subaccount and the Vehicle License Collection Account of the Local Revenue Fund; funds from the Mental Health Account and the Behavioral Health Subaccount of the Local Revenue Fund 2011; and any other mental health realignment funds from which the Controller makes distributions to the counties by the amount of the exception. The Department shall provide evidence to the Controller that the county had been notified of the amount of the audit exception no less than 30 days before the offset is to occur.

2) The Department will involve the Contractor in developing responses to any draft federal audit reports that directly impact the county.

B. Pursuant to Welf. & Inst. Code § 14718(b)(2), the Department may offset the amount of any federal disallowance, audit exception, or overpayment against subsequent claims from the Contractor.

1) The Department may offset the amount of any state disallowance, audit exception, or overpayment for fiscal years through and including 2010-11 against subsequent claims from the Contractor.

2) Offsets may be done at any time, after the department has invoiced or otherwise notified the Contractor about the audit exception, disallowance, or overpayment. The Department shall determine the amount that may be withheld from each payment to the mental health plan.

3) The maximum withheld amount shall be 25 percent of each payment as long as the Department is able to comply with the federal requirements for repayment of FFP pursuant 42 United States Code (U.S.C.) §1396b(d)(2)). The Department may increase the maximum amount when necessary for compliance with federal laws and regulations.

C. Pursuant to the Welf. & Inst. Code § 14170 , 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 the Welf. & Inst. Code § 14170 , 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

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Budget Detail and Payment Provisions

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, or once the Department has informed the Contractor of its intent to close the audit without disallowances.

D. If the adjustments result in the Department owing FFP to the Contractor, the Department shall submit a claim to the federal government for the related FFP within 30 days contingent upon sufficient budget authority.

6. Claims Adjudication Process

A. In accordance with the Welf. & Inst. Code §14705(c), 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 Cal. Code Regs., tit. 9, § 1840.112 and 42 C.F.R. § 433.51, 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 FFP. 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 Cal. Code Regs., tit. 9, § 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 42 C.F.R. § 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 Health Insurance Portability and Accountability Act (HIPAA) transaction requirements and any other applicable federal or state privacy laws or regulations and certified by the Contractor in accordance with Cal. Code Regs., tit. 9, § 1840.112, shall be processed for adjudication.

D. Good cause justification for late claim submission is governed by applicable federal and state laws and regulations and is subject to approval by the Department.

Exhibit B
Budget Detail and Payment Provisions

E. In the event that the Department or the Contractor determines that changes requiring a change in the Contractor's or Department's obligation 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 requirements and 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 Cal. Code Regs., tit. 9, § 1840.304, when submitting claims for FFP 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 42 C.F.R. §§ 438.604 and 438.606.

8. System Changes

In the event changes in federal or state law or regulations, including court decisions and interpretations, necessitate a change in either the fiscal or program obligations or operations of the Contractor or the Department, or a change in obligation for the cost of providing covered services the Department and the Contractor agree to negotiate, pursuant to the Welf. & Inst. Code § 14714(c) regarding (a) changes required to remain in compliance with the new law or 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 or regulation.

9. Administrative Reimbursement

A. The Contractor may submit claims for reimbursement of Medical Administrative Activities (MAA) pursuant to Welf. & Inst. Code § 14132.47. The Contractor shall not submit claims for MAA unless it has submitted a claiming plan to the Department which was approved by the Department and is effective during the quarter in which the costs being claimed were incurred. In addition, the Contractor shall not submit claims for reimbursements of MAA that are not consistent with the Contractor's approved MAA claiming plan. The Contractor shall not use the relative value methodology to report its MAA costs on the year-end cost report. Rather, the Contractor shall calculate and report MAA units on the cost report by multiplying the amount of time (minutes, hours, etc.) spent on MAA activities by the

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Budget Detail and Payment Provisions

salary plus benefits of the staff performing the activity and then allocating indirect administrative and other appropriately allocated costs.

B. Pursuant to the Welf. & Inst. Code § 14711(c), administrative costs shall be claimed separately in a manner consistent with federal Medicaid requirements and the approved Medicaid state plans and waivers and shall be limited to 15 percent of the total actual cost of direct client services. The cost of performing quality assurance and utilization review activities shall be reimbursed separately and shall not be included in administrative costs.

10. Notification of Request for Contract Amendment

In addition to the provisions in Exhibit E, Additional Provisions, 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.

Special Terms and Conditions

(For federally funded service contracts or agreements and grant agreements)

The use of headings or titles throughout this exhibit is for convenience only and shall not be used to interpret or to govern the meaning of any specific term or condition.

The terms "contract", "Contractor" and "Subcontractor" shall also mean, "agreement", "grant", "grant agreement", "Grantee" and "Subgrantee" respectively.

The terms "California Department of Health Care Services", "California Department of Health Services", 'Department of Health Care Services", "Department of Health Services", "CDHCS", "DHCS", "CDHS", and "DHS" shall all have the same meaning and refer to the California State agency that is a party to this Agreement.

This exhibit contains provisions that require strict adherence to various contracting laws and policies. Some provisions herein are conditional and only apply if specified conditions exist (i.e., agreement total exceeds a certain amount; agreement is federally funded, etc.). The provisions herein apply to this Agreement unless the provisions are removed by reference on the face of this Agreement, the provisions are superseded by an alternate provision appearing elsewhere in this Agreement, or the applicable conditions do not exist.

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1. Federal Equal Opportunity Requirements

(Applicable to all federally funded agreements entered into by the Department of Health Care Services)

a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or DHCS, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.

b. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.

c. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212) and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations, and relevant orders of the Secretary of Labor.

e. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

f. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

g. The Contractor will include the provisions of Paragraphs a through g in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or DHCS may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by DHCS, the Contractor may request in writing to DHCS, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

2. Travel and Per Diem Reimbursement

(Applicable if travel and/or per diem expenses are reimbursed with agreement funds.)

Reimbursement for travel and per diem expenses from DHCS under this Agreement shall, unless otherwise specified in this Agreement, be at the rates currently in effect, as established by the California Department of Personnel Administration (DPA), for nonrepresented state employees as stipulated in DHCS' Travel Reimbursement Information Exhibit. If the DPA rates change during the term of the Agreement, the new rates shall apply upon their effective date and no amendment to this Agreement shall be necessary. Exceptions to DPA rates may be approved by DHCS upon the submission of a statement by the Contractor indicating that such rates are not available to the Contractor. No travel outside the State of California shall be reimbursed without prior authorization from DHCS. Verbal authorization should be confirmed in writing. Written authorization may be in a form including fax or email confirmation.

3. Procurement Rules

(Applicable to agreements in which equipment/property, commodities and/or supplies are furnished by DHCS or expenses for said items are reimbursed by DHCS with state or federal funds provided under the Agreement.)

a. **Equipment/Property definitions**

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

(1) **Major equipment/property**: A tangible or intangible item having a base unit cost of **$5,000 or more** with a life expectancy of one (1) year or more and is either furnished by DHCS or the cost is reimbursed through this Agreement. Software and videos are examples of intangible items that meet this definition.

(2) **Minor equipment/property**: A tangible item having a base unit cost of **less than $5,000** with a life expectancy of one (1) year or more and is either furnished by DHCS or the cost is reimbursed through this Agreement.

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

c. **Nonprofit organizations and commercial businesses**, whether acting as a contractor and/or subcontractor, may secure commodities, supplies, equipment/property and services related to such purchases for performance under this Agreement.

(1) Equipment/property purchases shall not exceed $50,000 annually.

To secure equipment/property above the annual maximum limit of $50,000, the Contractor shall

make arrangements through the appropriate DHCS Program Contract Manager, to have all remaining equipment/property purchased through DHCS' Purchasing Unit. The cost of equipment/property purchased by or through DHCS shall be deducted from the funds available in this Agreement. Contractor shall submit to the DHCS Program Contract Manager a list of equipment/property specifications for those items that the State must procure. DHCS may pay the vendor directly for such arranged equipment/property purchases and title to the equipment/property will remain with DHCS. The equipment/property will be delivered to the Contractor's address, as stated on the face of the Agreement, unless the Contractor notifies the DHCS Program Contract Manager, in writing, of an alternate delivery address.

(2) All equipment/property purchases are subject to Paragraphs d through h of Provision 3. Paragraph b of Provision 3 shall also apply, if equipment/property purchases are delegated to subcontractors that are either a government or public entity.

(3) Nonprofit organizations and commercial businesses shall use a procurement system that meets the following standards:

(a) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement, or bid contract in which, to his or her knowledge, he or she has a financial interest.

(b) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.

(c) Procurements shall be conducted in a manner that provides for all of the following:

[1] Avoid purchasing unnecessary or duplicate items.

[2] Equipment/property solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured.

[3] Take positive steps to utilize small and veteran owned businesses.

d. Unless waived or otherwise stipulated in writing by DHCS, prior written authorization from the appropriate DHCS Program Contract Manager will be required before the Contractor will be reimbursed for any purchase of $5,000 or more for commodities, supplies, equipment/property, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by DHCS, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.

e. In special circumstances, determined by DHCS (e.g., when DHCS has a need to monitor certain purchases, etc.), DHCS may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. DHCS reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor purchase that DHCS determines to be unnecessary in carrying out performance under this Agreement.

f. The Contractor and/or subcontractor must maintain a copy or narrative description of the procurement system, guidelines, rules, or regulations that will be used to make purchases under this Agreement. The State reserves the right to request a copy of these documents and to inspect the purchasing practices of the Contractor and/or subcontractor at any time.

g. For all purchases, the Contractor and/or subcontractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor and/or subcontractor for inspection or audit.

h. DHCS may, with cause (e.g., with reasonable suspicion of unnecessary purchases or use of inappropriate purchase practices, etc.), withhold, cancel, modify, or retract the delegated purchase authority granted under Paragraphs b and/or c of Provision 3 by giving the Contractor no less than 30 calendar days written notice.

4. Equipment/Property Ownership / Inventory / Disposition

(Applicable to agreements in which equipment/property is furnished by DHCS and/or when said items are purchased or reimbursed by DHCS with state or federal funds provided under the Agreement.)

a. Wherever the term equipment and/or property is used in Provision 4, the definitions in Paragraph a of Provision 3 shall apply.

Unless otherwise stipulated in this Agreement, all equipment and/or property that is purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement shall be considered state equipment and the property of DHCS.

(1) **Reporting of Equipment/Property Receipt** - DHCS requires the reporting, tagging and annual inventorying of all equipment and/or property that is furnished by DHCS or purchased/reimbursed with funds provided through this Agreement.

Upon receipt of equipment and/or property, the Contractor shall report the receipt to the DHCS Program Contract Manager. To report the receipt of said items and to receive property tags, Contractor shall use a form or format designated by DHCS' Asset Management Unit. If the appropriate form (i.e., Contractor Equipment Purchased with DHCS Funds) does not accompany this Agreement, Contractor shall request a copy from the DHCS Program Contract Manager.

(2) **Annual Equipment/Property Inventory** - If the Contractor enters into an agreement with a term of more than twelve months, the Contractor shall submit an annual inventory of state equipment and/or property to the DHCS Program Contract Manager using a form or format designated by DHCS' Asset Management Unit. If an inventory report form (i.e., Inventory/Disposition of DHCS-Funded Equipment) does not accompany this Agreement, Contractor shall request a copy from the DHCS Program Contract Manager. Contractor shall:

(a) Include in the inventory report, equipment and/or property in the Contractor's possession and/or in the possession of a subcontractor (including independent consultants).

(b) Submit the inventory report to DHCS according to the instructions appearing on the inventory form or issued by the DHCS Program Contract Manager.

(c) Contact the DHCS Program Contract Manager to learn how to remove, trade-in, sell, transfer or survey off, from the inventory report, expired equipment and/or property that is no longer wanted, usable or has passed its life expectancy. Instructions will be supplied by either the DHCS Program Contract Manager or DHCS' Asset Management Unit.

b. Title to state equipment and/or property shall not be affected by its incorporation or attachment to any property not owned by the State.

c. Unless otherwise stipulated, DHCS shall be under no obligation to pay the cost of restoration, or rehabilitation of the Contractor's and/or Subcontractor's facility which may be affected by the removal of any state equipment and/or property.

d. The Contractor and/or Subcontractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or property.

(1) In administering this provision, DHCS may require the Contractor and/or Subcontractor to repair or replace, to DHCS' satisfaction, any damaged, lost or stolen state equipment and/or property. In the event of state equipment and/or miscellaneous property theft, Contractor and/or Subcontractor shall immediately file a theft report with the appropriate police agency or the California Highway Patrol and Contractor shall promptly submit one copy of the theft report to the DHCS Program Contract Manager.

e. Unless otherwise stipulated by the Program funding this Agreement, equipment and/or property purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, shall only be used for performance of this Agreement or another DHCS agreement.

f. Within sixty (60) calendar days prior to the termination or end of this Agreement, the Contractor shall provide a final inventory report of equipment and/or property to the DHCS Program Contract Manager and shall, at that time, query DHCS as to the requirements, including the manner and method, of returning state equipment and/or property to DHCS. Final disposition of equipment and/or property shall be at DHCS expense and according to DHCS instructions. Equipment and/or property disposition instructions shall be issued by DHCS immediately after receipt of the final inventory report. At the termination or conclusion of this Agreement, DHCS may at its discretion, authorize the continued use of state equipment and/or property for performance of work under a different DHCS agreement.

g. **Motor Vehicles**

(Applicable only if motor vehicles are purchased/reimbursed with agreement funds or furnished by DHCS under this Agreement.)

(1) If motor vehicles are purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, within thirty (30) calendar days prior to the termination or end of this Agreement, the Contractor and/or Subcontractor shall return such vehicles to DHCS and shall deliver all necessary documents of title or registration to enable the proper transfer of a marketable title to DHCS.

(2) If motor vehicles are purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, the State of California shall be the legal owner of said motor vehicles and the Contractor shall be the registered owner. The Contractor and/or a subcontractor may only use said vehicles for performance and under the terms of this Agreement.

(3) The Contractor and/or Subcontractor agree that all operators of motor vehicles, purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, shall hold a valid State of California driver's license. In the event that ten or more passengers are to be transported in any one vehicle, the operator shall also hold a State of California Class B driver's license.

(4) If any motor vehicle is purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, the Contractor and/or Subcontractor, as applicable, shall provide, maintain, and certify that, at a minimum, the following type and amount of automobile liability insurance is in effect during the term of this Agreement or any extension period during which any vehicle remains in the Contractor's and/or Subcontractor's possession:

Automobile Liability Insurance

(a) The Contractor, by signing this Agreement, hereby certifies that it possesses or will obtain automobile liability insurance in the amount of $1,000,000 per occurrence for bodily injury and property damage combined. Said insurance must be obtained and made effective upon the delivery date of any motor vehicle, purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, to the Contractor and/or Subcontractor.

(b) The Contractor and/or Subcontractor shall, as soon as practical, furnish a copy of the certificate of insurance to the DHCS Program Contract Manager. The certificate of insurance shall identify the DHCS contract or agreement number for which the insurance applies.

(c) The Contractor and/or Subcontractor agree that bodily injury and property damage liability insurance, as required herein, shall remain in effect at all times during the term of this Agreement or until such time as the motor vehicle is returned to DHCS.

(d) The Contractor and/or Subcontractor agree to provide, at least thirty (30) days prior to the expiration date of said insurance coverage, a copy of a new certificate of insurance evidencing continued coverage, as indicated herein, for not less than the remainder of the term of this Agreement, the term of any extension or continuation thereof, or for a period of not less than one (1) year.

(e) The Contractor and/or Subcontractor, if not a self-insured government and/or public entity, must provide evidence, that any required certificates of insurance contain the following provisions:

[1] The insurer will not cancel the insured's coverage without giving thirty (30) calendar days prior written notice to the State (California Department of Health Care Services).

[2] The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State under this Agreement and any extension or continuation of this Agreement.

[3] The insurance carrier shall notify the California Department of Health Care Services (DHCS), in writing, of the Contractor's failure to pay premiums; its cancellation of such policies; or any other substantial change, including, but not limited to, the status, coverage, or scope of the required insurance. Such notices shall contain a reference to each agreement number for which the insurance was obtained.

(f) The Contractor and/or Subcontractor is hereby advised that copies of certificates of insurance may be subject to review and approval by the Department of General Services (DGS), Office of Risk and Insurance Management. The Contractor shall be notified by DHCS, in writing, if this provision is applicable to this Agreement. If DGS approval of the certificate of insurance is required, the Contractor agrees that no work or services shall be performed prior to obtaining said approval.

(g) In the event the Contractor and/or Subcontractor fails to keep insurance coverage, as required herein, in effect at all times during vehicle possession, DHCS may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

5. Subcontract Requirements

(Applicable to agreements under which services are to be performed by subcontractors including independent consultants.)

a. Prior written authorization will be required before the Contractor enters into or is reimbursed for any subcontract for services costing $5,000 or more. Except as indicated in Paragraph a(3) herein, when securing subcontracts for services exceeding $5,000, the Contractor shall obtain at least three bids or justify a sole source award.

(1) The Contractor must provide in its request for authorization, all information necessary for evaluating the necessity or desirability of incurring such cost.

(2) DHCS may identify the information needed to fulfill this requirement.

(3) Subcontracts performed by the following entities or for the service types listed below are exempt from the bidding and sole source justification requirements:

(a) A local governmental entity or the federal government,
(b) A State college or State university from any State,
(c) A Joint Powers Authority,
(d) An auxiliary organization of a California State University or a California community college,
(e) A foundation organized to support the Board of Governors of the California Community Colleges,
(f) An auxiliary organization of the Student Aid Commission established under Education Code § 69522,
(g) Firms or individuals proposed for use and approved by DHCS' funding Program via acceptance of an application or proposal for funding or pre/post contract award negotiations,
(h) Entities and/or service types identified as exempt from advertising and competitive bidding in State Contracting Manual Chapter 5 Section 5.80 Subsection B.3. View this publication at the following Internet address: http://www.dgs.ca.gov/ols/Resources/StateContractManual.aspx.

b. DHCS reserves the right to approve or disapprove the selection of subcontractors and with advance written notice, require the substitution of subcontractors and require the Contractor to terminate subcontracts entered into in support of this Agreement.

(1) Upon receipt of a written notice from DHCS requiring the substitution and/or termination of a subcontract, the Contractor shall take steps to ensure the completion of any work in progress and select a replacement, if applicable, within 30 calendar days, unless a longer period is agreed to by DHCS.

c. Actual subcontracts (i.e., written agreement between the Contractor and a subcontractor) of $5,000 or more are subject to the prior review and written approval of DHCS. DHCS may, at its discretion, elect to waive this right. All such waivers shall be confirmed in writing by DHCS.

d. Contractor shall maintain a copy of each subcontract entered into in support of this Agreement and shall, upon request by DHCS, make copies available for approval, inspection, or audit.

e. DHCS assumes no responsibility for the payment of subcontractors used in the performance of this Agreement. Contractor accepts sole responsibility for the payment of subcontractors used in the performance of this Agreement.

f. The Contractor is responsible for all performance requirements under this Agreement even though performance may be carried out through a subcontract.

g. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this Agreement.

h. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:

"(*Subcontractor Name*) agrees to maintain and preserve, until three years after termination of (*Agreement Number*) and final payment from DHCS to the Contractor, to permit DHCS or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."

i. Unless otherwise stipulated in writing by DHCS, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this Agreement.

j. Contractor shall, as applicable, advise all subcontractors of their obligations pursuant to the following numbered provisions of this Exhibit: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 17, 19, 20, 24, 32 and/or other numbered provisions herein that are deemed applicable.

6. Income Restrictions

Unless otherwise stipulated in this Agreement, the Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor under this Agreement shall be paid by the Contractor to DHCS, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by DHCS under this Agreement.

7. Audit and Record Retention

(Applicable to agreements in excess of $10,000.)

a. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.

b. The Contractor's and/or subcontractor's facility or office or such part thereof as may be engaged in the performance of this Agreement and his/her records shall be subject at all reasonable times to inspection, audit, and reproduction.

c. Contractor agrees that DHCS, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this

Agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, CCR Title 2, Section 1896).

d. The Contractor and/or Subcontractor shall preserve and make available his/her records (1) for a period of three years from the date of final payment under this Agreement, and (2) for such longer period, if any, as is required by applicable statute, by any other provision of this Agreement, or by subparagraphs (1) or (2) below.

(1) If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.

(2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.

e. The Contractor and/or Subcontractor shall comply with the above requirements and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code § 10115.10, if applicable.

f. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books and records related to this Agreement to microfilm, computer disk, CD ROM, DVD, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.

g. The Contractor shall, if applicable, comply with the Single Audit Act and the audit reporting requirements set forth in OMB Circular A-133.

8. Site Inspection

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

9. Federal Contract Funds

(Applicable only to that portion of an agreement funded in part or whole with federal funds.)

a. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.

b. This agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal years covered by the term of this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this Agreement in any manner.

c. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.

d. DHCS has the option to invalidate or cancel the Agreement with 30-days advance written notice or to amend the Agreement to reflect any reduction in funds.

10. Intellectual Property Rights

a. Ownership

(1) Except where DHCS has agreed in a signed writing to accept a license, DHCS shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement.

(2) For the purposes of this Agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or here after come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.

(a) For the purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing those final products. Works does not include articles submitted to peer review or reference journals or independent research projects.

(3) In the performance of this Agreement, Contractor will exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this Agreement. In addition, under this Agreement, Contractor may access and utilize certain of DHCS' Intellectual Property in existence prior to the effective date of this Agreement. Except as otherwise set forth herein, Contractor shall not use any of DHCS' Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of DHCS. **Except as otherwise set forth herein, neither the Contractor nor DHCS shall give any ownership interest in or rights to its Intellectual Property to the other Party.** If during the term of this Agreement, Contractor accesses any third-party Intellectual Property that is licensed to DHCS, Contractor agrees to abide by all license and confidentiality restrictions applicable to DHCS in the third-party's license agreement.

(4) Contractor agrees to cooperate with DHCS in establishing or maintaining DHCS' exclusive rights in the Intellectual Property, and in assuring DHCS' sole rights against third parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this Agreement, Contractor shall require the terms of the Agreement(s) to include all Intellectual Property provisions. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to DHCS all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or DHCS and which result directly or indirectly from this Agreement or any subcontract.

(5) Contractor further agrees to assist and cooperate with DHCS in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce DHCS' Intellectual Property rights and interests.

b. Retained Rights / License Rights

(1) Except for Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement, Contractor shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this Agreement. Contractor hereby grants to DHCS, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose Contractor's Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this Agreement, unless Contractor assigns all rights, title and interest in the Intellectual Property as set forth herein.

(2) Nothing in this provision shall restrict, limit, or otherwise prevent Contractor from using any ideas, concepts, know-how, methodology or techniques related to its performance under this Agreement, provided that Contractor's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of DHCS or third party, or result in a breach or default of any provisions of this Exhibit or result in a breach of any provisions of law relating to confidentiality.

c. Copyright

(1) Contractor agrees that for purposes of copyright law, all works [as defined in Paragraph a, subparagraph (2)(a) of this provision] of authorship made by or on behalf of Contractor in connection with Contractor's performance of this Agreement shall be deemed "works made for hire". Contractor further agrees that the work of each person utilized by Contractor in connection with the performance of this Agreement will be a "work made for hire," whether that person is an employee of Contractor or that person has entered into an agreement with Contractor to perform the work. Contractor shall enter into a written agreement with any such person that: (i) all work performed for Contractor shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to DHCS to any work product made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement.

(2) All materials, including, but not limited to, visual works or text, reproduced or distributed pursuant to this Agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement, shall include DHCS' notice of copyright, which shall read in 3mm or larger typeface: "© *[Enter Current Year e.g., 2010, etc.]*, California Department of Health Care Services. This material may not be reproduced or disseminated without prior written permission from the California Department of Health Care Services." This notice should be placed prominently on the materials and set apart from other matter on the page where it appears. Audio productions shall contain a similar audio notice of copyright.

d. Patent Rights

With respect to inventions made by Contractor in the performance of this Agreement, which did not result from research and development specifically included in the Agreement's scope of work, Contractor hereby grants to DHCS a license as described under Section b of this provision for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within the Agreement's scope of work, then Contractor agrees to assign to DHCS, without additional compensation, all its right, title and interest in and to such inventions and to assist DHCS in securing United States and foreign patents with respect thereto.

e. Third-Party Intellectual Property

Except as provided herein, Contractor agrees that its performance of this Agreement shall not be dependent upon or include any Intellectual Property of Contractor or third party without first: (i) obtaining DHCS' prior written approval; and (ii) granting to or obtaining for DHCS, without additional compensation, a license, as described in Section b of this provision, for any of Contractor's or third-party's Intellectual Property in existence prior to the effective date of this Agreement. If such a license upon the these terms is unattainable, and DHCS determines that the Intellectual Property should be included in or is required

for Contractor's performance of this Agreement, Contractor shall obtain a license under terms acceptable to DHCS.

f. Warranties

(1) Contractor represents and warrants that:

(a) It is free to enter into and fully perform this Agreement.

(b) It has secured and will secure all rights and licenses necessary for its performance of this Agreement.

(c) Neither Contractor's performance of this Agreement, nor the exercise by either Party of the rights granted in this Agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by Contractor.

(d) Neither Contractor's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.

(e) It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites, locations, property or props that may be used or shown.

(f) It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to DHCS in this Agreement.

(g) It has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

(h) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Contractor's performance of this Agreement.

(2) DHCS MAKES NO WARRANTY THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

g. Intellectual Property Indemnity

(1) Contractor shall indemnify, defend and hold harmless DHCS and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of DHCS' use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by

Contractor or DHCS and which result directly or indirectly from this Agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this Agreement. DHCS reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against DHCS.

(2) Should any Intellectual Property licensed by the Contractor to DHCS under this Agreement become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonably and in good faith to preserve DHCS' right to use the licensed Intellectual Property in accordance with this Agreement at no expense to DHCS. DHCS shall have the right to monitor and appear through its own counsel (at Contractor's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for DHCS to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, DHCS shall be entitled to a refund of all monies paid under this Agreement, without restriction or limitation of any other rights and remedies available at law or in equity.

(3) Contractor agrees that damages alone would be inadequate to compensate DHCS for breach of any term of this Intellectual Property Exhibit by Contractor. Contractor acknowledges DHCS would suffer irreparable harm in the event of such breach and agrees DHCS shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

h. Federal Funding

In any agreement funded in whole or in part by the federal government, DHCS may acquire and maintain the Intellectual Property rights, title, and ownership, which results directly or indirectly from the Agreement; except as provided in 37 Code of Federal Regulations part 401.14; however, the federal government shall have a non-exclusive, nontransferable, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.

i. Survival

The provisions set forth herein shall survive any termination or expiration of this Agreement or any project schedule.

11. Air or Water Pollution Requirements

Any federally funded agreement and/or subcontract in excess of $100,000 must comply with the following provisions unless said agreement is exempt under 40 CFR 15.5.

a. Government contractors agree to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act [42 U.S.C. 1857(h)], section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

b. Institutions of higher education, hospitals, nonprofit organizations and commercial businesses agree to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et seq.), as amended, and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.

12. Prior Approval of Training Seminars, Workshops or Conferences

Contractor shall obtain prior DHCS approval of the location, costs, dates, agenda, instructors, instructional materials, and attendees at any reimbursable training seminar, workshop, or conference conducted pursuant to this Agreement and of any reimbursable publicity or educational materials to be made available for distribution. The Contractor shall acknowledge the support of the State whenever publicizing the work under this Agreement in any media. This provision does not apply to necessary staff meetings or training sessions held for the staff of the Contractor or Subcontractor to conduct routine business matters.

13. Confidentiality of Information

a. The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this Agreement or persons whose names or identifying information become available or are disclosed to the Contractor, its employees, agents, or subcontractors as a result of services performed under this Agreement, except for statistical information not identifying any such person.

b. The Contractor and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this Agreement.

c. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the DHCS Program Contract Manager all requests for disclosure of such identifying information not emanating from the client or person.

d. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the client, any such identifying information to anyone other than DHCS without prior written authorization from the DHCS Program Contract Manager, except if disclosure is required by State or Federal law.

e. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

f. As deemed applicable by DHCS, this provision may be supplemented by additional terms and conditions covering personal health information (PHI) or personal, sensitive, and/or confidential information (PSCI). Said terms and conditions will be outlined in one or more exhibits that will either be attached to this Agreement or incorporated into this Agreement by reference.

14. Documents, Publications and Written Reports

(Applicable to agreements over $5,000 under which publications, written reports and documents are developed or produced. Government Code Section 7550.)

Any document, publication or written report (excluding progress reports, financial reports and normal contractual communications) prepared as a requirement of this Agreement shall contain, in a separate section preceding the main body of the document, the number and dollar amounts of all contracts or agreements and subcontracts relating to the preparation of such document or report, if the total cost for work by nonemployees of the State exceeds $5,000.

15. Dispute Resolution Process

a. A Contractor grievance exists whenever there is a dispute arising from DHCS' action in the administration of an agreement. If there is a dispute or grievance between the Contractor and DHCS, the Contractor must seek resolution using the procedure outlined below.

(1) The Contractor should first informally discuss the problem with the DHCS Program Contract Manager. If the problem cannot be resolved informally, the Contractor shall direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief shall render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. If the Contractor disagrees with the Branch Chief's decision, the Contractor may appeal to the second level.

(2) When appealing to the second level, the Contractor must prepare an appeal indicating the reasons for disagreement with Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's

decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal.

b. If the Contractor wishes to appeal the decision of the Deputy Director of the division in which the branch is organized or his/her designee, the Contractor shall follow the procedures set forth in Health and Safety Code Section 100171.

c. Unless otherwise stipulated in writing by DHCS, all dispute, grievance and/or appeal correspondence shall be directed to the DHCS Program Contract Manager.

d. There are organizational differences within DHCS' funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the DHCS Program Contract Manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

16. Financial and Compliance Audit Requirements

a. The definitions used in this provision are contained in Section 38040 of the Health and Safety Code, which by this reference is made a part hereof.

b. Direct service contract means a contract or agreement for services contained in local assistance or subvention programs or both (see Health and Safety [H&S] Code Section 38020). Direct service contracts shall not include contracts, agreements, grants, or subventions to other governmental agencies or units of government nor contracts or agreements with regional centers or area agencies on aging (H&S Code Section 38030).

c. The Contractor, as indicated below, agrees to obtain one of the following audits:

(1) ***If the Contractor is a nonprofit organization (as defined in H&S Code Section 38040)*** and receives **$25,000 or more** from any State agency under a direct service contract or agreement; the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit. Said audit shall be conducted according to Generally Accepted Auditing Standards. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**

(2) ***If the Contractor is a nonprofit organization (as defined in H&S Code Section 38040)*** and receives **less than $25,000** per year from any State agency under a direct service contract or agreement, the Contractor agrees to obtain a biennial single, organization wide financial and compliance audit, unless there is evidence of fraud or other violation of state law in connection with this Agreement. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**

(3) ***If the Contractor is a State or Local Government entity or Nonprofit organization (as defined by the Federal Office of Management and Budget [OMB] Circular A-133)*** and expends $500,000 or more in Federal awards, the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit according to the requirements specified in OMB Circular A-133 entitled "Audits of States, Local Governments, and Non-Profit Organizations". An audit conducted pursuant to this provision will fulfill the audit requirements outlined in Paragraphs c(1) and c(2) above. The audit shall be completed by the end of the ninth month following the end of the audit period. The requirements of this provision apply if:

(a) The Contractor is a recipient expending Federal awards received directly from Federal awarding agencies, or

(b) The Contractor is a subrecipient expending Federal awards received from a pass-through entity such as the State, County or community based organization.

(4) If the Contractor submits to DHCS a report of an audit other than an OMB A-133 audit, the Contractor must also submit a certification indicating the Contractor has not expended $500,000 or more in federal funds for the year covered by the audit report.

d. Two copies of the audit report shall be delivered to the DHCS program funding this Agreement. The audit report must identify the Contractor's legal name and the number assigned to this Agreement. The audit report shall be due within 30 days after the completion of the audit. Upon receipt of said audit report, the DHCS Program Contract Manager shall forward the audit report to DHCS' Audits and Investigations Unit if the audit report was submitted under Section 16.c(3), unless the audit report is from a City, County, or Special District within the State of California whereby the report will be retained by the funding program.

e. The cost of the audits described herein may be included in the funding for this Agreement up to the proportionate amount this Agreement represents of the Contractor's total revenue. The DHCS program funding this Agreement must provide advance written approval of the specific amount allowed for said audit expenses.

f. The State or its authorized designee, including the Bureau of State Audits, is responsible for conducting agreement performance audits which are not financial and compliance audits. Performance audits are defined by Generally Accepted Government Auditing Standards.

g. Nothing in this Agreement limits the State's responsibility or authority to enforce State law or regulations, procedures, or reporting requirements arising thereto.

h. Nothing in this provision limits the authority of the State to make audits of this Agreement, provided however, that if independent audits arranged for by the Contractor meet Generally Accepted Governmental Auditing Standards, the State shall rely on those audits and any additional audit work and shall build upon the work already done.

i. The State may, at its option, direct its own auditors to perform either of the audits described above. The Contractor will be given advance written notification, if the State chooses to exercise its option to perform said audits.

j. The Contractor shall include a clause in any agreement the Contractor enters into with the audit firm doing the single organization wide audit to provide access by the State or Federal Government to the working papers of the independent auditor who prepares the single organization wide audit for the Contractor.

k. Federal or state auditors shall have "expanded scope auditing" authority to conduct specific program audits during the same period in which a single organization wide audit is being performed, but the audit report has not been issued. The federal or state auditors shall review and have access to the current audit work being conducted and will not apply any testing or review procedures which have not been satisfied by previous audit work that has been completed.

The term "expanded scope auditing" is applied and defined in the U.S. General Accounting Office (GAO) issued Standards for *Audit of Government Organizations, Programs, Activities and Functions*, better known as the "yellow book".

17. Human Subjects Use Requirements

(Applicable only to federally funded agreements/grants in which performance, directly or through a subcontract/subaward, includes any tests or examination of materials derived from the human body.)

By signing this Agreement, Contractor agrees that if any performance under this Agreement or any subcontract or subagreement includes any tests or examination of materials derived from the human body for the purpose of providing information, diagnosis, prevention, treatment or assessment of disease, impairment, or health of a human being, all locations at which such examinations are performed shall meet the requirements of 42 U.S.C. Section 263a (CLIA) and the regulations thereunder.

18. Novation Requirements

If the Contractor proposes any novation agreement, DHCS shall act upon the proposal within 60 days after receipt of the written proposal. DHCS may review and consider the proposal, consult and negotiate with the Contractor, and accept or reject all or part of the proposal. Acceptance or rejection of the proposal may be made orally within the 60-day period and confirmed in writing within five days of said decision. Upon written acceptance of the proposal, DHCS will initiate an amendment to this Agreement to formally implement the approved proposal.

19. Debarment and Suspension Certification

(Applicable to all agreements funded in part or whole with federal funds.)

a. By signing this Agreement, the Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations including, but not limited to 7 CFR Part 3017, 45 CFR 76, 40 CFR 32 or 34 CFR 85.

b. By signing this Agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;

(2) Have not within a three-year period preceding this application/proposal/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;

(3) 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 b(2) herein; and

(4) Have not within a three-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

(5) Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State.

(6) Will include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

c. If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the DHCS Program Contract Manager.

d. The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.

e. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the DHCS may terminate this Agreement for cause or default.

20. Smoke-Free Workplace Certification

(Applicable to federally funded agreements/grants and subcontracts/subawards, that provide health, day care, early childhood development services, education or library services to children under 18 directly or through local governments.)

a. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed.

b. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.

c. By signing this Agreement, Contractor or Grantee certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The prohibitions herein are effective December 26, 1994.

d. Contractor or Grantee further agrees that it will insert this certification into any subawards (subcontracts or subgrants) entered into that provide for children's services as described in the Act.

21. Covenant Against Contingent Fees

(Applicable only to federally funded agreements.)

The Contractor warrants that no person or selling agency has been employed or retained to solicit/secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee, except *bona fide* employees or *bona fide* established commercial or selling agencies retained by the Contractor for the purpose of securing business. For breach or violation of this warranty, DHCS shall have the right to annul this Agreement without liability or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, and brokerage or contingent fee.

22. Payment Withholds

(Applicable only if a final report is required by this Agreement. Not applicable to government entities.)

Unless waived or otherwise stipulated in this Agreement, DHCS may, at its discretion, withhold 10 percent (10%) of the face amount of the Agreement, 50 percent (50%) of the final invoice, or $3,000 whichever is greater, until DHCS receives a final report that meets the terms, conditions and/or scope of work requirements of this Agreement.

23. Performance Evaluation

(Not applicable to grant agreements.)

DHCS may, at its discretion, evaluate the performance of the Contractor at the conclusion of this Agreement. If performance is evaluated, the evaluation shall not be a public record and shall remain on file with DHCS. Negative performance evaluations may be considered by DHCS prior to making future contract awards.

24. Officials Not to Benefit

No members of or delegate of Congress or the State Legislature shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this Agreement if made with a corporation for its general benefits.

25. Four-Digit Date Compliance

(Applicable to agreements in which Information Technology (IT) services are provided to DHCS or if IT equipment is procured.)

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

26. Prohibited Use of State Funds for Software

(Applicable to agreements in which computer software is used in performance of the work.)

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 Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

27. Use of Small, Minority Owned and Women's Businesses

(Applicable to that portion of an agreement that is federally funded and entered into with institutions of higher education, hospitals, nonprofit organizations or commercial businesses.)

Positive efforts shall be made to use small businesses, minority-owned firms and women's business enterprises, whenever possible (i.e., procurement of goods and/or services). Contractors shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming purchasing and contracting opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Federal Small Business Administration and the U.S. Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

28. Alien Ineligibility Certification

(Applicable to sole proprietors entering federally funded agreements.)

By signing this Agreement, the Contractor certifies that he/she is not an alien that is ineligible for state and local benefits, as defined in Subtitle B of the Personal Responsibility and Work Opportunity Act. (8 U.S.C. 1601, et seq.)

29. Union Organizing

(Applicable only to grant agreements.)

Grantee, by signing this Agreement, hereby acknowledges the applicability of Government Code Sections 16645 through 16649 to this Agreement. Furthermore, Grantee, by signing this Agreement, hereby certifies that:

a. No state funds disbursed by this grant will be used to assist, promote or deter union organizing.

b. Grantee shall account for state funds disbursed for a specific expenditure by this grant, to show those funds were allocated to that expenditure.

c. Grantee shall, where state funds are not designated as described in b herein, allocate, on a pro-rata basis, all disbursements that support the grant program.

d. If Grantee makes expenditures to assist, promote or deter union organizing, Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that Grantee shall provide those records to the Attorney General upon request.

30. Contract Uniformity (Fringe Benefit Allowability)

(Applicable only to nonprofit organizations.)

Pursuant to the provisions of Article 7 (commencing with Section 100525) of Chapter 3 of Part 1 of Division 101 of the Health and Safety Code, DHCS sets forth the following policies, procedures, and guidelines regarding the reimbursement of fringe benefits.

a. As used herein fringe benefits shall mean an employment benefit given by one's employer to an employee in addition to one's regular or normal wages or salary.

b. As used herein, fringe benefits do not include:

(1) Compensation for personal services paid currently or accrued by the Contractor for services of employees rendered during the term of this Agreement, which is identified as regular or normal salaries and wages, annual leave, vacation, sick leave, holidays, jury duty and/or military leave/training.
(2) Director's and executive committee member's fees.
(3) Incentive awards and/or bonus incentive pay.
(4) Allowances for off-site pay.
(5) Location allowances.
(6) Hardship pay.
(7) Cost-of-living differentials

c. Specific allowable fringe benefits include:

(1) Fringe benefits in the form of employer contributions for the employer's portion of payroll taxes (i.e., FICA, SUI, SDI), employee health plans (i.e., health, dental and vision), unemployment insurance, worker's compensation insurance, and the employer's share of pension/retirement plans, provided they are granted in accordance with established written organization policies and meet all legal and Internal Revenue Service requirements.

d. To be an allowable fringe benefit, the cost must meet the following criteria:

(1) Be necessary and reasonable for the performance of the Agreement.
(2) Be determined in accordance with generally accepted accounting principles.
(3) Be consistent with policies that apply uniformly to all activities of the Contractor.

e. Contractor agrees that all fringe benefits shall be at actual cost.

f. Earned/Accrued Compensation

(1) Compensation for vacation, sick leave and holidays is limited to that amount earned/accrued within the agreement term. Unused vacation, sick leave and holidays earned from periods prior to the agreement term cannot be claimed as allowable costs. See Provision f (3)(a) for an example.

(2) For multiple year agreements, vacation and sick leave compensation, which is earned/accrued but not paid, due to employee(s) not taking time off may be carried over and claimed within the overall term of the multiple years of the Agreement. Holidays cannot be carried over from one agreement year to the next. See Provision f (3)(b) for an example.

(3) For single year agreements, vacation, sick leave and holiday compensation that is earned/accrued but not paid, due to employee(s) not taking time off within the term of the Agreement, cannot be claimed as an allowable cost. See Provision f (3)(c) for an example.

(a) **Example No. 1:**

If an employee, John Doe, earns/accrues three weeks of vacation and twelve days of sick leave each year, then that is the maximum amount that may be claimed during a one year agreement. If John Doe has five weeks of vacation and eighteen days of sick leave at the beginning of an agreement, the Contractor during a one-year budget period may only claim up to three weeks of vacation and twelve days of sick leave as actually used by the employee. Amounts earned/accrued in periods prior to the beginning of the Agreement are not an allowable cost.

(b) **Example No. 2:**

If during a three-year (multiple year) agreement, John Doe does not use his three weeks of vacation in year one, or his three weeks in year two, but he does actually use nine weeks in year three; the Contractor would be allowed to claim all nine weeks paid for in year three. The total compensation over the three-year period cannot exceed 156 weeks (3 x 52 weeks).

(c) **Example No. 3:**

If during a single year agreement, John Doe works fifty weeks and used one week of vacation and one week of sick leave and all fifty-two weeks have been billed to DHCS, the remaining unused two weeks of vacation and seven days of sick leave may not be claimed as an allowable cost.

31. Suspension or Stop Work Notification

a. DHCS may, at any time, issue a notice to suspend performance or stop work under this Agreement. The initial notification may be a verbal or written directive issued by the funding Program's Contract Manager. Upon receipt of said notice, the Contractor is to suspend and/or stop all, or any part, of the work called for by this Agreement.

b. Written confirmation of the suspension or stop work notification with directions as to what work (if not all) is to be suspended and how to proceed will be provided within 30 working days of the verbal notification. The suspension or stop work notification shall remain in effect until further written notice is received from DHCS. The resumption of work (in whole or part) will be at DHCS' discretion and upon receipt of written confirmation.

(1) Upon receipt of a suspension or stop work notification, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize or halt the incurrence of costs allocable to the performance covered by the notification during the period of work suspension or stoppage.

(2) Within 90 days of the issuance of a suspension or stop work notification, DHCS shall either:

(a) Cancel, extend, or modify the suspension or stop work notification; or

(b) Terminate the Agreement as provided for in the Cancellation / Termination clause of the Agreement.

c. If a suspension or stop work notification issued under this clause is canceled or the period of suspension or any extension thereof is modified or expires, the Contractor may resume work only upon written concurrence of funding Program's Contract Manager.

d. If the suspension or stop work notification is cancelled and the Agreement resumes, changes to the services, deliverables, performance dates, and/or contract terms resulting from the suspension or stop work notification shall require an amendment to the Agreement.

e. If a suspension or stop work notification is not canceled and the Agreement is cancelled or terminated pursuant to the provision entitled Cancellation / Termination, DHCS shall allow reasonable costs resulting from the suspension or stop work notification in arriving at the settlement costs.

f. DHCS shall not be liable to the Contractor for loss of profits because of any suspension or stop work notification issued under this clause.

32. Lobbying Restrictions and Disclosure Certification

(Applicable to federally funded agreements in excess of $100,000 per Section 1352 of the 31, U.S.C.)

a. Certification and Disclosure Requirements

(1) Each person (or recipient) who requests or receives a contract or agreement, subcontract, grant, or subgrant, which is subject to Section 1352 of the 31, U.S.C., and which exceeds $100,000 at any tier, shall file a certification (in the form set forth in Attachment 1, consisting of one page, entitled "Certification Regarding Lobbying") that the recipient has not made, and will not make, any payment prohibited by Paragraph b of this provision.

(2) Each recipient shall file a disclosure (in the form set forth in Attachment 2, entitled "Standard Form-LLL 'disclosure of Lobbying Activities'") if such recipient has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered federal action) in connection with a contract, or grant or any extension or amendment of that contract, or grant, which would be prohibited under Paragraph b of this provision if paid for with appropriated funds.

(3) Each recipient shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affect the accuracy of the information contained in any disclosure form previously filed by such person under Paragraph a(2) herein. An event that materially affects the accuracy of the information reported includes:

(a) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action;

(b) A change in the person(s) or individuals(s) influencing or attempting to influence a covered federal action; or

(c) A change in the officer(s), employee(s), or member(s) contacted for the purpose of influencing or attempting to influence a covered federal action.

(4) Each person (or recipient) who requests or receives from a person referred to in Paragraph a(1) of this provision a contract or agreement, subcontract, grant or subgrant exceeding $100,000 at any tier under a contract or agreement, or grant shall file a certification, and a disclosure form, if required, to the next tier above.

(5) All disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the person referred to in Paragraph a(1) of this provision. That person shall forward all disclosure forms to DHCS Program Contract Manager.

b. Prohibition

Section 1352 of Title 31, U.S.C., provides in part that no appropriated funds may be expended by the recipient of a federal contract or agreement, grant, loan, or cooperative agreement to pay any person for

influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract or agreement, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract or agreement, grant, loan, or cooperative agreement.

Attachment 1
State of California
Department of Health Care Services

CERTIFICATION REGARDING LOBBYING

The undersigned 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 undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making, awarding or entering into of this Federal contract, Federal grant, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of this Federal contract, grant, 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 agency of the United States Government, 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, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities" in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants and cooperative agreements) of $100,000 or more, and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C., 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.

Name of Contractor	Printed Name of Person Signing for Contractor
Contract / Grant Number	Signature of Person Signing for Contractor
Date	Title

After execution by or on behalf of Contractor, please return to:

California Department of Health Care Services

DHCS reserves the right to notifiy the contractor in writing of an alternate submission address.

Attachment 2

CERTIFICATION REGARDING LOBBYING

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
[ ] a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	[ ] a. bid/offer/application b. initial award c. post-award	[ ] a. initial filing b. material change For Material Change Only: Year _____ quarter _____ date of last report _____.

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier ___, if known: Congressional District, If known:	Congressional District, If known:
6. Federal Department/Agency	7. Federal Program Name/Description: CDFA Number, if applicable: _____
8. Federal Action Number, if known:	9. Award Amount, if known: $
10.a. Name and Address of Lobbying Registrant *(If individual, last name, first name, MI)*:	b. Individuals Performing Services *(including address if different from 10a.* *(Last name, First name, MI)*:
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person that fails to file the required disclosure shall be subject to a not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: Telephone No.: Date:

Federal Use Only

Authorized for Local Reproduction
Standard Form-LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity 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 a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriateclassification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if itis, or expects to be,a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizationallevel below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001".

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

Exhibit E
Additional Provisions

1. Amendment Process

Should either party, during the term of this Agreement, desire a change or amendment to the terms of this Agreement, such changes or amendments shall be proposed in writing to the other party, who will respond in writing as to whether the proposed changes/amendments are accepted or rejected. If accepted and after negotiations are concluded, the agreed upon changes shall be made through the State's official agreement amendment process. No amendment will be considered binding on either party until it is formally approved by the both parties and the Department of General Services (DGS), if DGS approval is required.

2. Cancellation/Termination

A. General Provisions

1) As required by Welf. & Inst. Code § 14712, if the Contractor decides not to contract with the Department, does not renew its contract, or is unable to meet the standards set by the Department, the Contractor agrees to inform the Department of this decision in writing.

2) If the Contractor is unwilling to contract for the delivery of specialty mental health services or if the Department or Contractor determines that the Contractor is unable to adequately provide specialty mental health services or that the Contractor does not meet the standards the Department deems necessary for a mental health plan, the Department shall ensure that specialty mental health services are provided to Medi-Cal beneficiaries.

3) The Department may contract with qualifying individual counties, counties acting jointly, or other qualified entities approved by the Department for the delivery of specialty mental health services in any county that is unable or unwilling to contract with the Department. The Contractor may not subsequently contract to provide specialty mental health services unless the Department elects to contract with the Contractor.

4) If the Contractor does not contract with the Department to provide specialty mental health services, the Department will work with the Department of Finance and the Controller to obtain funds from the Contractor in accordance with Government (Govt.) Code 30027.10.

B. Contract Renewal

1) Pursuant to Welf. & Inst. Code § 14714(b), this contract may be renewed if the Contractor continues to meet the statutory and regulatory requirements governing this contract, as well as the terms and conditions of this contract. Failure to meet these requirements shall be cause for nonrenewal of the contract. The Department may base the decision to renew on timely

Exhibit E
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completion of a mutually agreed-upon plan of correction of any deficiencies, submissions of required information in a timely manner, and/or other conditions of the contract.

2) In the event the contract is not renewed based on the reasons specified in (1), the Department will notify the Department of Finance, the fiscal and policy committees of the Legislature, and the Controller of the amounts to be sequestered from the Mental Health Subaccount, the Mental Health Equity Account, and the Vehicle License Fee Collection Account of the Local Revenue Fund and the Mental Health Account and the Behavioral Health Subaccount of the Local Revenue Fund 2011, and the Controller will sequester those funds in the Behavioral Health Subaccount pursuant to Govt. Code § 30027.10. Upon this sequestration, the Department will use the funds in accordance with Govt. Code § 30027.10

C. Contract Amendment Negotiations

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 in writing 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 costs 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.

D. Contract Termination

The Department or the Contractor may terminate this contract in accordance with Cal. Code Regs., tit. 9, § 1810.323.

1) DHCS reserves the right to cancel or terminate this Agreement immediately for cause.

2) The term "for cause" shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of this Agreement.

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Additional Provisions

3) Agreement termination or cancellation shall be effective as of the date indicated in DHCS' notification to the Contractor. The notice shall identify any final performance, invoicing or payment requirements.

4) Upon receipt of a notice of termination or cancellation, the Contractor shall take immediate steps to stop performance and to cancel, or if cancelation is not possible reduce, subsequent agreement costs.

5) In the event of early termination or cancellation, the Contractor shall be entitled to payment for all allowable costs authorized under this Agreement and incurred up to the date of termination or cancellation, including authorized non-cancelable obligations, provided such expenses do not exceed the stated maximum amounts payable.

6) Pursuant to the Welf. & Inst. Code § 14714(d), the Department will immediately terminate a contract when the director finds that there is an immediate threat to the health and safety of Medi-Cal beneficiaries. Termination of the contract for other reasons will be subject to reasonable notice to the Contractor of the Department's intent to terminate, as well as notification to affected beneficiaries.

E. Termination of Obligations

1) 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.

2) 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.

F. 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, Cal. Code Regs., tit. 9, or the processes governing the audit appeals process in Chapter 9 of Division 1, Cal. Code Regs., tit. 9 the Contractor shall follow the Dispute Resolution Process outlined in provision number 15 of Exhibit D(F) which is attached hereto as part of this agreement.

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3. 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.

4. Additional Provisions

A. 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.

B. 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 of Health Care Services
Mental Health Services Division
1500 Capitol Avenue, MS 2702
P.O. Box 997413
Sacramento, CA 95899-7413

Inyo County Mental Health
162 J Grove Street
Bishop, CA 93514

C. Nondiscrimination

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Additional Provisions

1) Consistent with the requirements of applicable federal law such as 42 C.F.R. §§ 438.6(d)(3) and (4) 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. The Contractor will not discriminate against beneficiaries on the basis of health status or need for health care services, pursuant to 42 C.F.R. § 438.6(d)(3).

2) 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.

3) The Contractor shall include the nondiscrimination and compliance provisions of this contract in all subcontracts to perform work under this contract.

4) Notwithstanding other provisions of this section, the Contractor may require a determination of medical necessity pursuant to Cal. Code Regs., tit. 9, §§ 1820.205, 1830.205 and/or 1830.210, prior to providing covered services to a beneficiary.

D. Patients' Rights

1) 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, Cal. Code Regs., tit. 9, §§ 860 through 868, and 42 C.F.R. § 438.100. The Contractor shall ensure that its subcontractors comply with these provisions.

2) Pursuant to 42 C.F.R. § 438.100, the Contractor shall have written policies regarding the beneficiary rights specified in this section and ensure that its staff and subcontract providers take those rights into account when providing services, including the right to:

   a) Receive information in accordance with 42 C.F.R. § 438.10.

   b) Be treated with respect and with due consideration for his or her dignity and privacy.

   c) Receive information on available treatment options and alternatives, presented in a manner appropriate to the beneficiary's condition and ability to understand.

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d) Participate in decisions regarding his or her health care, including the right to refuse treatment.

e) Be free from any form of restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation.

f) Request and receive a copy of his or her medical records, and to request that they be amended or corrected, as specified in 45 C.F.R. §§ 164.524 and 164.526.

g) To be furnished services in accordance with 42 C.F.R. §§ 438.206 through 438.210.

h) To freely 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.

E. 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.

F. 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.

5. Duties of the State

In discharging its obligations under this contract, and in addition to the obligations set forth in other parts of this contract, the Department shall perform the following duties:

A. Payment for Services

Exhibit E
Additional Provisions

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 Cal. Code Regs., tit. 9, §§ 1810.380 and 1810.385. The Department shall also arrange for an annual external quality review of the Contractor as required by 42 C.F.R. § 438.204(d) and Cal. Code Regs., tit. 9, § 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 Cal. Code Regs., tit. 9, §§ 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 Cal. Code Regs., tit. 9, §§ 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 Cal. Code Regs., tit. 9, § 1810.310 (b)-(c)).

E. The Department shall act promptly to review the Contractor's Cultural Competence Plan submitted pursuant to Cal. Code Regs., tit. 9, § 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

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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

1) The Department shall certify the organizational provider sites that are owned, leased or operated by the Contractor, in accordance with Cal. Code Regs., tit. 9, § 1810.435, and the requirements specified in Exhibit B, 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 Cal. Code Regs., tit. 9, § 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.

2) 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.

3) 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.

4) 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 FFP 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 42 C.F.R. § 438.10(f)(2), and Cal. Code Regs., tit. 9, § 1810.360(c).

H. Sanctions

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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 Welf. & Inst. Code § 14712(e) and Cal. Code Regs., tit. 9, §§ 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.

6. State and Federal Law Governing this Contract

A. Contractor agrees to comply with all applicable federal and state law, including the applicable sections of the state plan and waiver, particularly the statutes and regulations incorporated by reference below, in its provision of services as the Mental Health Plan. The Department will 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 and any new applicable statutes or regulations, but either the Department or Contractor may request consultation and discussion of new or changed statutes or regulations, including whether contract amendments may be necessary.

B. Pursuant to Welf. & Inst. Code § 14704, a regulation or order concerning Medi-Cal specialty mental health services adopted by the State Department of Mental Health pursuant to Division 5 (commencing with Section 5000), as in effect preceding the effective date of this section, shall remain in effect and shall be fully enforceable, unless and until the readoption, amendment, or repeal of the regulation or order by DHCS, or until it expires by its own terms.

C. Specifically, the following federal law applies to this contract:

1) Title 42 United States Code, to the extent that these requirements are applicable

2) 42 C.F.R. to the extent that these requirements are applicable;

3) 42 C.F.R. § 438 – Managed Care, limited to those provisions that apply to Prepaid Inpatient Health Plans (PIHP);

4) 45 C.F.R. §§ 160 and 164to the extent that these requirements are applicable;

Exhibit E
Additional Provisions

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.

12) The Contractor shall comply with the provisions of the Copeland Anti-Kickback Act, 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.

13) The Contractor shall comply with the provisions of the Davis-Bacon Act, as amended, 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 as supplemented by Department of Labor regulations.

14) The Contractor shall comply with the provisions of the Contract Work Hours and Safety Standards Act, 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 the Contract Work Hours and Safety Standards Act.

D. State Law:

1) Division 5, Welf. & Inst. Code, to the extent that these requirements are applicable to the services and functions set forth in this contract

2) Welf. & Inst. Code §§ 5779-5782

3) Welf. & Inst. Code §§ 14680-14685.1

4) Welf. & Inst. Code §§ 14700-14726

Exhibit E
Additional Provisions

5) Chapter 7, Division 9, Welf. & Inst. Code, to the extent that these requirements are applicable to the services and functions set forth in this contract

6) Cal. Code Regs., tit. 9, § 1810.100 et. seq. – Medi-Cal Specialty Mental Health Services

7) Cal. Code Regs., tit. 22, §§ 50951 and 50953

8) Cal. Code Regs., tit. 22, §§ 51014.1 and 51014.2

EXHIBIT F
Privacy and Information Security Provisions

Exhibit F is intended to protect the privacy and security of specified Department information that Contractor may access, receive, or transmit under this Agreement. The Department information covered under this Exhibit F consists of: (1) Protected Health Information (PHI) as defined under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA")(PHI): and (2) Personal Information (PI) as defined under the California Information Practices Act (CIPA), at California Civil Code § 1798.3. Personal Information may include data provided to the Department by the Social Security Administration.

Exhibit F consists of the following parts:

A. Part I, HIPAA Business Associate Addendum, which provides for the privacy and security of PHI.

B. Part II, which provides for the privacy and security of PI in accordance with specified provisions of the IEA and the Computer Matching and Privacy Protection Act Agreement between the Social Security Administration and the California Health and Human Services Agency (Computer Agreement) to the extent Contractor access, receives, or transmits PI under these Agreements. Exhibit F, Part II, further provides for the privacy and security of PI as defined under Civil Code §§ 1798.3(a) and 1798.29. These terms of the California Information Practices Act (CIPA) are included here because they do not apply to counties directly, and the statute requires the Department to contractually extend these CIPA terms to contractors if they use the Department's PI to accomplish a function for the Department.

C. Part III, Miscellaneous Provision, sets forth additional terms and conditions that extend to the provisions of Exhibit F in its entirety.

EXHIBIT F
Privacy and Information Security Provisions

Part I: HIPAA Business Associate Addendum

1. Recitals

A. 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. § 17921 et seq., and their implementing privacy and security regulations at 45 C.F.R. Parts 160 and 164 ("the HIPAA regulations") between Department and Contractor arises only to the extent that Contractor performs functions or activities on behalf of the Department pursuant to this Agreement that are described in the definition of "business associate" in 45 C.F.R. § 160.103, including but not limited to utilization review, quality assurance, or benefit management.

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, to be used or disclosed in the course of providing services and activities as set forth in Section 1.A. of Exhibit F, Part I of this Agreement. This information is hereafter referred to as "Department PHI".

C. To the extent Contractor performs the services, functions and activities on behalf of Department as set forth in Section 1.A. of Exhibit F, Part I of 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 and ePHI in the provision of such services or in the performance of such functions or activities. The Department and Contractor are each a party to this Agreement and are collectively referred to as the "parties."

D. The purpose of this Part I is to protect the privacy and security of the PHI and ePHI 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 C.F.R. Parts 160 and 164 and the HITECH Act.

E. The terms used in this Part I, 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.

EXHIBIT F
Privacy and Information Security Provisions

2. Definitions

A. Breach shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.

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 shall mean Protected Health Information or Electronic Protected Health Information, as defined below, accessed by Contractor 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 on behalf of the Department as specified in Section 1.A. of Exhibit F, Part I of this Agreement. The terms PHI as used in this document shall mean Department PHI.

E. Electronic Health Records hall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. § 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 C.F.R. § 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 C.F.R. § 160.103.

H. Privacy Rule shall mean the HIPAA Regulations that are found at 45 C.F.R. Parts 160 and 164, Subparts A and E.

I. 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 C.F.R. § 160.103 and as defined under HIPAA.

EXHIBIT F
Privacy and Information Security Provisions

J. Required by law, as set forth under 45 C.F.R. § 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.

K. Secretary means the Secretary of the U.S. Department of Health and Human Services ("HHS") or the Secretary's designee.

L. Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of Department PHI, or confidential data utilized by Contractor to perform the services, functions and activities on behalf of Department as set forth in Section 1.A. of Exhibit F, Part I of this Agreement; or interference with system operations in an information system that processes, maintains or stores Department PHI.

M. Security Rule shall mean the HIPAA regulations that are found at 45 C.F.R. Parts 160 and 164.

N. Unsecured PHI shall have the meaning given to such term under the HITECH Act, 42 U.S.C. § 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, Part I, Contractor may use or disclose Department PHI only to perform functions, activities or services specified in Section 1.A of Exhibit F, Part I of 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 C.F.R. § 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, Part I, Contractor may:

EXHIBIT F
Privacy and Information Security Provisions

1) **Use and disclose for management and administration**. Use and disclose Department PHI for the proper management and administration of the Contractor's 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 Department 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 Contractor, as 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 Department PHI about an individual to a health plan for payment or health care operations purposes if the Department 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. §§ 17935(a) and 45 C.F.R. § 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. § 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) **Compliance with the HIPAA Security Rule**. 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 C.F.R. §§ 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,

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Privacy and Information Security Provisions

implementation specifications and other requirements of 45 C.F.R. § 164, subpart C, in compliance with 45 C.F.R. § 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 take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI and/or PI, and to protect paper documents containing PHI and/or PI. These steps shall include, at a minimum:

   a) Complying with all of the data system security precautions listed in Attachment A, Business Associate Data Security Requirements;

   b) Achieving and maintaining compliance with the HIPAA Security Rule (45 C.F.R. Parts 160 and 164), as necessary in conducting operations on behalf of DHCS under this Agreement; and

   c) Providing 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.

4) **Security Officer**. 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.

5) **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, Part I.

6) **Reporting Unauthorized Use or Disclosure**. To report to Department any use or disclosure of Department PHI not provided for by this Exhibit F, Part I of which it becomes aware.

7) **Contractor's Agents and Subcontractors**.

   a) To enter into written agreements with any agents, including subcontractors and vendors to whom Contractor provides Department PHI, that impose the same restrictions and conditions on such agents, subcontractors and vendors that apply to Contractor

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Privacy and Information Security Provisions

with respect to such Department PHI under this Exhibit F, and that require compliance 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. Contractor shall incorporate, when applicable, the relevant provisions of this Exhibit F, Part I into each subcontract or subaward to such agents, subcontractors and vendors, including the requirement that any security incidents or breaches of unsecured PHI be reported to Contractor.

b) In accordance with 45 C.F.R. § 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:

i. 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

ii. Immediately terminate the agreement if the subcontractor has breached a material term of the agreement and cure is not possible.

8) **Availability of Information to the Department and Individuals to Provide Access and Information:**

a) 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 Department PHI in a Designated Record Set, to the Department (or, as directed by the Department), to an Individual, in accordance with 45 C.F.R. § 164.524. Designated Record Set means the group of records maintained for the Department health plan under this Agreement that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for the Department health plan for which Contractor is providing services under this Agreement; 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.

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b) 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. §17935(e).This section shall be effective as of the date that 42 U.S.C. § 17935(e) and its implementing regulations apply to the Department.

9) **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 C.F.R. § 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.

10) **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.

11) **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 such PHI, in accordance with the HITECH Act and its implementing regulations, including but not limited to 45 C.F.R. § 164.528 and 42 U.S.C. § 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 U.S.C. § 17935(c) and its implementing regulations apply to the Department.

12) **Breaches and Security Incidents.** During the term of this Agreement, Contractor agrees to implement reasonable systems for the discovery and

EXHIBIT F
Privacy and Information Security Provisions

prompt reporting of any breach or security incident, and to take the following steps:

a) **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 in electronic media or in any other media if the PHI was, or is reasonably believed to have been, accessed or acquired by an unauthorized person. (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 in violation of this Agreement or this Exhibit F, Part I, 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.

b) 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 Partner" near the middle of the page) or use this link:

http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/DHCSBusinessAssociatesOnly.aspx

c) Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of Department PHI , Contractor shall take:

i. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and

ii. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

d) **Investigation and Investigation Report**. To immediately investigate such suspected security incident, security incident, breach, or unauthorized access, use or disclosure of PHI . Within 72 hours of

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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.

e) **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, and the HIPAA regulations. 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.

f) **Responsibility for Reporting of Breaches.** If the cause of a breach of Department PHI 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. § 17932and its implementing regulations, including notification to media outlets and to the Secretary. If a breach of unsecured Department 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.

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Privacy and Information Security Provisions

g) **Responsibility for Notification of Affected Individuals.** If the cause of a breach of Department PHI is attributable to Contractor or its agents, subcontractors or vendors and notification of the affected individuals is required under state or federal law, Contractor shall bear all costs of such notifications as well as any costs associated with the breach. In addition, the Department reserves the right to require Contractor to notify such affected individuals, which notifications shall comply with the requirements set forth in 42 U.S.C. § 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.

h) **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.

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	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)

13) **Termination of Agreement.** In accordance with § 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, Part I, it shall take the following steps:

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a) 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

b) Immediately terminate the Agreement if the Department has breached a material term of the Exhibit F, Part I and cure is not possible.

14) **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.

E. **Obligations of the Department**

The Department agrees to:

1) **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 Department PHI, if such changes affect the Contractor's permitted or required uses and disclosures.

2) **Notification of Restrictions**. Notify the Contractor of any restriction to the use or disclosure of Department PHI that the Department has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect the Contractor's use or disclosure of PHI.

3) **Requests Conflicting with HIPAA Rules**. Not request the Contractor to use or disclose Department PHI in any manner that would not be permissible under the HIPAA regulations if done by the Department.

4) **Notice of Privacy Practices**. Provide Business Associate with the Notice of Privacy Practices that DHCS produces in accordance with 45 C.F.R. § 164.520, as well as any changes to such notice. Visit the DHCS Privacy Office to view the most current Notice of Privacy Practices at: http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/default.aspx or the DHCS website at www.dhcs.ca.gov (select "Privacy in the right column and "Notice of Privacy Practices" on the right side of the page).

F. **Audits, Inspection and Enforcement**

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

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Health and Human Services, that is related to the performance of its obligations pursuant to this HIPAA Business Associate Exhibit F, Part I, Contractor shall notify the Department. Upon request from the Department, Contractor shall provide the Department with a copy of any Department PHI that Contractor, as the Business Associate, provides to the Secretary or the Office of Civil Rights concurrently with providing such PHI 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. § 17934(c).

G. **Termination**

1) **Term**. The Term of this Exhibit F, Part I, 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 C.F.R. § 164.504(e)(2)(ii)(I).

2) **Termination for Cause**. In accordance with 45 C.F.R. § 164.504(e)(1)(ii), upon the Department's knowledge of a material breach or violation of this Exhibit F, Part I, by Contractor, the Department shall:

   a) 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

   b) Immediately terminate this Agreement if Contractor has breached a material term of this Exhibit F, Part I, and cure is not possible.

EXHIBIT F
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Part II: Privacy and Security of Personal Information and Personally Identifiable Information Not Subject to HIPAA

1. Recitals

A. In addition to the Privacy and Security Rules under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) the Department is subject to various other legal and contractual requirements with respect to the personal information (PI) and personally identifiable information (PII)it maintains. These include:

1) The California Information Practices Act of 1977 (California Civil Code §§ 1798 et seq.).

2) The Agreement between the Social Security Administration (SSA) and the Department, known as the Information Exchange Agreement (IEA), which incorporates the Computer Matching and Privacy Protection Act Agreement (CMPPA) between the SSA and the California Health and Human Services Agency. The IEA, including the CMPPA, is attached to this Exhibit F as Attachment B and is hereby incorporated in this Agreement.

B. The purpose of this Exhibit F, Part II is to set forth Contractor's privacy and security obligations with respect to PI and PII that Contractor may create, receive, maintain, use, or disclose for or on behalf of Department pursuant to this Agreement. Specifically this Exhibit applies to PI and PII which is not Protected Health Information (PHI) as defined by HIPAA and therefore is not addressed in Exhibit F, Part I of this Agreement, the HIPAA Business Associate Addendum.

C. The IEA Agreement referenced in A.2) above requires the Department to extend its substantive privacy and security terms to subcontractors who receive data provided to DHCS by the Social Security Administration. If Contractor receives data from DHCS that includes data provided to DHCS by the Social Security Administration, Contractor must comply with the following specific sections of the IEA Agreement: 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. Contractor must also ensure that any agents, including a subcontractor, to whom it provides DHCS data that includes data provided by the Social Security Administration, agree to the same requirements for privacy and security safeguards for such confidential data that apply to Contractor with respect to such information.

D. The terms used in this Exhibit F, Part II, but not otherwise defined, shall have the same meanings as those terms have in the above referenced statute and

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Agreement. Any reference to statutory, regulatory, or contractual 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 the IEA and CMPPA. It shall include a "PII loss" as that term is defined in the CMPPA.

B. "Breach of the security of the system" shall have the meaning given to such term under the California Information Practices Act, Civil Code § 1798.29(d).

C. "CMPPA Agreement" means the Computer Matching and Privacy Protection Act Agreement between the Social Security Administration and the California Health and Human Services Agency (CHHS).

D. "Department PI" shall mean 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.

E. "IEA" shall mean the Information Exchange Agreement currently in effect between the Social Security Administration (SSA) and the California Department of Health Care Services (DHCS).

F. "Notice-triggering Personal Information" shall mean the personal information identified in Civil Code section 1798.29(e) whose unauthorized access may trigger notification requirements under Civil Code § 1709.29. For purposes of this provision, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print, a photograph or a biometric identifier. Notice-triggering Personal Information includes PI in electronic, paper or any other medium.

G. "Personally Identifiable Information" (PII) shall have the meaning given to such term in the IEA and CMPPA.

H. "Personal Information" (PI) shall have the meaning given to such term in California Civil Code § 1798.3(a).

I. "Required by law" means a mandate contained in law that compels an entity to make a use or disclosure of PI or PII 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

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of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

J. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PI, or confidential data utilized in complying with this Agreement; or interference with system operations in an information system that processes, maintains or stores PI.

3. Terms of Agreement

A. **Permitted Uses and Disclosures of Department PI and PII by Contractor**

Except as otherwise indicated in this Exhibit F, Part II, Contractor may use or disclose Department PI only to perform functions, activities or services for or on behalf of the Department pursuant to the terms of this Agreement provided that such use or disclosure would not violate the California Information Practices Act (CIPA) if done by the Department.

B. **Responsibilities of Contractor**

Contractor agrees:

1) **Nondisclosure**. Not to use or disclose Department PI or PII other than as permitted or required by this Agreement or as required by applicable state and federal law.

2) **Safeguards**. To implement appropriate and reasonable administrative, technical, and physical safeguards to protect the security, confidentiality and integrity of Department PI and PII, to protect against anticipated threats or hazards to the security or integrity of Department PI and PII, and to prevent use or disclosure of Department PI or PII other than as provided for by this Agreement. Contractor shall develop and maintain a written information privacy and security program that include administrative, technical and physical safeguards appropriate to the size and complexity of Contractor's operations and the nature and scope of its activities, which incorporate the requirements of Section 3, Security, below. Contractor will provide DHCS with its current policies upon request.

3) **Security**. Contractor shall take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI and/or PI, and to protect paper documents containing PHI and/or PI. These steps shall include, at a minimum:

a) Complying with all of the data system security precautions listed in Attachment A, Business Associate Data Security Requirements; and

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b) Providing 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.

c) If the data obtained by User(s) from DHCS includes PII, User(s) shall also comply with the substantive privacy and security requirements in the Computer Matching and Privacy Protection Act Agreement between the SSA and the California Health and Human Services Agency (CHHS) and in the Agreement between the SSA and DHCS, known as the Information Exchange Agreement (IEA), which are attached as Attachment B and are incorporated into this Agreement. The specific sections of the IEA with substantive privacy and security requirements to be complied with are sections E, F, and G, 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 SSA. The User(s) also agree to ensure that any agents, including a subcontractor, to whom they provide DHCS PII agree to the same requirements for privacy and security safeguards for confidential data that apply to the User(s) with respect to such information.

4) **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 PI or PII by Contractor or its subcontractors in violation of this Exhibit F, Part II.

5) **Contractor's Agents and Subcontractors**. To impose the same restrictions and conditions set forth in this Exhibit F, Part II on any subcontractors or other agents with whom Contractor subcontracts any activities under this Agreement that involve the disclosure of Department PI or PII to the subcontractor.

6) **Availability of Information to DHCS**.To make Department PI and PII available to the Department for purposes of oversight, inspection, amendment, and response to requests for records, injunctions, judgments, and orders for production of Department PI and PII. If Contractor receives Department PII, upon request by DHCS, Contractor shall provide DHCS with a list of all employees, contractors and agents who have access to Department PII, including employees, contractors and agents of its subcontractors and agents.

7) **Cooperation with DHCS**. With respect to Department PI, to cooperate with and assist the Department to the extent necessary to ensure the Department's compliance with the applicable terms of the CIPA including, but not limited to, accounting of disclosures of Department PI, correction of

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errors in Department PI, production of Department PI, disclosure of a security breach involving Department PI and notice of such breach to the affected individual(s).

8) **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:

a) **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 Department PI or PII in electronic media or in any other media if the PI or PII was, or is reasonably believed to have been, accessed or acquired by an unauthorized person, or upon discovery of a suspected security incident involving Department PII. (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 Department PI or PII in violation of this Agreement or this Exhibit F, Part I, or potential loss of confidential data affecting this Agreement. A breach shall be treated as discovered by Contractor 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 Contractor.

b) 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 Department PI or PII, 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 Partner" near the middle of the page) or use this link:
http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/DHCSBusinessAssociatesOnly.aspx

c) Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of Department PHI , Contractor shall take:

i. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and

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ii. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

d) **Investigation and Investigation Report**.To immediately investigate such suspected security incident, security incident, breach, or unauthorized access, use or disclosure of PHI . 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:

e) **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. 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.

f) **Responsibility for Reporting of Breaches**. If the cause of a breach of Department PI or PII is attributable to Contractor or its agents, subcontractors or vendors, Contractor is responsible for all required reporting of the breach as specified in CIPA, § 1798.29(a) – (d) and as may be required under the IEA. Contractor shall bear all costs of required notifications to individuals as well as any costs associated with the breach. The Department Program Contract Manager and the Department Information Security Officer and Privacy Officer shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications

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are made. The Department will provide its review and approval expeditiously and without unreasonable delay. 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.

g) **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.

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	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)

9. **Designation of Individual Responsible for Security.** Contractor shall designate an individual, (e.g., Security Officer), to oversee its data security program who shall be responsible for carrying out the requirements of this Exhibit F, Part II and for communicating on security matters with the Department.

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Part III: Miscellaneous Terms and Conditions Applicable to Exhibit F

1. 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.

2. Amendment

A. 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, and the HIPAA regulations. Upon either party's request, the other party agrees to promptly enter into negotiations concerning an amendment to this Exhibit F embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, and the HIPAA regulations. 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.

3. 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 or other security or privacy law. 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.

4. 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

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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, or the HIPAA regulations, which involves inactions or actions by the Contractor, except where Contractor or its subcontractor, employee or agent is a named adverse party.

5. 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.

6. 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, and the HIPAA regulations. 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.

7. Conflict

In case of a conflict between any applicable privacy or security rules, laws, regulations or 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.

8. 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.

9. Survival

The respective rights and obligations of Contractor under Section 3, Item D of Exhibit F, Part I, Responsibilities of Contractor, shall survive the termination or expiration of this Agreement.

10. 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.

11. Audits, Inspection and Enforcement

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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.

12. 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.

13. 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 C.F.R. § 164.504(e)(2)(ii)(I), and when all Department PI and PII is destroyed in accordance with Attachment A.

14. Effect of Termination

Upon termination or expiration of this Agreement for any reason, Contractor shall return or destroy all Department PHI, PI and PII that Contractor still maintains in any form, and shall retain no copies of such PHI, PI or PII. 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, PI or PII. Contractor shall continue to extend the protections of this Exhibit F to such Department PHI, PI and PII, and shall limit further use of such data to those purposes that make the return or destruction of such data infeasible. This provision shall apply to Department PHI, PI and PII that is in the possession of subcontractors or agents of Contractor.

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Attachment A
Business Associate Data Security Requirements

1. 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.

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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.

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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.

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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.

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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.

INFORMATION EXCHANGE AGREEMENT
BETWEEN
THE SOCIAL SECURITY ADMINISTRATION (SSA)
AND
THE CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES (STATE AGENCY)

A. PURPOSE: The purpose of this Information Exchange Agreement ("IEA") is to establish terms, conditions, and safeguards under which SSA will disclose to the State Agency certain information, records, or data (herein "data") to assist the State Agency in administering certain federally funded state-administered benefit programs (including state-funded state supplementary payment programs under Title XVI of the Social Security Act) identified in this IEA. By entering into this IEA, the State Agency agrees to comply with:

- the terms and conditions set forth in the Computer Matching and Privacy Protection Act Agreement ("CMPPA Agreement") attached as **Attachment 1**, governing the State Agency's use of the data disclosed from SSA's Privacy Act System of Records; and
- all other terms and conditions set forth in this IEA.

B. PROGRAMS AND DATA EXCHANGE SYSTEMS: (1) The State Agency will use the data received or accessed from SSA under this IEA for the purpose of administering the federally funded, state-administered programs identified in **Table 1** below. In **Table 1**, the State Agency has identified: (a) each federally funded, state-administered program that it administers; and (b) each SSA data exchange system to which the State Agency needs access in order to administer the identified program. The list of SSA's data exchange systems is attached as **Attachment 2:**

TABLE 1

FEDERALLY FUNDED BENEFIT PROGRAMS	
Program	**SSA Data Exchange System(s)**
[X] Medicaid	BENDEX/SDX/EVS/SVES/SOLQ/SVES I-Citizenship /Quarters of Coverage/Prisoner Query
☐ Temporary Assistance to Needy Families (TANF)	
☐ Supplemental Nutrition Assistance Program (SNAP- formally Food Stamps)	
☐ Unemployment Compensation (Federal)	
☐ Unemployment Compensation (State)	
☐ State Child Support Agency	
☐ Low-Income Home Energy Assistance Program (LI-HEAP)	
☐ Workers Compensation	
☐ Vocational Rehabilitation Services	

☐ Foster Care (IV-E)	
☐ State Health Insurance Program (S-CHIP)	
☐ Women, Infants and Children (W.I.C.)	
[X] Medicare Savings Programs (MSP)	LIS File
[X] Medicare 1144 (Outreach)	Medicare 1144 Outreach File
☐ *Other Federally Funded, State-Administered Programs (List Below)*	
Program	**SSA Data Exchange System(s)**

(2) The State Agency will use each identified data exchange system ***only*** for the purpose of administering the specific program for which access to the data exchange system is provided. SSA data exchange systems are protected by the Privacy Act and federal law prohibits the use of SSA's data for any purpose other than the purpose of administering the specific program for which such data is disclosed. In particular, the State Agency will use: (a) the **tax return data** disclosed by SSA only to determine individual eligibility for, or the amount of, assistance under a state plan pursuant to Section 1137 programs and child support enforcement programs in accordance with 26 U.S.C. § 6103(1)(8); and (b) the **citizenship status data** disclosed by SSA under the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. 111-3, only for the purpose of determining entitlement to Medicaid and CHIP program for new applicants. The State Agency also acknowledges that SSA's citizenship data may be less than 50 percent current. Applicants for SSNs report their citizenship data at the time they apply for their SSNs; there is no obligation for an individual to report to SSA a change in his or her immigration status until he or she files a claim for benefits.

C. **PROGRAM QUESTIONNAIRE:** Prior to signing this IEA, the State Agency will complete and submit to SSA a program questionnaire for each of the federally funded, state-administered programs checked in **Table 1** above. SSA will not disclose any data under this IEA until it has received and approved the completed program questionnaire for each of the programs identified in **Table 1** above.

D. TRANSFER OF DATA: SSA will transmit the data to the State Agency under this IEA using the data transmission method identified in **Table 2** below:

TABLE 2

TRANSFER OF DATA
☐ Data will be transmitted directly between SSA and the State Agency.
[X] Data will be transmitted directly between SSA and the California Office of Technology (State Transmission/Transfer Component ("STC")) by the File Transfer Management System, a secure mechanism approved by SSA. The STC will serve as the conduit between SSA and the State Agency pursuant to the State STC Agreement.
☐ Data will be transmitted directly between SSA and the Interstate Connection Network ("ICON"). ICON is a wide area telecommunications network connecting state agencies that administer the state unemployment insurance laws. When receiving data through ICON, the State Agency will comply with the "Systems Security Requirements for SSA Web Access to SSA Information Through the ICON," attached as **Attachment 3**.

E. SECURITY PROCEDURES: The State Agency will comply with limitations on use, treatment, and safeguarding of data under the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget guidelines, the Federal Information Security Management Act of 2002 (44 U.S.C. § 3541, et seq.), and related National Institute of Standards and Technology guidelines. In addition, the State Agency will comply with SSA's "Information System Security Guidelines for Federal, State and Local Agencies Receiving Electronic Information from the Social Security Administration," attached as **Attachment 4**. For any tax return data, the State Agency will also comply with the "Tax Information Security Guidelines for Federal, State and Local Agencies," Publication 1075, published by the Secretary of the Treasury and available at the following Internal Revenue Service (IRS) website: http://www.irs.gov/pub/irs-pdf/p1075.pdf. This IRS Publication 1075 is incorporated by reference into this IEA.

F. CONTRACTOR/AGENT RESPONSIBILITIES: The State Agency will restrict access to the data obtained from SSA to only those authorized State employees, contractors, and agents who need such data to perform their official duties in connection with purposes identified in this IEA. At SSA's request, the State Agency will obtain from each of its contractors and agents a current list of the employees of its contractors and agents who have access to SSA data disclosed under this IEA. The State Agency will require its contractors, agents, and all employees of such contractors or agents with authorized access to the SSA data disclosed under this IEA, to comply with the terms and conditions set forth in this IEA, and not to duplicate, disseminate, or disclose such data without obtaining SSA's prior written approval. In addition, the State Agency will comply with the limitations on use, duplication, and redisclosure of SSA data set forth in Section IX. of the CMPPA Agreement, especially with respect to its contractors and agents.

G. SAFEGUARDING AND REPORTING RESPONSIBILITIES FOR PERSONALLY IDENTIFIABLE INFORMATION ("PII"):

1. The State Agency will ensure that its employees, contractors, and agents:
   a. properly safeguard PII furnished by SSA under this IEA from loss, theft or inadvertent disclosure;
   b. understand that they are responsible for safeguarding this information at all times, regardless of whether or not the State employee, contractor, or agent is at his or her regular duty station;
   c. ensure that laptops and other electronic devices/media containing PII are encrypted and/or password protected;
   d. send emails containing PII only if encrypted or if to and from addresses that are secure; and
   e. limit disclosure of the information and details relating to a PII loss only to those with a need to know.

2. If an employee of the State Agency or an employee of the State Agency's contractor or agent becomes aware of suspected or actual loss of PII, he or she must immediately contact the State Agency official responsible for Systems Security designated below or his or her delegate. That State Agency official or delegate must then notify the SSA Regional Office Contact and the SSA Systems Security Contact identified below. If, for any reason, the responsible State Agency official or delegate is unable to notify the SSA Regional Office or the SSA Systems Security Contact within 1 hour, the responsible State Agency official or delegate must call SSA's Network Customer Service Center ("NCSC") at 410-965-7777 or toll free at 1-888-772-6661 to report the actual or suspected loss. The responsible State Agency official or delegate will use the worksheet, attached as **Attachment 5**, to quickly gather and organize information about the incident. The responsible State Agency official or delegate must provide to SSA timely updates as any additional information about the loss of PII becomes available.

3. SSA will make the necessary contact within SSA to file a formal report in accordance with SSA procedures. SSA will notify the Department of Homeland Security's United States Computer Emergency Readiness Team if loss or potential loss of PII related to a data exchange under this IEA occurs.

4. If the State Agency experiences a loss or breach of data, it will determine whether or not to provide notice to individuals whose data has been lost of breached and bear any costs associated with the notice or any mitigation.

H. POINTS OF CONTACT:

FOR SSA

San Francisco Regional Office:

Ellery Brown
Data Exchange Coordinator
Frank Hagel Federal Building
1221 Nevin Avenue
Richmond CA 94801
Phone: (510) 970-8243
Fax: (510) 970-8101
Email: Ellery.Brown@ssa.gov

Data Exchange Issues:

Guy Fortson
Office of Electronic Information Exchange
GD10 East High Rise
6401 Security Boulevard
Baltimore, MD 21235
Phone: (410) 597-1103
Fax: (410) 597-0841
Email: guy.fortson@ssa.gov

Systems Issues:

Pamela Riley
Office of Earnings, Enumeration &
Administrative Systems
DIVES/Data Exchange Branch
6401 Security Boulevard
Baltimore, MD 21235
Phone: (410) 965-7993
Fax: (410) 966-3147
Email: Pamela.Riley@ssa.gov

Systems Security Issues:

Michael G. Johnson
Acting Director
Office of Electronic Information Exchange
Office of Strategic Services
6401 Security Boulevard
Baltimore, MD 21235
Phone: (410) 965-0266
Fax: (410) 966-0527
Email: Michael.G.Johnson@ssa.gov

FOR STATE AGENCY

Agreement Issues:

Manuel Urbina
Chief, Security Unit
Policy Operations Branch
Medi-Cal Eligibility Division
1501 Capitol Avenue, MS 4607
Sacramento, CA 95814
Phone: (916) 650-0160
Email: Manuel.Urbina@dhcs.ca.gov

Technical Issues:

Fei Collier
Chief, Application Support Branch
Information Technology Services Division
1615 Capitol Ave, MS 6100
Sacramento, CA 95814
Phone: (916) 440-7036
Email: Fei.Collier@dhcs.ca.gov

I. **DURATION:** The effective date of this IEA is January 1, 2010. This IEA will remain in effect for as long as: (1) a CMPPA Agreement governing this IEA is in effect between SSA and the State or the State Agency; and (2) the State Agency submits a certification in accordance with Section J. below at least 30 days before the expiration and renewal of such CMPPA Agreement.

J. **CERTIFICATION AND PROGRAM CHANGES:** At least 30 days before the expiration and renewal of the State CMPPA Agreement governing this IEA, the State Agency will certify in writing to SSA that: (1) it is in compliance with the terms and conditions of this IEA; (2) the data exchange processes under this IEA have been and will be conducted without change; and (3) it will, upon SSA's request, provide audit reports or other documents that demonstrate review and oversight activities. If there are substantive changes in any of the programs or data exchange processes listed in this IEA, the parties will modify the IEA in accordance with Section K. below and the State Agency will submit for SSA's approval new program questionnaires under Section C. above describing such changes prior to using SSA's data to administer such new or changed program.

K. **MODIFICATION:** Modifications to this IEA must be in writing and agreed to by the parties.

L. **TERMINATION:** The parties may terminate this IEA at any time upon mutual written consent. In addition, either party may unilaterally terminate this IEA upon 90 days advance written notice to the other party. Such unilateral termination will be effective 90 days after the date of the notice, or at a later date specified in the notice.

SSA may immediately and unilaterally suspend the data flow under this IEA, or terminate this IEA, if SSA, in its sole discretion, determines that the State Agency (including its employees, contractors, and agents) has: (1) made an unauthorized use or disclosure of SSA-supplied data; or (2) violated or failed to follow the terms and conditions of this IEA or the CMPPA Agreement.

M. **INTEGRATION:** This IEA, including all attachments, constitutes the entire agreement of the parties with respect to its subject matter. There have been no representations, warranties, or promises made outside of this IEA. This IEA shall take precedence over any other document that may be in conflict with it.

ATTACHMENTS

1 – CMPPA Agreement
2 – SSA Data Exchange Systems
3 – Systems Security Requirements for SSA Web Access to SSA Information Through ICON
4 – Information System Security Guidelines for Federal, State and Local Agencies Receiving Electronic Information from the Social Security Administration
5 – PII Loss Reporting Worksheet

N. **SSA AUTHORIZED SIGNATURE:** The signatory below warrants and represents that he or she has the competent authority on behalf of SSA to enter into the obligations set forth in this IEA.

SOCIAL SECURITY ADMINISTRATION

Mary G Ann Gallagher for

Michael G. Gallagher
Assistant Deputy Commissioner
for Budget, Finance and Management

5/13/05

Date

O. REGIONAL AND STATE AGENCY SIGNATURES:

SOCIAL SECURITY ADMINISTRATION
REGION IX

Peter D. Spencer
San Francisco Regional Commissioner

10/26/09
Date

THE CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES

The signatory below warrants and represents that he or she has the competent authority on behalf of the State Agency to enter into the obligations set forth in this IEA.

Toby Douglas
Chief Deputy Director, Health Care Programs

10/11/09
Date

CERTIFICATION OF COMPLIANCE
FOR
THE INFORMATION EXCHANGE AGREEMENT
BETWEEN
THE SOCIAL SECURITY ADMINISTRATION (SSA)
AND
THE CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES (STATE AGENCY)

(State Agency Level)

In accordance with the terms of the Information Exchange Agreement (IEA/F) between SSA and the State Agency, the State Agency, through its authorized representative, hereby certifies that, as of the date of this certification:

1. The State Agency is in compliance with the terms and conditions of the IEA/F;

2. The State Agency has conducted the data exchange processes under the IEA/F without change, except as modified in accordance with the IEA/F;

3. The State Agency will continue to conduct the data exchange processes under the IEA/F without change, except as may be modified in accordance with the IEA/F;

4. Upon SSA's request, the State Agency will provide audit reports or other documents that demonstrate compliance with the review and oversight activities required under the IEA/F and the governing Computer Matching and Privacy Protection Act Agreement; and

5. In compliance with the requirements of the "Electronic Information Exchange Security Requirements, Guidelines, and Procedures for State and Local Agencies Exchanging Electronic Information with the Social Security Administration," Attachment 4 to the IEA/F, as periodically updated by SSA, the State Agency has not made any changes in the following areas that could potentially affect the security of SSA data:

    - General System Security Design and Operating Environment
    - System Access Control
    - Automated Audit Trail
    - Monitoring and Anomaly Detection
    - Management Oversight
    - Data and Communications Security

    The State Agency will submit an updated Security Design Plan at least 30 days prior to making any changes to the areas listed above.

The signatory below warrants and represents that he or she is a representative of the State Agency duly authorized to make this certification on behalf of the State Agency.

DEPARTMENT OF HEALTH CARE SERVICES OF CALIFORNIA

Toby Douglas
Director

4/12/12
Date

ATTACHMENT 1

COMPUTER MATCHING AND PRIVACY PROTECTION ACT AGRREMENT

COMPUTER MATCHING AND PRIVACY PROTECTION ACT AGREEMENT BETWEEN THE SOCIAL SECURITY ADMINISTRATION AND THE HEALTH AND HUMAN SERVICES AGENCY OF CALIFORNIA

I. Purpose and Legal Authority

A. Purpose

This Computer Matching and Privacy Protection Act (CMPPA) Agreement between the Social Security Administration (SSA) and the California Health and Human Services Agency (State Agency), sets forth the terms and conditions governing disclosures of records, information, or data (collectively referred to herein "data") made by SSA to the State Agency that administers federally funded benefit programs under various provisions of the Social Security Act (Act), such as section 1137 (42 U.S.C. § 1320b-7), including the state-funded state supplementary payment programs under title XVI of the Act. The terms and conditions of this Agreement ensure that SSA makes such disclosures of data, and the State Agency uses such disclosed data, in accordance with the requirements of the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. § 552a.

Under section 1137 of the Act, the State Agency is required to use an income and eligibility verification system to administer specified federally funded benefit programs, including the state-funded state supplementary payment programs under title XVI of the Act. To assist the State Agency in determining entitlement to and eligibility for benefits under those programs, as well as other federally funded benefit programs, SSA discloses certain data about applicants for state benefits from SSA Privacy Act Systems of Records (SOR) and verifies the Social Security numbers (SSN) of the applicants.

B. Legal Authority

SSA's authority to disclose data and the State Agency's authority to collect, maintain, and use data protected under SSA SORs for specified purposes is:

- Sections 1137, 453, and 1106(b) of the Act (42 U.S.C. §§ 1320b-7, 653, and 1306(b)) (income and eligibility verification data);
- 26 U.S.C. § 6103(l)(7) and (8) (tax return data);
- Section 202(x)(3)(B)(iv) of the Act (42 U.S.C. § 401(x)(3)(B)(iv)) (prisoner data);
- Section 1611(e)(1)(I)(iii) of the Act (42 U.S.C. § 1382(e)(1)(I)(iii) (SSI);

- Section 205(r)(3) of the Act (42 U.S.C. § 405(r)(3)) and the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458, § 7213(a)(2) (death data);
- Sections 402, 412, 421, and 435 of Pub. L. 104-193 (8 U.S.C. §§ 1612, 1622, 1631, and 1645) (quarters of coverage data);
- Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. 111-3 (citizenship data); and
- Routine use exception to the Privacy Act, 5 U.S.C. § 552a(b)(3) (data necessary to administer other programs compatible with SSA programs).

This Agreement further carries out section 1106(a) of the Act (42 U.S.C. § 1306), the regulations promulgated pursuant to that section (20 C.F.R. Part 401), the Privacy Act of 1974 (5 U.S.C. § 552a), as amended by the CMPPA, related Office of Management and Budget (OMB) guidelines, the Federal Information Security Management Act of 2002 (FISMA) (44 U.S.C. § 3541, et seq.), and related National Institute of Standards and Technology (NIST) guidelines, which provide the requirements that the State Agency must follow with regard to use, treatment, and safeguarding of data.

II. Scope

A. The State Agency will comply with the terms and conditions of this Agreement and the Privacy Act, as amended by the CMPPA.

B. The State Agency will execute one or more Information Exchange Agreements (IEA) with SSA, documenting additional terms and conditions applicable to those specific data exchanges, including the particular benefit programs administered by the State Agency, the data elements that will be disclosed, and the data protection requirements implemented to assist the State Agency in the administration of those programs.

C. The State Agency will use the SSA data governed by this Agreement to determine entitlement and eligibility of individuals for one or more of the following programs:

1. Temporary Assistance to Needy Families (TANF) program under Part A of title IV of the Act;
2. Medicaid provided under an approved State plan or an approved waiver under title XIX of the Act;
3. State Children's Health Insurance Program (CHIP) under title XXI of the Act, as amended by the Children's Health Insurance Program Reauthorization Act of 2009;
4. Supplemental Nutritional Assistance Program (SNAP) under the Food Stamp Act of 1977 (7 U.S.C. § 2011, et seq.);

5. Women, Infants and Children Program (WIC) under the Child Nutrition Act of 1966 (42 U.S.C. § 1771, et seq.);
6. Medicare Savings Programs (MSP) under 42 U.S.C. § 1396a(10)(E);
7. Unemployment Compensation programs provided under a state law described in section 3304 of the Internal Revenue Code of 1954;
8. Low Income Heating and Energy Assistance (LIHEAP or home energy grants) program under 42 U.S.C. § 8621;
9. State-administered supplementary payments of the type described in section 1616(a) of the Act;
10. Programs under a plan approved under titles I, X, XIV or XVI of the Act;
11. Foster Care and Adoption Assistance under title IV of the Act;
12. Child Support Enforcement programs under section 453 of the Act (42 U.S.C. § 653);
13. Other applicable federally funded programs administered by the State Agency under titles I, IV, X, XIV, XVI, XVIII, XIX, XX and XXI of the Act; and
14. Any other federally funded programs administered by the State Agency that are compatible with SSA's programs.

D. The State Agency will ensure that SSA data disclosed for the specific purpose of administering a particular federally funded benefit program is used only to administer that program.

III. Justification and Expected Results

A. Justification

This Agreement and related data exchanges with the State Agency are necessary for SSA to assist the State Agency in its administration of federally funded benefit programs by providing the data required to accurately determine entitlement and eligibility of individuals for benefits provided under these programs. SSA uses computer technology to transfer the data because it is more economical, efficient, and faster than using manual processes.

B. Expected Results

The State Agency will use the data provided by SSA to improve public service and program efficiency and integrity. The use of SSA data expedites the application process and ensures that benefits are awarded only to applicants that satisfy the State Agency's program criteria. A cost-benefit analysis for the exchange made under this Agreement is not required in accordance with the determination by the SSA Data Integrity Board (DIB) to waive such analysis pursuant to 5 U.S.C. § 552a(u)(4)(B).

IV. Record Description

A. Systems of Records

SSA SORs used for purposes of the subject data exchanges include:

- 60-0058 -- Master Files of SSN Holders and SSN Applications (accessible through EVS, SVES, or Quarters of Coverage Query data systems);
- 60-0059 -- Earnings Recording and Self-Employment Income System (accessible through BENDEX, SVES, or Quarters of Coverage Query data systems);
- 60-0090 -- Master Beneficiary Record (accessible through BENDEX or SVES data systems);
- 60-0103 -- Supplemental Security Income Record (SSR) and Special Veterans Benefits (SVB) (accessible through SDX or SVES data systems);
- 60-0269 -- Prisoner Update Processing System (PUPS) (accessible through SVES or Prisoner Query data systems).
- 60-0321 -- Medicare Part D and Part D Subsidy File

The State Agency will only use the tax return data contained in **SOR 60-0059** (Earnings Recording and Self-Employment Income System) in accordance with 26 U.S.C. § 6103.

B. Data Elements

Data elements disclosed in computer matching governed by this Agreement are Personally Identifiable Information (PII) from specified SSA SORs, including names, SSNs, addresses, amounts, and other information related to SSA benefits, and earnings information. Specific listings of data elements are available at:

http://www.ssa.gov/gix/

C. Number of Records Involved

The number of records for each program covered under this Agreement is equal to the number of title II, title XVI, or title XVIII recipients resident in the State as recorded in SSA's Annual Statistical Supplement found on the Internet at:

http://www.ssa.gov/policy/docs/statcomps/

This number will fluctuate during the term of this Agreement, corresponding to the number of title II, title XVI, and title XVIII recipients added to, or deleted from, SSA databases during the term of this Agreement.

V. Notice and Opportunity to Contest Procedures

A. Notice to Applicants

The State Agency will notify all individuals who apply for federally funded, state-administered benefits under the Act that any data they provide are subject to verification through computer matching with SSA. The State Agency and SSA will provide such notice through appropriate language printed on application forms or separate handouts.

B. Notice to Beneficiaries/Recipients/Annuitants

The State Agency will provide notice to beneficiaries, recipients, and annuitants under the programs covered by this Agreement informing them of ongoing computer matching with SSA. SSA will provide such notice through publication in the Federal Register and periodic mailings to all beneficiaries, recipients, and annuitants describing SSA's matching activities.

C. Opportunity to Contest

The State Agency will not terminate, suspend, reduce, deny, or take other adverse action against an applicant for or recipient of federally funded, state-administered benefits based on data disclosed by SSA from its SORs until the individual is notified in writing of the potential adverse action and provided an opportunity to contest the planned action. "Adverse action" means any action that results in a termination, suspension, reduction, or final denial of eligibility, payment, or benefit. Such notices will:

1. Inform the individual of the match findings and the opportunity to contest these findings;

2. Give the individual until the expiration of any time period established for the relevant program by a statute or regulation for the individual to respond to the notice. If no such time period is established by a statute or regulation for the program, a 30-day period will be provided. The time period begins on the date on which notice is mailed or otherwise provided to the individual to respond; and

3. Clearly state that, unless the individual responds to the notice in the required time period, the State Agency will conclude that the SSA data are correct and will effectuate the threatened action or otherwise make the necessary adjustment to the individual's benefit or entitlement.

VI. Records Accuracy Assessment and Verification Procedures

The State Agency may use SSA's benefit data without independent verification. SSA has independently assessed the accuracy of its benefits data to be more than 99 percent accurate when they are created.

Prisoner and death data, some of which is not independently verified by SSA, does not have the same degree of accuracy as SSA's benefit data. Therefore, the State Agency must independently verify these data through applicable State verification procedures and the notice and opportunity to contest procedures specified in Section V of this Agreement before taking any adverse action against any individual.

SSA's citizenship data may be less than 50 percent current. Applicants for SSNs report their citizenship status at the time they apply for their SSNs. There is no obligation for an individual to report to SSA a change in his or her immigration status until he or she files a claim for benefits.

VII. Disposition and Records Retention of Matched Items

A. The State Agency will retain all data received from SSA to administer programs governed by this Agreement only for the required processing times for the applicable federally funded benefit programs and will then destroy all such data.

B. The State Agency may retain SSA data in hardcopy to meet evidentiary requirements, provided that they retire such data in accordance with applicable state laws governing the State Agency's retention of records.

C. The State Agency may use any accretions, deletions, or changes to the SSA data governed by this Agreement to update their master files of federally funded, state-administered benefit program applicants and recipients and retain such master files in accordance with applicable state laws governing the State Agency's retention of records.

D. The State Agency may not create separate files or records comprised solely of the data provided by SSA to administer programs governed by this Agreement.

E. SSA will delete electronic data input files received from the State Agency after it processes the applicable match. SSA will retire its data in accordance with the Federal Records Retention Schedule (44 U.S.C. § 3303a).

VIII. Security Procedures

The State Agency will comply with the security and safeguarding requirements of the Privacy Act, as amended by the CMPPA, related OMB guidelines, FISMA, related

NIST guidelines, and the current revision of IRS Publication 1075, *Tax Information Security Guidelines for Federal, State and Local Agencies and Entities*, available at http://www.irs.gov. In addition, the State Agency will have in place administrative, technical, and physical safeguards for the matched data and results of such matches. Additional administrative, technical, and physical security requirements governing all data SSA provides electronically to the State Agency, including specific guidance on safeguarding and reporting responsibilities for PII, are set forth in the IEAs.

IX. Records Usage, Duplication, and Redisclosure Restrictions

A. The State Agency will use and access SSA data and the records created using that data only for the purpose of verifying eligibility for the specific federally funded benefit programs identified in the IEA.

B. The State Agency will comply with the following limitations on use, duplication, and redisclosure of SSA data:

1. The State Agency will not use or redisclose the data disclosed by SSA for any purpose other than to determine eligibility for, or the amount of, benefits under the state-administered income/health maintenance programs identified in this Agreement.

2. The State Agency will not use the data disclosed by SSA to extract information concerning individuals who are neither applicants for, nor recipients of, benefits under the state-administered income/health maintenance programs identified in this Agreement.

3. The State Agency will use the **Federal tax information (FTI)** disclosed by SSA only to determine individual eligibility for, or the amount of, assistance under a state plan pursuant to section 1137 programs and child support enforcement programs in accordance with 26 U.S.C. § 6103(l)(7) and (8). The State Agency receiving FTI will maintain all FTI from IRS in accordance with 26 U.S.C. § 6103(p)(4) and the IRS Publication 1075. Contractors and agents acting on behalf of the State Agency will only have access to tax return data where specifically authorized by 26 U.S.C. § 6103 and the IRS Publication 1075.

4. The State Agency will use the **citizenship status data** disclosed by SSA under the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. 111-3, only for the purpose of determining entitlement to Medicaid and CHIP programs for new applicants.

5. The State Agency will restrict access to the data disclosed by SSA to only those authorized State employees, contractors, and agents who need such data

to perform their official duties in connection with the purposes identified in this Agreement.

6. The State Agency will enter into a written agreement with each of its contractors and agents who need SSA data to perform their official duties whereby such contractor or agent agrees to abide by all relevant Federal laws, restrictions on access, use, and disclosure, and security requirements in this Agreement. The State Agency will provide its contractors and agents with copies of this Agreement, related IEAs, and all related attachments before initial disclosure of SSA data to such contractors and agents. Prior to signing this Agreement, and thereafter at SSA's request, the State Agency will obtain from its contractors and agents a current list of the employees of such contractors and agents with access to SSA data and provide such lists to SSA.

7. The State Agency's employees, contractors, and agents who access, use, or disclose SSA data in a manner or purpose not authorized by this Agreement may be subject to civil and criminal sanctions pursuant to applicable Federal statutes.

C. The State Agency will not duplicate in a separate file or disseminate, without prior written permission from SSA, the data governed by this Agreement for any purpose other than to determine entitlement to, or eligibility for, federally funded benefits. The State Agency proposing the redisclosure must specify in writing to SSA what data are being disclosed, to whom, and the reasons that justify the redisclosure. SSA will not give permission for such redisclosure unless the redisclosure is required by law or essential to the conduct of the matching program and authorized under a routine use.

X. Comptroller General Access

The Comptroller General (the Government Accountability Office) may have access to all records of the State Agency that the Comptroller General deems necessary to monitor and verify compliance with this Agreement in accordance with 5 U.S.C. § 552a(o)(l)(K).

XI. Duration, Modification, and Termination of the Agreement

A. Duration

1. This Agreement is effective from July 1, 2012 (Effective Date) through December 31, 2013 (Expiration Date).

2. In accordance with the CMPPA, SSA will: (a) publish a Computer Matching Notice in the Federal Register at least 30 days prior to the

Effective Date; (b) send required notices to the Congressional committees of jurisdiction under 5 U.S.C. § 552a(o)(2)(A)(i) at least 40 days prior to the Effective Date; and (c) send the required report to the OMB at least 40 days prior to the Effective Date.

3. Within 3 months prior the Expiration Date, the SSA DIB may, without additional review, renew this Agreement for a period not to exceed 12 months, pursuant to 5 U.S.C. § 552a(o)(2)(D), if:

   - the applicable data exchange will continue without any change; and
   - SSA and the State Agency certify to the DIB in writing that the applicable data exchange has been conducted in compliance with this Agreement.

4. If either SSA or the State Agency does not wish to renew this Agreement, it must notify the other party of its intent not to renew at least 3 months prior to the Expiration Date.

B. Modification

Any modification to this Agreement must be in writing, signed by both parties, and approved by the SSA DIB.

C. Termination

The parties may terminate this Agreement at any time upon mutual written consent of both parties. Either party may unilaterally terminate this Agreement upon 90 days advance written notice to the other party; such unilateral termination will be effective 90 days after the date of the notice, or at a later date specified in the notice.

SSA may immediately and unilaterally suspend the data flow or terminate this Agreement if SSA determines, in its sole discretion, that the State Agency has violated or failed to comply with this Agreement.

XII. Reimbursement

In accordance with section 1106(b) of the Act, the Commissioner of SSA has determined not to charge the State Agency the costs of furnishing the electronic data from the SSA SORs under this Agreement.

XIII. Disclaimer

SSA is not liable for any damages or loss resulting from errors in the data provided to the State Agency under any IEAs governed by this Agreement. Furthermore, SSA is not liable for any damages or loss resulting from the destruction of any materials or data provided by the State Agency.

XIV. Points of Contact

A. SSA Point of Contact

Regional Office

Martin White, Director
San Francisco Regional Office, Center for Programs Support
1221 Nevin Ave
Richmond CA 94801
Phone: (510) 970-8243/Fax: (510) 970-8101
Martin.White@ssa.gov

B. State Agency Point of Contact

Sonia Herrera
Health and Human Services Agency
1600 Ninth Street, Room 460
Sacramento, CA 95814
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XV. SSA and Data Integrity Board Approval of Model CMPPA Agreement

The signatories below warrant and represent that they have the competent authority on behalf of SSA to approve the model of this CMPPA Agreement.

SOCIAL SECURITY ADMINISTRATION

Dawn S. Wiggins
Deputy Executive Director
Office of Privacy and Disclosure
Office of the General Counsel

1-17-2012
Date

I certify that the SSA Data Integrity Board approved the model of this CMPPA Agreement.

Daniel F. Callahan
Chair
SSA Data Integrity Board

1-26-2012
Date

XVI. Authorized Signatures

The signatories below warrant and represent that they have the competent authority on behalf of their respective agencies to enter into the obligations set forth in this Agreement.

SOCIAL SECURITY ADMINISTRATION

Patty Robidart

for Bill Zielinski
Regional Commissioner
San Francisco

05/10/2012
Date

HEALTH AND HUMAN SERVICES AGENCY

Diana L. Dooley

Diana S. Dooley
Secretary

April 27, 2012
Date

ATTACHMENT 2

AUTHORIZED DATA EXCHANGE SYSTEM(S)

Attachment 2

Authorized Data Exchange System(s)

BEER (Beneficiary Earnings Exchange Record): Employer data for the last calendar year.

BENDEX (Beneficiary and Earnings Data Exchange): Primary source for Title II eligibility, benefit and demographic data.

LIS (Low-Income Subsidy): Data from the Low-Income Subsidy Application for Medicare Part D beneficiaries -- used for Medicare Savings Programs (MSP).

Medicare 1144 (Outreach): Lists of individuals on SSA roles, who may be eligible for medical assistance for: payment of the cost of Medicare cost-sharing under the Medicaid program pursuant to Sections 1902(a)(10)(E) and 1933 of the Act; transitional assistance under Section 1860D-31(f) of the Act; or premiums and cost-sharing subsidies for low-income individuals under Section 1860D-14 of the Act.

PUPS (Prisoner Update Processing System): Confinement data received from over 2000 state and local institutions (such as jails, prisons, or other penal institutions or correctional facilities) -- PUPS matches the received data with the MBR and SSR benefit data and generates alerts for review/action.

QUARTERS OF COVERAGE (QC): Quarters of Coverage data as assigned and described under Title II of the Act -- The term "quarters of coverage" is also referred to as "credits" or "Social Security credits" in various SSA public information documents, as well as to refer to "qualifying quarters" to determine entitlement to receive Food Stamps.

SDX (SSI State Data Exchange): Primary source of Title XVI eligibility, benefit and demographic data as well as data for Title VIII Special Veterans Benefits (SVB).

SOLQ/SOLQ-I (State On-line Query/State On-line Query-Internet): A real-time online system that provides SSN verification and MBR and SSR benefit data similar to data provided through SVES.

Attachment 2

SVES (State Verification and Exchange System): A batch system that provides SSN verification, MBR benefit information, and SSR information through a uniform data response based on authorized user-initiated queries. The SVES types are divided into five different responses as follows:

SVES I:	This batch provides strictly SSN verification.
SVES I/Citizenship*	This batch provides strictly SSN verification and citizenship data.
SVES II:	This batch provides strictly SSN verification and MBR benefit information
SVES III:	This batch provides strictly SSN verification and SSR/SVB.
SVES IV:	This batch provides SSN verification, MBR benefit information, and SSR/SVB information, which represents all available SVES data.

** Citizenship status data disclosed by SSA under the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. 111-3 is only for the purpose of determining entitlement to Medicaid and CHIP program for new applicants.*

ATTACHMENT 3 OMITTED

ATTACHMENT 4

ELECTRONIC INFORMATION EXCHANGE SECURITY REQUIREMENTS AND PROCEDURES

ELECTRONIC INFORMATION EXCHANGE SECURITY REQUIREMENTS AND PROCEDURES FOR STATE AND LOCAL AGENCIES EXCHANGING ELECTRONIC INFORMATION WITH THE SOCIAL SECURITY ADMINISTRATION

SENSITIVE DOCUMENT

VERSION 5.0
MARCH 9, 2012

ELECTRONIC INFORMATION EXCHANGE
SECURITY REQUIREMENTS AND PROCEDURES
FOR
STATE AND LOCAL AGENCIES
EXCHANGING ELECTRONIC INFORMATION WITH THE
SOCIAL SECURITY ADMINISTRATION

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ELECTRONIC INFORMATION EXCHANGE
SECURITY REQUIREMENTS AND PROCEDURES
FOR
STATE AND LOCAL AGENCIES
RECEIVING ELECTRONIC INFORMATION FROM THE
SOCIAL SECURITY ADMINISTRATION

1. Introduction Ω

The Social Security Administration (SSA) is required by law to maintain oversight and assure the protection of information it has provided to its *'electronic information exchange partners'* (EIEP)s. EIEPs are entities that have established an electronic information sharing agreement with the agency.

The overall aim of this document is twofold. First, to ensure that EIEPs are properly certified as compliant by SSA to SSA security requirements, standards, and procedures expressed in this document, prior to being granted access to SSA information in a production environment; second, to ensure that EIEPs adequately safeguard electronic information provided to them by SSA.

This document (which is considered SENSITIVE by SSA and must be handled accordingly), describes the security requirements which must be met including, SSA's standards and procedures which must be implemented by outside entities (state and local agencies) in order to obtain information from SSA electronically. This document assists outside entities in understanding the criteria that SSA will use when evaluating and certifying the system design, and security features used for electronic access to SSA-provided information. It also provides the framework and general procedures for SSA's security compliance review program intended to ensure, on a periodic basis, conformance to SSA's security requirements by outside entities.

The addition, elimination, and modification of security controls, etc. are predicated upon factors which impact the level of security and due diligence required for mitigating risks, e.g., the emergence of new threats and attack methods, the availability of new security technologies, etc. System security requirements (SSR) are, therefore, periodically reviewed and revised. Accordingly, over time, the SSRs may be subject to change.

The EIEP must comply with SSA's most current SSRs for access to SSA-provided data. However, SSA will work with its partners in the EIEPs' resolution of any deficiencies which occur subsequent to previous approval for access as the result of updated SSRs. Additionally, EIEPs may proactively ensure their ongoing compliance with the SSRs by periodically requesting the most current SSR package from their SSA contact and making such adjustments as may be necessary.

2. Electronic Information Exchange (EIE) Definition Ω

For discussion purposes herein, EIE is any electronic process in which information under SSA control is disclosed to any third party for program or non-program purposes, without the specific consent of the owner of that information. EIE involves individual data transactions and data files that are processed within the programmatic systems of either or all parties to electronic information sharing agreements with SSA. This includes direct terminal access (DTA) to SSA systems, batch processing, and variations thereof (e.g., online query) regardless of the systematic method used to accomplish the activity or to interconnect SSA with the EIEP.

3. Roles and Responsibilities Ω

The SSA ***Office of Information Security (OIS)*** has agency-wide responsibility for interpreting, developing, and implementing security policy; providing security and integrity review requirements for all major SSA systems; managing SSA's fraud monitoring and reporting activities, developing and disseminating security training and awareness materials, and providing consultation and support for a variety of agency initiatives. SSA's security reviews ensure that external systems receiving information from SSA are secure and operate in a manner that is consistent with SSA's Information Technology (IT) security policies and in compliance with the terms of electronic information sharing agreements executed by SSA and the outside entity. Within the context of SSA's security policies and the terms of electronic information sharing agreements with SSA's EIEPs, OIS exclusively conducts and brings to closure initial security certifications and periodic security compliance reviews of EIEPs that process, maintain, transmit, or store SSA-provided data in accordance with pertinent Federal requirements which include the following (refer to ***References***):

a. The Federal Information Security Management Act (FISMA) requires the protection of "Federal information in contractor systems, including those systems operated by state and local governments".

b. Social Security Administration (SSA) policies, standards, procedures, and directives.

Privacy information is information about an individual including, but not limited to, personal identifying information including the social security number (SSN).

The data (last 4 digits of the SSN) provided by SSA to its EIEPs for purposes of the Help America Vote Act (HAVA) does not identify a specific individual and, therefore, is not 'Privacy Information' as defined by the Act.

However, SSA is diligent in discharging its responsibility for establishing ***appropriate*** administrative, technical, and physical safeguards to ensure the security, confidentiality, and availability of its records and to protect against any anticipated threats or hazards to their security or integrity.

Therefore, although the information provided HAVA is not, by definition, 'Privacy Information' and as such, does not require that SSA conduct compliance reviews of entities to which it provides information for purposes of HAVA; SSA does require that those organizations adhere to the terms of their electronic information sharing agreements with SSA.

SSA regional ***Data Exchange Coordinators*** (DECs) are the bridge between SSA and state EIEPs. As such, in the security arena, DECs will assist OIS in coordinating data exchange security review activities with state and local EIEPs; e.g., providing points of contact with state agencies, assisting in setting up security reviews, etc. DECs are also the first points of contact for states if an employee of a state agency or an employee of a state agency's contractor or agent becomes aware of suspected or actual loss of SSA-provided personally identifiable information (PII).

4. General Systems Security Standards Ω

EIEPs that request and receive information electronically from SSA must comply with the following general systems security standards concerning access to and control of SSA-provided information.

NOTE: EIEPs may not create separate files or records comprised solely of the information provided by SSA.

a. EIEPs must ensure that means, methods, and technology by which SSA-provided information is processed, maintained, transmitted, or stored neither prevent nor impede the EIEP's ability to:

   - safeguard the information in conformance to SSA requirements;
   - efficiently investigate fraud, breach, or security events that involve SSA-provided data, or instances of misuse of SSA-provided data.

   For example, utilization of cloud computing may have the potential to jeopardize an EIEP's compliance with the terms of their agreement or SSA's associated system security requirements and procedures.

b. EIEPs must ensure that SSA-provided data is not processed, maintained, transmitted, or stored in or by means of data communications channels, electronic devices, computers, computer networks, etc. that are located in geographic or virtual areas ***not*** subject to U.S. law.

c. EIEPs must restrict access to the information to authorized users who need it to perform their official duties.

   NOTE: Contractors and agents (hereafter referred to as contractors) of the EIEP who process, maintain, transmit, or store SSA-provided data are held to the same security requirements as are employees of the EIEP. Refer to the section 'Contractors of Electronic Information Exchange Partners' in the 'Systems Security Requirements' for additional information.

d. Information received from SSA must be stored in a manner that, at all times, is physically and electronically secure from access by unauthorized persons.

e. SSA-provided information must be processed under the immediate supervision and control of authorized personnel.

f. EIEPs must employ both physical and technological safeguards to ensure against unauthorized retrieval of SSA-provided information by means of computer, remote terminal, or other means.

g. EIEPs must have in place formal PII incident response procedures. When faced with a security incident whether caused by malware, unauthorized access, software issues, or acts of nature, etc., EIEP must be able to respond in a manner that protects SSA-provided information affected by the incident.

h. EIEPs must have an active and robust employee security awareness program that is mandatory for all employees who may have access to SSA-provided information.

i. EIEP employees with access to SSA provided information must be advised of the confidentiality of the information, the safeguards required to protect the information, and the civil and criminal sanctions for non-compliance contained in the applicable Federal and state laws.

j. At its discretion, SSA or its designee, must have the option to conduct onsite security reviews or make other provisions, to ensure that EIEPs maintain adequate security controls to safeguard the information we provide.

5. Systems Security Requirements Ω

5.1 Overview Ω

Following is a discussion of SSA's security requirements that must be met by its EIEPs. SSA must certify that controls to meet the requirements have been implemented and working as intended, before it will authorize initiating transactions to and from SSA through batch data exchange processes or online processes such as State Online Query (SOLQ) or Internet SOLQ.

The Systems Security Requirements (SSR)s address management, operational, and technical aspects of security regarding the confidentiality, integrity, and availability of Social Security Administration (SSA) provided information used, maintained, transmitted, or stored by SSA's EIEPs.

SSRs are representative of the current state-of-the-practice security controls, safeguards, and countermeasures required for Federal information systems by Federal regulations and statutes, congressional mandates, etc., including but not limited to the Privacy Act of 1974, the Federal Information Security Management Act (FISMA), etc. and recommended by standards and guidelines established by NIST, etc.

5.2 General System Security Design and Operating Environment Ω

The EIEP must provide descriptions and explanations of their overall system design, configuration, security features, and operational environment and include discussions of how they conform to SSA's requirements. Discussion must also include:

- Description of the operating environment(s) in which SSA-provided data is to be utilized, maintained, and transmitted
- Description of the business process(es) in which SSA-provided information is to be used
- Physical safeguards employed to ensure that unauthorized personnel cannot access SSA-provided data and that audit information pertaining to use of and access to SSA-provided information and the EIEP's associated applications is readily available
- Electronic safeguards, methods, and procedures for protecting the EIEP's network infrastructure and for protecting SSA-provided data while in transit, in use within a process or application, at rest (stored or not in use); preventing unauthorized retrieval of SSA-provided information by computer, remote terminal, or other means; including descriptions of security software other than access control software (e.g., security patch and anti-malware software installation and maintenance, etc.)

5.3 System Access Control Ω

EIEPs must utilize and maintain technological (logical) access controls that limit access to SSA-provided information and associated transactions and functions to only those users, processes acting on behalf of authorized users, or devices (including other information systems) authorized for such access based on their official duties or purpose(s). EIEPs must employ a recognized user access security software package (e.g. RAC-F, ACF-2, TOP SECRET) or a security software design which is *at minimum* equivalent to such products. The access control software must utilize personal identification numbers (PIN) and passwords or

biometric identifiers in combination with the user's system identification code (userID), etc. (e.g., the access control software must employ and enforce (1) *PIN/password*, and/or (2) *PIN/biometric identifier*, and/or (3) *SmartCard/ biometric identifier,* etc., for authentication of users).

Depending upon the computing platform (e.g., client/server (PC), mainframe) and the access software implementation, the terms "PIN" and "user system identification code (userID)" may be, for practical purposes, synonymous. For example, the PIN/password combination may be required for access to an individual's PC after which, the userID/password combination may be required for access to a mainframe application. (A biometric identifier may supplant one element in the pair of those combinations).

Implementation of the control software must be in compliance with recognized industry standards. For example, password policies should enforce sufficient construction strength (length and complexity) to defeat or minimize risk-based identified vulnerabilities, ensure limitations for password repetition; technical controls should enforce periodic password changes based on a risk-based standard (e.g., maximum password age of 30 – 45 days, minimum password age of 3 – 7 days), enforce automatic disabling of user accounts that have been inactive for a specified period of time (e.g., 45 days); etc.

EIEPs must have management control and oversight of the function of authorizing individual user access to SSA-provided information and over the process of issuing and managing access control PINs, passwords, biometric identifiers, etc. for access to the EIEP's system.

The EIEPs' systems access rules must cover such matters as least privilege and individual accountability regarding access to sensitive information and associated transactions and functions, control of transactions by permissions modules, the assignment and limitation of system privileges, disabling accounts of separated employees (e.g., within 24 hours), individual accountability, work at home, dial-up access, and connecting to the Internet.

5.4 Automated Audit Trail Ω

EIEPs that receive information electronically from SSA are required to implement and maintain a fully automated audit trail system (ATS). The system must, at a minimum, be capable of creating, storing, protecting, and efficiently retrieving and collecting records identifying the individual user that initiates a request for information from SSA or accesses SSA-provided data. At a minimum, individual audit trail records must contain the data needed (including date and time stamps) to associate each query transaction or access to SSA-provided information with its initiator, their action, if any, and the relevant business purpose/process (e.g., SSN verification for driver license, etc.). Each entry in the audit file must be stored as a separate record, not overlaid by subsequent records. Transaction files must be created to capture all input from interactive internet applications which access or query SSA-provided data.

EIEPs whose transactions with SSA are mediated AND audited by an STC (e.g., State Transmission Component) are responsible for ensuring that the STC's audit capabilities meet SSA's requirements for an automated audit trail system. The EIEP must also establish a process by which the EIEP is able to efficiently obtain audit information from the STC regarding the EIEP's SSA transactions.

Access to the audit file must be restricted to authorized users with a "need to know" and audit file data must be unalterable (read only) and maintained for a minimum of three (preferably seven) years. Information in the audit file must be retrievable by an automated method and capable of being made available to SSA upon request. Audit trail records must be backed up

on a regular basis to ensure their availability. Backup audit files must have the same level of protection as that applied to the original files.

If SSA-provided information is retained by the EIEP (e.g., Access database, Share Point, etc.), or if certain data elements within the EIEP's system will indicate to users that the information has been verified by SSA, the EIEP's system must also capture an audit trail record of any user who views SSA-provided information stored within the EIEP's system. The audit trail requirements for these inquiry transactions are the same as those outlined above for the EIEP's transactions requesting or accessing information directly from SSA.

5.5 Personally Identifiable Information (PII) Ω

PII is defined as any information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc., alone or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc.

PII loss is defined as a circumstance wherein SSA has reason to believe that information on hard copy or in electronic format which contains PII provided by SSA to an EIEP, has left the EIEP's custody or has been disclosed by the EIEP to an unauthorized individual or entity. PII loss is a reportable incident (refer to ***Incident Reporting***).

If a PII loss involving SSA-provided data occurs or is suspected, the EIEP must be able to quantify the extent of the loss and compile a complete list of the individuals potentially affected incident (refer to ***Incident Reporting***).

5.6 Monitoring and Anomaly Detection Ω

The EIEP must establish and/or maintain continuous monitoring of its network infrastructure and assets to ensure that:

- implemented security controls continue to be effective over time
- only authorized individuals, devices, and processes have access to SSA-provided information
- efforts by external and internal entities, devices, or processes to perform unauthorized actions (i.e., data breaches, malicious attacks, access to network assets, software/hardware installations, etc.) are detected as soon as they occur
- the necessary parties are immediately alerted to unauthorized actions performed by external and internal entities, devices, or processes
- upon detection of unauthorized actions, measures are immediately initiated to prevent or mitigate associated risk
- in the event of a data breach or security incident, the necessary remedial actions can be efficiently determined and initiated
- trends, patterns, or anomalous occurrences and behavior in user or network activity that may be indicative of potential security issues are more readily discernable

The EIEP's system must include the capability to prevent employees from browsing SSA records (e.g., utilize a permission module and/or employ a system design which is transaction-driven, whereby employees are unable to initiate transactions). If such a design is used, the EIEP then needs only minimal additional monitoring and anomaly detection (detect and monitor employees' attempts to gain access to SSA-provided data to which they are not authorized and attempts to obtain information from SSA for clients not in the EIEP's client system). However, measures must exist to prevent circumvention of the permission module (e.g., creation of a bogus case and subsequently deleting it in such a way that it goes undetected).

If the EIEP's design does not ***currently*** utilize a permission module ***and*** is not transaction-driven, until at least one of these security features is implemented, the EIEP must develop and implement compensating security controls to deter their employees from browsing SSA records. These controls must include monitoring and anomaly detection features, either systematic, manual, or a combination thereof. Such features must include the capability to detect anomalies in the volume and/or type of transactions or queries requested or initiated by individuals and include systematic or manual procedures for verifying that requests for and queries of SSA-provided information are in compliance with valid official business purposes. The system must also produce reports providing management and/or supervisors with the capability to appropriately monitor user activity, such as:

- User ID Exception Reports:

  This type of report captures information about users who enter incorrect user IDs when attempting to gain access to the system or to the transaction that initiates requests for information from SSA, including failed attempts to enter a password.

- Inquiry Match Exception Reports:

  This type of report captures information about users who may be initiating transactions for SSNs that have no client case association within the EIEP's system **(100 percent of these cases must be reviewed by the EIEP's management).**

- System Error Exception Reports:

  This type of report captures information about users who may not understand or be following proper procedures for access to SSA-provided information.

- Inquiry Activity Statistical Reports:

  This type of report captures information about transaction usage patterns among authorized users and is a tool which would enable the EIEP's management to monitor typical usage patterns in contrast to extraordinary usage.

The EIEP must have a process for distributing these monitoring and exception reports to appropriate local managers/supervisors or to local security officers to ensure that the reports are used by those whose responsibilities include monitoring anomalous activity of users including those who have been granted exceptional system rights and privileges.

5.7 Management Oversight and Quality Assurance Ω

The EIEP must establish and/or maintain ongoing management oversight and quality assurance capabilities to ensure that only authorized employees have access to SSA-provided information and to ensure that there is ongoing compliance with the terms of the EIEP's

electronic information sharing agreement with SSA and the SSRs established by SSA for access to and use of SSA-provided data by EIEPs. The management oversight function must consist of one or more of the EIEP's management officials whose job functions include responsibility for assuring that access to and use of SSA-provided information is appropriate for each employee position type for which access is granted.

The EIEP must assure that employees granted access to SSA-provided information receive adequate training on the sensitivity of the information, associated safeguards, procedures that must be followed and the penalties for misuse.

Although not required, it is recommended that EIEPs establish the following functions and require that they be performed by employees whose job functions are separate from those who request or use information from SSA:

- Performing periodic self-reviews to monitor the EIEP's ongoing usage of SSA-provided information.
- Random sampling of work activity involving SSA-provided information to determine whether the access and usage comply with SSA's requirements.

5.8 Data and Communications Security

EIEPs must encrypt all PII and SSA-provided information when it is transmitted across dedicated communications circuits between its systems, included in intrastate communications among its local office locations, and resident on the EIEP's mobile computers/devices and removable media, etc. The encryption method employed must meet acceptable standards as designated by the National Institute of Standards and Technology (NIST). The recommended encryption method for securing SSA-provided data during transport is the Advanced Encryption Standard (AES) or triple DES (Data Encryption Standard 3) if AES is unavailable. Files encrypted for external users (when using tools such as Microsoft WORD encryption, etc.) require a key length of 9 characters. Although not required, it is recommended that the key (also referred to as a *password*) contain both a number and a special character. However, it is required that the key be delivered in a manner wherein the key does not accompany the media. Also, the key must be secured when unattended or not in use.

It is recommended that the public Internet not be used for transmission of SSA-provided information. If it is, however, Internet and all other electronic communications (e.g., emails and FAXes) containing SSA-provided information must, at minimum, utilize Secure Socket Layer (SSL) and 256-bit encryption protocols or more secure methods such as Virtual Private Network technology. Additionally, the data must be transmitted only to a secure address or device.

EIEPs may retain SSA-provided data for only the business purpose(s) and period of time stipulated in the EIEP's Information Exchange Agreement with SSA. SSA-provided information is to be deleted, purged, destroyed, or returned to SSA when the purpose for which the information was obtained has been completed.

The EIEP may not save or create separate files comprised solely of information provided by SSA. The EIEP may, however, apply specific SSA-provided data to the EIEP's matched record (i.e., specified data obtained from SSA which matches that in the EIEP's preexisting record).

Duplication and redisclosure of SSA-provided information within or outside the EIEP without the written approval of SSA is prohibited.

EIEPs must prevent unauthorized disclosure of SSA-provided data after processing has been completed and also after the data is no longer required by the EIEP. The EIEP's operational processes must ensure that no residual SSA-provided data remains on the hard drives of users' workstations after the user has exited the application(s) in which SSA-provided data was utilized. In cases where a PC, hard drive, or other computing or storage device on which SSA-provided information resided will be sent offsite from the EIEP for repair and its information must be retrievable, the EIEP's repair contract must include a requirement for non-disclosure of SSA-provided data by the servicing vendor. SSA-provided information must be completely removed from, rendered unrecoverable, or destroyed on any electronic device or media (e.g., hard drives, removable storage devices, etc.) prior to the device or media being serviced by an external vendor (when the data need not be recovered), excessed, sold, or placed in the custody of another organization.

To sanitize media, one of the following methods must be used:

- **Overwriting**

  Overwrite utilities can only be used on working devices. The media to be overwritten must be designed for multiple reads and writes. This includes disk drives, magnetic tapes, floppies, USB flash drives, etc. The overwrite utility must completely overwrite the media by the ***purging*** type of media sanitization to make the data irretrievable by a laboratory attack or laboratory forensic procedures (refer to ***Definitions*** for more information regarding ***Media Sanitization***). Reformatting the media does not overwrite the data.

- **Degaussing**

  Degaussing is a sanitization method for magnetic media (e.g., disk drives, tapes, floppies, etc.). Degaussing is not effective for purging non-magnetic media (e.g., optical discs). Degaussing must be performed with a certified tool designed for the media being degaussed. Certification of the tool is required to ensure that the magnetic flux applied to the media is strong enough to render the information irretrievable. The degaussing process must render data on the media irretrievable by a laboratory attack or laboratory forensic procedures (refer to ***Definitions*** for more information regarding ***Media Sanitization***).

- **Physical destruction**

  Physical destruction is the method which must be used when degaussing or over-writing cannot be accomplished (for example, CDs, floppies, DVDs, damaged tapes, hard drives, damaged USB flash drives, etc.). Examples of physical destruction include shredding, pulverizing, and burning.

State agencies may retain SSA-provided data in hardcopy if it is required to fulfill evidentiary requirements, provided the agencies retire such data in accordance with applicable state laws governing state agencies' retention of records. The EIEP must ensure that print media containing SSA-provided data is controlled to restrict its access to only authorized employees who need such access to perform their official duties and must have in place secure processes by which print media containing SSA-provided data is destroyed when it is no longer required. Paper documents containing SSA-provided data must be destroyed by burning, pulping, shredding, macerating, or other similar means that ensures that the information cannot be recovered.

NOTE: Hand tearing or lining through documents to obscure information does not meet SSA's requirements for appropriate destruction of PII).

The EIEP must employ measures to ensure that communications and data furnished to SSA contain no viruses or other malware.

5.9 Incident Reporting Ω

The EIEP must develop and implement policies and procedures for responding to the breach or loss of PII and explain how they conform to SSA's requirements. The procedures must include the following information:

If the EIEP experiences or suspects a breach or loss of PII or a security incident which includes SSA-provided data, they must notify the United States Computer Emergency Readiness Team (US-CERT) ***within one hour*** *of discovering the incident. The EIEP must also notify the SSA Systems Security contact named in the agreement. If within 1 hour the EIEP has been unable to make contact with that person, the EIEP must call SSA's National Network Service Center (NNSC) toll free at 877-697-4889 (select "Security and PII Reporting" from the options list). The EIEP will provide updates as they become available to SSA contact, as appropriate. Refer to the worksheet,* ***Attachment 5,*** *provided in the agreement to facilitate gathering and organizing information about an incident.*

The EIEP must agree that if SSA determines that the risk presented by the breach or security incident requires the notification of the individuals whose information is involved and/or remedial action, the EIEP will perform those actions without cost to SSA.

5.10 Security Awareness and Employee Sanctions Ω

The EIEP must establish and/or maintain an ongoing function that is responsible for providing security awareness training for employees granted access to SSA-provided information. Training must include discussion of:

- The sensitivity of SSA-provided information and address the Privacy Act and other Federal and state laws governing its use and misuse
- Rules of behavior concerning use of and security in systems processing SSA-provided data
- Restrictions on viewing and/or copying SSA-provided information
- The employees' responsibility for proper use and protection of SSA-provided information including its proper disposal
- Security incident reporting procedures
- The possible sanctions and penalties for misuse of SSA-provided information.

The EIEP must provide security awareness training periodically or. as needed, and have in place administrative procedures for sanctioning employees who violate laws governing the use and misuse of SSA-provided data through unauthorized or unlawful use or disclosure of SSA-provided information.

5.11 Contractors of Electronic Information Exchange Partners Ω

As previously stated, in ***The General Systems Security Standards***, contractors of the EIEP are held to the same security requirements as are employees of the EIEP. As such, the EIEP is responsible for oversight and compliance of their contractors with SSA's security requirements. The EIEP must be able to provide proof of the contractual agreement between itself and its contractors (e.g., copy of their contract, etc.) who are authorized by the EIEP to perform on its behalf and who have access to or are involved in the processing, handling, transmission, etc. of information provided to the EIEP by SSA. The EIEP must also explain the role of those contractors within the EIEP's operations.

The EIEP must also require that their contractors who will have access to or be involved in the processing, handling, transmission, etc. of information provided to the EIEP by SSA, sign an agreement with the EIEP that obligates the contractor to follow the terms of the EIEP's data exchange agreement with SSA. The EIEP must provide its contractors a copy of the data exchange agreement between the EIEP and SSA and related attachments before any disclosure by the EIEP of SSA-provided information to the EIEP's contractor/agent.

If the EIEP's contractor will be involved with the processing, handling, transmission, etc. of information provided to the EIEP by SSA offsite from the EIEP, the EIEP must have the contractual option to perform onsite reviews of that offsite facility to ensure that the following meet SSA's requirements:

- safeguards for sensitive information
- computer system safeguards
- security controls and measures to prevent, detect, and resolve unauthorized access to, use of, and redisclosure of SSA-provided information

6. General -- Security Certification and Compliance Review Programs Ω

SSA's security certification and compliance review programs are two distinct programs with the same objective. The certification program is a one-time process associated exclusively with an EIEP's initial request for electronic access to SSA-provided information or an initial change to online access. The certification process entails two rigorous stages intended to ensure that technical, management, and operational security measures implemented by EIEPs fully conform to SSA's security requirements and are working as intended. EIEPs must satisfy both stages of the certification process before SSA will permit online access to its data in a production environment.

The compliance review program, however, is intended to ensure that the suite of security measures implemented by an EIEP to safeguard SSA-provided data remains in full compliance with SSA's security standards and requirements. The compliance review program is applicable to online access to SSA-provided data as well as batch processes. Under the compliance review program, EIEPs are subject to ongoing periodic security reviews by SSA that are regularly scheduled or ad hoc.

6.1 The Security Certification Program Ω

The security certification process applies to EIEPs that seek online electronic access to SSA information and consists of two general phases:

- Phase One: The Security Design Plan (SDP) phase wherein a formal written plan is authored by the EIEP to comprehensively document its technical and non-technical

security controls to safeguard SSA-provided information (refer to ***Documenting Security Controls in the Security Design Plan***).

NOTE: **SSA may have legacy EIEPs (EIEPs not certified under the current process) who have not prepared an SDP. OIS strongly recommends that these EIEPs prepare an SDP.**

The EIEPs' preparation and maintenance of a current SDP will aid them in determining potential compliance issues prior to reviews, assuring continued compliance with SSA's security requirements, and providing for more efficient security reviews.

- Phase 2: SSA Onsite Certification phase wherein a formal onsite review is conducted by SSA to examine the full suite of technical and non-technical security controls implemented by the EIEP to safeguard data obtained from SSA electronically (refer to ***The Certification Process***).

6.2 Documenting Security Controls in the Security Design Plan (SDP) Ω

6.2.1 When the SDP and RA are Required Ω

EIEPs must submit to SSA an SDP and a security risk assessment (RA) for evaluation when one or more of the following circumstances apply. The RA must be in an electronic format and include discussion of the measures planned or implemented to mitigate risks identified by the RA and (as applicable) risks associated with the circumstances below:

- to obtain approval for requested initial access to SSA-provided information for an initial agreement
- to obtain approval to reestablish previously terminated access to SSA-provided data
- when implementing a new operating or security platform in which SSA-provided data will be involved
- significant changes to the EIEP's organizational structure, technical processes, operational environment, data recovery capabilities, or security implementations are planned or have been made since approval of their most recent SDP or of their most recent successfully completed security review
- one or more security breaches or incidents involving SSA-provided data have occurred since approval of the EIEP's most recent SDP or of their most recent successfully completed security review
- to document descriptions and explanations of measures implemented as the result of a data breach or security incident
- to document descriptions and explanations of measures implemented to resolve non-compliancy issue(s)
- when approval of the SDP has been revoked

The RA may also be required if changes (other than those listed above) that may impact the terms of the EIEP's data sharing agreement with SSA have occurred.

The SDP must be approved by SSA prior to the initiation of transactions and/or access to SSA-provided information by the EIEP.

An SDP must satisfactorily document the EIEP's compliance with all of SSA's SSRs in order to provide the minimum level of security acceptable to SSA for its EIEPs' access to SSA-provided information.

Deficiencies identified through the evaluation of the SDP must be corrected by the EIEP and a revised SDP which incorporates descriptions and explanations of the measures implemented to eliminate the deficiencies must be submitted. Until the deficiencies have been corrected and documented in its SDP, and the SDP is approved, the EIEP will not be granted access to SSA-provided information or certified for electronic receipt of the information. The progress of corrective implementation(s) must be communicated to SSA on a regular basis. If, within a reasonable time as determined by SSA, the EIEP is unable to rectify a deficiency determined by SSA to present an untenable risk to SSA-provided information or the agency, approval of the SDP will be withheld.

If, at any time subsequent to approval of its SDP the EIEP is found to be in non-compliance with one or more SSRs, SSA may revoke approval of the EIEP's access to SSA-provided data. A revised SDP which incorporates descriptions and explanations of the measures implemented to resolve the non-compliance issue(s) must be submitted. The progress of corrective implementation(s) must be communicated to SSA on a regular basis. Until resolution of the issue(s) has been accomplished and documented in its SDP, and the SDP is approved, the EIEP will be in non-compliance with SSA's SSRs. If, within a reasonable time as determined by SSA, the EIEP is unable to rectify a deficiency determined by SSA to present an untenable risk to SSA-provided information or to SSA, approval of the SDP will be withheld and the flow of SSA-provided information to the EIEP may be discontinued.

NOTE: **EIEPs that function only as an STC, transferring SSA-provided data to other EIEPs must, per the terms of their agreements with SSA, adhere to SSA's System Security Requirements (SSR) and exercise their responsibilities regarding protection of SSA-provided information.**

6.3 The Certification Process Ω

Once the EIEP has successfully satisfied Phase 1, SSA will conduct an onsite certification review. The objective of the onsite review will be to ensure by SSA's examination and the EIEP's demonstration that the non-technical and technical controls implemented by the EIEP to safeguard Social Security-provided data from misuse and improper disclosure are fully functioning and working as intended.

At its discretion, SSA may request that the EIEP participate in an onsite review and compliance certification of their security infrastructure and implementation of SSA's security requirements.

The onsite review may address any or all of SSA's security requirements and include, where appropriate:

- a demonstration of the EIEP's implementation of each requirement
- random sampling of audit records and transactions submitted to SSA

- a walkthrough of the EIEP's data center to observe and document physical security safeguards
- a demonstration of the EIEP's implementation of electronic exchange of data with SSA
- discussions with managers/supervisors
- examination of management control procedures and reports (e.g., anomaly detection reports, etc.)
- demonstration of technical tools pertaining to user access control and, if appropriate, browsing prevention, specifically:
    - If the design is based on a permission module or similar design, or is transaction driven, the EIEP will demonstrate how the system triggers requests for information from SSA.
    - If the design is based on a permission module, the EIEP will demonstrate the process by which requests for SSA-provided information are prevented for SSNs not present in the EIEP's system (e.g.; by attempting to obtain information from SSA using at least one, randomly created, fictitious number not known to the EIEP's system).

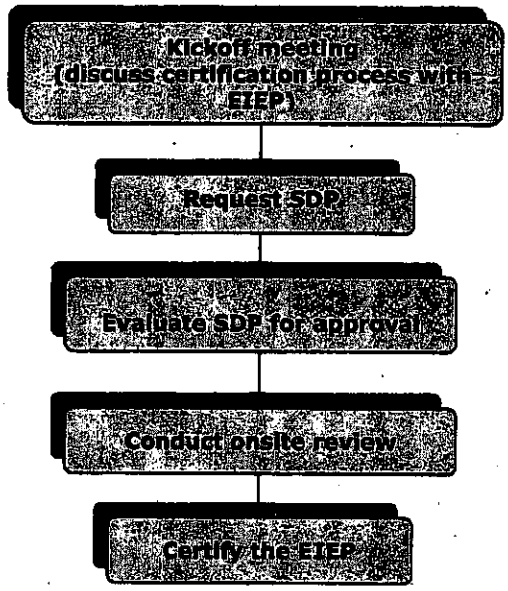
During the certification review, SSA, or a certifier acting on its behalf, may request a demonstration of the system's audit trail and retrieval capability. The certifier may request a demonstration of the system's capability for tracking the activity of employees that are permitted to view SSA-provided information within the EIEP's system. Additionally, the certifier may request those EIEPs whose transactions with SSA are mediated AND audited by an STC to demonstrate the process(es) by which the EIEP obtains audit information from the STC regarding the EIEP's SSA transactions.

EIEPs whose transactions with SSA are mediated AND audited by an STC will be required to demonstrate both their own in-house audit capabilities AND the process(es) by which the EIEP obtains audit information from the STC regarding the EIEP's transactions with SSA.

If the EIEP employs a contractor who will be involved with the processing, handling, transmission, etc. of the EIEP's SSA-provided information offsite from the EIEP, SSA, at its discretion, may include in the onsite certification review an onsite inspection of the contractor's facility. The inspection may occur with or without a representative of the EIEP.

Upon successful completion of the onsite certification exercise, SSA will authorize electronic access to production data by the EIEP. SSA will provide written notification of its certification to the EIEP as well as all appropriate internal components.

The following is a high-level flow chart of the OIS Certification Process: Ω

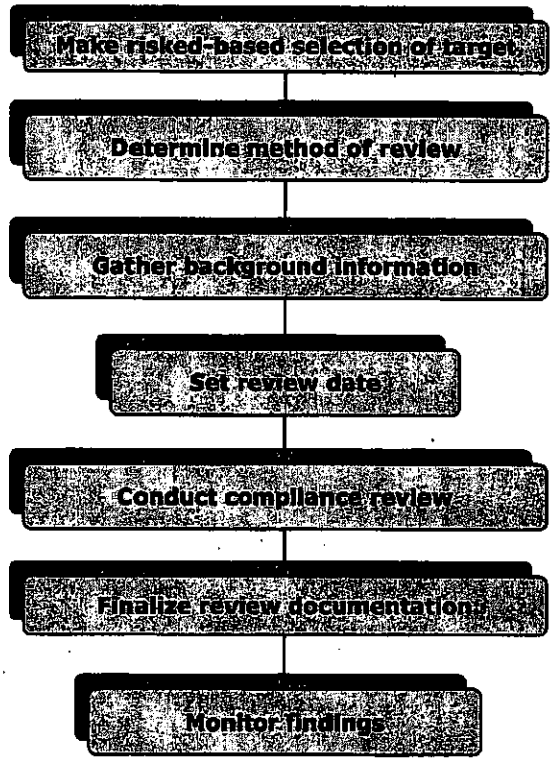


6.5 The Compliance Review Program and Process Ω

Similar to the certification process, the compliance review program entails a rigorous process intended to ensure that EIEPs currently receiving electronic information from SSA are in full compliance with the Agency's security requirements and standards. As a practice, SSA attempts to conduct compliance reviews following a 3 to 5 year periodic review schedule. However, as circumstances warrant, a review may take place at anytime. Three prominent examples that would trigger an ad hoc review are:

- a significant change in the outside EIEP's computing platform
- a violation of any of SSA's systems security requirements
- an unauthorized disclosure of SSA information by the EIEP

The following is a high-level flow chart of the OIS Compliance Review Process: Ω



SSA may, at its discretion, conduct compliance reviews onsite at the EIEPs' site, including a field office location, if appropriate.

SSA may, also at its discretion, request that the EIEP participate in an onsite compliance review of their security infrastructure and implementation of SSA's security requirements.

The onsite review may address any or all of SSA's security requirements and include, where appropriate:

- a demonstration of the EIEP's implementation of each requirement
- random sampling of audit records and transactions submitted to SSA
- a walkthrough of the EIEP's data center to observe and document physical security safeguards
- a demonstration of the EIEP's implementation of online exchange of data with SSA
- discussions with managers/supervisors
- examination of management control procedures and reports (e.g., anomaly detection reports, etc.)

- demonstration of technical tools pertaining to user access control and, if appropriate, browsing prevention, specifically:

    - If the design is based on a permission module or similar design, or is transaction driven, the EIEP will demonstrate how the system triggers requests for information from SSA.

    - If the design is based on a permission module, the EIEP will demonstrate the process by which requests for SSA-provided information are prevented for SSNs not present in the EIEP's system (e.g.; by attempting to obtain information from SSA using at least one, randomly created, fictitious number not known to the EIEP's system).

SSA may also, at its discretion, perform an ad hoc onsite or remote review for reasons including but not limited to the following:

- the EIEP has experienced a security breach or incident involving SSA-provided data
- the EIEP has unresolved non-compliancy issue(s)
- to review an EIEP's offsite (relative to the EIEP) contractor's facilities involving SSA-provided data
- the EIEP is a legacy organization that has not yet been through SSA's security certification and compliance review programs
- the EIEP has requested that an IV & V (Independent Verification and Validation review) be performed by SSA

During the compliance review, SSA, or a certifier acting on its behalf, may request a demonstration of the system's audit trail and retrieval capability. The certifier may request a demonstration of the system's capability for tracking the activity of employees that are permitted to view SSA-provided information within the EIEP's system. Additionally, the certifier may request those EIEPs whose transactions with SSA are mediated AND audited by an STC to demonstrate the process(es) by which the EIEP obtains audit information from the STC regarding the EIEP's SSA transactions.

EIEPs whose transactions with SSA are mediated AND audited by an STC may be required to demonstrate both their own in-house audit capabilities AND the process(es) by which the EIEP obtains audit information from the STC regarding the EIEP's transactions with SSA.

If the EIEP employs a contractor who will be involved with the processing, handling, transmission, etc. of the EIEP's SSA-provided information offsite from the EIEP, SSA, at its discretion, may include in the onsite compliance review an onsite inspection of the contractor's facility. The inspection may occur with or without a representative of the EIEP. However, manpower limitations or fiscal constraints could drive an alternative approach, such as teleconferencing. In any event, the format of the review in routine circumstances (i.e., the compliance review is not being conducted to address a special circumstance, such as a disclosure violation, etc.) will generally consist of reviewing and updating the EIEP's compliance with the systems security requirements described above in this document. At the conclusion of the review, SSA will issue a formal report to appropriate EIEP personnel. Findings and recommendations from SSA's compliance review, if any, will be discussed in its report and monitored for closure.

NOTE: Documentation provided SSA by the EIEP for compliance reviews is considered sensitive and is, therefore, handled accordingly by SSA. E.g., the information is accessible to only authorized individuals who have a need for the information as it relates to compliance of the EIEP with its electronic information sharing agreement with SSA and SSA's associated system security requirements and procedures. Additionally, the EIEP's documentation is retained for only as long as required and is deleted, purged, or destroyed when the requirement for which the information was obtained has expired.

The following is a high-level example of the analysis that aids in making preliminary decisions as to which review format may be most appropriate. Various additional factors may also be factored in determining whether SSA performs an onsite or remote compliance review.

- High/Medium Risk Criteria
  - undocumented closing of prior review finding(s)
  - implementation of technical/operational controls that impact security of SSA provided data (e.g., implementation of new data access method, etc.)
  - reported PII breach

- Low Risk Criteria
  - no prior review finding(s) or prior finding(s) documented as closed
  - no implementation of technical/operational controls that impact security of SSA provided data (e.g., implementation of new data access method, etc.)
  - no reported PII breach

6.5.1 EIEP Compliance Review Participation Ω

During the compliance review SSA may request to meet with the following:

- a sample of managers and/or supervisors responsible for enforcing and monitoring ongoing compliance to security requirements and procedures to assess their level of training to monitor their employee's use of SSA-provided information, and for reviewing reports and taking necessary action
- the individuals responsible for security awareness and employee sanction functions and request an explanation of how these responsibilities are performed
- a sample of the EIEP's employees to assess their level of training and understanding of the requirements and potential sanctions applicable to the use and misuse of SSA-provided information
- the individual(s) responsible for management oversight and quality assurance functions and request a description of how these responsibilities will be carried out
- additional individuals as deemed appropriate by SSA

6.5.2 Verification of Audit Samples Ω

Prior to or during the compliance review, SSA will present to the EIEP a sampling of transactions previously submitted to SSA for verification. The EIEP is required to verify whether each transaction was, per the terms of their agreement with SSA, legitimately submitted by a user authorized to do so.

The EIEP must provide SSA a written attestation of the results of the EIEP's review of the transactions. The document must provide:

- confirmation for each sample transaction located in the EIEP's audit file(s) and determined to have been submitted by its employee(s) for legitimate and authorized business purposes
- an explanation for each sample transaction located in the EIEP's audit file(s) determined to have been unauthorized
- an explanation for each sample transaction not found in the EIEP's ATS

When the sample transactions are provided to the EIEP, detailed instructions will be included. Only an official responsible for the EIEP is to provide the attestation.

6.6 Scheduling the Onsite Review Ω

The SDP must be approved before its associated onsite review is scheduled. Notification of the approval of a plan will be sent via email. Although there is no prescribed time frame for arranging the subsequent onsite review (***certification review*** for an EIEP requesting initial access to SSA-provided information for an initial agreement or ***compliance review*** for other EIEPs), unless there are compelling circumstances precluding it, the onsite review will follow as soon as reasonably possible.

However, the scheduling of the onsite review may depend on additional factors including:

- the reason for submission of a plan
- the severity of security issues if any
- circumstances of the previous review if any
- SSA workload considerations

Although the scheduling of the review is contingent upon approval of the SDP, in extreme circumstances, SSA may, at its discretion, perform an onsite review prior to approval if determined necessary by SSA for completion of the evaluation of a plan.

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7. Additional Definitions Ω

Back Button:
Refers to a button on a web browser's toolbar, the *backspace button* on a computer keyboard, a programmed keyboard button or mouse button, etc., that returns a user to a previously visited web page or application screen.

Breach:
Refers to actual loss, loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for other than authorized purposes have access or potential access to PII or Covered Information, whether physical, electronic, or in spoken word or recording.

Browsing:
Requests for or queries of SSA-provided data for purposes not related to the performance of official job duties.

Choke Point:
The firewall between a local network and the Internet is considered a choke point in network security, because any attacker would have to come through that channel, which is typically protected and monitored.

Cloud Computing:
The term refers to Internet-based computing and is derived from the cloud drawing representing the Internet in computer network diagrams. Cloud computing providers deliver on-demand online computing resources (e.g., services, software applications, data storage, and information) accessible to their customers by means of a web service or browser.

Cloud Drive:
A cloud drive is a Web-based service that provides storage space on a remote server.

CloudAudit:
CloudAudit is a specification that provides cloud computing service providers a standard way to present and share detailed, automated statistics about performance and security.

Commingling:
The process by which an EIEP adjoins specific SSA-provided data to specific preexisting EIEP information according to a particular data-matching scheme.

Degaussing:
Degaussing is the method of using a degausser (i.e., a device that generates a magnetic field) in order to disrupt magentically recorded information. Degaussing can be effective for purging damaged media and media with exceptionally large storage capacities. Degaussing is not effective for purging non-magnetic media (e.g., optical discs).

Dial-up:
Sometimes used synonymously with *dial-in*, refers to digital data transmission over the wires of a local telephone network.

Function:
One or more persons or organizational components assigned to serve a particular purpose, or perform a particular role. Also, the purpose, activity, or role assigned to one or more persons or organizational components.

Hub:
As it relates to electronic data exchange with SSA, a hub is an organization which performs as an electronic information distribution and/or collection point (and may also be referred to as a State Transmission Component or STC).

ICON:
Interstate Connection Network (various entities use 'Connectivity' rather than 'Connection')

IV & V:
Independent Verification and Validation

Legacy System:
A term usually referring to a corporate or organizational computer system or network that utilizes outmoded programming languages, software, and/or hardware that typically no longer receive support from the original vendors or developers.

Manual Transaction:
An operation (also referred to as a 'user-initiated transaction') which is initiated at the volition of a user rather than system-generated within an automated process.

Example: A user enters a client's information including the client's SSN on an input screen and presses the 'ENTER' key to acknowledge that input of data has been completed. A new screen appears with multiple options which include 'VERIFY SSN' and 'CONTINUE'. The user has the option to verify the client's SSN or perform alternative actions.

Media Sanitization:

- Disposal: Refers to the discarding (e.g., recycling) of media that contains no sensitive or confidential data.

- Clearing: This type of media sanitization is considered to be adequate for protecting information from a robust keyboard attack. Clearing must prevent retrieval of information by data, disk, or file recovery utilities. Clearing must be resistant to keystroke recovery attempts executed from standard input devices and from data scavenging tools. For example, overwriting is an acceptable method for clearing media. Deleting items, however, is not sufficient for clearing.

  This process may include overwriting all addressable locations of the data, as well as its logical storage location (e.g., its file allocation table). The aim of the overwriting process is to replace or obfuscate existing information with random data. Most rewriteable media may be cleared by a single overwrite. This method of sanitization cannot be utilized on unwriteable or damaged media.

- Purging: This type of media sanitization is a process that protects information from a laboratory attack. The terms *clearing* and *purging* are sometimes considered synonymous. However, for some media, clearing is not sufficient for purging (i.e., protecting data from a laboratory attack). Although most rewriteable media may be cleared by a single overwrite, purging may require multiple rewrites using different characters for each write cycle.

  This is because a laboratory attack involves threats with the capability to employ non-standard assets (e.g., specialized hardware) to attempt data recovery on media outside of that media's normal operating environment.

  Degaussing is also an example of an acceptable method for purging magnetic media. If purging media is not a viable method for sanitization, the media should be destroyed.

- Destruction: Physical destruction of media is the most effective form of sanitization. Methods of destruction include burning, pulverizing, and shredding. Any residual medium should be able to withstand a laboratory attack.

Permission module:
A utility or subprogram within an application which automatically enforces the relationship of a request for or query of SSA-provided data to an authorized process or transaction legitimately initiated; e.g., verification of an SSN for issuance of a driver license which can be triggered only automatically from within a state's driver license application, requests for information from SSA by an EIEP's employee which cannot be initiated unless the EIEP's client system has a record containing the SSN of the individual for which information is sought, etc.

Screen Scraping:

Screen scraping is normally associated with the programmatic collection of visual data from a source. Originally, screen scraping referred to the practice of reading text data from a computer display terminal's screen. This was generally done by reading the terminal's memory through its auxiliary port, or by connecting the terminal output port of one computer system to an input port on another. The term screen scraping is also commonly used to refer to the bidirectional exchange of data.

A screen scraper might connect to a legacy system via Telnet, emulate the keystrokes needed to navigate the legacy user interface, process the resulting display output, extract the desired data, and pass it on to a modern system.

More modern screen scraping techniques include capturing the bitmap data from a screen and running it through an optical character reader engine, or in the case of graphical user interface applications, querying the graphical controls by programmatically obtaining references to their underlying programming objects.

Security Breach:

An act from outside an organization that bypasses or contravenes security policies, practices, or procedures.

Security Incident:

A fact or event which signifies the possibility that a breach of security may be taking place, or may have taken place. All threats are security incidents, but not all security incidents are threats.

Security Violation:

An act from within an organization that bypasses or contravenes security policies, practices, or procedures.

Sensitive data:

Information such as PII and information provided by SSA to an EIEP, the loss, misuse, or unauthorized access to or modification of which, could adversely affect the national interest or the conduct of Federal programs, or the privacy to which individuals are entitled under 5 U.S.C. Section 552a (the Privacy Act), but that has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept classified in the interest of national defense or foreign policy but is to be protected in accordance with the requirements of the Computer Security Act of 1987 (P.L.100-235).

SMDS (Switched Multimegabit Data Service (SMDS):
SMDS is a telecommunications service that provides connectionless, high- performance, packet-switched data transport. Although not a protocol, it supports standard protocols and communications interfaces using current technology.

SSA-provided data/information:
Synonymous with 'SSA-supplied data/information', defines information under the control of SSA provided to an external entity under the terms of an information exchange agreement with SSA. The following are examples of SSA-provided data/information information:

- SSA's response to a request from an EIEP for information from SSA (e.g., date of death)
- SSA's response to a query from an EIEP for verification of an SSN

SSA data/information:
This is term, sometimes used interchangeably with 'SSA-provided data/information', denotes information under the control of SSA provided to an external entity under the terms of an information exchange agreement with SSA. However, **'SSA data/information'** also includes information provided to the EIEP by a source other than SSA, but which is attested by the EIEP to have been verified by SSA, or is coupled with data from SSA as to the accuracy of the information. The following are examples of SSA information:

- SSA's response to a request from an EIEP for information from SSA (e.g., date of death)
- SSA's response to a query from an EIEP for verification of an SSN
- Display by the EIEP of SSA's response to a query for verification of an SSN ***and*** the associated SSN provided by SSA
- Display by the EIEP of SSA's response to a query for verification of an SSN ***and*** the associated SSN provided to the EIEP by a source other than SSA
- Electronic records that contain only SSA's response to a query for verification of an SSN ***and*** the associated SSN whether provided to the EIEP by SSA or a source other than SSA

SSN:
Social Security Number

STC:
A State Transmission Component is an organization which performs as an electronic information distribution and/or collection point for one or more other entities (and may also be referred to as a hub).

System-generated transaction:
A transaction automatically triggered by an automated system process.

Example: A user enters a client's information including the client's SSN on an input screen and presses the 'ENTER' key to acknowledge that input of data has been completed. An automated process then matches the SSN against the user's organization's database and when no match is found, automatically sends an electronic request for verification of the SSN to SSA.

Systems process:
Refers to a software program module that runs in the background within an automated batch, online, or other process.

Third Party:
This term pertains to an entity (person or organization) provided access to SSA-provided information by an EIEP or other SSA business partner for which one or more of the following apply:

- is not stipulated access to SSA-provided data by an information-sharing agreement between an EIEP and SSA
- has no information-sharing agreement with SSA
- is not directly authorized by SSA for access to SSA-provided data

Transaction-driven:
This term pertains to an automatically initiated online query of or request for SSA information by an automated transaction process (e.g., driver license issuance, etc.). The query or request will only occur if prescribed conditions are met within the automated process.

Uncontrolled transaction:
This term pertains to a transaction that is not controlled by a permission module (i.e., not subject to a systematically enforced relationship to an authorized process or application or an existing client record).

8. Regulatory References Ω

Federal Information Processing Standards (FIPS) Publications

Federal Information Security Management Act of 2002 (FISMA)

Homeland Security Presidential Directive (HSPD-12)

National Institute of Standards and Technology (NIST) Special Publications

Office of Management and Budget (OMB) Circular A-123, *Management's Responsibility for Internal Control*

Office of Management and Budget (OMB) Circular A-130, Appendix III, *Management of Federal Information Resources*

Office of Management and Budget (OMB) Memo M-06-16, *Protection of Sensitive Agency Information, June 23, 2006*

Office of Management and Budget (OMB) Memo M-07-16, *Memorandum for the Heads of Executive Departments and Agencies, May 22, 2007*

Office of Management and Budget (OMB) Memo M-07-17, *Safeguarding Against and Responding to the Breach of Personally Identifiable Information, May 22, 2007*

Privacy Act of 1974

9. Frequently Asked Questions Ω

(Click links for answers or additional information)

1. Q: What is a breach of data?
   A: Refer also to Security Breach, Security Incident, and Security Violation.

2. Q: What is employee browsing?
   A: Click hyperlink

3. Q: Okay, so the SDP was submitted. Can the Onsite Review be scheduled now?
   A: Refer to Scheduling the Onsite Review.

4. Q: What is a 'Permission Module'?
   A: Click hyperlink

5. Q: What is meant by Screen Scraping?
   A: Click hyperlink

6. Q: When does an SDP have to be submitted?
   A: Refer to When the SDP and RA are Required.

7. Q: Does an SDP have to be submitted when the agreement is renewed?
   A: The SDP does not have to be submitted ***because*** the agreement between the EIEP and SSA was renewed. There are, however, circumstances that require an SDP to be submitted. Refer to When the SDP and RA are Required.

8. Q: Is it acceptable to save SSA data with a verified indicator on a (EIEP) workstation as long as the hard drive is encrypted? If not, what options does the agency have?
   A: There is no problem with an EIEP saving SSA-provided information to the encrypted hard drives of computers processing the data provided the information is retained only as provided for in the EIEP's data-sharing agreement with SSA. Refer to Data and Communications Security.

9. Q: Is caching of SSA-provided data on EIEP workstations allowed?
   A: Caching during processing is not a problem. However, SSA-provided data must be cleared from the cache when the user exits the application in which the data was used or accessed. Refer to Data and Communications Security.

10. Q: What is meant by "interconnections to other systems"?
    A: As used in SSA's system security requirements document, the term "interconnections" is synonymous with "connections".

11. Q: Is it acceptable to submit the SDP as a PDF file?
    A: No, it is not.

12. Q: Should the SDP be written from the standpoint of my agency's SVES access itself, or from the standpoint of access to all data provided to us by SSA?
    A: The SDP is to encompass your agency's electronic access to SSA-provided data as per the electronic data sharing agreement between your agency and SSA. Refer to Developing the SDP.

15. Q: Does having a "transaction-driven" system mean that employees cannot initiate a query to SSA and that a permission module is not needed?
    A: Not necessarily. "Transaction driven" basically means that queries, etc. are submitted automatically (and it might depend on the transaction). Depending on the system

implementation, queries might not be automatic or, if they are, manual transactions might still be permitted (for example, when something needs to be corrected). Also, even if a "transaction-driven" system is implemented in such a way that manual transactions cannot be performed, if the system does ***not*** require the user to be in a particular application and/or the query to be for an existing record in the EIEP's system ***before*** the system will allow a query to go through to SSA, it would still need a permission module.

16. Q: What is an Onsite Compliance Review?
A: The Onsite Compliance Review is the process wherein SSA performs periodic site visits to its Electronic Information Exchange Partners (EIEP) to certify whether the EIEP's technical, managerial, and operational security measures for protecting data obtained electronically from SSA continue to conform to the terms of the EIEPs' data sharing agreements with SSA and SSA's associated system security requirements and procedures. Refer to the Compliance Review Program and Process.

17. Q: What are the criteria for performing an Onsite Compliance Review?
A: The following are criteria for performing the Onsite Compliance Review:

- EIEP initiating new access or new access method for obtaining information from SSA
- EIEP's cyclical review (previous review was performed remotely)
- EIEP has made significant change(s) in its operating or security platform involving SSA-provided data
- EIEP experienced a breach of SSA-provided personally identifying information (PII)
- EIEP has been determined to be high-risk

Refer also to the Review Determination Matrix.

18. Q: What is a Remote Compliance Review?
A: The Remote Compliance Review is the process wherein SSA conducts periodic meetings remotely (e.g., via conference calls) with its EIEPs to determine whether the EIEP's technical, managerial, and operational security measures for protecting data obtained electronically from SSA continue to conform to the terms of the EIEPs' data sharing agreements with SSA and SSA's associated system security requirements and procedures. Refer to the Compliance Review Program and Process.

19. Q: What are the criteria for performing a Remote Compliance Review?
A: Each of the following criteria must be satisfied for performing the Remote Compliance Review:

- EIEP's cyclical review (previous review was performed onsite without findings or issues for which findings were cited have been satisfactorily resolved).
- EIEP has made no significant change(s) in its operating or security platform involving SSA-provided data.
- EIEP has not experienced a breach of SSA-provided personally identifying information (PII) since its previous compliance review.
- EIEP has been determined to be low-risk

Refer also to the Review Determination Matrix

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ATTACHMENT 5

WORKSHEET FOR REPORTING LOSS OR POTENTIAL LOSS OF PERSONALLY IDENTIFABLE INFORMATION

ATTACHMENT 5 **09/27/06**

Worksheet for Reporting Loss or Potential Loss of Personally Identifiable Information

1. Information about the individual making the report to the NCSC:

Name:					
Position:					
Deputy Commissioner Level Organization:					
Phone Numbers:					
Work:		Cell:		Home/Other:	
E-mail Address:					
Check one of the following:					
Management Official		Security Officer		Non-Management	

2. Information about the data that was lost/stolen:

Describe what was lost or stolen (e.g., case file, MBR data):

Which element(s) of PII did the data contain?

Name		Bank Account Info	
SSN		Medical/Health Information	
Date of Birth		Benefit Payment Info	
Place of Birth		Mother's Maiden Name	
Address		Other (describe):	

Estimated volume of records involved:

3. How was the data physically stored, packaged and/or contained?

Paper or Electronic? (circle one):

If Electronic, what type of device?

Laptop		Tablet		Backup Tape		Blackberry	
Workstation		Server		CD/DVD		Blackberry Phone #	
Hard Drive		Floppy Disk		USB Drive			
Other (describe):							

Additional Questions if Electronic:

	Yes	No	Not Sure
a. Was the device encrypted?			
b. Was the device password protected?			
c. If a laptop or tablet, was a VPN SmartCard lost?			
Cardholder's Name:			
Cardholder's SSA logon PIN:			
Hardware Make/Model:			
Hardware Serial Number:			

Additional Questions if Paper:

	Yes	No	Not Sure
a. Was the information in a locked briefcase?			
b. Was the information in a locked cabinet or drawer?			
c. Was the information in a locked vehicle trunk?			
d. Was the information redacted?			
e. Other circumstances:			

4. **If the employee/contractor who was in possession of the data or to whom the data was assigned is not the person making the report to the NCSC (as listed in #1), information about this employee/contractor:**

Name:					
Position:					
Deputy Commissioner Level Organization:					
Phone Numbers:					
Work:		Cell:		Home/Other:	
E-mail Address:					

5. **Circumstances of the loss:**
   a. When was it lost/stolen?

   b. Brief description of how the loss/theft occurred:

   c. When was it reported to SSA management official (date and time)?

6. **Have any other SSA components been contacted? If so, who? (Include deputy commissioner level, agency level, regional/associate level component names)**

7. Which reports have been filled? (include FPS, local police, and SSA reports)

Report Filed	Yes	No	Report Number
Federal Protective Service			
Local Police			

	Yes	No
SSA-3114 (Incident Alert)		
SSA-342 (Report of Survey)		
Other (describe)		

8. Other pertinent information (include actions under way, as well as any contacts with other agencies, law enforcement or the press):

CCC-307

CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

Contractor/Bidder Firm Name (Printed)	*Federal ID Number*
By (Authorized Signature)	
Printed Name and Title of Person Signing	
Date Executed	*Executed in the County of*

CONTRACTOR CERTIFICATION CLAUSES

1. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

1) the dangers of drug abuse in the workplace;
2) the person's or organization's policy of maintaining a drug-free workplace;
3) any available counseling, rehabilitation and employee assistance programs; and,
4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

1) receive a copy of the company's drug-free workplace policy statement; and,
2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the

certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES $50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lessor of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.

b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations,

or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

7. DOMESTIC PARTNERS: For contracts over $100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: 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. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

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AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
9

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

FROM: HEALTH & HUMAN SERVICES – ESAAA

FOR THE BOARD MEETING OF: April 16, 2013

SUBJECT: Approval of Amendment #1 to the Contract with County of Mono for ESAAA Services to Seniors

DEPARTMENTAL RECOMMENDATION:
Request your Board approve Amendment #1 to 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 additional amount of $1,205 for a total amount not to exceed $289,906 for the period of October 1, 2012 through June 30, 2016, contingent upon the Board's adoption of future budgets; and authorize the Chairperson to sign.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:
This amendment is coming before you in order to recognize the One Time Only (OTO) funding that should be distributed to Mono County. Each year the California Department of Aging (CDA) reviews the closeouts from each Planning and Service Area (PSA) and determines if there are any unspent Federal funds. CDA then re-distributes the funds to each PSA. Your Board approved the acceptance of this OTO funding at the January 15, 2013 meeting. This amendment allows ESAAA to distribute to Mono County their share of the OTO funds, based on the percentages that were approved by the Governing Board for the four year plan that is currently in place.

The exact funding amounts per year for Mono services are as follows:

Fiscal Year

2012/13 (10/1-06/30) = $58,388 + $1,205 of OTO funds = $59,593
2013/14 = $76,771
2014/15 = $76,771
2015/16 = $76,771

Contingent upon State allocations in future years and any OTO funds that could become available, the above amounts could be lower or higher.

ALTERNATIVES:
Board could choose not to approve this request, resulting in not being able to fund Mono County fully based on the percentages that were approved by the Governing Board.

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: yes Date: 2/27/2013
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: 2/28/13
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: V Date: 3/5/13
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) Jean Turner for Date: 4-2-13

AMENDMENT NUMBER 1 TO
AGREEMENT BETWEEN THE COUNTY OF INYO AND
County of Mono
FOR THE PROVISION OF INDEPENDENT CONTRACTOR SERVICES

WHEREAS, the County of Inyo (hereinafter referred to as "County") and Mono County Social Services, of County of Mono (hereinafter referred to as "Contractor"), have entered into an Agreement for the Provision of Independent Contractor Services dated September 4, 2012, on County of Inyo Standard Contract No. 116, for the term from October 1, 2012 to June 30, 2016.

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:

The first sentence of Paragraph 3.D. Limit Upon Amount Payable Under this Agreement, of the Agreement is amended to read as follows:

The total sum of all payments made by the County to Contractor for services and work performed under this Agreement shall not exceed $289,906 (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.

In Attachment B, Agreement Between County of Inyo and County of Mono under the Schedule of Fees, second paragraph, fifth sentence, the Schedule of fees is amended to read as follows:

The total contract amount for October 1, 2012 through June 30, 2013 is $59,593 (remaining 3 quarters of the year).

The effective date of this Amendment to the Agreement is October 1, 2012.

All the other terms and conditions of the Agreement are unchanged and remain the same.

AMENDMENT NUMBER 1 TO
AGREEMENT BETWEEN THE COUNTY OF INYO AND
County of Mono
FOR THE PROVISION OF INDEPENDENT CONTRACTOR SERVICES

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

COUNTY OF INYO

By: _____

Dated: _____

CONTRACTOR

By: Lynda Salcido
Signature

Lynda Salcido
Type or Print

Dated: 2-12-13

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 RISK ASSESSMENT:

_____
County Risk Manager

Inyo - Mono - Contract Split
Budget Display
Fiscal Year 2012/13

County of Inyo

	Baseline	Actual Amounts Expended 3 Month Mono County 1/4 of funds	9 Month Mono County	
Supportive Services				
Federal Title IIIB	107,406	4,948	12,527	
Lifeline	1,912			
Legal	19,632			
I&A	16,414			
Transportation (86/14)	12,000	2,500	1,070	*
Assisted Transportation (75/25)	52,078	2,448	11,457	*
In Home	5,370			
Total Supportive Services	107,406	4,948	12,527	
Ombudsman				
Federal Title IIIB	15,260			
Federal Title VIIa	19,513			
Special Deposit (SDF)	1,241			
SNF Quality & Accountability	16,997			
Total Ombudsman	53,011	-	-	
Congregate Nutrition (85/15)				
Federal Title IIIC1	141,451	9,725	16,067	*
General Fund C1	58,448	4,018	6,575	
NSIP C1	15,976	1,098	2,042	
Total Congregate Nutrition	215,875	14,841	24,684	
Home-Delivered Meals (90/10)				
Federal Title IIIC2	70,479	4,845	5,348	*
General Fund C2	190,286	13,082	14,271	
NSIP C2	32,415	2,229	2,763	
Total Home Delivered Meals	293,180	20,156	22,382	
Disease Prevention				
Federal Title IIID	2,582	-	0	
Total Disease Prevention	2,582	-	-	
Family Caregiver				
Federal Title IIIE	17,007	-	0	
Total Title IIIE	17,007	-	-	
Elder Abuse				
Federal Title VIIb	637			
Total Elder Abuse	637	-	-	
Administration				
Federal Title IIIB	19,197			
Federal Title IIIC1	22,636			
Federal Title IIIC2	11,278			
Federal Title IIIE	7,932			
General Fund C1	108			
General Fund C2	29			
Total Administration	61,180	-	-	
Grand Total - All Funds	750,879	39,945	59,593	

* Transportation is calculated at 86% Inyo/14% Mono; Assisted Transportation is calculated at 75% Inyo/25% Mono; Congregate Nutrition is calculated at 85% Inyo/15% Mono; Home Delivered is calculated at 90% Inyo/10% Mono

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 (10th) 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 (10th) 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.

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
10

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

FROM: Planning Department- LAFCO

FOR THE BOARD MEETING OF: April 16, 2013

SUBJECTS: Amendment No. One to contract between the County of Inyo and Inyo Local Agency Formation Commission (LAFCO) for the provision of services for FY 2013-2013.

DEPARTMENTAL RECOMMENDATION: Request that the Board ratify Contract Amendment No. One to the contract between the County of Inyo and Inyo LAFCO to increase the contract limit by $1,500 to a total of $10,242, contingent on obtaining the appropriate signatures.

SUMMARY DISCUSSION: On August 7, 2012, the Board entered into contract with Inyo LAFCO for the provision of staff services. The original contract had a Not-To-Exceed amount of $8,742. Staff is requesting increasing the contract limit by $1,500 to a total of $10,242. Inyo LAFCO approved the contract amendment at their April 1, 2013 meeting with a vote of 3-0.

The increase to the contract is necessary for a second staff member to attend the Staff Workshop in April. LAFCO budgeted $1,056 in the Professional & Special Services (5265) object code for one staff member to attend the Staff Workshop and it is estimated that the costs for two staff members to attend the workshop will be approximately $2,500.

The $1,500 is already allocated for in the 5265 object code due to the annual audit costing $1,500 less than budgeted.

ALTERNATIVES: The Board could choose not to approve and ratify the proposed amendment. This is not recommended, as it would be beneficial for two staff members to attend the Staff Workshop and there are sufficient funds in the Professional & Special Services object code to cover the cost.

OTHER AGENCY INVOLVEMENT: Inyo LAFCO

FINANCING: Inyo LAFCO is funded by the County of Inyo and City of Bishop with equal contributions as specified in the yearly budget. In FY 2012-2013 each entity contributed $10,000. Staff services are paid out of the Professional & Special Services object code (5265). The annual audit is also paid out of this object code. The annual audit ended up costing $1,500 less than budgeted. This savings will be utilized for a second staff member to attend the Staff Workshop. There will be no additional net cost to the Inyo LAFCO 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: yes Date 4/5/13

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 4/9/13
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) Joshua Hart by NB Date: 4-9-13

Attachments:

1.) Proposed Contract Amendment with Inyo LAFCO, with copy of current Contract with Inyo LAFCO.

AMENDMENT NO. ONE TO THE AGREEMENT BETWEEN THE COUNTY OF INYO AND INYO LAFCO FOR THE PROVISION OF SERVICES

WHEREAS, the County of Inyo (hereinafter referred to as "County") and Inyo Local Agency Formation Commission (hereinafter referred to as "Inyo LAFCO") have entered into an Agreement for the provision of services dated August 7, 2012 on County of Inyo Standard Contract No. 150 for the term commencing July 1, 2012 and terminating June 30, 2013.

WHEREAS, County and Inyo LAFCO do desire to consent to 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 Inyo LAFCO hereby amend such Agreement, Amendment One, as follows:

Amend Section 3C (Limit Upon Amount Payable Under Agreement) to increase the total sum of the estimated cost of services and work to be performed under the Agreement to $10,242.

AMENDMENT NO. ONE TO THE AGREEMENT BETWEEN THE COUNTY OF INYO AND INYO LAFCO FOR THE PROVISION OF SERVICES

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

COUNTY **APPLICANT**

By:_____ By: _____

Dated:_____ 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

AGREEMENT BETWEEN THE COUNTY OF INYO AND THE INYO LOCAL AGENCY FORMATION COMMISSION FOR THE PROVISION OF SERVICES

INTRODUCTION

WHEREAS, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code § 56000 et seq., hereinafter referred to as "Act") governs Local Agency Formation Commission operations, policies, and procedures; and

WHEREAS, Government Code § 56384 requires Inyo Local Agency Formation Commission (hereinafter referred to as "Inyo LAFCO") to appoint an Executive Officer and Legal Counsel, and Government Code § 56380 allows Inyo LAFCO to contract with any public agency or private party for personnel and facilities; and

WHEREAS, Inyo LAFCO has the need for the services of the County of Inyo (hereinafter referred to as "County"), 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 County shall provide to Inyo LAFCO, those services and work set forth in Attachment A, attached hereto and by reference incorporated herein.

Services and work provided by the County under this Agreement will be performed by County employees or other County contractors 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.

When County performs work or services under this Agreement, County may have such work or services performed either by its own employees or, upon approval by Inyo LAFCO, by one or more of County's contractors. County will have such work or services performed by employees or contractors who are qualified to, and capable of, doing such work. County has the right in its sole discretion to determine which employee(s) are qualified and capable, and to determine which employee(s) of those which are deemed qualified and capable, are to actually perform the work and services under this Agreement. Inyo LAFCO has no right to designate, or require the work or services to be performed by a particular County Department, class of County employees, or particular employee(s). Further, County need not obtain Inyo LAFCO's approval prior to or after incurring any travel and/or per diem, or overtime expenses in performing work or services under 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. County Employee(s).~~ Where work and services are performed by County employee(s) under this Agreement, the consideration to be paid by Inyo LAFCO to County for such services and work is the sum total of the (1) hourly rate costs (including overtime, if any), (2) fringe benefits cost, and (3) overhead and administrative costs (including travel and per diem, if any), for each employee who performed any work or services under this Agreement. Hourly rate costs (non overtime), including fringe benefits are set forth in Attachment "B" to this Agreement.

(1) Hourly Rate Costs. The product of the number of hours (rounded up or down to the nearest 1/2 (0.50) of an hour) which a County employee worked under this agreement, multiplied by the employee's hourly rate of pay as set by the most recent County salary ordinance, resolution, or employee contract. Where the circumstances of the services and work requested by Inyo LAFCO under this Agreement require the County employee to work in excess of eight (8) hours per day or forty (40) hours per week (hereinafter referred to as "overtime"), and County is obligated by law or contract to compensate the employee for such overtime at a rate of one and one half (1½) times their hourly rate of pay, the hourly rate of pay for such overtime hours worked under this Agreement will be one and one half (1½) times the employee's hourly rate of pay as set by the most recent County salary ordinance, resolution, or employee contract.

(2) Fringe Benefit Costs. The product of the hourly rate costs multiplied by 40% (0.40).

(3) Overhead and Administrative Costs. The product of the hourly rate costs multiplied by 20% (0.20), plus special, travel and per diem costs if any. Where a County employee travels and/or incurs per diem expenses in performing work under this Agreement, the travel and per diem costs for such work will be the actual costs to the County for such travel and per diem. Actual costs to the County will be determined by the most recent County ordinance or resolution establishing travel and per diem reimbursement rates for County employees. Special costs are those approved in advance by Inyo LAFCO for particular specialized equipment, supplies, tools and materials to be used by County in performing under this Agreement.

(4) Exception For County Counsel. Notwithstanding the foregoing, the consideration to be paid for services of professional employees of the Office of the County Counsel shall be the flat hourly rate (inclusive of benefits and overhead) shown in Attachment "B" to this Agreement, plus any special, travel and per diem costs as provided in Paragraph 3.A.(3) above.

B. Other County Contractors. Where work and services under this Agreement are performed by another County contractor, the consideration to be paid by Inyo LAFCO to County for such services and work is the sum total of (1) the contract costs and (2) administrative costs for each County contractor who performs any work or services under this Agreement.

(1) Contract Costs. The total costs to the County (including all labor, travel and per diem, overhead, administrative costs, and other fees) charged by such other contractor to County for the performance of work or services under this Agreement.

(2) Administrative Costs. The product of the contract cost multiplied by 20% (0.20), plus any special costs as defined in Section 3.A.(3) above.

C. Limit Upon Amount Payable Under Agreement. Except for amounts payable to County under Section 6 for Defense and Indemnification, the total sum of all payments made by Inyo LAFCO to County for services and work performed under this Agreement, shall not exceed eight thousand seven hundred forty-two 00/100 Dollars ($ 8,742.00) (hereinafter referred to as "contract limit"). County expressly reserves the right to decline to perform any work or services which would be in excess of the contract limit.

D. Insurance. Inyo LAFCO shall, when billed, pay to County its actual cost of providing general liability insurance as set forth in the Scope of Work (Attachment A).

E. Billing and Payment. County shall submit to Inyo LAFCO, once a month, an itemized statement of all services and work described in Attachment A. This statement will be submitted to Inyo LAFCO 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. County's statement to the Inyo LAFCO will also include an itemization of any travel or per diem expenses incurred by County during that period. Upon timely receipt of the statement by the fifth (5th) day of the month, Inyo LAFCO shall make payment to County on or before the last day of the month.

F. Federal and State Taxes. Inyo LAFCO will not withhold any federal or state income taxes or social security from any payments made by Inyo LAFCO to County under the terms and conditions of this Agreement.

4. WORK SCHEDULE.

County's obligation is to perform, in a reasonably timely manner, those services and work identified in Attachment A. It is understood by Inyo LAFCO that the performance of these services and work will require cooperation and coordination between County, Inyo LAFCO, and other parties. Inyo LAFCO and County will use their best efforts to arrange their own schedules, and coordinate with other interested parties, to insure that services and work under this Agreement can be performed within the time frames set by mutual agreement.

5. STATUS OF PARTIES.

County is a political subdivision of the State of California. Inyo LAFCO is a special district authorized by the Act. Each party is a public entity independent of the other. Inyo LAFCO 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, County has no authority or responsibility to exercise any rights or power vested in the Inyo LAFCO. It is understood by both Inyo LAFCO 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 entity:

A. County shall determine the method, details, and means of performing the work and services to be provided by County under this Agreement.

B. County shall be responsible to Inyo LAFCO only for the requirements and results specified in this Agreement, and except as expressly provided in this Agreement, shall not be subjected to control by Inyo LAFCO with respect to the physical action or activities of County officers or employees in fulfillment of this Agreement.

6. STATUS OF COUNTY OFFICERS AND EMPLOYEES.

A. County officers and employees while providing work and services under this Agreement, remain County officers and employees subject to the exclusive control, direction, and supervision by County.

B. County officers and employees providing work and services under this Agreement will do so in accordance with all federal and state laws applicable to the County, and in accordance with all County ordinances, resolutions, rules, regulations, policies, and Board of Supervisors directions. Exceptions to this will be made only for those Inyo LAFCO ordinances, resolutions, rules, regulations, policies, and directions which have been formally adopted by Inyo LAFCO and approved in writing by the County for implementation under this Agreement.

C. County expressly and specifically retains the right to hire, fire, and discipline any County officer or employee who provides work or services under this Agreement. If Inyo LAFCO is unsatisfied with the performance of any County officer or employee who provides work or services under this Agreement, Inyo LAFCO shall promptly notify the County and request that the County consider taking appropriate action.

D. Except as provided in this Agreement, no County officer or employee shall provide any work or services to Inyo LAFCO. Further, Inyo LAFCO shall not hire, retain, engage, contract or employ any County officer or employee except under the provisions of this Agreement.

7. WARRANTY OF ELIGIBILITY.

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.

8. DEFENSE AND INDEMNIFICATION.

To the extent permitted by law, each party hereto shall defend, indemnify, and hold harmless the other and its officers, employees, and agents 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, its acts or omissions, or that of its officers, employees, or agents in the performance of this Agreement.

8. CANCELLATION.

This Agreement may be cancelled by either party without cause, and at will, for any reason by giving to the other party sixty (60) calendar days written notice of such intent to cancel.

9. DEFAULT.

A. If Inyo LAFCO fails to pay County for the work and services performed by County in a timely manner, County may declare the Inyo LAFCO in default and terminate this Agreement upon thirty (30) calendar days written notice to Inyo LAFCO. Upon such termination by default, Inyo LAFCO will pay to County all amounts owing to County for services and work performed to the date of termination.

B. Except as provided in paragraph "A" above, if a party to this Agreement should fail to comply with the terms and conditions of this Agreement in a timely manner, the other party may declare a default and notify the "defaulting" party in writing of the facts constituting such default. Upon making such written notification, the defaulting party will have thirty (30) calendar days to cure such default. A party shall be deemed to cure the default if within the time period set forth herein, the defaulting party begins and thereafter diligently continues to completion curing such default. Service of a notice of default on the defaulting party and allowance of said thirty (30) calendar day period for the defaulting party to commence with diligence to cure such default shall be a condition precedent to any termination of this Agreement or to the bringing of any action based upon such default. If any default is not cured or deemed cured hereunder, the non-defaulting party, at its election, may terminate this Agreement by written notice thereof to the defaulting party. Upon such termination by default, Inyo LAFCO will pay to County all amounts owing to County for services or work performed to the date of termination and County will turn over to Inyo LAFCO all information, work papers, reports, analysis of other information in County's possession as may relate to the services and work being performed hereunder.

10. 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 19 below.

11. ASSIGNMENT/SUBCONTRACTING.

This is an agreement for the services of County. Inyo LAFCO has relied upon the skills, knowledge, experience, and training of County as an inducement to enter into this Agreement. County shall not assign this

Agreement, or any part of it. However, County may, with the approval of Inyo LAFCO, subcontract work or services it is to perform under this Agreement.

12. PRODUCTS OF COUNTY'S WORK AND SERVICES.

Any and all compositions, publications, plans, designs, specifications, blueprints, maps, formulas, photographs, slides, video tapes, computer programs, computer disks, computer tapes, memory chips, soundtracks, audio recordings, films, audio-visual presentations, exhibits, reports, or studies, which are created, produced, assembled, compiled by, or are the result, product, or manifestation of County's services or work under this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of the Inyo LAFCO. At the termination of the Agreement, County will convey possession and title to all such properties to Inyo LAFCO. However, any and all 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 County's services or work under this Agreement, are, and at the termination of this Agreement remain, the sole and exclusive property of County.

13. RECORDS AND AUDIT.

A. Records. County shall prepare and maintain all records required by the various provisions of this Agreement, and federal, state, county, and municipal, ordinances, regulations, and directions. County shall maintain these records for a minimum of four (4) years from the termination or completion of this Agreement. County 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 Inyo LAFCO shall have access to any books, documents, papers, and records, including, but not limited to, financial records of County, 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 County. Further, Inyo LAFCO has the right to audit, inspect, or otherwise evaluate the work performed or being performed under this Agreement.

14. NONDISCRIMINATION.

During the performance of this Agreement, neither party, or their agents, officers, and employees, shall 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, ages, or sex. Both parties and their 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. The parties 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.

15. CONFIDENTIALITY.

County agrees to comply with the various provisions of federal, state, and county laws, regulations, and ordinances providing that information and records kept, maintained, or accessible by County in the course of performance under this Agreement, shall be privileged, restricted, or confidential.

16. 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.

17. FUNDING LIMITATION.

The ability of Inyo LAFCO 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, Inyo LAFCO has the option to cancel, reduce, or modify this Agreement, or any of its terms within five (5) calendar days of its notifying County 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 19.

18. 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.

19. 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.

20. 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 Inyo LAFCO 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

Kevin Carunchio
COUNTY ADMINISTRATOR
224 North Edwards
Independence, California 93526

Inyo LAFCO:

Joshua Hart Name
Executive Officer
168 North Edwards Street
Independence, CA 93526 City and State

21. 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 THE COUNTY OF INYO
AND THE INYO LOCAL AGENCY FORMATION COMMISSION
FOR THE PROVISION OF SERVICES

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

COUNTY OF INYO

By: _____

Dated: 8-7-12

INYO LAFCO

By: _____

Dated: 6/25/12

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

ATTACHMENT A

AGREEMENT BETWEEN THE COUNTY OF INYO AND THE INYO LOCAL AGENCY FORMATION COMMISSION FOR THE PROVISION OF SERVICES

TERM:

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

SCOPE OF WORK:

SERVICES TO BE PROVIDED BY THE COUNTY

A. Services of the appointed Executive Officer as provided by 56384(a) of the Act.

B. Services of the appointed Legal Counsel as provided by 56384(b) of the Act.

C. Preparing staff analyses, reports, CEQA documents, proposed findings and other agenda materials for the Inyo LAFCO Commission relating to boundary proposals, contracts for provision of new and extended services outside city and district jurisdictional boundaries, sphere of influence amendments, periodic review of sphere of influence designations and any other matters that are within the Commission's authority under the Act.

D. Calling, staffing, noticing, and otherwise coordinating Commission meetings in accordance with the Act and Inyo LAFCO policies and procedures.

E. Preparing, mailing, filing, publishing and keeping records of agendas, notices and other required official documents on behalf of the Inyo LAFCO Commission.

F. Responding to inquiries, providing information, and technical assistance to interested public agencies and individuals.

G. Providing supporting fiscal services such as the development of the annual Inyo LAFCO budget, management of Inyo LAFCO financial accounts including the processing of Inyo LAFCO fees and charges; the processing of payment of Commission charges and expenses, and the preparation of required fiscal reports.

H. Informing Inyo LAFCO Commissioners of new legislation, correspondence with the Commission, CALAFCO activities, current events and matters of interest related to Inyo LAFCO.

I. County will provide Inyo LAFCO and its officers the same broad form general liability insurance coverage as County provides for itself and its officer through the Excess Insurance Authority (EIA), including the same coverage, coverage limits, exclusions, and Self-Insured Retention (SIR).

J. Maintain the Inyo LAFCO website in compliance with Government Code Section 56661.

K. Maintain membership in CALAFCO, and provide training of LAFCO Commissioners and staff involved in support of LAFCO.

ATTACHMENT B

AGREEMENT BETWEEN COUNTY OF INYO
AND THE INYO LOCAL AGENCY FORMATION COMMISSION
FOR THE PROVISION OF SERVICES

TERM:

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

SCHEDULE OF FEES

HOURLY RATES (NON OVERTIME) OF COUNTY PERSONNEL INCLUDING BENEFITS:

Position	Rate With Benefits
Executive Officer	$66.23
Analyst	$49.06
Clerk	$36.94

Other County employees at rates and benefits as set forth for such employees by the Board of Supervisors.

HOURLY RATES (FLAT) OF PROFESSIONAL EMPLOYEES OF OFFICE OF THE COUNTY COUNSEL:

Position	Hourly Rate
County Counsel Assistant County Counsel Deputy County Counsel	$98.00

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: Probation Department – Juvenile Institutions

FOR THE BOARD MEETING OF: April 16, 2013

SUBJECT: Amendment One (1) to the Contract between Inyo County and Dr. Keith Andersen

DEPARTMENTAL RECOMMENDATION: Request Board to approve Amendment One (1) of the contract between Inyo County and Dr. Keith Andersen for professional services, extending the termination date from May 10, 2013 to June 30, 2013, contingent upon obtaining the appropriate signatures.

CAO RECOMMENDATION:

SUMMARY DISCUSSION: On May 15, 2012, your Board approved a contract between the County of Inyo and Dr. Keith Andersen to provide professional services to the Probation Department Juvenile Division. The amount of the contract is for a not to exceed amount of $50,000, which has already been encumbered and budgeted in Fiscal Year 2012-2013, for the term beginning May 11, 2012 terminating on May 10, 2013. We are requesting that the Board approve Amendment One (see attached) to the contract to extend the termination date from May 10, 2013 to a new termination date of June 30, 2013 to correspond with the County's fiscal year end. This is a no cost amendment request as there are plenty of encumbered monies remaining to cover expenses through the end of June 2013.

ALTERNATIVES: The Board could choose not to approve Amendment One (1); however, this is not recommended. For fiscal and budgeting reasons it make sense to extend Dr. Andersen's contract with a termination date reflecting the County's fiscal year ending June 30, 2013.

OTHER AGENCY INVOLVEMENT:

FINANCING: $50,000 has been budgeted and encumbered in the Fiscal Year 2012-2013 Juvenile Institutions Budget 023100, Professional Services Expenditure Object Code 5265. Approximately $18,975 is remaining to cover expenses incurred in March, April, May and June 2013, with the average monthly invoice submitted at $3,300 for Dr. Andersen's services.

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 3/25/2013
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 4/1/13
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 4/3/13

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received) _____ Date: 4/4

AMENDMENT NUMBER ONE (1) TO
AGREEMENT BETWEEN THE COUNTY OF INYO AND
DR. KEITH ANDERSEN
FOR THE PROVISION OF INDEPENDENT CONTRACTOR SERVICES

WHEREAS, the County of Inyo (hereinafter referred to as "County") and Dr. Keith Andersen, of Bishop, California (hereinafter referred to as "Contractor"), have entered into an Agreement for the Provision of Independent Contractor Services dated May 15, 2012, on County of Inyo Standard Contract No. 111, for the term from May 11, 2012 to May 10, 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 2 (Term) is replaced with the following:

The term of this Agreement shall be from May 11, 2012 through June 30, 2013 unless sooner terminated as provided below.

The effective date of this Amendment to the Agreement is April 16, 2013.

All the other terms and conditions of the Agreement are unchanged and remain the same.

AMENDMENT NUMBER ONE (1) TO
AGREEMENT BETWEEN THE COUNTY OF INYO AND
DR. KEITH ANDERSEN
FOR THE PROVISION OF INDEPENDENT CONTRACTOR SERVICES

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

COUNTY OF INYO

By: _____

Dated: _____

CONTRACTOR

By: _____
Signature

Keith Andersen
Type or Print

Dated: 032613

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 RISK ASSESSMENT:

_____
County Risk Manager

In the Rooms of the Board of Supervisors

County of Inyo, State of California

I, HEREBY CERTIFY, that at a meeting of the Board of Supervisor of the County of Inyo, State of California, held in their rooms at the County Administrative Center in Independence on the 15th day of *May*, 2012 an order was duly made and entered as follows:

Probation/Dr. Andersen Contract	Moved by Supervisor Cash and seconded by Supervisor Arcularius to ratify and approve the Contract between the County of Inyo and Dr. Keith Andersen to provide professional services to the Inyo County Probation Department – Juvenile Institutions, for the period of May 11, 2012 through May 10, 2013, in an amount not to exceed $50,000, 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. Motion carried unanimously.

WITNESS my hand and the seal of said Board this 15th

Day of ***May*** ***2012***

KEVIN D. CARUNCHIO
Clerk of the Board of Supervisors

By: *Patricia Gunsolley*
Patricia Gunsolley, Assistant

Routing

CC
Purchasing
Personnel
Auditor
CAO
Other Probation

DATE: May 22, 2012

AGREEMENT BETWEEN COUNTY OF INYO
AND DR. KEITH ANDERSEN
FOR THE PROVISION OF PROFESSIONAL **SERVICES**

INTRODUCTION

WHEREAS, the County of Inyo (hereinafter referred to as "County") may have the need for the Professional services of Dr. Keith Andersen of Bishop, California (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 Mark Olsen whose title is: Deputy Director of Juvenile Institutions. 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 May 11, 2012 to May 10, 2013, unless sooner terminated as provided below.

3. CONSIDERATION.

A. Compensation. County shall pay to Contractor the sum of One Hundred Dollars and no/100 cents ($ 100.00) per hour (hereinafter referred to as "hourly rate") for the services and work described in Attachment A which are performed by Contractor at the County's request. Hours worked under the provisions of this Agreement in excess of forty (40) hours per week will be paid at the hourly rate.

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 Fifty thousand and no/100 Dollars (hereinafter referred to as "contract limit"). County expressly reserves the right to deny any payment or reimbursement requested by Contractor for services or work performed which is in excess of the contract limit.

E. Billing and payment. Contractor shall submit to the County, once a month, an itemized statement of all hours spent by Contractor in performing 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 hours were worked and describe the nature of the work which was performed on each day. Upon timely receipt of the statement by the fifth (5th) day of the month, County shall make payment to Contractor on the last day of the month.

F. Federal and State taxes.

(1) Except as provided in subparagraph (2) below, County will not withhold any federal or state income taxes or social security from any payments made by County to Contractor under the terms and conditions of this Agreement.

(2) County will withhold California State income taxes from payments made under this Agreement to non-California resident independent contractors when it is anticipated that total annual payments to Contractor under this Agreement will exceed one thousand four hundred ninety nine dollars ($1,499.00).

(3) Except as set forth above, County has no obligation to withhold any taxes or payments from sums paid by County to Contractor under this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor. County has no responsibility or liability for payment of Contractor's taxes or assessments.

(4) The total amounts paid by County to Contractor, and taxes withheld from payments to non-California residents, if any, will be reported annually to the Internal Revenue Service and the California State Franchise Tax Board. To facilitate this reporting, Contractor shall complete and submit to the County an Internal Revenue Service (IRS) Form W-9, attached hereto as Attachment B, upon executing this Agreement.

AGREEMENT BETWEEN COUNTY OF INYO
AND DR. KEITH ANDERSEN
FOR THE PROVISION OF PROFESSIONAL **SERVICES**

15TH DAY OF MAY, 2012.

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

COUNTY OF INYO

By: Marty D. Fortney

Dated: 5-15-12

CONTRACTOR

By: _____
Signature

Keith J. Andersen
Type or Print Name

Dated: 052312

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 DR. KEITH ANDERSEN
FOR THE PROVISION OF PROFESSIONAL **SERVICES**

TERM:

FROM: MAY 11, 2012 **TO:** MAY 10, 2013

SCOPE OF WORK:

MEDICATION MANAGEMENT - Contractor will evaluate juveniles upon admission and when appropriate provide written referral for psychotropic medication evaluation to Inyo County Health and Human Services Department Psychiatrist, Inyo County Juvenile Probation Officer and Juvenile Center files. Contractor will evaluate all juveniles receiving psychotropic medications to determine efficacy and possible medication side effects and provide written progress updates to the Inyo County Health and Human Services Psychiatrist, Inyo County Juvenile Probation Officer and Juvenile Center files.

INTAKE ASSESSMENT/MANAGEMENT - Contractor to complete an Intake Assessment identifying the mental health needs/concerns of newly admitted juveniles and provide written information to the Judge assigned to juvenile matters with Inyo County Superior Court, Inyo County Juvenile Probation Department and Juvenile Center files. Intake Assessment information shall include information to assist the court with Detention Hearings, assist Juvenile Center staff in programming the juvenile, provide relevant information to the juvenile's probation officer and provide preliminary discharge recommendations.

BEHAVIOR MANAGEMENT CONSULTATION - Contractor will provide consultation to Juvenile Center staff on an as needed basis regarding behavioral recommendations for juveniles with a psychiatric diagnosis or behavior management issues.

JUVENILE SUPPORT GROUP - Contractor to conduct a Juvenile Support Group monthly. The goal of the program will be to provide discharged juveniles who are currently mandated to probation services with support, guidance and encouragement to satisfactorily complete their probation requirements and maintain behavioral gains and success achieved at the Juvenile Center.

PARENT SUPPORT GROUP - Contractor to conduct a Parent Support Group monthly. The goal of the program will be to provide parents with behavioral management techniques to assist in maintaining the juvenile's behavioral gains and success achieved at the Juvenile Center. Specific behavioral interventions will include teaching effective compliance procedures, positive reinforcement of the juvenile's appropriate behaviors and crisis intervention procedures.

IN-SERVICE TRAINING - Contractor will provide Juvenile Center staff with basic behavior management techniques to assist with behavioral programming of juveniles as requested by the Inyo County Director of Juvenile Institutions.

Weekly billable hours shall not exceed ten (10) hours per week without the explicit permission of the Deputy Director of Juvenile Institutions. All invoices shall show, in one-quarter (1/4) of an hour increments, the actual time spent in performing the described work. Travel time to and from the Juvenile Center will not be billed or reimbursable. Contractor shall maintain California Psychologist license, state required continuing medical education credits and liability insurance at own expense.

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

☐ Consent ☒ Departmental ☐ Correspondence Action ☐ Public Hearing
☐ Schedule time for ☐ Closed Session ☐ Informational

For Clerk's Use Only:
AGENDA NUMBER
18

FROM: Public Works Department

FOR THE BOARD MEETING OF: April 16, 2013

SUBJECT: Award of the construction contract for the Heater Replacement Project at Independence American Legion Hall and Big Pine Town Hall.

DEPARTMENTAL RECOMMENDATIONS:

1. Award the construction contract for the project to Mojave Desert Heating and Cooling, Inc. of Bishop, California in the amount of $14,900.00;
2. Authorize the chairperson to execute the contract, contingent upon obtaining appropriate signatures; and,
3. Authorize the interim public works director to execute all other contract documents, including contract change orders, to the extent permitted by Public Contract Code Section 20142 and other applicable law.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

At the February 26, 2013 Board meeting, the Department of Public Works received authorization from your Board to advertise and bid the Heater Replacement Project at Independence American Legion Hall and Big Pine Town Hall, which includes the purchase and installation of liquid propane furnace heaters, ductwork, and controls, at these two (2) facilities. The project will replace existing furnace heaters that are very old and operate inefficiently.

Three (3) bids were received by the Assistant Board Clerk's office and were opened on March 27, 2013. These bids were reviewed by County Counsel's office and have been deemed responsive to the bid documents. The three submitted bids and amounts were:

1. Bishop Heating and Air Conditioning, Inc.: $24,051.63
   Small Business Certified: (Yes)
   Local Business Verification: (N/A, does not apply to Public Works Contracts)
2. Deans Plumbing and Heating, Inc.: $27,394.00
   Small Business Certified: (Yes)
   Local Business Verification: (N/A see above)
3. Mojave Desert Heating & Cooling, Inc.: $14,900.00
   Small Business Certified: (No)
   Local Business Verification: (N/A)

Mojave Desert Heating and Cooling, Inc. provided the lowest bid in the amount of $14,900.00. This bid amount was 38% lower than the next lowest bid of $24,051.63 and, 7% lower than the Engineer's estimate of $16,000. Therefore, the Public Works Department is recommending that the Board award the bid to Mohave Desert Heating and Cooling, Inc., in a total contract amount of $14,900.00. There is sufficient funding in the Public Works Deferred Maintenance Budget to complete all of the work.

ALTERNATIVES:

The Board could choose not to approve the construction contract for the Heater Replacement Project. This is not recommended because this project is part of the Clean Air Projects (CAPP) Block Grant program and these funds must be expended by December 31, 2013.

OTHER DEPARTMENT/AGENCY INVOLVEMENT:

The Public Works Department for the development of the plans, specifications, and bid packages;
The auditor's office to make payments to the contractor after the contract is awarded; and,
County Counsel to review and approve the contract documents.

FINANCING:

The project is part of the CAPP Block Grant program. The funds for this project will be provided from the Public Works Deferred Maintenance Budget 011501, Object Code 5640 – Structures and Improvements.

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 4/9/13
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 4/10/13
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: 4/10/13

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: April 16, 2013

SUBJECT: Submittal of Whitney Portal Road for the California Federal Lands Access Program grant application.

DEPARTMENTAL RECOMMENDATIONS:

Request approval of A) the submittal of a California Federal Lands Access Program grant application for Whitney Portal Road and B) authorize the Public Works Director to sign documents related to the grant application.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

The Federal Lands Access Program (Access Program) provides funds for work on public highways, roads, bridges, trails, and transit systems that are located on, are adjacent to, or provide access to Federal lands. These facilities are owned or maintained by a state, county, town, township, tribe, municipal, or local government. This program is a new program, being created under Moving Ahead for Progress in the 21st Century (MAP-21). This program places emphasis on projects that provide access to high-use recreation sites or economic generators.

This is a program ideally suited for Inyo County. There are a multitude of roads part of the Inyo County maintained mileage list that meet the basic requirement.

The project selection for this grant include the following factors:

Criteria 1: Access, Mobility, and Connectivity

- Provides access for high use FLMA (Federal Land Management Agencies) recreation site(s)
- Only facilities accessing FLMA unit
- Improves/provides facilities for alternative modes
- Reduces congestion
- Connects to additional routes serving FLMAs

Criteria 2: Economic Development

- Enhances access and connectivity to local communities
- Provides access to Federal economic generator

Criteria 3: Condition

- Improves pavement condition
- Improves condition of bridge structures

- Reduces maintenance costs or operating costs

Criteria 4: Safety

- Mitigates a known safety issue/reduces crashes
- Improves safety for a wide range of users

Criteria 5: Funding

- Project leverages funds or resources
- Cost effectiveness
- Viability of proposed project budget and financial plan
- Project is applicable state, regional, FLMA, or local plans

Criteria 6: Resource Protection

- Protects or restores natural, cultural and historic resources
- Enhances wildlife connectivity, and habitats
- Reduces pollution (noise, emissions, water, dust

Proposed Selection

The table below reflects the following candidates.

Inyo County Roads	Project Need	Average Daily Traffic	Pavement Condition Index	Recreational Focal Point
Whitney Portal Road	Reconstruct, add bicycle lanes in lower section, guardrail	1,726 (high) 698 (low)	68 (average – upper parts in worse condition)	Alabama Hills, Whitney Portal, trails to John Muir Wilderness and Sequoia National Park, road links to other Federal lands via Horseshoe Meadows Road, Movie Road, and Hogback Road, multiple campgrounds, BLM and Inyo NF
Onion Valley Road	Reconstruct, guardrail	186	73 (average)	Sierra Nevada, trails to John Muir Wilderness and Kings Canyon National Park, road links to other Federal lands via Foothill Road, multiple campgrounds, BLM and Inyo NF
Glacier Lodge Road	Reconstruct, guardrail	341	72 (average)	Sierra Nevada, trails to John Muir Wilderness, road links to other Federal lands via McMurray Meadows Road, multiple campgrounds, BLM and Inyo NF
South Lake Road	Reconstruct, add bicycle lanes to lower part	735	61 (average)	Sierra Nevada, trails to John Muir Wilderness and Kings Canyon National Park, multiple campgrounds, BLM and Inyo NF
Death Valley Road	Repave	43 (high) 36 (low)	61 (average)	Death Valley National Park, Eureka Dunes, Piper Mountain Wilderness, BLM and Inyo NF, multiple use routes
White Mountain Road	Reconstruct or repave	186	79 (average)	Inyo NF, Bristlecone Pine Forest, multiple use routes
Horse shoe Meadows Road	Reconstruct, add bicycle lanes in lower section, guardrail, slope stabilization	473 (high) 169 (low)	70 (average)	Alabama Hills (BLM) and Inyo NF, trails to Sequoia National Park, Golden Trout Wilderness
Nine Mile Canyon Road	Repave or reconstruct	281 (high) 99 (low)	73 (average)	BLM and National Forest land – links to multiple trails, links to Sherwin Pass Road
Sabrina Road	Repave or reconstruct	401	55 (average)	Sierra Nevada, trails to John Muir Wilderness, links to Federal Lands via North Lake Road
Pine Creek Road	Repave or reconstruct	320	67 (average)	Sierra Nevada, trails to John Muir Wilderness, links to Federal Lands via Round Valley Road

From reviewing the project selection criteria, the above table, and past prioritization by the Board, it appears that Whitney Portal Road would best fit this grant application based on the following factors:

- It access two internationally known destinations on Federal land in the Alabama Hills and Whitney Portal
- It is directly tied to Lone Pine
- It has the highest average daily traffic of the routes listed above
- Complete reconstruction is required for the most cost effective long term fix

Proposed Project
The proposed Whitney Portal Road reconstruction project will reconstruct existing pavement (grind, regrade, and repave) between Tuttle Creek Road and the end of Whitney Portal Road at the Mount Whitney trailhead. The proposed project also proposes 4-feet wide bicycle lanes between Tuttle Creek Road and Horseshoe Meadows Road to provide alternative transportation options and installing and/or replacing approximately 1,000 feet of guardrail to improve safety.

The County previously submitted Whitney Portal Road for a Forest Highways Program grant. On March 10, 2009, the Board of Supervisors ranked Whitney Portal first amongst a list of road projects that could qualify for American Recovery and Reinvestment Act of 2009 funding. The County also submitted Whitney Portal for possible earmark funding as part of the Federal Reauthorization. Whitney Portal Road did not end up receiving funds from any of these sources.

ALTERNATIVES:

1) The Board could choose to select a different or an additional roadway.
2) The Board could choose not to submit an application for these grant funds.

OTHER AGENCY INVOLVEMENT:

Caltrans (implementation of federal programs), Inyo National Forest, Bureau of Land Management, and the Federal Highway Administration

FINANCING:

This grant requires an 11.47% match. The project contact at Caltrans has indicated that the project is eligible to use Toll Credits as a match. No budget action is required at this time. If the County is successful in obtaining this grant, necessary budget actions will be brought forward at that time.

If the County were to commit additional funds to this project, it might make the application have a better chance to succeed. The County could choose to attempt to program additional funds on the project through the upcoming State Transportation Improvement Program cycle. That is, the County could request that the Inyo County Local Transportation Commission program Transportation Alternative Program (TAP) funds toward this project. As the State of California has not approved legislation implementing MAP-21, it is unclear at this point what the requirements will be for TAP funds. Staff recommends adding a phrase to the application that reads "If this grant is awarded to Inyo County, Inyo County will pursue additional TAP funds to leverage additional funds for the completion of this project as a part of the 2014 Statewide Transportation Improvement Program." During the similar 2011 Forest Highways Program grant cycle, the Mono County Upper Rock Creek

Road project used Transportation Enhancement (TE) funds (with MAP-21, the TE program has been renamed the TAP program).

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: [signature] Date 4/2/13
AUDITOR/CONTROLLER	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor/controller prior to submission to the board clerk.) Approved: [signature] Date 4/3/13
PERSONNEL DIRECTOR	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.) Approved: _____ Date _____

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received) [signature] Date: 4-9-13

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
14

FROM: SHERIFF'S DEPARTMENT

FOR THE BOARD MEETING OF: April 16, 2013

SUBJECT: Purchase of Mechanized Entry Device

DEPARTMENTAL RECOMMENDATIONS:
Declare RoboteX, Inc. as sole source and approve the purchase and issuance of a purchase order in the amount of $15,903.00 including sales tax of $1,178.00(shipping included).

CAO RECOMMENDATIONS:

SUMMARY DISCUSSION:
The Sheriff's department has been looking into the use of the Mechanized Entry Device. The RoboteX Avatar® is a portable, micro-sized robot designed for use by police and military personnel to remotely collect situational information and communicate with potentially hostile individual in physically hazardous environments. It can help Deputies avoid major hazards by clearing spaces before they enter, and by communicating with potentially violent suspects. It has a standard two-way voice capability, allowing the operator to communicate with a suspect from a safe distance. If approved, we will be purchasing the base package which included Robot, Battery, Controller and Chargers, plus the external audio/video receiver. RoboteX, Inc. is the sole provider of the RoboteX Avatar®.

ALTERNATIVES:
Not approve the purchase order.

OTHER AGENCY INVOLVEMENT:

FINANCING:
This item was included in the Board approved 2012-2013 Sheriff General budget 022700, object 5313, Law Enforcement Special.

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: R Date 3.27.13
AUDITOR/CONTROLLER	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor/controller prior to submission to the board clerk.) Approved: Rita Date 4/1/13
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: 4-02-13

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. **This is a portable, micro-sized robot designed for use by police and military personnel to remotely collect situational information and communicate with potentially hostile individuals in physically hazardous environments. Total cost is $15,903.00**	
DEPARTMENT CONTACT PERSON & TITLE Keith Hardcastle, Undersheriff	
DEPARTMENT NAME Sheriff	PHONE 878.0327
REQUESTED SUPPLIER/CONSULTANT NAME RoboteX, Inc.	SUPPLIER CONTACT PERSON David Fromstein
SUPPLIER ADDRESS 1400 Page Mill Road Suite 100 Palo alto, CA 94304	SUPPLIER CONTACT'S PHONE NUMBER Office: 650-461-4113

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.

_____ _____

Signature of Requestor *Date*

_____ _____

President/CEO Approval *Date*

RoboteX, Inc.
1400 Page Mill Road
Suite 100
Palo Alto, CA 94304
(650) 838-9191

Sales Quote Acknowledgement

Ship To:
Inyo County Sheriff's Office CA

Sales Quote	SQ-20130326-001058
Print Date	3/26/2013 9:33 AM
Customer Purchase Order	
Created Date	3/26/2013 9:22 AM
Payment Terms	Net 30 Days
Delivery Terms	

Invoice To:
Inyo County Sheriff's Office CA
550 South Clay Street
Independence CA 93526
USA

Details

Line	Product	Unit Of Measure	Tax	Scheduled Date	Order Quantity	Unit Price	Extension
005393	Avatar II Base Package (with Robot, Battery, Controller and Chargers) **A019P**	Each	Y	3/26/2013	1.00	$12,500.00	$12,500.00
005394	Avatar II External Audio/Video Receiver **A008A**	Each	Y	3/26/2013	1.00	$2,225.00	$2,225.00

Line Sub Total $14,725.00

Tax Rate	Type	Taxable Amount	Tax Amount
8.0%	CA - Sales	$14,725.00	$1,178.00

Tax Total $1,178.00

Order Total $15,903.00

The sales quote provided herein shall be valid for sixty (60) calendar days from the "Print Date" set forth above. All prices in USD.

Customer acknowledges and agrees that it shall use all products acquired from RoboteX, Inc. ("RoboteX") in compliance with all applicable laws, statutes, rules, regulations, orders and restrictions, and that it will not resell or otherwise transfer or convey any products acquired from RoboteX to any third party without the prior express written consent of RoboteX.

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 for ☐ Closed Session ☐ Informational

FROM: Sheriff's Department

FOR THE BOARD MEETING OF: April 16, 2013

SUBJECT: License Agreement No. 281 with the Los Angeles Department of Water & Power for Mazourka Peak

DEPARTMENTAL RECOMMENDATION:

1. Approve License Agreement No. 821 with the Los Angeles Dept. of Water & Power for installation, operation, and maintenance of electronic telecommunication equipment on Mazourka Peak for the period of July 1, 2012 through June 30, 2017 in the amount of $500.00 per year, plus a 3% annual increase; and a prorated share of any site, access, road maintenance or other fees charges by the Forest Service or California Department of Forestry, contingent upon adoption of future budgets; and

2. Authorize the Chairperson of the Board of Supervisors to sign the agreement (3 originals).

SUMMARY DISCUSSION:

The Sheriff's Department has radio and antenna equipment on Mazourka Peak land, owned by LADWP. On May 6, 2003, your Board Approved the License Agreement for the period of July 1, 2003 for five years at the rate of $500 per year. Since that time, we have continued to pay the yearly amount. Since June 30, 2008, the agreement has been in holdover. We have just received the new agreement from LADWP that covers the period of July 1, 2012-June 30, 2017, at the current rate of $500. See attached License Agreement for more detail.

ALTERNATIVES:

Deny the agreement. This is not recommended as the telecommunication service we receive by having this is imperative to our operations for the safety of the County.

OTHER AGENCY INVOLVEMENT:

County Counsel
Risk Manager
Auditor's office

FINANCING:

The yearly cost of $500 for the agreement is currently in the 2012-2013 Board approved Sheriff General budget 022700, Object Code 5291 Office, Space & Site Rental; and this amount will be budgeted in future budgets.

APPROVALS	
COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS *(Must be reviewed and approved by county counsel prior to submission to the board clerk.)* R. Keller Approved: — Date 3.27.13
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (M*ust be reviewed and approved by the auditor-controller prior to submission to the board clerk.)* Rita Lindsay Approved: GL Date 4/1/13
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) U/S Date: 4-02-13

DO NOT RECORD
LA-821

LICENSE AGREEMENT

MAZOURKA PEAK COMMUNICATIONS SITE

This agreement is by and between the CITY OF LOS ANGELES, by and through its DEPARTMENT OF WATER AND POWER, hereinafter referred to as Licensor, and the COUNTY OF INYO, hereinafter referred to as Licensee.

RECITALS

A. Licensor occupies and operates certain facilities at the Mazourka Peak Communications Site (Site) located in Section 23, Township 11 South, Range 35 East, MDM, County of Inyo, State of California, by virtue of Special Use Permit dated October 8, 1996 from the United States Department of Agriculture Forest Service, Inyo National Forest (Forest Service). Licensee hereby acknowledges title in Licensor in said real property, and agrees never to assail or resist the same, and further agrees that Licensee's use and occupancy of said licensed area shall be referable solely to the permission herein given.

B. Licensee desires to install, operate, and maintain communication equipment at the Site. Licensee further desires to use certain buildings, improvements, and equipment owned and operated by Licensor, also located at the Site.

C. Licensor, for and in consideration of the keeping and performance by Licensee of the terms and conditions hereof, gives permission to use certain real property and facilities of Licensor for the purpose of installation, operation, and maintenance of that electronic telecommunication equipment described as 1) four VHF Cavities located in one 23-inch rack; 2) two VHF Quantar Repeaters (one each for Channel 1 and Channel 2) located in a 20½-inch rack; 3) one 20-foot antenna located at the 60-foot level of the tower; 4) a second 20-foot antenna located at the 30-foot level of the tower; 5) a photovoltaic system; and 6) a 10 kilo-watt self-contained generator.

Along with the above-mentioned special Use Permit governing the occupancy of said site and facilities by Licensor, THE FOREGOING PERMISSION is given upon and subject to the following terms and conditions:

1. **TERM:** This License shall commence on July 1, 2012 and terminate on June 30, 2017.

2. **LICENSE FEES:**

   2.1. Fee: Licensee shall pay to the Department as the license fee, the amount of Five Hundred and No/100 Dollars ($500) per year, in advance, payable on the first day of each year commencing on July 1, 2012.

   2.2. Fee Adjustment: The license fee shall be increased by 3% annually on the anniversary of the license commencement date.

   2.3. The License fee is nonrefundable if this License Agreement is terminated prior to the end of any license period or term of the agreement, for default with respect to the terms and

conditions of the agreement, or upon Licensee's request for relinquishment.

2.4. Fee Payment:

2.4.1. Licensee agrees to pay all fees, or any other amount due under the terms of this license, promptly when due, and without deduction, offset, prior notice, or demand, to the Department of Water and Power, 300 Mandich Street, Bishop, California 93514-3449. **All payments shall reference Account No. 17217**.

2.4.2. Prompt payment shall mean payment at the office of the Department not more than five (5) days after the due date for the fees as set forth in this License Agreement. Fees due and not paid promptly shall be deemed delinquent.

2.4.3. Fees not paid when due shall bear interest from due date until paid, at the rate of 10/12th of 1% per month (10% per annum) from the date fee is due. Said interest shall be deemed an additional license fee.

2.4.4. Should any fees due hereunder remain unpaid for a period of 30 days from the due date, this permit may be terminated forthwith by the Department mailing to Licensee a 30-day written notice of such termination.

2.4.5. The Department is not required to make any demand on the Licensee for the payments, whether on the premises or elsewhere. Billing for any payment shall be for the convenience of the Licensee and not required of the Department.

2.4.6. If any check offered by the Licensee in payment of fees or any other amount due under this agreement is returned for any reason other than that caused by the Department's negligence, Licensee shall pay to the Department a check-return processing charge in the amount of Thirty and No/100 Dollars ($30.00).

2.4.7. In addition to the annual license fee, Licensor shall bill Licensee, and Licensee agrees to promptly pay, a prorated share of any fees, including but not limited to site, access, and road maintenance fees, charged by the Forest Service and/or the California Department of Forestry. Prompt payment means payment within ten (10) days of mailing of a bill for such share.

3. LIMITATIONS ON USE OF PREMISES:

3.1. There is excepted from this license and reserved to the Licensor all water and water rights, whether surface, subsurface, or of any other kind; and all water and water rights appurtenant or in anywise incident to the lands or premises licensed herein, or used thereon or in connection therewith, together with the right to develop, take, transport, control, regulate, and use all such water and water rights.

3.2. There is also excepted and reserved to the Licensor the right to use, operate, and maintain any ways, waterways, ditches, pipelines, canals, wells, and appurtenances thereto, or desirable in connection therewith, together with the right to grant easements, rights of way, licenses, and permits for other purposes that will not unreasonably interfere with Licensee's use.

3.3. Licensee hereby acknowledges that this License is a license only and does not constitute a lease of or any interest in real property.

3.4. Licensor finds that (1) the property to be licensed is not presently needed for Departmental purposes, and (2) the grant of the License will not interfere with Departmental purposes.

3.5. The right and permission of Licensee is subordinate to the prior and paramount right of Licensor to use said real property for the public purposes to which it now is and may, at the option of Licensor, be devoted. Licensee undertakes and agrees to use said real property and to exercise this License jointly with Licensor, and will at all times exercise the permission herein given in such manner as will not interfere with the full use and enjoyment of the licensed area by the Department.

3.6. Licensee hereby acknowledges title in the City of Los Angeles, a municipal corporation, and said Department in said real property, and agrees never to assail or resist the same, and further agrees that Licensee's use and occupancy of said licensed area shall be referable solely to the permission herein given.

3.7. Licensee is hereby notified that facilities of other licensees of the Department may exist on the subject property. Licensee shall take reasonable precautions and actions to avoid infringement, interference, or damage to all installations.

3.8. Licensee shall immediately repair, at its sole expense, any damage to the site or facilities or any other improvements thereon, arising out of its exercise of the permission herein granted. Licensee shall immediately notify Licensor's Telecommunications Section at (760) 873-0299 upon any such occurrence.

3.9. Licensee agrees to use the site for the sole purpose of installing, operating, and maintaining the electronic telecommunications equipment described on page 1, item C, of this agreement, and for no other purpose. All facilities to be installed by Licensee, and all plans relative thereto, shall be subject to the prior written approval of Licensor. If Licensor determines it necessary for Licensee to rearrange its equipment or facilities within the site, Licensee shall rearrange its equipment or facilities at its own expense upon written request of Licensor.

3.10. Any tower work done by an authorized tower user (Party) may require the other Parties to shut down all transmitting radio antennae for the period needed to complete the work. The requesting Party will notify all other Parties to schedule such an outage a minimum of 72 hours in advance. Each Party has the right in emergency conditions to shut down the other Parties' transmitting antennae without notice. Following emergency shutdown, the transmitting antennae shall be made operational as soon as practicable and all affected Parties notified of the event and disposition.

3.11. Licensee shall ensure that equipment within their facility operates in a manner which will not cause harmful interference with the operation of existing equipment on or adjacent to the communications site. If Licensor or an authorized official of the FCC determines that the Licensee's use interferes with existing equipment, the Licensee shall promptly take the necessary steps to eliminate or reduce the harmful interference to the satisfaction of Licensor or the FCC official. Licensee shall be responsible for all costs of such removal or mitigation.

3.12. Licensee will furnish technical information concerning the equipment located on the premises when requested by Licensor.

3.13. Personnel of Licensee upon entering and exiting the Site shall immediately notify Licensor's Telecommunication Control Center at (213) 367-3176 and Licensee's Telecommunication Control Center at (949) 587-5500, or 8-51200 if an internal phone is used.

3.14. Unauthorized parking or storage of vehicles or equipment shall not be allowed on the Site at any time.

4. **UTILITIES:** Licensee shall pay for all costs, fees, or charges for the application, installation, maintenance, use, or removal of any utilities or services required in the exercise of the permission herein given and Licensee shall be responsible for ensuring the transfer of any utilities, including water and power, to Licensee's name required in the exercise of the permission herein given.

5. **TAXES:** Licensee, by executing this License and accepting the benefits hereof, understands that a property right pursuant to applicable ordinances and codes under tax law, may be created known as "possessory interest" and may be subject to property taxation. Licensee will be responsible for payment of any property taxes upon such right. Licensee herewith acknowledges that notice required by Revenue and Taxation Code, Section 107.6 has been provided.

6. **COMPLIANCE WITH APPLICABLE LAWS:**

6.1. Licensee shall comply with all valid laws, ordinances, statutes, rules, orders, or regulations of any agencies, departments, districts, or commissions of the State, County, or City having jurisdiction thereover. The provisions of such laws, ordinances, statutes, rules, orders, or regulations are, by reference, made a part hereof as though incorporated herein.

6.2. All work done, pursuant to the terms of this License, shall be done in accordance with the terms and conditions specified in ordinances, statutes, permits, and regulations governing such instances; and the provisions of such ordinances, statutes, permits, and regulations are, by reference, made a part hereof as though incorporated verbatim herein.

6.3. Licensee shall be responsible for the training of personnel under all applicable laws, including, but not limited to, training with regard to the operation of equipment and the handling and disposal of hazardous materials and wastes.

6.4. Licensee shall be responsible for training in safe entry to facilities that radiate radio frequency emissions, and shall require the possession and use of personal RF exposure meters by personnel entering this facility.

6.5. The Department has the right of unrestricted access to the licensed area or facility to ensure compliance with laws, regulations, and ordinances, and the term and conditions of this license.

6.6. Use of communications equipment is contingent upon the possession of a valid Federal Communications Commission (FCC) authorization, and that the operation of the equipment is in strict compliance with applicable requirements of FCC. A copy of each applicable license or authorization shall be maintained at all times by the Licensee for each transmitter being operated. The Licensee shall provide Licensor, when requested, with current copies of all licenses for equipment in or on facilities covered by this License.

7. **INSURANCE:**

7.1. Additional Insured Status Required: Licensee shall procure at its own expense, and keep in effect at all times during the term of this license agreement, the types and amounts of insurance specified on the attached *Exhibit A* (*Contract Insurance Requirements*). The specified insurance shall also, either by provisions in the policies, by the City's own endorsement form, or by other endorsement attached to such policies, include and insure the City, the Department, its Board, and all of its officers, employees, and agents, their successors and assigns, as additional insureds (except for Professional

Liability and Workers' Compensation), against the area(s) of risk described herein as respect to Licensee's acts or omissions in its performance of the license agreement, use and occupancy of the premises hereunder, or other related functions performed by or on behalf of Licensee. Such insurance shall not limit or qualify the liabilities and obligations of the Licensee assumed under the license agreement.

7.2. Severability of Interests and Cross Liability Required: Each specified insurance policy (other than Workers' Compensation and Employers' Liability and Property coverages) shall contain a Severability of Interest and Cross Liability clause that states, "It is agreed that the insurance afforded by this policy shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability"; and a Contractual Liability Endorsement that shall state, "Such insurance as is afforded by this policy shall also apply to liability assumed by the insured under this Agreement with the City of Los Angeles."

7.3. Primary and Non-Contributory Insurance Required: All such insurance shall be Primary and Noncontributing with any other insurance held by the City's Department where liability arises out of, or results from, the acts or omissions of Licensee, its agents, employees, officers, assigns, or any person or entity acting for or on behalf of Licensee. Any insurance carried by the Department, which may be applicable, shall be deemed to be excess insurance and the Licensee's insurance is primary for all purposes despite any conflicting provision in the Licensee's policies to the contrary.

7.4. Deductibles Subject to Department's Discretion: Deductibles and/or self-insured retentions shall be at the sole discretion of the Risk Manager of the Department (hereinafter referred to as "Risk Manager"). The Department shall have no liability for any premiums charged for such coverage(s). The inclusion of the Department, its Board, and all of its officers, employees and agents, and their agents and assigns, as additional insureds, is not intended to, and shall not, make them, or any of them, a partner or joint venturer with Licensee in its operations.

7.5. Proof of Insurance for Renewal or Extension Required: At least ten (10) days prior to the expiration date of any of the policies required on the attached *Exhibit A* (*Contract Insurance Requirements*), documentation showing that the insurance coverage has been renewed or extended shall be filed with the Department. If such coverage is canceled or reduced in coverage, Licensee shall, within fifteen (15) days of such cancellation or reduction of coverage, file with the Department evidence that the required insurance has been reinstated or provided through another insurance company or companies.

7.6. Submission of Acceptable Proof of Insurance and Notice of Cancellation: Licensee shall provide proof to the Department's Risk Manager of all specified insurance and related requirements either by production of the actual insurance policy(ies), by use of Department's own endorsement form(s), by other written evidence of insurance acceptable to the Risk Manager, but always in a form acceptable to the Risk Manager and the Office of the City Attorney. The documents evidencing all specified coverages shall be filed with the Department prior to Licensee beginning operations or occupying the premises hereunder. Said proof shall contain, at a minimum, the applicable policy number, the inclusive dates of policy coverages, the date the protection begins for the Department, and the insurance carrier's name. Such documents shall bear an original signature of an authorized representative of said carrier(s), and they shall provide that such insurance shall not be subject to cancellation, material reduction in coverage or non-renewal except after written notice by certified mail, return receipt requested, to the City Attorney of the City of Los Angeles at least thirty (30) calendar days prior to the effective date thereof. The notification shall be sent by registered mail to: The Office of

the City Attorney, Water and Power Division, Post Office Box 51111, JFB – Room 340, Los Angeles, California 90051-0100.

7.7. Claims-Made Insurance Conditions: Should any portion of the required insurance be on a "Claims Made" policy, the Licensee shall, at the policy expiration date following the license term, provide evidence that the "Claims Made" policy has been renewed or replaced with the same limits, terms and conditions of the expiring policy, or that an extended three (3) years discovery period has been purchased on the expiring policy.

7.8. Failure to Maintain and Provide Proof as Cause for Termination: Failure to maintain and provide acceptable evidence of the required insurance for the required period of coverage shall constitute a breach of the license agreement, upon which the Department may immediately terminate or suspend the license agreement.

7.9. Sub-Contractor Compliance: The Licensee shall be responsible for all sub-Licensee's compliance with the insurance requirements set forth herein.

7.10. Periodic Right to Review/Update Insurance Requirements: The Department and Licensee agree that the insurance policy limits specified on the attached *Exhibit A (Contract Insurance Requirements)* may be reviewed for adequacy annually throughout the term of this license agreement by the Risk Manager/City Attorney, who may thereafter require Licensee to adjust the amounts and types of insurance coverage(s) to whatever extent the Risk Manager/City Attorney deems to be adequate and necessary. The City reserves the right to have submitted to it, upon request, all pertinent information about the agent(s) and carrier(s) providing such insurance, including applicable license(s) and ratings.

8. **INDEMNIFICATION - GENERAL:** Licensee has inspected the premises, knows the condition thereof, and on behalf of itself and its successors, assigns, and sub-licensees undertakes and agrees to indemnify and hold harmless the City of Los Angeles, the Department of Water and Power, the Board of Water and Power Commissioners of the City of Los Angeles, and all of their officers, agents, successors in interest, insurers, assigns, and/or employees (individually and collectively, "Indemnitees"); and at the option of the City, defend by counsel satisfactory to the City, the Indemnitees from and against any and all liens and claims of lien, suits, causes of action, claims, charges, damages (including, but not limited to, indirect, consequential, and incidental), demands, judgments, civil fines, penalties, or losses of any kind or nature whatsoever that are incurred by or asserted against the Indemnitees, for death, bodily injury, or personal injury to any person, including, but not limited to, Licensee's employees, customers, invitees, and agents, or persons who enter onto the premises; or damage (including environmental damage) or destruction or loss of use of any property of either party hereto or third persons in any manner arising by reason of, incident to, or connected in any manner to this agreement or to the Licensee's use of the premises covered under this agreement, regardless of any negligence on the part of Indemnitees, except for the sole active negligence or willful misconduct of the Department of Water and Power. It is the specific intent of this paragraph that this Indemnification shall apply and be effective for all accidents, occurrences, and/or events occurring during the term of this agreement that give rise to future claims, even if the actual claim comes against the Department after the agreement has expired or terminated. This Indemnification shall be in addition to any other rights or remedies that Indemnitees have under law or under this agreement.

9. **INDEMNIFICATION - ENVIRONMENTAL:** Licensee, on behalf of itself and its successors, assigns, and sub-licensees, further undertakes and agrees to indemnify and hold harmless the City of Los Angeles, the Department of Water and Power, the Board of Water and Power Commissioners of the City of Los Angeles, and all of their officers, agents, successors in

interest, insurers, assigns and/or employees (individually and collectively, "Indemnitees"), and at the option of the City, defend by counsel satisfactory to the City the Indemnitees from and against any and all liens and claims of lien, suits, causes of action, claims, charges, damages, demands, judgments, civil fines, penalties (including, but not limited to, costs, expenses, and legal liability for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remediation, penalties, and fines arising from the violation of any local, regional, state, or federal law, or regulation, disbursements, and other environmental response costs), or losses of any kind or nature whatsoever that are incurred by or asserted against the Indemnitees, for death, bodily injury or personal injury to any person, including Licensee employees and agents, or damage or destruction or loss of use of any property of either party hereto, or third persons in any manner arising by reason of, incident to, or connected in any manner to the acts, errors, omissions to act, willful misconduct, or non-performance or breach by Licensee of any term and/or condition of this license, relating directly or indirectly to the release or spill of any legally designated hazardous material or waste, resulting from or incident to the presence upon or performance of activities by Licensee or its personnel with respect to the subject area/property covered under this license, on the part of the Licensee, or Licensee's officers, agents, employees, or sub-licensees of any tier, regardless of any negligence on the part of Indemnitees, except for the sole active negligence or willful misconduct of the Department. It is the specific intent of this paragraph that this Indemnification shall apply and be effective for all accidents, occurrences, and/or events occurring during the term of this agreement that give rise to future claims, even if the actual claim comes against the Department after the agreement has expired or terminated. This Indemnification shall be in addition to any other rights or remedies that Indemnitees have under law or under this agreement.

10. IMPROVEMENTS:

10.1. Plans for development, layout, construction, reconstruction, or alteration of improvements on the licensed area, as well as revisions of such plans, must be prepared by a qualified individual acceptable to Licensor and must be approved, in writing, prior to commencement of work. Licensee shall furnish as-built plans, maps, or surveys, or other similar information within 60 days after completion of construction.

10.2. Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the Licensee, or any person working on their behalf, on the licensed area shall be immediately reported to the Licensor. Licensee shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the Licensor. An evaluation of the discovery will be made by Licensor to determine appropriate actions to prevent the loss of significant cultural or scientific values. Licensee will be responsible for the cost of evaluation, and any decision as to proper mitigation measures will be made by the Licensor after consulting with Licensee.

11. LIENS: Licensee shall pay for all materials placed upon, joined, or affixed to said licensed area by or at the insistence of Licensee, shall pay in full all persons who perform labor upon said licensed area at the insistence of Licensee, and shall not cause or permit any liens of any kind or nature to be levied against said licensed area for any work done or materials furnished thereon at the insistence or request of Licensee. Licensee shall provide the Department notice in writing of any liens levied against the licensed area. Licensee shall have 15 days to cause the removal of any such liens and if such liens are not removed, the Department may pay any amount owed and cause their removal. Department may bill the Licensee for the amount paid out by the Department in removing such liens. Licensee shall have 15 days to repay the funds expended by the Department necessary to remove such lien. Failure to comply with the requirements of this section shall be considered a default and Department shall have the right but not the obligation to terminate this License.

12. **ASSIGNMENT OR SUBLET:** This License and the permission herein given is personal to Licensee and is not assignable. Licensee shall not allow the use or occupancy of the premises by any other party without first obtaining written permission from the Department.

13. **TERMINATION:**

13.1. Regardless of the manner or duration of use or occupancy of said licensed area by Licensee, and regardless of the permanent character of any works or structures constructed or installed therein or thereon by Licensee, this License may be terminated at anytime without cause for any reason or no reason at all at the option of the Department by giving 30 days' notice of termination.

13.2. Upon the expiration of the term of this License or sooner termination as herein provided, the Department has the right to discontinue allowing the use of the premises and has no obligation to Licensee to renew, extend, transfer, or re-license the premises. If this right is exercised by the Department, Licensee shall vacate and discontinue use of the premises and shall peaceably surrender the same.

13.3. This License may be immediately revoked by the Department in the event of any failure or refusal on the part of Licensee to keep or perform any of the terms or conditions herein. Notice of revocation shall be given by delivering the same to Licensee personally or by mailing the same to Licensee. Failure by the Department to revoke this License for noncompliance of the terms or conditions by Licensee shall not constitute a waiver of the terms or conditions.

13.4. Upon any termination of this License, Licensee shall surrender the licensed area in a neat and clean condition. Licensee shall complete restoration of the premises to its original condition or better prior to termination of this License. Licensee shall remove all improvements unless otherwise instructed in writing by the Department. Licensee shall call the Department's Real Estate Section, (760) 873-0370, to make arrangements for a field inspection of Licensee's improvements in order to determine which improvements, if any, will be allowed to remain. All improvements allowed to remain shall become the property of the Department.

13.5. Upon termination of the License for whatever reason, the Licensee shall be responsible, to the extent caused by or introduced onto the property as a result of the use of the property by Licensee, for all cleanup costs and expenses including, but not limited to, any fines, penalties, judgments, litigation costs, and attorneys' fees incurred as a result of any and all discharge, leakage, spillage, emission of material which is, or becomes, defined as any pollutant, contaminant, hazardous waste or hazardous substance, under all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, or imposing liability or standards of conduct concerning any hazardous substance on, under, or about the property, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USCS §§9601 et seq.); the Resource Conservation and Recovery Act of 1976 (42 USCS §§6901 et seq.); the Clean Water Act, also known as the Federal Water Pollution Control Act (33 USCS §§1251 et seq.); the Toxic Substances Control Act [15 USCS §§2601 et seq.); the Hazardous Materials Transportation Act [49 USCS §§1801 et seq.); the Federal Insecticide, Fungicide, Rodenticide Act (7 USCS §§136 et seq.); the Superfund Amendments and Reauthorization Act (42 USCS §§6901 et seq.); the Clean Air Act (42 USCS §§7401 et seq.); the Safe Drinking Water Act (42 USCS §§300f et seq.); the Solid Waste Disposal Act

(42 USCS §§6901 et seq.); the Surface Mining Control and Reclamation Act (30 USCS §§1201 et seq.); the Emergency Planning and Community Right to Know Act (42 USCS §§11001 et seq.); the Occupational Safety and Health Act (29 USCS §§655 and 657); the California Underground Storage of Hazardous Substances Act (H&SC §§25280 et seq.); the California Hazardous Substances Account Act (H&SC §§25300 et seq.); the California Hazardous Waste Control Act (H&SC §§25100 et seq.); the California Safe Drinking Water and Toxic Enforcement Act (H&SC §§24249.5 et seq.); the Porter-Cologne Water Quality Act (Wat. C. §§13000 et seq.); together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect or later enacted that pertains to hazardous substances on, under, or about the property, including ambient air, soil, soil vapor, groundwater, surface water, or land use. Said cleanup shall be accomplished to the satisfaction of the Department and any governmental body having jurisdiction there over.

14. **NOTICES:** Any notice to be given hereunder by either party to the other shall be in writing, and either served personally or sent by prepaid, first-class mail. Any such notice shall be addressed as follows:

To the Department:

Real Estate
Los Angeles Department of Water and Power
300 Mandich Street
Bishop, California 93514-3449

To the Licensee

County of Inyo
Sheriff's Department
P.O. Drawer S
Independence, California 93526

or to such other address as the Department and the Licensee may hereafter designate by written notice. Notice shall be deemed communicated within twenty-four (24) hours from the time of mailing if mailed as provided in this paragraph.

15. **NONDISCRIMINATION:** During the term of this license, the Licensee shall not discriminate in its employment practices against any employee or applicant for employment because of race, religion, national origin, ancestry, sex, sexual orientation, age disability, marital status, domestic partner status, or medical condition. Any sublicenses shall contain a like nondiscrimination clause: The applicable provisions of Executive Order No. 11246 of September 24, 1965; Part 60-741 of 41 CFR pertaining to handicapped workers, including 60-741.4 Affirmative Action Clause; and Sections 10.8 to 10.13 of the Los Angeles Administrative Code pertaining to nondiscrimination in employment in the performance of City contracts are incorporated herein by reference and made a part hereof as if they were fully set forth herein.

16. **AFFIRMATIVE ACTION PLAN:** Licensee shall have an Affirmative Action Plan on file with the Director of Corporate Purchasing Services. Licensee's Plan shall be submitted on the City's form, available from the Director of Corporate Purchasing Services.

17. **CHILD SUPPORT ASSIGNMENT ORDERS:** Licensee shall comply with Section 10.10, Article 1, Chapter 1, Division 10 of the Los Angeles Administrative Code related to Child Support Assignment Orders. Said Ordinance is incorporated by reference as though fully set forth herein. The Department requires all licensees and sublicensees entering into a contract with the Department to comply with all reporting requirements and court-ordered wage earning assignments.

18. **LIVING WAGE ORDINANCE (LWO):** Under provisions of Section 10.37 et seq. of the Los Angeles Administrative Code, all employers (except where specifically exempted) under contracts primarily for the furnishing of services to or for the City and that involve an expenditure in excess of $25,000 and a contract term of at least three months; leases; licenses; or, certain recipients of City financial assistance, shall comply with all applicable provisions of the Ordinance. The Department of Water and Power shall have the authority, under appropriate circumstances, to terminate the contract and otherwise pursue legal remedies that may be available, if the Department of Water and Power determines that the subject contractor or financial recipient violated the provisions of the referenced Code Section.

19. **GOVERNING LAW:** This License shall be interpreted, governed by, and construed under the laws of the State of California or the laws of the United States, as applicable, as if executed and to be performed wholly in the State of California.

20. **NO THIRD PARTY RIGHTS:** The Parties do not intend to create rights in or grant remedies to any Third Party as a beneficiary of this License or of any duty, covenant, obligation, or undertaking established under this License.

21. **WAIVER:** Any waiver at any time by either Party of its rights with respect to a default under this License, or with respect to any other matter arising in connection with this License, shall not be deemed a waiver with respect to any subsequent default or other matter arising in connection therewith. Any delay in assessing or enforcing any right, shall not be deemed to be a waiver of such right, provided that all applicable statutory periods of limitation shall apply.

22. **FAIR MEANING:** Each Party and its counsel have participated fully in the review and preparation of this License. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this License. The language in this License shall be interpreted as to its fair meaning and not strictly for or against either Party.

23. **ENTIRE UNDERSTANDING:** This License Agreement contains the entire understanding of the parties, and Licensee, by accepting the same, acknowledges that there is no other written or oral understanding between the parties in respect to the subject premises or the right and obligations of the parties hereto. No modification, amendment, or alteration of this License Agreement shall be valid unless it is in writing and signed by the parties hereto.

IN WITNESS WHEREOF, the respective parties hereto have executed this License Agreement on the day and year written below.

The signature affixed hereto of the Licensee, or the authorized representative of the Licensee, certifies that Licensee has read and does understand each and every paragraph contained in this License Agreement and agrees to abide by and be bound by same.

County of Inyo

Date _____ By _____

P.O. Drawer S
Independence, California 93526

LICENSEE

DEPARTMENT OF WATER AND POWER
OF THE CITY OF LOS ANGELES

Date _____ By _____

RONALD O. NICHOLS
General Manager

LICENSOR

APPROVED:

_____
Martin L. Adams
Director of Water Operations

_____
Date

APPROVED AS TO FORM AND LEGALITY
CARMEN A. TRUTANICH, CITY ATTORNEY

FEB 20 2013

BY _____
TINA SHIM
DEPUTY CITY ATTORNEY

EXHIBIT A

CONT RACT INSURANCE REQUIREMENTS -- DEPARTMENT OF WATER AND POWER
For Contractors, Service Providers, Vendors, and Tenants

Agreement/Activity/Operation:	**installation, operation, and maintenance of electronic telecommunication equipment - Mazourka Peak Communications Site**
Reference/Agreement:	**LA-821** **County of Inyo**
Term of Agreement:	**five years – 7/1/12 through 6/30/17**
Contract Administrator and Phone:	**Karen E. Philbrook / Bishop / Ext. 30234**
Buyer and Phone Number:	

Contract-required types and amounts of insurance as indicated below by checkmark are the minimum which must be maintained. All limits are Combined Single Limit (Bodily Injury/Property Damage) unless otherwise indicated. Firm 30 day Notice of Cancellation required by Receipted Delivery.

PER OCCURRENCE LIMITS

(✓) **WORKERS' COMPENSATION** (Stat. Limits)/Employer's Liability: **($1,000,000.00)**
- (✓) Broad Form All States Endorsement
- ( ) Jones Act (Maritime Employment)
- (✓) Waiver of Subrogation
- ( ) Other: _____
- ( ) US L&H (Longshore and Harbor Workers)
- ( ) Outer Continental Shelf
- ( ) Black Lung (Coal Mine Health and Safety)
- ( ) Other: _____

(✓) **AUTOMOBILE LIABILITY:** **($1,000,000.00)**
- (✓) Owned Autos
- (✓) Hired Autos
- ( ) Contractual Liability
- ( ) MCS-90 (US DOT)
- ( ) Waiver of Subrogation
- ( ) Any Auto
- (✓) Non-Owned Auto
- (✓) Additional Insured
- ( ) Trucker's Form
- ( ) Other: _____

(✓) **GENERAL LIABILITY:** ( ) Limit Specific to Project ( ) Per Project Aggregate **($1,000,000.00)**
- (✓) Broad Form Property Damage
- (✓) Premises and Operations
- (✓) Fire Legal Liability
- ( ) Corporal Punishment
- ( ) Watercraft Liability
- ( ) Waiver of Subrogation
- ( ) Marine Contractors Liability
- (✓) Contractual Liability
- (✓) Products/Completed Ops.
- ( ) Garagekeepers Legal Liab.
- ( ) Collapse/Underground
- ( ) Pollution
- ( ) Airport Premises
- (✓) Other: Agg 2x per occurrence
- (✓) Personal Injury
- (✓) Independent Contractors
- ( ) Child Abuse/Molestation
- ( ) Explosion Hazard
- (✓) Addition Insured Status
- ( ) Hangarkeepers Legal Liab.
- ( ) Other: _____

( ) PROFESSIONAL LIABILITY: ( )
- ( ) Contractual Liability
- ( ) Additional Insured
- ( ) Waiver of Subrogation
- ( ) Vicarious Liability Endt.
- ( ) 3 Year Discovery Tail
- ( ) Other: _____

( ) AIRCRAFT LIABILITY: ( )
- ( ) Passenger Per Seat Liability
- ( ) Pollution
- ( ) Contractual Liability
- ( ) Additional Insured
- ( ) Hull Waiver of Subrogation
- ( ) Other: _____

( ) PROPERTY DAMAGE: ( ) Loss Payable Status (AOIMA) ( )
- ( ) Replacement Value
- ( ) All Risk Form
- ( ) Builder's Risk: $_____
- ( ) Transportation Floater: $_____
- ( ) Scheduled Locations/Propt.
- ( ) Actual Cash Value
- ( ) Named Perils Form
- ( ) Boiler and Machinery
- ( ) Contractors Equipment: $_____
- ( ) Other: _____
- ( ) Agreed Amount
- ( ) Earthquake: _____
- ( ) Flood: _____
- ( ) Loss of Rental Income: _____
- ( ) Other: _____

( ) WATERCRAFT: ( )
- ( ) Protection and Indemnity
- ( ) Waiver of Subrogation
- ( ) Pollution
- ( ) Other: _____
- ( ) Additional Insured
- ( ) Other: _____

( ) POLLUTION: ( )
- ( ) Incipient/Long-Term
- ( ) Waiver of Subrogation
- ( ) Sudden and Accidental
- ( ) Contractor's Pollution
- ( ) Additional Insured
- ( ) Other: _____

( ) CRIME: ( ) Joint Loss Payable Status ( ) Additional Insured ( )
- ( ) Fidelity Bond
- ( ) Employee Dishonesty
- ( ) Computer Fraud
- ( ) Other: _____
- ( ) Financial Institution Bond
- ( ) In Transit Coverage
- ( ) Commercial Crime
- ( ) Other: _____
- ( ) Loss of Monies/Securities
- ( ) Wire Transfer Fraud
- ( ) Forgery/Alteration of Docs.

( ) ASBESTOS LIABILITY: ( ) Additional Insured ( )

For Clerk's Use Only:
AGENDA NUMBER

16

AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

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

FROM: AUDITOR-CONTROLLER

FOR THE BOARD MEETING OF: April 16, 2013

SUBJECT: Request to replace one Fiscal Supervisor with an Administrative Analyst and authorize recruitment.

DEPARTMENTAL RECOMMENDATION:

1) Request your Board approve a change in the authorized strength by deleting one Fiscal Supervisor, Range 67 ($3,852-$4,676) and adding one Administrative Analyst, Range 66 ($3,757-$4,574).

2) Request your Board find that, consistent with the adopted Authorized Position Review Policy:

   A) The availability of funding for this requested position comes from the General Fund, as certified by the Auditor-Controller and concurred with by the County Administrator; and
   B) Where if the County was facing layoffs, the position could be filled by internal candidates meeting the qualifications for the position, but since no layoffs are pending, an open recruitment would be appropriate to ensure qualified applicants apply; and
   C) approve the hiring of one Administrative Analyst at Range 66 ($3,757-$4,574) and
   D) approve the hiring of an Account Technician I,II, or III if an internal recruitment is successful leaving an additional vacancy.

SUMMARY DISCUSSION:

The Fiscal Supervisor in the Auditor-Controller's office is retiring after 28 years of service to the County. This leaves a void in the office that needs to be filled as soon as possible. Since the County's objective has been to eliminate the position of Fiscal Supervisor, we are asking to replace this position with an Administrative Analyst. This position falls within the same range as a Fiscal Supervisor so there will be no budget impact at this time.

ALTERNATIVES:

Your Board could choose not to approve the hiring of this position which would negatively impact the daily operations of the Auditor's office.

FINANCING:

There is sufficient appropriation in the board-approved Auditor's budget (010400), salary object codes to fund this (these) position(s).

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: 4/11/13
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: 4/11/13

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received) Lisa L. Chapman Date: 4/11/13

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: Arthur J. Maillet, District Attorney

FOR THE BOARD MEETING OF: April 16, 2013

SUBJECT: Transfer of Funds

DEPARTMENTAL RECOMMENDATION:

Request Board amend the FY 2012-2013 County Budget as follows: Recognize $15,000.00 in unanticipated revenue and increase District Attorney Budget 022400, Restitutions (Revenue Code #4676) by $15,000.00 and increase expenditures in Special Appropriations by $15,000.00 (Object Code #5321) (4/5's vote required).

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

Through ongoing enforcement operations money is received at various times as a result of Court ordered payments by convicted criminal defendants and through Asset Forfeiture proceedings pursuant to Health and Safety Code Section 11489.

Proper procedures for processing these funds, as determined by the Board of Supervisors and the County Counsel, require that the Board recognize and appropriate these funds.

By prior action in like situations, the Board has found it fitting to appropriate such funds to District Attorney Special Appropriations (#5321) to be used for buy money, petty cash needs, training, and occasional pieces of equipment for the Inyo Narcotics Enforcement Team (INET).

Accordingly, the District Attorney is requesting that the Board recognize and appropriate unanticipated revenue in the amount of $15,000.00 for the purposes identified in the preceding paragraph.

ALTERNATIVES:

None

OTHER AGENCY INVOLVEMENT:

Superior Court Judge, Inyo County Sheriff, Inyo Narcotics Enforcement Team (INET)

FINANCING:

Court ordered restitutions collected by Probation, District Attorney and law enforcement share of Asset Forfeiture funds earmarked to reimburse INET Task Force.

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 3-27-13

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 4/1/13
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: 9-14-13

CAO-Budget Officer Approved ✓ Date: 04-10-2017

INYO NARCOTICS ENFORCEMENT TEAM (INET) COUNCIL MEETING

February 27, 2013

Bishop, California

This council meeting was held at the [redacted], Bishop, California, on February 27, 2013. Those present were [redacted] and [redacted] brought the meeting to order.

The Minutes of [redacted] are corrected to reflect [redacted] Motion was made by [redacted], Seconded by [redacted] and carried by all that the minutes of January 16, 2013 be approved with the correction noted.

AGENT IN CHARGE [redacted] REPORT:

- [redacted]

REPORTS FROM COUNCIL MEMBERS

- [redacted]

[redacted]

FINANCIAL REPORT: [redacted]

NEW BUSINESS: There was a discussion regarding the need to transfer funds from the INET Asset Forfeiture trust account to the Federal Asset Forfeiture Checking Account. The motion was made by [redacted] Seconded by [redacted] to transfer $15,000.00 from the INET Asset Forfeiture trust account to the Federal Asset Forfeiture Checking Account and carried by all.

[redacted]

OLD BUSINESS: There is no old business.

The next meeting will be held at 9:00 a.m. on March 27, 2013 at the [redacted]
Motion to adjourn was made by [redacted] and seconded by [redacted]

Respectfully submitted,

Heidi J. Garcia

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
18

☐ Consent ☒ Departmental ☐ Correspondence Action ☐ Public Hearing

☐ Scheduled Time for ☐ Closed Session ☐ Informational

FROM: Arthur J. Maillet, District Attorney

FOR THE BOARD MEETING OF: April 16, 2013

SUBJECT: Fiscal Year 2012/2013 Justice Grant (JAG) Anti-Drug Abuse (ADA) Enforcement Team Program Grant.

DEPARTMENTAL RECOMMENDATION:

A) Request Board Authorize acceptance of the Inyo County Justice Grant (JAG) Anti-Drug Abuse (ADA) Enforcement Team Program Grant (#BSCC 621-12) in the amount of $87,617.00 from the Board of State and Community Corrections for Fiscal Year 2012/2013.

B) Authorize District Attorney to sign any necessary documentation to accept and utilize the grant on behalf of the County.

C) Amend the County's Fiscal Year 2012/2013 Budget by replacing the current Budget as follows:

   a. Increase estimated revenue in OES-DSTF Budget #620312 – State Grants (4498) in the amount of $68,715.00 and Internal Charges (4821) in the amount of $30,308.00 for total of revenue of $99,023.00.

   b. Increase appropriations in OES-DSTF Budget #620312 in the amount of $99,023.00 as follows: Salaried Employees 5001-5042 $59,428.00; Internal Charges (5121) $600.00; Cell Phones (5122) $2,900.00; Maintenance of Equipment (5171) $250.00; Professional & Special (5265) $150.00; Office, Space & Rent (5291) $18,819.00; General Operating Expense (5311) $12,076.00; Utilities (5351) $4,800.00

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

This is the (23rd) twenty-third year we have applied for and been offered this grant. The grant total is $87,617.00. New this year, the grant is being administrated by the Board of State and Community Corrections for the time period October 1, 2012 to September 30, 2013. The grant in past years was administrated by the California Emergency Management Agency (CalEMA) for the time period July 1 to June 30. For Fiscal Year 2012/2013 we have budget nine (9) months period (three (3) quarters) October 1, 2012 to June 30, 2013 in the amount of $68,715.00. The remainder of the grant July 1, 2013 to September 30, 2013 (one (1) quarter) will be budgeted in the amount of $18,902.00 for the Fiscal Year 2013/2014. This Grant provides for a portion of the salary and benefits of the INET Legal Secretary at 49% and the Inyo County Sheriff's CalMET grant provides the other 51%. 100% of the INET Legal Secretary's Salary and Benefits will be taken from this grant budget and 51% will be transferred in from the Sheriff's CalMET grant quarterly. After salaries and benefits, remaining funds pay for office space rent, utilities, office security system and miscellaneous operating costs. This grant does not allow for the County Cost Plan and County Administration fees.

We respectfully request your consideration of acceptance of this grant, which makes possible the continuation of the serious and effective enforcement of the State's controlled substance laws in this County of Inyo. This earnest addressing of the "drug problem" which faces Inyo County strikes at the core of a myriad of other crime-related problems.

Staff recommends the following appropriations for FY 2012/2013 as follows:

Salaried Employee	$59,428.00
Internal Charges (5121)	600.00
Cellular Telephones (5122)	2,900.00
Maintenance of Equipment (5171)	250.00
Professional & Special (5265)	150.00
Office Space, & Rent (5291)	18,819.00
General Operating (5311)	12,076.00
Utilities (5351)	4,800.00
Total	$99,023.00

ALTERNATIVES:

Without your Board's acceptance of the Grant, the INET Task Force would have to look for other possibilities of funding.

OTHER AGENCY INVOLVEMENT:

Inyo Sheriff's Department, Inyo County Probation Department, Bishop Police Department, California Highway Patrol.

FINANCING:

Total Grant amount is $87,617.00. Fiscal Year 2012/2013 Grant amount is $68,715.00 October 1, 2012 to June 30, 2013. Budget #620312. The County expends funds and then a claim is made to the State for reimbursement. The remaining grant funds will be budgeted and spent in FY 2013/2014.

APPROVALS	
COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS *(Must be reviewed and approved by county counsel prior to submission to the board clerk.)* R. Oller Approved: — Date 3-27-13
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (*Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)* Approved: [signature] Date 4/1/13
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_____

CAO-Budget Officer [signature] Approved: ✓ Date: 04-10-2013

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received) [signature] Date: 4-11-13

Board of State and Community Corrections
600 Bercut Drive, Sacramento, CA 95811

916.445.5073 PHONE
916.327.3317 FAX

bscc.ca.gov

GOVERNOR Edmund G. Brown Jr.
EXECUTIVE DIRECTOR Patricia Mazzilli

February 14, 2013

Arthur J. Maillet, District Attorney
Inyo County District Attorney
P.O. Drawer D
Independence, CA 93526

Dear Mr. Maillet:

RE: 2012-2013 Justice Assistance Grant (JAG),
Anti-Drug Abuse (ADA) Enforcement Team Program
Contract Number: BSCC 621-12

Your copy of the fully-executed Grant Agreement for funds awarded under the 2012-2013 JAG – ADA Program is enclosed. This document should be kept in your official project file.

As you begin the administration of your grant we encourage you to do the following:

- Refer to Sections 4 and 5 in the Grant Agreement to review the reporting requirements for your project;
- Refer to the Board of State and Community Corrections (BSCC), Corrections Planning and Programs webpage for your project's Excel invoicing file and progress reporting form: www.bscc.ca.gov/programs-and-services/cpp/services; and
- For additional guidelines for the administration of your grant refer to the Contract Administration and Audit Guide – July 2012 edition which includes requirements and forms to be used in the administration of your grant, located at: www.bscc.ca.gov/resources.

For questions regarding the day-to-day operation of your grant, please contact Sandra Fletcher, Program Analyst, at (916) 323-8600 or sandra.fletcher@bscc.ca.gov. If you have technical questions regarding the JAG Program, you may contact Daryle McDaniel, Field Representative, at (916) 341-7392 or daryle.mcdaniel@bscc.ca.gov. The BSCC looks forward to our partnership to ensure the successful completion of your project.

Sincerely,

JEAN L. SCOTT
Deputy Director
Corrections Planning and Programs Division

Enclosure

cc (letter only): Leslie Chapman, Financial Officer
Kris Porter, Day-to-Day Project Contact Person

RECEIVED
FEB 21 2013
Inyo District Attorney
Independence

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

AGREEMENT NUMBER
BSCC 621-12
REGISTRATION NUMBER

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

STATE AGENCY'S NAME
BOARD OF STATE AND COMMUNITY CORRECTIONS

CONTRACTOR'S NAME
INYO COUNTY

2. The term of this Agreement is: **OCTOBER 1, 2012** through **SEPTEMBER 30, 2013**

3. The maximum amount of this Agreement is: **$ 87,617.00**
EIGHTY SEVEN THOUSAND, SIX HUNDRED SEVENTEEN DOLLARS AND NO CENTS

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.

Sections 1 through 11	4 pages
Exhibit A – JUSTICE ASSISTANCE GRANT Standard Conditions	6 pages
Exhibit B – Federal Assurances	7 pages
*Exhibit C – General Terms and Conditions	GTC 610

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.dgs.ca.gov (CA Department of General Services, Office of Legal Services – Standard Contract 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

BY *(Authorized Signature)* ✍ Arthur J. Maillet
DATE SIGNED *(Do not type)* 1-23-13

PRINTED NAME AND TITLE OF PERSON SIGNING
Arthur J. Maillet, District Attorney

ADDRESS
168 N. Edwards/P.O. Drawer Independence, CA 93526

STATE OF CALIFORNIA

AGENCY NAME
BOARD OF STATE AND COMMUNITY CORRECTIONS

BY *(Authorized Signature)* ✍
DATE SIGNED *(Do not type)* 2/15/13

PRINTED NAME AND TITLE OF PERSON SIGNING
JEAN L. SCOTT, Deputy Director

ADDRESS
600 Bercut Drive, Sacramento, CA 95811

California Department of General Services Use Only

☒ Exempt per:
State Contracting Manual (SCM) 4.06

JUSTICE ASSISTANCE GRANT (JAG) PROGRAM

This Grant Agreement is between the

State of California, **Board of State and Community Corrections**, hereafter referred to as the "BSCC"

and

Inyo County,

An entity duly organized, existing and acting pursuant to the laws of the State of California, hereafter referred to as the "Grantee".

The parties agree as follows:

SECTION 1. PROGRAM SUMMARY

The Anti-Drug Abuse (ADA) Enforcement Team Program supports multi-jurisdictional drug task forces (MJDTFs) to combat street to mid-level drug sales, manufacturing, and distribution. The MJDTFs integrate federal, state, and/or local law enforcement agencies and prosecutors for the purpose of enhancing interagency coordination and intelligence in the facilitation of multi-jurisdictional investigations. Each MJDTF must also rescue children found in any drug environment.

SECTION 2. ASSURANCES

A. Grantee agrees to comply with all conditions of this Grant Agreement, all standard Grant Agreement conditions as contained in Exhibit A, all federally required assurances as contained in Exhibit B, general terms and conditions as contained in Exhibit C, and all budget items and conditions as contained in the Application for Funding.

B. Grantee agrees to comply with the financial and administration requirements set forth in the most current edition of the BSCC's *Grant Administration and Audit Guide, Federal, and State Grants.*

SECTION 3. PROJECT OFFICIALS

A. The BSCC's Executive Director or designee shall be the BSCC's representative for administration of the Grant Agreement and shall have authority to make determinations relating to any controversies that may arise under or in connection with the interpretation, performance, or payment for work performed under this Grant Agreement. Disputes shall be resolved in accordance with the provisions of Exhibit A.

B. The Grantee project officials shall be those identified as follows and as specified in Section 1 of the Application for Funding:

Authorized officer with legal authority to sign:

NAME: Arthur J. Maillet
TITLE: District Attorney
ADDRESS: 168 N. Edwards/P.O. Drawer D Independence, CA 93526
TELEPHONE: 760-878-0282
FAX: 760-878-2383
EMAIL: amaillet@inyocounty.us

Designated financial officer authorized to receive warrants:

NAME: Leslie Chapman
TITLE: Auditor
ADDRESS: P.O. Drawer R/168 N. Edwards Independence, CA 93526
TELEPHONE: 760-878-0343
FAX: 760-878-0391
EMAIL: lchapman@inyocounty.us

C. Either party may change its project representatives upon written notice to the other party.

SECTION 4. REPORTS

A. Grantee will submit quarterly progress reports, including results for the Federal performance indicators, in a format developed by the BSCC that describes progress made with respect to program objectives and activities.

Due dates are as follows:

Reporting Periods	Due (No Later Than):
1. October 1, 2012 through December 31, 2012	January 15, 2013
2. January 1, 2013 through March 31, 2013	April 15, 2013
3. April 1, 2013 through June 30, 2013	July 15, 2013
4. July 1, 2013 through September 30, 2013	October 15, 2013

B. Grantee will submit all other reports and data as required by the BSCC.

SECTION 5. INVOICES

A. The Grantee shall be paid in arrears by submitting financial invoices for approved program expenditures no later than forty five (45) days after the end of each quarter.

B. An invoice is due to the BSCC even when grant funds are not expended in the reporting period.

SECTION 6. GRANT AMOUNT AND LIMITATION

Under no circumstances shall the BSCC be obligated to pay any amount in excess of the Grantee's award. Grantee waives any and all claims against the BSCC, the State of California, and the Federal Government on account of project costs that may exceed the sum of the award amount.

SECTION 7. AVAILABILITY OF FUNDS

A. Grantee agrees that the BSCC's obligation to pay any sum under any provision of this Grant Agreement is contingent upon the availability of sufficient funds. This Grant Agreement is valid and enforceable only if sufficient funds are made available by the United States Congress and California Legislature.

B. Subject to any additional restrictions, limitations, statutes or conditions enacted by the United States Congress, the outlined provisions, terms and funding may change at any time during the life of this Grant Agreement.

SECTION 8. BUDGET

LINE ITEM	GRANT FUNDS
1. Salaries and Benefits	$38,893
2. Services and Supplies	$41,942
3. Equipment	$0
4. Other	$6,782
TOTAL	$87,617

SECTION 9. AUDIT

Per Article 8 of the Standard Conditions, grantees must submit an audit of expenditures within 120 days following the end of the grant period. Grantees may choose either a program-specific audit or a single federal audit. Federal guidelines allow grantees receiving $500,000 or more in federal funds in a fiscal year to use their federal juvenile justice assistance grant funds to pay for the cost of the audit. Grantees falling below the $500,000 threshold must use non-federal funds (i.e., match funds) to pay for audit costs. **For purposes of this grant award, please check one of the boxes below to indicate the grantee's choice for meeting the audit requirement.**

☐ In conformance with Federal OMB Circular #A-133, and the California State Controller's Accounting Standards and Procedures Chapter 23, Grant Accounting Index, the identified grant will be included in the City/County Single Federal Audit Report, which will be submitted to the BSCC within the required timeframe of 120 days from the end of the grant period. NOTE: Should an extension be needed, please provide in advance of the deadline a written justification that indicates the reason(s) for the extension and the timeframe needed.

OR

☐ In conformance with Federal OMB Circular #A-133, and the California State Controller's Accounting Standards and Procedures Chapter 23, Grant Accounting Index, the grantee will provide a Program-Specific Final Audit Report to the BSCC within the required timeframe of 120 days from the end of the grant period.

SECTION 10. SCOPE OF WORK

Grantee agrees to implement and complete the project in accordance with the approved Application for Funding.

SECTION 11. CONFLICTS BETWEEN DOCUMENT TERMS

In the event of any inconsistency in the Grant Agreement, except as otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

1) Grant Agreement Sections 1 through 11
2) Exhibit A, Standard Conditions
2) Exhibit B, Federal Assurances
3) Exhibit C, GTC 610

EXHIBIT A

JUSTICE ASSISTANCE GRANT (JAG) PROGRAM

STANDARD CONDITIONS

ARTICLE 1. ASSIGNMENT

This Agreement is not assignable by the Grantee, either in whole or in part, without the consent of the State in the form of a formal written amendment.

ARTICLE 2. AMENDMENT

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in this Agreement is binding on any of the parties.

ARTICLE 3. PROJECT COSTS

The BSCC's *Grant Administration and Audit Guide, Federal and State Grants* outlines eligible and ineligible project costs, as well as match and project income requirements. Grantee is responsible for ensuring that all invoices contain only eligible project costs.

ARTICLE 4. GRANTEE'S GENERAL RESPONSIBILITY

Grantee is solely responsible for the project activities as identified in the Application for Funding. Review and approval by the BSCC is solely for the purpose of proper administration of grant funds by the BSCC and shall not be deemed to relieve or restrict the Grantee's responsibility.

ARTICLE 5. GRANTEE ASSURANCES AND COMMITMENTS

A. Compliance with Laws and Regulations

This Grant Agreement is governed by and shall be interpreted in accordance with the laws of the State of California and the United States Department of Justice. Grantee shall at all times comply with all applicable federal and state laws, rules, and regulations, and all applicable local ordinances, specifically including, but not limited to, environmental, procurement and safety laws, rules, regulations, and ordinances.

B. Fulfillment of Assurances and Declarations

Grantee shall fulfill all assurances, declarations, representations, and statements made by the Grantee in the Application for Funding, documents, amendments, approved modifications, and communications filed in support of its request for grant funds.

C. Use of Grant Funds

Grantee shall expend all grant funds solely for eligible project costs. Grantee shall, upon demand, remit to the BSCC any grant funds and interest or income not expended for eligible project costs or an amount equal to any grant funds expended by the Grantee in violation of the terms, provisions, conditions, or commitments of this Grant Agreement.

D. Permits and Licenses

Grantee agrees to procure all permits and licenses necessary to complete the project, pay all charges and fees, and give all notices necessary or incidental to the due and lawful proceeding of the project work.

E. Contracting Requirements

In accordance with the provisions of this Grant Agreement, the Grantee may contract with public or private contractors for services where activities are necessary for the program/project implementation. Grantee agrees that in the event of any inconsistency between the Grant Agreement, its Exhibits and Grantee's agreement for services with a contractor, the Grant Agreement and its Exhibits will prevail. Grantee shall ensure that the contractor complies with all requirements of the Grant Agreement.

Grantee assures that for any contract awarded by the Grantee, such insurance and fidelity bonds, as is customary and appropriate, will be obtained.

Grantee agrees to place appropriate language in all contracts for work on the project requiring the Grantee's contractors to:

1) Books and Records

Maintain adequate fiscal and project books, records, documents, and other evidence pertinent to the contractor's work on the project in accordance with generally accepted accounting principles. Adequate supporting documentation shall be maintained in such detail so as to permit tracing transactions from the invoices, to the accounting records, to the supporting documentation. These records shall be maintained for a minimum of three (3) years after acceptance of the final grant project audit under the Grant Agreement, and shall be subject to examination and/or audit by the BSCC or designees, state government auditors or designees, or by federal government auditors or designees.

2) Access to Books and Records

Make such books, records, supporting documentations, and other evidence available to the BSCC or designees, the Department of General Services, the Department of Finance, the Bureau of State Audits, their designated representatives, and federal government auditors or designees, during the course of the project and for a minimum of three (3) years after acceptance of the final grant project audit. The Contractor shall provide suitable facilities for access, monitoring, inspection, and copying of books and records related to the grant-funded project.

3) Non-discrimination Clause

During the performance of this Agreement, Contractor and its subcontractors shall comply with all Federal statutes relating to non-discrimination, including but not limited to prohibitions against discrimination on the basis of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition, age or marital status.

ARTICLE 6. PROJECT ACCESS

Grantee shall insure that the BSCC, or any authorized representative, will have suitable access to the project activities, sites, and staff at all reasonable times during project implementation.

ARTICLE 7. RECORDS

A. The Grantee shall establish an official file for the project. The file shall contain adequate documentation of all actions that have been taken with respect to the project, in accordance with generally accepted government accounting principles.

B. The Grantee shall establish separate accounting records and maintain documents and other evidence sufficient to properly reflect the amount, receipt, and disposition of all project funds, including grant funds and any matching funds by the Grantee and the total cost of the project. Source documents include copies of all awards, applications, approved modifications, financial records, and narrative reports.

C. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under the grant, whether they are employed full-time or part-time. Time and effort reports are required for consultants and contractors.

D. The Grantee shall maintain documentation for donated goods and/or services, including the basis for valuation.

E. Grantee agrees to protect records adequately from fire or other damage. When records are stored away from the Grantee's principal office, a written index of the location of records stored must be on hand and ready access must be assured.

F. All Grantee records relevant to the project must be preserved a minimum of three (3) years after closeout of the grant project and shall be subject at all reasonable times to inspection, examination, monitoring, copying, excerpting, transcribing, and auditing by the BSCC or designees. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records must be retained until the completion of the action and resolution of all issues which arise from it or until the end of the regular three-year period, whichever is later.

ARTICLE 8. ACCOUNTING AND AUDIT REQUIREMENTS

All funds received by the Grantee shall be deposited into separate fund accounts which identify the funds and clearly show the manner of their disposition. Grantee agrees that the audit and accounting procedures shall be in accordance with generally accepted government accounting principles and practices (see *Accounting Standards and Procedures for Counties*, California State Controller, Division of Local Government Fiscal Affairs)

and adequate supporting documentation shall be maintained in such detail so as to provide an audit trail which will permit tracing transactions from support documentation to the accounting records to the financial reports and invoices. The Grantee further agrees to the following audit requirements:

A. Federal Single Audit Act

If the Grantee expends $500,000 or more in a year in federal funds, Grantee agrees to comply with the provisions pursuant to the Federal Office of Management and Budget Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations." Circular No. A-133 requires non-federal entities that meet the expenditure criteria to have either a single or program-specific audit conducted for that expenditure year.

B. Interim Audit

The BSCC reserves the right to call for a program audit or a system audit at any time between the execution of this Grant Agreement and the completion or termination of the project. At any time, the BSCC may disallow all or part of the cost of the activity or action determined to not be in compliance with the terms and conditions of this Grant Agreement, or take other remedies legally available.

C. Annual Audit

1) Within 120 calendar days of the Grant Agreement end date, all Grantees must obtain and submit an annual program audit to the BSCC. Only Grantees expending $500,000 or more in a year are authorized to use federal funds to pay the costs associated with performing the audit. Should the federal single audit report include this grant project, the Grantee may submit the federal single audit to satisfy the annual audit requirement. The audit shall be prepared in accordance with generally accepted auditing standards and government auditing standards for financial and compliance audits.

2) Since the audit function must maintain organizational independence, the Grantee's financial officer for this project shall not perform the annual audit. If the Grantee's internal auditor performs the audit, the auditor must be organizationally independent from the Grantee's accounting and project management functions. Additionally, Grantee's internal auditors who report to the financial officer, or to whom the financial officer reports, shall not perform the audit. The person conducting the audit shall be a certified public accountant, unless a Grantee auditor completes the audit.

ARTICLE 9. CHANGES

A. Grantee shall immediately advise the BSCC of any significant problems or changes that arise during the course of the project.

B. No change or modification in the project will be permitted without prior written approval from the BSCC. Changes may include modification to project scope, changes to performance measures, compliance with collection of data elements, and other significant changes in the budget or program components contained in the Application for Funding. Changes shall not be implemented by the project until authorized by the BSCC.

ARTICLE 10. DISBURSEMENT

The Grantee shall be paid in arrears on invoices submitted to the BSCC on the forms or processes determined by the BSCC, certifying to the accuracy of the reports in accordance with generally accepted governmental accounting principles and BSCC regulations, guidelines, policies and procedures.

ARTICLE 11. WITHHOLDING OF GRANT DISBURSEMENTS

A. The BSCC may withhold all or any portion of the grant funds provided by this Grant Agreement in the event that the Grantee has materially and substantially breached the terms and conditions of this Grant Agreement.

B. At such time as the balance of federal funds allocated to the Grantee reaches five percent (5%), the BSCC shall withhold that amount as security, to be released to the Grantee upon compliance with all grant provisions, including: 1) submittal and approval of the final invoice; 2) submittal and approval of the final progress report; 3) submittal and approval of any additional required reports; and 4) submittal and approval of the final audit.

C. The BSCC will not reimburse Grantee for costs identified as ineligible for grant funding. If grant funds have been provided for costs subsequently discovered to be ineligible, the BSCC may either withhold an equal amount from future payments to the Grantee or require repayment of an equal amount to the state by the Grantee.

D. In the event that grant funds are withheld from the Grantee, the BSCC's Executive Director or designee shall notify the Grantee of the reasons for withholding and advise the Grantee of the time within which the Grantee may remedy the failure or violation leading to the withholding.

ARTICLE 12. TERMINATION

A. This Grant Agreement may be terminated at any time by the BSCC, where it appears that there will be lack of grant funds available to fulfill this Grant Agreement, provided that after such termination, the Grantee shall be entitled to an amount that equals the eligible project costs that have been incurred by the Grantee prior to such termination.

B. This Grant Agreement may be terminated after the award of the Grant Agreement but prior to completion of the project, by the BSCC, upon action or inaction by the Grantee that constitutes a material and substantial breach of this Grant Agreement. Such action or inaction by the Grantee includes but is not limited to:

1) Substantial alteration of the scope of the grant project without the prior written approval of the BSCC;

2) Refusal or inability to complete the grant project in a manner consistent with the Application for Funding or approved modifications;

3) Failure to provide the required local match share of the total project costs; if applicable;

4) Failure to meet prescribed assurances, commitments, Grant Agreement, and recording, accounting, auditing, and reporting requirements.

C. Prior to terminating the Grant Agreement under this provision, the BSCC shall provide the Grantee at least 30 days written notice stating the reasons for termination and effective date thereof. The Grantee may appeal the termination decision in accordance with Article 13.

ARTICLE 13. DISPUTES

A. Grantee shall continue with the responsibilities under this Agreement during any dispute.

B. The Grantee may appeal a BSCC staff decision on the basis of alleged misapplication, capricious interpretation of the regulations, policies and procedures, or substantial differences of opinion that may occur concerning the proper application of regulations, policies or procedures.

C. If the Grantee is dissatisfied with an action of BSCC staff, the Grantee may appeal the cause of the dissatisfaction to the Deputy Director in charge of the Corrections Planning and Programs Division of the BSCC. Such appeals shall be filed within 30 calendar days of the notification of action with which the Grantee is dissatisfied. The appeal shall be in writing, and shall:

- state the basis for the dissatisfaction;
- state the action being requested of the Deputy Director; and,
- include any correspondence/documentation related to the cause for dissatisfaction.

D. The Deputy Director will review the correspondence and related documentation and render a decision on the appeal within 30 calendar days, except in those cases where the Grantee withdraws or abandons the appeal. The procedural time requirement may be waived with the mutual consent of the Grantee and the Deputy Director.

E. The Deputy Director may render a decision based on the correspondence and related documentation submitted by the Grantee and may consider other relevant sources of information deemed appropriate. The decision of the Deputy Director shall be in writing and shall provide the rationale for the decision.

F. If the Grantee is dissatisfied with the decision of the Deputy Director, the Grantee may file a request for review by the BSCC Executive Director. Such a request shall be filed within 30 calendar days after receipt of the Deputy Director's decision. The requested review shall be in writing, and shall:

- state the basis for the dissatisfaction;
- state the action being requested of the Executive Director; and
- include any correspondence/documentation related to the appeal.

G. The Executive Director, after reviewing the appeal and the correspondence related to the review, may decide the matter on the record or request additional information. After a decision is made by the Executive Director, notice of the decision shall be mailed to the Grantee. The decision of the Executive Director shall be final.

ARTICLE 14. WAIVER

The parties hereto may waive any of their rights under this Grant Agreement unless such waiver is contrary to law, provided that any such waiver shall be in writing and signed by the party making such waiver.

EXHIBIT B

JUSTICE ASSISTANCE GRANT (JAG) PROGRAM

FEDERAL ASSURANCES

The Grantee hereby assures and certifies compliance with all federal statutes, regulations, policies, guidelines and requirements including the following:

1. As required by Section 1352, Title 31 of the U.S. Code, and implemented as 28 CFR, Part 69, the Grantee certifies that:

   A. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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 making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.

   B. 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 agency, a Member of Congress an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the Grantee shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

   C. The Grantee shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, contracts under grants and cooperative agreements and subcontracts) and that all subgrantees shall certify and disclose accordingly.

2. As required by Executive Order 12549, Debarment and Suspension, and implemented at 28 CFR, Part 67, the Grantee certifies that it and its principals:

   A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of federal benefits by a State or Federal Court, or voluntarily excluded from covered transactions by any federal department or agency.

   B. Have not, within a three-year period preceding this application, 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 above.

   D. Have not, within a three-year period preceding this Grant Agreement, had one or more public transactions (federal, state, or local) terminated for cause or default.

3. As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 67, the Grantee certifies that they will provide a drug-free workplace by:

   A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

   B. Establishing an on-going drug-free awareness program to inform employees about:

      1) The dangers of drug abuse in the workplace;
      2) The Grantee's policy of maintaining a drug-free workplace;
      3) Any available drug counseling, rehabilitation, and employee assistance programs; and
      4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

   C. Making it a requirement that each employee to be engaged in the performance of the grant project be given a copy of the statement required by paragraph (A);

   D. Notifying the employee in the statement required by paragraph (A) that, as a condition of employment under the grant, the employee will:

      1) Abide by the terms of the statement; and
      2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

   E. Notifying the BSCC in writing, within 10 calendar days after receiving notice under subparagraph D.2 from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Department of Justice, Office of Justice Programs, ATTN: Control Desk, 633 Indiana Avenue, N.W., Washington, D.C. 20531. Notice shall include the identification number of each affected grant;

   F. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph D.2, with respect to any employee who is so convicted:

      1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or
      2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

   G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs A, B, C, D, E, and F.

4. Grantee agrees to comply with the financial and administration requirements set forth in the current edition of the *OJP Financial Guide*.

5. Grantee will maintain an Equal Employment Opportunity Plan (EEOP) if the grant award is more than $25,000.

6. If the grant award is $500,000 or more, and the Grantee has 50 or more employees, Grantee must submit its EEOP within 60 days from the date of this award to the Federal Office for Civil Rights (OCR) (www.ojp.usdoj.gov/ocr). A copy of the federal approval letter must be submitted to the BSCC. If Grantee has a current EEOP approval letter, it shall be submitted to the BSCC.

7. Grantee acknowledges that failure to submit the required EEOP that is approved by the Office for Civil Rights (OCR) is a violation of its Certified Assurances and may result in suspension or termination of funding, until such time as the Grantee is in compliance.

8. In the event a Federal or State court or administrative agency makes a finding of discrimination after a due process hearing on grounds of race, color, religion, national origin, sex, or disability against the Grantee, the Grantee will forward a copy of the finding to OCR.

9. Grantee agrees to comply with the organizational audit requirements of OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, and further understands and agrees that funds may be withheld, or other related requirements may be imposed, if outstanding audit issues (if any) from OMB Circular A-133 audits (and any other audits of OJP grand funds) are not satisfactorily and promptly addressed, as further described in the current edition of the OJP Financial Guide.

10. Grantee agrees that within 120 days of award acceptance, each member of a law enforcement task force funded with these funds who is a task force commander, agency executive, task force officer, or other task force member of equivalent rank, will complete required online (internet-based) task force training. The training is provided free of charge online through BJA's Center for Task Force Integrity and Leadership (www.ctfli.org). All current and new task force members are required to complete this training once during the life of the award, or once every four years if multiple awards include this requirement. This training addresses task force effectiveness as well as other key issues including privacy and civil liberties/rights, task force performance measurement, personnel selection, and task force oversight and accountability. Additional information is available regarding this required training and access methods via BJA's and the Center for Task Force Integrity and Leadership's websites.

11. Grantee understands and agrees that it cannot use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation, or policy, at any level of government, without the express prior written approval of OJP, through the BSCC.

12. Grantee must promptly refer to the DOJ OIG any credible evidence that a principal, employee, agent, contractor, subgrantee, subcontractor, or other person has either 1) submitted a false claim for grant funds under the False Claims Act; or 2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving grant funds. This condition also applies to any subgrantees. Potential fraud, waste, abuse, or misconduct should be reported to the OIG by

Mail:

Office of the Inspector General
U.S. Department of Justice
Investigations Division
950 Pennsylvania Avenue, N.W.
Room 4706
Washington, D.C. 20530

Email: oig.hotline@usdoj.gov

Hotline: (English and Spanish): (800) 869-4499

Or Hotline Fax: (202) 616-9881

Additional information is available from the DOJ OIG website at www.usdoj.gov/oig.

13. Grantee understands and agrees that it cannot use any federal funds, either directly or indirectly, in support of any contract or subaward to either the Association of Community Organizations for Reform Now (ACORN) or its subsidiaries, without the express prior written approval of OJP, through the BSCC.

14. Grantee agrees to comply with any additional requirements that may be imposed during the grant performance period if the agency determines that the grantee is a high-risk grantee. Cf. 28 C.F.R. parts 66, 70.

15. Grantee agrees to comply with applicable requirements regarding Central Contractor Registration (CCR) and applicable restrictions on subawards to first-tier subgrantees that do not acquire and provide a Data Universal Numbering System (DUNS) number. The details of grantee obligations are posted on the Office of Justice Programs website at http://www.ojp.gov/funding/ccr.htm (Award condition: Central Contractor Registration and Universal Identifier Requirements), and are incorporated by reference here. This special condition does not apply to an award to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

16. Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), the Department encourages grantees and sub-grantees to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this grant, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

17. Grantee agrees to comply with all applicable laws, regulations, policies, and guidance (including specific cost limits, prior approval, and reporting requirements, where applicable) governing the use of federal funds for expenses related to conferences, meetings, trainings, and other events, including the provision of food and/or beverages at such events, and costs of attendance at such events. Information on pertinent laws, regulations, policies, and guidance is available at www.ojp.gov/funding/confcost.htm.

18. Grantee understands and agrees that any training or training materials developed or delivered with funding provided under this award must adhere to the OJP Training Guiding Principles for Grantees and Subgrantees, available at http://www.ojp.usdoj.gov/funding/ojptrainingguidingprinciples.htm

19. Grantee agrees that if it currently has an open award of federal funds or if it receives an award of federal funds other than this OJP award, and those award funds have been, are being, or are to be used, in whole or in part, for one or more of the identical cost items for which funds are being provided under this OJP award, the grantee will promptly notify, in writing, the grant manager for this BSCC award, and if so requested by the BSCC, seek a budget-modification or change-of-project-scope modification to eliminate any inappropriate duplication of funding.

20. Grantee agrees to comply with applicable requirements to report first-tier subawards of $25,000 or more and, in certain circumstances, to report the names and total compensation of the five most highly compensated executives of the grantee and first-tier subgrants of award funds. Such data will be submitted to the FFATA Subaward Reporting System (FSRS). The details of grantee obligations, which derive from the Federal Funding Accountability and Transparency Act of 2006 (FFATA), are posted on the Office of Justice Programs website at http://www.ojp.gov/funding/ffata.htm (Award condition: Reporting Subawards and Executive Compensation), and are incorporated by reference here. This condition, and its reporting requirement does not apply to grant awards made to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own operate in his or her name).

21. Grantee agrees that all income generated as a direct result of this award shall be deemed program income. All program income earned must be accounted for and used for the purposes of funds provided under this award, including such use being consistent with the conditions of the award, the effective edition of the OJP Financial Guide and, as applicable, either (1) 28 C.F.R. Part 66 or (2) 28 C.F.R. Part 70 and 2 C.F.R. Part 215 (OMB Circular A-110). Further, the use of program income must be reported quarterly to the BSCC.

22. With respect to this award, federal funds may not be used to pay cash compensation (salary plus bonuses) to any employee of the award recipient at a rate that exceeds 110% of the maximum annual salary payable to a member of the federal government's Senior Executive Service (SES) at an agency with a Certified SES Performance Appraisal System for that year. (An award recipient may compensate an employee at a higher rate, provided the amount in excess of this compensation limitation is paid with non-federal funds.)

23. Grantee agrees to assist BJA and the BSCC in complying with the National Environmental Policy Act (NEPA), the National Historic Preservation Act, and other related federal environmental impact analyses requirements in the use of these grant funds, either directly by the grantee or by a subgrantee. Accordingly, the grantee agrees to first determine if any of the following activities will be funded by the grant, prior to obligating funds for any of these purposes. If it is determined that any of the following activities will be funded by the grant, the grantee agrees to contact BJA.

    The grantee understands that this special condition applies to its following new activities whether or not they are being specifically funded with these grant funds. That is, as long as the activity is being conducted by the grantee, a subgrantee, or any third party and the activity needs to be undertaken in order to use these grant funds, this special condition must first be met. The activities covered by this special condition are:

    a. New construction;
    b. Minor renovation or remodeling of a property located in an environmentally or historically sensitive area, including properties located within a 100-year flood plain, a wetland, or habitat for endangered species, or a property listed on or eligible for listing on the National Registrar of Historic Places;
    c. A renovation, lease, or any proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly change its size;
    d. Implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or education environments; and
    e. Implementation of a program relating to clandestine methamphetamine laboratory operations, including the identification, seizure, or closure of clandestine methamphetamine laboratories.

    The grantee understands that complying with NEPA may require the preparation of an Environmental Assessment and/or an Environmental Impact Statement, as directed by BJA. The grantee further understands and agrees to the requirements for implementation of a Mitigation Plan, as detailed at http://www.ojp.usdoj.gov/BJA/resource/nepa/html, for programs relating to methamphetamine laboratory operations.

    Application of This Special Condition to Grantee's Existing Programs or Activities; For any of the grantee's or its subgrantees' existing programs or activities that will be funded by these grant funds, the grantee, upon specific request from BJA, agrees to cooperate with BJA and the BSCC in any preparation by BJA or the BSCC of a national or program environmental assessment of that funded program or activity.

24. In order to promote information sharing and enable interoperability among disparate systems across the justice and public safety community, OJP requires grantees to comply with DOJ's Global Justice Information Sharing Initiative (DOJ's Global) guidelines and recommendations for this particular grant. Grantee shall conform to the Global Standards Package (GSP) and all constituent elements, where applicable, as described at: http://www.itojp.gov/gsp_grantcondition. Grantee shall document planned approaches to information sharing and describe compliance to the GSP and appropriate privacy policy and protects shared information, or provide detailed justification for why an alternative approach is recommended.

25. JAG funds may be used to purchase bulletproof vests for an agency, but may not be used as the 50% match for purposes of the Bulletproof Vest Partnership (BVP) program.

26. Grantee agrees to submit a signed certification to the BSCC that all law enforcement agencies receiving vests purchased with JAG funds have a written "mandatory wear" policy in effect. Fiscal agents and state agencies must keep signed certifications on file for any subgrantees planning to utilize JAG funds for bulletproof vest purchases. This policy must be in place for at least all uniformed officers before any FY 2012 JAG funding can be used by the agency for bulletproof vests. There are no requirements regarding the nature of the policy other than it being a mandatory wear policy for all uniformed officers while on duty.

27. Bulletproof vests purchased with JAG funds may be purchased at any threat level, make or model, from any distributor or manufacturer, as long as the vests have been tested and found to comply with applicable National Institute of Justice ballistic or stab standards. In addition, bulletproof vests purchased with JAG funds must be American-made. The latest NIJ standard information can be found here: http://www.nij.gov/topics/technology/body-armor/safety-initiative.htm.

28. The grantee agrees that any information technology system funded or supported by OJP funds will comply with 28 C.F.R. Part 23, Criminal Intelligence Systems Operating Policies, if OJP determines this regulation to be applicable. Should OJP determine 28 C.F.R. Part 23 to be applicable, OJP may, at its discretion, perform audits of the system, as per the regulation. Should any violation of 28 C.F.R. Part 23 occur, the grantee may be fined as per 42 U.S.C. 2789g©-(d). The grantee may not satisfy such a fine with federal funds.

29. Grantee agrees to ensure that the State Information Technology Point of Contact receives written notification regarding any information technology project funded by this grant during the obligation and expenditure period. This is to facilitate communication among local and state governmental entities regarding various information technology projects being conducted with these grant funds. In addition, the grantee agrees to maintain an administrative file documenting the meeting of this requirement. For a list of State Information Technology Points of Contact, go to http://www.itojp.gov/default.aspx?area=policyAndPractice&page=1046.

30. Grantee agrees to comply with the applicable requirements of 28 C.F.R. Part 38, the Department of Justice regulation governing "Equal Treatment for Faith Based Organizations" (the Equal Treatment Regulation"). The Equal Treatment Regulation provides in part that Department of Justice grant awards of direct funding may not be used to fund any inherently religious activities, such as worship, religious instruction, or proselytization. Grantees of direct grants may still engage in inherently religious activities, but such activities must be separate in time or place from the Department of Justice funded program, and participation in such activities by individuals receiving services from the grantee or a sub-grantee must be voluntary. The Equal Treatment Regulation also makes clear that organizations participating in programs directly funded by the Department of Justice are not permitted to discriminate in the provision of services on the basis of a beneficiary's religion. Notwithstanding any other special condition of this award, faith-based organizations may, in some circumstances, consider religion as a basis for employment. See http://www.ojp.gov/about/ocr/equal_fbo.htm.

31. Grantee acknowledges that all programs funded through subawards, whether at the state or local levels, must conform to the grant program requirements as stated in BJA program guidance.

32. Grantee agrees to comply with the requirements of 28 C.F.R. Part 46 and all Office of Justice Programs policies and procedures regarding the protection of human research subjects, including obtainment of Institutional Review Board approval, if appropriate, and subject informed consent.

33. Grantee agrees to comply with all confidentiality requirements of 42 U.S.C. section 3789g and 28 C.F.R. Part 22 that are applicable to collection, use, and revelation of data or information. Grantee further agrees, as a condition of grant approval, to submit a Privacy Certificate that is in accord with requirements of 28 C.F.R. Part 22, and in particular, section 22.23.

34. Grantee agrees to monitor subawards under this JAG award in accordance with all applicable statutes, regulations, OMB circulars, and guidelines, including the OJP Financial Guide, and to include the applicable conditions of this award in any subaward. The grantee is responsible for oversight of subgrantee spending and monitoring of specific outcomes and benefits attributable to use of JAG funds by subgrantees. The grantee agrees to submit, upon request, documentation of its policies and procedures for monitoring of subawards under this award.

35. Grantee agrees that funds received under this award will not be used to supplant State or local funds, but will be used to increase the amounts of such funds that would, in the absence of Federal funds, be made available for law enforcement activities.

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: Public Works Department/CAO

FOR THE BOARD MEETING OF: April 16, 2013

SUBJECT: Independence Campus Solar installation Project

DEPARTMENTAL RECOMMENDATION:

1. Request Board discussion on possible changes to the SolarCity photovoltaic installation contract; and if the Board is in agreement with staff recommendations *(specific recommendations will be provide during the discussion);*
2. Authorize the CAO to sign any contract amendments with SolarCity for the installation of solar photovoltaic systems, contingent upon the appropriate signatures being obtained;
3. Authorize the Public Works Director to sign all other contract documents, including change orders, to the extent permitted pursuant to Section 20142 of the Public Contract Code and other applicable law; and
4. Amend the FY County Budget as appropriate to facilitate the funding of authorized Contract Amendments *(4/5's vote required.)*

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

The County recently entered into an agreement with SolarCity for the installation of photovoltaic generating systems at the Courthouse Annex, Jail and Juvenile Detention facility. During the project development process it became apparent that a number of changes were needed in the original design because of specific site concerns. These include the preservation of a space for the proposed Superior Court adjacent to the Jail and the need by the Sheriff's Department for overflow parking and aesthetic consideration for the front of the Health and Human Services building located on Market Street.

Your Board should also be aware that County Counsel and the Auditor's office have been informed regarding this proposed contract amendment and will be in the Board meeting to participate in the discussion regarding the amendment process.

ALTERNATIVES:

Not approve the specifications, advertisement and award of the project. This is not recommended because the there is funding available for the work and the installations will provide long term savings in electrical consumption and power billing.

OTHER AGENCY INVOLVEMENT:

(1) County Counsel has reviewed this Agenda Request and the original contracts.
(2) The Auditor's Office will provide financial review for the expenditure of CEC Loan funds.
(3) The California CEC for provision of low interest loan and payments to the County.

FINANCING:

Funds for the Independence Campus Solar installation Project are provided by the California Energy Commission, in the form of low interest loans. LADWP is also providing rebates through their Solar Incentive Program.

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 4.10.13
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: 4/10/13

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
20

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

FROM: Probation Department – Juvenile Institutions

FOR THE BOARD MEETING OF: April 16, 2013

SUBJECT: Amendment to Juvenile Institutions Budget (BPAI Grant Extension) and Request for Approval of Contract

DEPARTMENTAL RECOMMENDATION: Request Board to:

1) amend the Fiscal Year 2012-13 Juvenile Institutions Budget (023100) as follows: increase estimated revenue in State Other (Revenue Object Code 4499) by $89,000 and increase appropriation in Professional Services (Expenditure Object Code 5265) by $89,000 (4/5's vote required);
2) declare Allvest Information Services Inc. dba Assessments.com as a sole source provider;
3) approve the contract between the County of Inyo and Allvest Information Services Inc. dba Assessments.com for consulting, training, and software programming services in an amount not to exceed $89,000 for the period of May 1, 2013 through December 31, 2013 contingent upon the adoption of future budgets and continued BPAI Grant Extension Funding; and,
4) authorize the Chairperson to sign the contract, contingent on obtaining the appropriate signatures.

CAO RECOMMENDATION:

SUMMARY DISCUSSION: On July 13, 2010, your Board approved Resolution #2010-32 authorizing the Chief Probation Officer to submit and/or sign the County's Juvenile Accountability Block Grants (JABG) program application and related contracts, amendments, or extensions with the State of California Corrections Standards Authority (CSA). Recently, the CSA changed their name to the Board of State and Community Corrections (BSCC). At the time, CSA had developed a project known as Best Practices Approach Initiative (BPAI) and awarded monies to Assessments.com (ADC) to provide direct services for the project and monies to the Administrative Office of the Courts (AOC) to support the inclusion of the courts and other court partners in this initiative. The BPAI project objectives were to provide regional trainings, develop participant training guides, develop monitoring tools for CSA, conduct a statewide review and assessment of evidence based practice (EBP) in all county probation departments, and complete an end-of-the-project report, with the majority of the funding directed toward providing two-years of intensive on the ground training, support and technical assistance to three county level juvenile justice communities seeking to implement or enhance use of EBP.

Thereafter, in August 2010, Inyo County was selected along with Shasta and San Diego Counties as the three local juvenile justice jurisdictions to receive technical assistance through a grant, referred to as the BPAI Grant, said Grant expired in July 2012. Progress fluctuated due to many variables, including each county's readiness to proceed as well as ADC's ability to respond and schedule activities. At the end of the BPAI Grant period, numerous deliverables remained outstanding for both

Inyo and Shasta Counties. ADC was able to complete the deliverables for the San Diego implementation.

CSA authorized the BPAI Executive Steering Committee (ESC) to *redirect* remaining project funds to complete the outstanding deliverables. ESC authorized that the remaining funds be made available to Inyo and Shasta Counties in the form of a *direct grant agreement and contract* with each County to cover the cost of the outstanding deliverables not completed in their initial BPAI Scope of Work. Specifically for Inyo County, we did not receive several deliverables that were on our list of priorities and goals to implement evidence based practices throughout the juvenile justice system. These deliverables include data collection, training, policy and procedure development, public outreach, and sustainability measures [Continuous Quality Improvement (CQI)].

Along with the assistance of our contact at the Administrative Office of the Courts, Inyo County Probation applied for the BPAI Grant Extension and in mid-March 2013 this Department was awarded a total of $128,468, which is available to be used to contract with a vendor to provide consulting, training, and software programming services and a very small portion to cover administrative overhead. The BPAI Grant Extension period began on January 1, 2013 expiring December 31, 2013. Progress reports are due quarterly and the Grantee shall be paid in arrears by submitting a quarterly invoice for approved program expenditures for the reporting periods.

This Department has had an on-going relationship with Assessments.com for the last five (5) years. ADC has provided consulting services, training and a software program (PACT) for the juvenile division of the Probation Department. Due to our current contractual relationship with ADC in providing the PACT software; ADC's experience with the various deliverables; and, coupled with the fact that several deliverables are outstanding, this Department is requesting that Assessments.com be declared as the sole source provider for consulting, training, and software programming services to accomplish the BPAI Grant Extension deliverables.

In addition, we respectfully request that the Board approve the attached contract between Inyo County and Assessments.com in an amount not to exceed $89,000 for the time period of May 1, 2013 expiring December 31, 2013. The contract deliverables are specified in Attachment A – Scope of Work, which are also the BPAI Grant Extension deliverables.

ALTERNATIVES: The Board could choose not to amend the Budget to accommodate the BPAI Grant Extension, not declare Assessments.com as a sole course provider, and not approve the contract with Assessments.com; however, this is not recommended. We have the opportunity and the funding to accomplish this Department's goals and that of the BPAI Grant to effectively implement evidence based practices through consulting, training and software program services by entering into a contract with Assessments.com. The Board's alternative is to request that this Department seek other vendors to accomplish our goals and deliverables.

OTHER AGENCY INVOLVEMENT: Board of State and Community Corrections

FINANCING: This contract would be expended out of the Juvenile Institutions Budget 023100, Professional Services Expenditure Object Code 5265 and funded with BPAI Grant Extension monies.

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 4/2/2013
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 4/3/13
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 4/5/13

COUNTY ADMINISTRATIVE OFFICER: _____ Approved: ✓ Date: 4-3-13

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received) _____ Date: 4/9/13

AGREEMENT BETWEEN COUNTY OF INYO
AND ALLVEST INFORMATION SERVICES, INC. DBA ASSESSMENTS.COM
FOR THE PROVISION OF CONSULTING, TRAINING AND SOFTWARE PROGRAM **SERVICES**

INTRODUCTION

WHEREAS, the County of Inyo (hereinafter referred to as "County") may have the need for the consulting, training, software prgrm. services of Allvest Information Services, Inc. dba Assessments.com of Salt Lake City, Utah (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 Jeffrey Thomson or his designee, whose title is: Chief Probation Officer. 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 May 1, 2013 to December 31, 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 Eighty-nine thousand and no/100 ---------- Dollars (hereinafter referred to as "contract limit"). County expressly reserves the right to deny any payment or reimbursement requested by Contractor for services or work performed which is in excess of the contract limit.

E. Billing and payment. Contractor shall submit to the County, once a month, an itemized statement of all services and work 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	
Probation	Department
918 North Main Street	Street
Bishop, CA 93514	City and State

Contractor:	
Allvest Info. Services dba Assessments.com	Name
201 South Main Street, Suite #1300	Street
Salt Lake City, UT 84111	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 ALLVEST INFORMATION SERVICES, INC. DBA ASSESSMENTS.COM
FOR THE PROVISION OF CONSULTING, TRAINING AND SOFTWARE PROGRAM **SERVICES**

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

COUNTY OF INYO

By: _____

Dated: _____

CONTRACTOR

By: _____
Signature

Marjorie Rist
Print or Type Name

Dated: 4/2/2013

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 ALLVEST INFORMATION SERVICES, INC. DBA ASSESSMENTS.COM
FOR THE PROVISION OF CONSULTING, TRAINING AND SOFTWARE PROGRAM **SERVICES**

TERM:

FROM: May 1, 2013 **TO:** December 31, 2013

SCOPE OF WORK:

Assessments.com (ADC) will be performing work that builds upon that which was completed under the Corrections Standards Authority (CSA) - sponsored Best Practices Approval Initiative (BPAI). The following core deliverable areas are:

Goal #1: Data Collection and Management Assessment
1. Implementation of the ADAPT DataMart
2. Implementation of the Recidivism Database
3. Data Management Systems Feasibility Analysis and Report

Goal #2: Training to fully implement Evidence Based Practices (EBP)
1. Preparation, Training and Coaching for Continuous Quality Improvement (CQI)
2. PACT Case Plan Implementation

Goal #3: Policy and Procedure / Business Rules
1. Consulting on development of policy and procedure to support the use of the PACT

Goal #4: Public Outreach
1. Develop EBP Communications and Education Plan

Goal #5: Implement Efficacy and Sustainability Measures
1. Develop Project Implementation Plan

Notwithstanding Paragraph 7B, County and Contractor agree to the following:

PROTECTION OF INTELLECTUAL PROPERTY.

1. Ownership. Customer acknowledges that all Intellectual Property (excluding the Other Programs and elements derived there from) is the exclusive property of Allvest. The foregoing shall be so regardless of whether Customer or Customer Personnel may have contributed to the conception or development of the same, or may have paid Allvest for the development or use of the same. Nothing in this Agreement shall be construed as an assignment, transfer or grant to Customer of, nor shall Customer otherwise acquire pursuant to this Agreement, any ownership rights in, the Intellectual Property. All use of the Programs, Program Upgrades and Documentation by Customer shall be solely as provided in this Agreement. Customer shall not in any manner represent that it has any ownership rights in the Intellectual Property. Customer acknowledges that use of the Allvest Programs, Program Upgrades and Documentation and the goodwill generated thereby shall inure solely to the benefit of Allvest. Customer further acknowledges the value of and Allvest's exclusive rights in the goodwill in the foregoing. Customer agrees that it will not, during the term of this Agreement or thereafter, attack or otherwise challenge Allvest's exclusive ownership rights in the Allvest Programs, Program Upgrades and Documentation or the validity of this Agreement, or do anything that would jeopardize or diminish Allvest's rights in the Intellectual Property.

2. Proprietary Notices. Customer shall not remove any copyright, trademark, service mark, patent or other proprietary or restrictive notice or legend contained in or included on any Programs, Program Upgrades or Documentation. Customer shall modify existing notices and apply such additional notices as Allvest may request from time to time.

ATTACHMENT A
AGREEMENT BETWEEN COUNTY OF INYO AND ALLVEST INFORMATION SERVICES, INC. DBA ASSESSMENTS.COM FOR THE PROVISION OF CONSULTING, TRAINING, AND SOFTWARE PROGRAM SERVICES

TERM:

FROM: May 1, 2013 TO: December 31, 2013

SCOPE OF WORK Continued:

3. Protective Action. Customer shall immediately notify Allvest of any infringement of or challenge to Customer's licensed use of the Allvest Programs, Program Upgrades or Documentation, or Allvest's rights in the Intellectual Property, or of any claim by any person, business or entity to any rights in the Intellectual Property, whenever it first comes to Customer's attention. Allvest shall have sole discretion to take such action as it deems appropriate, and the right to exclusively control any litigation, action, or proceeding, whether before a court, administrative agency or otherwise, arising out of any such infringement, challenge or claim, or otherwise relating to the Intellectual Property, and Customer agrees to execute any and all instruments and documents, render such assistance and do such acts or things as may, in the opinion of Allvest or its counsel, be reasonably necessary to protect or maintain the interests of Allvest in any such litigation, action or proceeding, or to otherwise protect and maintain the interests of Allvest in the Intellectual Property.

4. Exclusion of Liability. Allvest shall have no liability to Customer or Customer Personnel for any claim, action, proceeding or litigation by third parties for infringement relating to or arising from the Intellectual Property.

PROTECTION OF CONFIDENTIAL INFORMATION.

1. Ownership. Customer acknowledges and agrees that the Confidential Information is proprietary and confidential, that it is not generally known or available in the industry, that it constitutes trade secrets of and is of great value to Allvest, and that all rights to the same are and shall remain the sole property of Allvest.

2. Use, Disclosure or Copying. Customer acknowledges and agrees that at all times, both during the term of this Agreement and thereafter, Customer shall not use, disclose, copy or remove, nor permit any Customer Personnel to use, disclose, copy or remove, any Confidential Information, except to the extent such use, disclosure, copying or removal is specifically authorized by this Agreement.

PROTECTION OF DATA.

1. Ownership. Allvest acknowledges and agrees that the Data is proprietary and confidential, that it is not generally known or available in the industry, that it constitutes trade secrets of and is of great value to Customer, and that all rights to the same are and shall remain the property of Customer.

ATTACHMENT A
AGREEMENT BETWEEN COUNTY OF INYO
AND ALLVEST INFORMATION SERVICES, INC. DBA ASSESSMENTS.COM
FOR THE PROVISION OF CONSULTING, TRAINING,
AND SOFTWARE PROGRAM SERVICES

TERM:

FROM: May 1, 2013 TO: December 31, 2013

SCOPE OF WORK Continued:

2. Use, Disclosure or Copying. Allvest acknowledges and agrees that at all times, both during the term of this Agreement and thereafter, Allvest shall not use, disclose, copy or remove, nor permit any officer, employee or agent of Allvest to use, disclose, copy or remove, any Data, except to the extent such use, disclosure, copying or removal is specifically authorized by the customer, this Agreement, by law or by a court or government agency.

3. Limited Use. Notwithstanding anything in this Agreement to the contrary, the parties agree that Allvest shall have access to all Data that is downloaded and/or stored on the System pursuant to and during the term of this Agreement, with Allvest authorized to select, aggregate and use anonymized Data for purposes of research, analysis, statistical study and instrument validation, during and after the term of this Agreement. Actual disclosure or release of Data by Allvest beyond that noted above or beyond the scope of this Agreement shall be permitted solely upon the written consent of Customer.

ATTACHMENT B

AGREEMENT BETWEEN COUNTY OF INYO
AND ALLVEST INFORMATION SERVICES, INC. DBA ASSESSMENTS.COM
FOR THE PROVISION OF CONSULTING, TRAINING AND SOFTWARE PROGRAM **SERVICES**

TERM:

FROM: May 1, 2013 **TO:** December 31, 2013

SCHEDULE OF FEES:

To be billed as services are provided and/or complete. A total not to exceed Eighty-nine thousand and no/100 dollars ($89,000).

ATTACHMENT C

AGREEMENT BETWEEN COUNTY OF INYO
AND ALLVEST INFORMATION SERVICES, INC. DBA ASSESSMENTS.COM
FOR THE PROVISION OF CONSULTING, TRAINING AND SOFTWARE PROGRAM **SERVICES**

TERM:

FROM: May 1, 2013 **TO:** December 31, 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 ALLVEST INFO. SERVICES, INC. DBA ASSESSMENTS.COM
FOR THE PROVISION OF CONSULTING, TRAINING AND SOFTWARE PROGRAM **SERVICES**

TERM:

FROM: May 1, 2013 **TO:** December 31, 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, $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.

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 03/22/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER TOBY H. GONZALES TOBY H. GONZALES STATE FARM AGENCY 465 SOUTH 200 WEST, SUITE 2 BOUNTIFUL, UT 84010-7147	CONTACT NAME: TOBY H GONZALES PHONE (A/C, No, Ext): 801-292-8424 FAX (A/C, No): E-MAIL ADDRESS: TOBY@TOBYGONZALES.COM
INSURED ALLVEST INFORMATION SERVICE, INC. ASSESSMENTS.COM 533 W 2600 S STE 140 BOUNTIFUL UT 84010-7744	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A: State Farm Fire and Casualty Company — 25143 INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY	Y	Y	94-CA-2843-4	10/27/2012	10/27/2013	EACH OCCURRENCE	$ 1,000,000
	COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
	[X] CLAIMS-MADE [ ] OCCUR						MED EXP (Any one person)	$ 5,000
							PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,000
	[X] POLICY [ ] PRO-JECT [ ] LOC						PRODUCTS - COMP/OP AGG	$ 2,000,000
								$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS / NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB [ ] OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB [ ] CLAIMS-MADE						AGGREGATE	$
	DED RETENTION $							$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICE/MEMBER EXCLUDED? (Mandatory in NH) Y/N: Y If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	Y	94-MT-A017-7	04/20/2012	04/20/2013	WC STATU-TORY LIMITS / OTH-ER	
							E.L. EACH ACCIDENT	$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000
A	TECHINCAL ERROR AND OMISSIONS	Y	Y	PS0000001176206	12/18/2012	12/18/2013	1,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

County of Nevada and its officers, agents, employees and volunteers as additional insureds with respect to claims or suits arising from the services provided.

Insurance shall be primary and other insurance maintained by the County of Nevada shall be excess only and not contributing with Contractor's insurance. as additionally insured with respect to claims or suits arising from the services provided.
Insurance shall provide for thirty (30) days written notice to County of any termination or change in coverage protection, or reduction in coverage limits (except ten (10) days notice for non-payment of premium).

CERTIFICATE HOLDER

Inyo County Probation Department
918 N. Main Street
Bishop, CA 93514

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Toby Gonzales

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For Clerk's Use Only:
AGENDA NUMBER

21

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 – ESAAA

FOR THE BOARD MEETING OF: April 16, 2013

SUBJECT: Approval of Annual Area Plan Update and Minimum Funding Percentages

DEPARTMENTAL RECOMMENDATION:
Recommend (1) approval of the minimum percentages of funding for the Title IIIB federal funds as recommended by the Advisory Council including 5% for in-home services, 10% for legal services and 50% for access; and (2) approval of the annual 2013-2014 Area Plan Update for Services for Planning and Services Area 16 (Inyo and Mono Counties), and authorize the Chairperson to sign the required Transmittal Letter.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:
Every four years, the Eastern Sierra Area Agency on Aging (ESAAA) is required to conduct an extensive needs assessment of regional seniors, including those living in long-term care facilities. Then annually, updates must be submitted to the California Department of Aging, per their guidance and use of their templates. The update is intended to report any significant changes in services for each year, and is due by May 1 each year. This year's Area Plan Update was reviewed and recommended for approval by the ESAAA Advisory Council on April 3, 2013.

Further, this new ESAAA Advisory Council, with terms that began in January 2013, reviewed the previous Governing Board's decision on the required setting of minimum percentages of funding in the Title IIIB funds including legal, in-home services and access to services. The Advisory Council's recommendation is to leave the minimum funding percentages as they currently exist.

A Public Hearing on this Area Plan Update was held during the Advisory Council meeting on April 3, 2013. Input from that hearing has been incorporated in the Area Plan Update.

ALTERNATIVES:
Board could choose to delay or deny approval of the plan, which would delay submission to CDA, and delay receipt of current year's funding.

OTHER AGENCY INVOLVEMENT:
County of Mono, California Department of Aging

FINANCING:
There is no funding involved in this request, although receipt of this document is required before our allocations to ESAAA will be released to 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.)* Approved: yes Date: 4/4/2013
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) Jean Turner DC Date: 4/5/13

EASTERN SIERRA AREA AGENCY ON AGING (ESAAA)

for

PLANNING & SERVICE AREA (PSA) 16

2013-2014 Annual

AREA PLAN UPDATE FOR SERVICES

April 2013

Submitted by
The Eastern Sierra Area Agency on Aging Program
of the
Inyo County Health and Human Services Department
163 May Street
Bishop, CA 93514
760 873-3305

Inyo County Board of Supervisors Chairperson Linda Arcularius
ESAAA Advisory Council Chairperson Jim Copeland
ESAAA Director Jean Turner
jturner@inyocounty.us

TRANSMITTAL LETTER
Four-Year Area Plan
2012-2016

AAA Name: Eastern Sierra Area Agency on Aging (ESAAA) **PSA** 16

This Area Plan is hereby submitted to the California Department of Aging for approval. The Governing Board and the Advisory Council have each had the opportunity to participate in the planning process and to review and comment on the Area Plan. The Governing Board, Advisory Council, and Area Agency Director actively support the planning and development of community-based systems of care and will ensure compliance with the assurances set forth in this Area Plan. The undersigned recognize the responsibility within each community to establish systems in order to address the care needs of older individuals and their family caregivers in this planning and service area.

1. Linda Arcularius

Signature: Governing Board Chair [1] — April 16, 2013 Date

2. Jim Copeland

Signature: Advisory Council Chair — April 3, 2013 Date

3. Jean Turner

Signature: Area Agency Director — April 3, 2013 Date

1 Original signatures or official signature stamps are required.

SECTION 2. DESCRIPTION OF THE PLANNING AND SERVICE AREA (PSA)

The Counties of Inyo and Mono are located at the eastern edge of California, approximately midway between the northern and southern boundaries of the state. The two-county area is a long triangle of which Mono County forms the apex and Inyo County the base. The east side of the triangle comprises about 300 miles of the California-Nevada border. Kern, San Bernardino, Fresno, Tulare and Alpine Counties share borders on the north, south and west. Total area exceeds 13,000 square miles. The total year-round population is approximately 32,750, but visitors and second homeowners double this at certain times of the year.

The area can be divided into essentially two geographic regions. The Western portion includes the Sierra Nevada Mountain range, which, with its forest, lakes, streams, and ski slopes, plays a major role in the resources and economy of the area, attracting outdoors enthusiasts for hiking, backpacking, hang gliding, snow skiing, snowboarding, fishing, camping and hunting. The Eastern two-thirds of the area is made up essentially of desert basins and mountain ranges, featuring the Death Valley National Park. Emphasizing the contrasting topography of the area is the fact that the western edge of Inyo County contains Mt. Whitney, the highest peak in the United States outside of Alaska, while the eastern region includes Death Valley, in which is found the lowest point in the western hemisphere. Most of the population of the counties is located in the Owens Valley, along the base of the Sierra Nevada Mountains, and in mountain communities in Mono County along US Highway 395. Small pockets of population also are found along Highway 6 in Mono County and, in Inyo County, east of the Death Valley National Park boundary.

This expansive geographic region of over 13,000 square miles, spread out over desert and mountain terrain, coupled with the dispersed and diverse population pockets, also provides significant constraints and challenges in the delivery of services and in the development of overarching systems for services.

Area Plan Update – April 2013 – Estimate of the number of lower income older individuals

According to the 2010 Census Data, there are 7,064 residents aged 60 and over, out of population of 32,748; senior citizens represent 22% of the total population. Attachment A details the population breakdown by community, by age tiers, income and level of remoteness of more urban areas. Of that group, approximately 10% are minority residents, primarily Native American and Hispanic.

SECTION 5. NEEDS ASSESSMENT

No Change

SECTION 7. PUBLIC HEARINGS **PSA** 16

At least one public hearing must be held each year of the four-year planning cycle.
CCR Title 22, Article 3, Section 7302(a)(10) and Section 7308, OAA 2006 306(a)

Fiscal Year	Date	Location	Number of Attendees	Presented in languages other than English? [2] Yes or No	Was hearing held at a Long-Term Care Facility? [3] Yes or No
2012-13	Aug. 27-28, 2012	Bishop & Independence, California	35	No	No
2013-14	April 3, 2013	Bishop, California	18	No	Yes
2014-15					
2015-16					

The following must be discussed at each Public Hearing conducted during the planning cycle:

1. Summarize the outreach efforts used in seeking input into the Area Plan from institutionalized, homebound, and/or disabled older individuals.

   This Area Plan Update was sent to all three skilled nursing facilities in the PSA prior to the Public Hearing, and a Public Hearing on April 3, 2013 was held at the Bishop Care Center. Further a notice about the Area Plan Update was mailed to all homebound/disabled older individuals identified through Home-Delivered Meals program staff with directions on how to receive more detailed information if interested.

2. Were proposed expenditures for Program Development (PD) and Coordination (C) discussed?

   ☐ Yes. Go to question #3

   ☒ Not applicable, PD and C funds are not used. Go to question #4

3. Summarize the comments received concerning proposed expenditures for PD and C
   N.A.

4. Attendees were provided the opportunity to testify regarding setting of minimum percentages of Title III B program funds to meet the adequate proportion funding for Priority Services

   ☒Yes. Go to question #5

   ☐No, Explain:

5. The discussion around minimum percentages included a full discussion about (a) the importance of legal services for seniors as a way to offset the onset of other issues; and (b) transportation needs, including assisted transportation and the possible impact of health care reform on the need,

2 A translator is not required unless the AAA determines a significant number of attendees require translation services.
3 AAAs are encouraged to include individuals in LTC facilities in the planning process, but hearings are not required to be held in LTC facilities.

including whether or not some transportation could be billed to Medi-Cal/Medicare for eligible seniors.

6. List any other issues discussed or raised at the public hearing.

   The Disease Prevention services will include, in the upcoming year, an augmentation of use of volunteers to receive training and subsequently implement the evidence-based Healthy Ideas program. This is viewed as a strategy for getting additional observation and assistance, particularly to local homebound residents who may be experiencing depression or other emerging issues.

7. Note any changes to the Area Plan which were a result of input by attendees.
   None

ANNUAL BUDGET

This is the 2012/2013 budget.
At the time of mailing the budget documents for 2013/2014
have not been received from the State.

AREA PLAN BUDGET SUMMARY - BUDGETED COSTS

TITLE III ADMIN AND TITLE III PROGRAMS

BUDGET PERIOD: July 1, 2012 - June 30, 2013		[ ] ORIGINAL [X] REVISION #1			CONTRACT NO.: AP-1213-16		DATE: 12/27/12	PSA # 16
COST CATEGORIES		(a) Area Plan Admin	(b) III B Supportive Svcs	(c) III C-1 Congregate Nutr	(d) III C-2 Home Del Nutr	(e) III D Health Promotion	(f) III E Family Caregiver	(g) Total Title III
1. Personnel (+)	CASH	45,454	81,559	70,389	159,515	0	14,645	371,562
	IN-KIND	0	0	0	0	0	0	0
2. Staff Travel (+)	CASH		1,250					1,250
	IN-KIND							0
3. Staff Training (+)	CASH							0
	IN-KIND							0
4. Equipment (+)	CASH							0
	IN-KIND							0
5. Consultants (+)	CASH							0
	IN-KIND							0
6. Food Costs (+)	CASH			52,526	116,168			168,694
	IN-KIND							0
7. Other Costs (+)	CASH	28,404	44,431	81,074	83,127	3,057	7,137	247,230
	IN-KIND						1,697	1,697
8. Allocated Costs* (+)	CASH							0
	IN-KIND							0
9. DIRECT AREA	CASH	73,858	127,240	203,989	358,810	3,057	21,782	788,736
AGENCY COSTS (=)	IN-KIND	0	0	0	0	0	1,697	1,697
10. Indirect Costs (+)	CASH	7,492	12,653	11,125	25,656		2,705	59,631
	IN-KIND	4,032	7,056	6,720	14,784		1,008	33,600
11. TOTAL AREA	CASH	81,350	139,893	215,114	384,466	3,057	24,487	848,367
AGENCY COSTS (=)	IN-KIND	4,032	7,056	6,720	14,784	0	2,705	35,297
12. Contracted Services Costs (+)	CASH		50,312	42,104	46,753	0	0	139,169
	IN-KIND		3,109	0	0	0	0	3,109
13. TOTAL TITLE III	CASH	81,350	190,205	257,218	431,219	3,057	24,487	987,536
COSTS (=)	IN-KIND	4,032	10,165	6,720	14,784	0	2,705	38,406
14. TOTAL CASH & IN-KIND		85,382	200,370	263,938	446,003	3,057	27,192	1,025,942

AREA PLAN BUDGET APPROVAL

FOR STATE USE ONLY

Fiscal Specialist Approval	Date	Fiscal Coach Verification	Date

* - Must submit allocation plan with Area Plan Budget

AREA PLAN BUDGET SUMMARY - BUDGETED COSTS

TITLE III , TITLE VII, OMBUDSMAN SDF, AND OMBUDSMAN SNF-QAF TOTAL COSTS

BUDGET PERIOD: July 1, 2012 - June 30, 2013		[ ] ORIGINAL [X] REVISION #1			CONTRACT NO.: AP-1213-16		DATE: 12/27/12	PSA # 16
COST CATEGORIES		(a) VII Ombudsman	(b) VII Elder Abuse Prev	(c) Total Title VII	(d) **Total Title III & VII**	(e) Ombudsman SDF	(f) Ombudsman SNF-QAF	(g) **Total Area Plan**
1. Personnel (+)	CASH	4,928	177	5,105	376,667	310	4,249	381,226
	IN-KIND	0	0	0	0	0	0	0
2. Staff Travel (+)	CASH			0	1,250			1,250
	IN-KIND			0	0			0
3. Staff Training (+)	CASH			0	0			0
	IN-KIND			0	0			0
4. Equipment (+)	CASH			0	0			0
	IN-KIND			0	0			0
5. Consultants (+)	CASH			0	0			0
	IN-KIND			0	0			0
6. Food Costs (+)	CASH				168,694			168,694
	IN-KIND				0			0
7. Other Costs (+)	CASH			0	247,230			247,230
	IN-KIND			0	1,697			1,697
8. Allocated Costs* (+)	CASH			0	0			0
	IN-KIND			0	0			0
9. DIRECT AREA	CASH	4,928	177	5,105	793,841	310	4,249	798,400
AGENCY COSTS (=)	IN-KIND	0	0	0	1,697	0	0	1,697
10. Indirect Costs (+)	CASH			0	59,631			59,631
	IN-KIND			0	33,600			33,600
11. TOTAL AREA	CASH	4,928	177	5,105	853,472	310	4,249	858,031
AGENCY COSTS (=)	IN-KIND	0	0	0	35,297	0	0	35,297
12. Cost of Contracted Services (+)	CASH	14,784	530	15,314	154,483	931	12,748	168,162
	IN-KIND			0	3,109			3,109
13. TOTAL AREA	CASH	19,712	707	20,419	1,007,955	1,241	16,997	1,026,193
PLAN COSTS (=)	IN-KIND	0	0	0	38,406	0	0	38,406
14. TOTAL CASH & IN-KIND		19,712	707	20,419	1,046,361	1,241	16,997	1,064,599

* - Must submit allocation plan with Area Plan Budget

AREA PLAN BUDGET SUMMARY - BUDGETED FUNDING

TITLE III , TITLE VII, OMBUDSMAN SDF, AND OMBUDSMAN SNF-QAF

BUDGET PERIOD: July 1, 2012 - June 30, 2013		[ ] ORIGINAL [X] REVISION #1			CONTRACT NO.: AP-1213-16		DATE: 12/27/12	PSA # 16
SECTION A FUNDING SOURCES		(a) Area Plan Admin	(b) III B Supportive Svcs	(c) III C-1 Congregate Nutr	(d) III C-2 Home Del Nutr	(e) III D Health Promotion	(f) III E Family Caregiver	(g) **Total Title III**
1. Program Income	CASH		2,800	30,714	28,461	0	0	61,975
2. NSIP	CASH			17,610	35,731			53,341
3. Non-Matching	CASH		0	0	0	0	0	0
Contributions	IN-KIND		0	0	0	0	0	0
4. State Funds	CASH	137		58,448	190,286			248,871
5. Matching	CASH	20,170	63,216	7,969	105,641	247	4,643	201,886
Contributions	IN-KIND	4,032	10,165	6,720	14,784	0	2,705	38,406
6. Federal Funding	CASH	61,043	124,189	142,477	71,100	2,810	19,844	421,463
7. TOTAL TITLE III	CASH	81,350	190,205	257,218	431,219	3,057	24,487	987,536
FUNDING	IN-KIND	4,032	10,165	6,720	14,784	0	2,705	38,406
8. TOTAL CASH & IN-KIND		85,382	200,370	263,938	446,003	3,057	27,192	1,025,942

SECTION B FUNDING SOURCES		(h) VII Ombudsman	(i) VII Elder Abuse Prev	(j) **Total Title VII**	(k) **Total Title III & VII**	(l) Ombudsman SDF	(m) Ombudsman SNF-QAF	(n) **Total Area Plan**
9. Program Income	CASH			0	61,975			61,975
10. NSIP	CASH				53,341			53,341
11. Non-Matching	CASH			0	0			0
Contributions	IN-KIND			0	0			0
12. State Funds	CASH			0	248,871	1,241	16,997	267,109
13. Matching	CASH			0	201,886			201,886
Contributions	IN-KIND			0	38,406			38,406
14. Federal Funding	CASH	19,712	707	20,419	441,882			441,882
15. TOTAL AREA	CASH	19,712	707	20,419	1,007,955	1,241	16,997	1,026,193
PLAN FUNDING	IN-KIND	0	0	0	38,406	0	0	38,406
16. TOTAL CASH & IN-KIND		19,712	707	20,419	1,046,361	1,241	16,997	1,064,599

SECTION C

MINIMUM MATCHING REQUIREMENTS

ITEM	(a) Area Plan Admin	(b) Title III B, C, & D Programs	(c) Title III E Programs	(d) **Total Min Matching**
1. Costs to be Matched	85,245	549,318	27,192	661,755
2. Required Matching Percentages	25%	10.53%	25%	
3. Minimum Required Match	21,311	57,843	6,798	85,952
4. Required Local Public Agencies Matching = Line 3 x 25%				21,488

MATCHING CONTRIBUTIONS, TRANSFERS, & ADEQUATE PROPORTION

BUDGET PERIOD: July 1, 2012 - June 30, 2013 | [ ] ORIGINAL [X] REVISION #1 | CONTRACT NO.: AP-1213-16 | DATE: 12/27/12 | PSA # 16

SECTION A

AREA PLAN ADMINISTRATION MATCHING CONTRIBUTIONS

Source	Cash	In-Kind	Total
Inyo County A-87 Administrative	20170	4032	24202
			0
			0
			0
TOTAL	20170	4032	24202

SECTION B

LOCAL PUBLIC AGENCIES MATCHING CONTRIBUTIONS

Source	Cash	In-Kind	Total
Inyo County Local Transportation Commission	37145		37145
CA Wellness Grant	65000		65000
Inyo County	39461	29568	69029
Mono County	8542		8542
TOTAL	150148	29568	179716

SECTION C

TRANSFER OF FUNDS (Do not include OTO)

Federal Funds	Current Budget Display	Increase	Decrease	New Budget Display
1. III B Admin	19,197			19,197
2. III C-1 Admin	22,636			22,636
3. III C-2 Admin	11,278			11,278
4. III B Ombudsman	15,260			15,260
5. III B Program	107,406			107,406
6. III C-1 Program	141,451			141,451
7. III C-2 Program	70,479			70,479
8. III E Admin	7,932			7,932
9. III E Program	17,007			17,007
10. NSIP C-1 Congr Program	15,976			15,976
11. NSIP C-2 Home Del Program	32,415			32,415
State Funds				
12. State B Ombudsman				0
13. State B Other Program				0
14. State C-1 Admin	108			108
15. State C-1 Program	58,448			58,448
16. State C-2 Admin	29			29
17. State C-2 Program	190,286			190,286
18. State D Program				0

SECTION D

PROVIDE JUSTIFICATION FOR TRANSFERS THAT EXCEED 30% BETWEEN III B AND III C OR 40% BETWEEN III C-1 AND III C-2:

SECTION E

ADEQUATE PROPORTION CALCULATION FOR PRIORITY SERVICES

ITEM		Amount
1. Total Supportive Services Federal Share	(+)	124,189
2. Less III B Ombudsman Federal Share	(-)	15,276
3. Less III B One-Time-Only	(-)	1,507
4. Equals III B Supportive Services Base Allocation	(=)	107406

Priority Services (Do not include OTO)	Federal Share	% of Base*	Approved Percentage^
5. Information & Assistance	16,415		
6. Case Management	0		
7. Assisted Transportation	52,078		
8. Transportation	12,000		
9. Outreach	0		
10. Comprehensive Assess.	0		
11. Health	0		
12. Mental Health	0		
13. Public Information	0		
14. Total Access	**80,493**	**74.9%**	**50.0**
15. Personal Care	0		
16. Homemaker	0		
17. Chore	0		
18. Visiting	0		
19. Respite Care	0		
20. Alzheimer's Day Care	0		
21. Residential Repairs/Mods.	0		
22. Adult Day/Health Care	0	% of Base*	Approved Percentage^
23. Telephone Reassurance	5,369		
24. Total In-Home	**5369**	**5.0%**	**5.0**
25. Legal Assistance	**19,632**	**18.3%**	**10.0**

* Total Priority Service Federal Share Divided by III B Base (line 4)

^ As Approved in the Area Plan

SCHEDULE OF PAID PERSONNEL COSTS

ADMIN & TITLE III PROGRAM DIRECT SERVICES

BUDGET PERIOD: July 1, 2012 - June 30, 2013 | [ ] ORIGINAL [X] REVISION #1 | CONTRACT NO.: AP-1213-16 | DATE: 12/27/12 | PSA # 16

POSITION CLASSIFICATION	Annual Wage Rate	FTE %	Admin	FTE %	Direct III B	FTE %	Direct III C-1	FTE %	Direct III C-2	FTE %	Direct III D	FTE %	Direct III E	FTE %	Total Title III
Director	133,138	10.0%	13,314			6.0%	7,988	4.0%	5,326					20.0%	26,628
Assistant Director	104,752	3.0%	3,143											3.0%	3,143
Fiscal Director	83,348	5.0%	4,167	2.0%	1,667	1.5%	1,250	1.5%	1,250					10.0%	8,335
Social Services Director	83,579	1.5%	1,254	1.5%	1,254	3.0%	2,507	2.3%	1,881			6.8%	5,642	15.0%	12,537
Management Analyst	67,587	2.0%	1,352											2.0%	1,352
Executive Secretary	53,363	8.0%	4,269											8.0%	4,269
HHS Specialist	36,869			39.6%	14,600	2.3%	830	3.2%	1,161					45.0%	16,591
Administrative Analyst	55,440	4.5%	2,495	3.8%	2,079	3.8%	2,079	3.0%	1,663					15.0%	8,316
Registered Dietician	67,638					2.5%	1,691	2.5%	1,691					5.0%	3,382
Account Technician	37,520	9.0%	3,377											9.0%	3,377
Site Coordinators	140,752			13.2%	18,632	9.0%	12,711	14.1%	19,896					36.4%	51,239
Cooks	119,432					15.0%	17,915	35.0%	41,801					50.0%	59,716
Program Services Assistant	219,904			8.6%	18,840	2.1%	4,704	19.3%	42,437			2.3%	5,110	32.3%	71,091
HHS Supervisor	20,257			18.9%	3,819									18.9%	3,819
														0.0%	0
														0.0%	0
														0.0%	0
														0.0%	0
														0.0%	0
														0.0%	0
														0.0%	0
														0.0%	0
														0.0%	0
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														0.0%	0
														0.0%	0
														0.0%	0
														0.0%	0
														0.0%	0
														0.0%	0
														0.0%	0
														0.0%	0
														0.0%	0
														0.0%	0
TOTAL SALARIES			33,370		60,891		51,675		117,106		0		10,751		273,793
PAYROLL TAXES															0
EMPLOYEE BENEFITS			12,084		20,668		18,714		42,409				3,894		97,769
TOTAL PAID PERSONNEL COSTS			45,454		81,559		70,389		159,515		0		14,645		371,562

See below for additional personnel lines if needed

SCHEDULE OF PAID PERSONNEL COSTS

TITLE VII, OMBUDSMAN SDF, & OMBUDSMAN SNF-QAF DIRECT SERVICES

BUDGET PERIOD: July 1, 2012 - June 30, 2013 | [ ] ORIGINAL [X] REVISION #1 | CONTRACT NO.: AP-1213-16 | DATE: 12/27/12 | PSA # 16

POSITION CLASSIFICATION	Annual Wage Rate	FTE %	Direct VII A	FTE %	Direct VII B	FTE %	Total Title VII	FTE %	Total Title III & VII	FTE %	Direct Omb SDF	FTE %	Direct Omb SNF-QAF	Total FTE%	Total Area Plan
Director						0.0%	0	20.0%	26628					20.0%	26,628
Assistant Director						0.0%	0	3.0%	3143					3.0%	3,143
Fiscal Director						0.0%	0	10.0%	8335					10.0%	8,335
Social Services Director						0.0%	0	15.0%	12537					15.0%	12,537
Management Analyst						0.0%	0	2.0%	1352					2.0%	1,352
Executive Secretary						0.0%	0	8.0%	4269					8.0%	4,269
HHS Specialist						0.0%	0	45.0%	16591					45.0%	16,591
Administrative Analyst						0.0%	0	15.0%	8316					15.0%	8,316
Registered Dietician						0.0%	0	5.0%	3382					5.0%	3,382
Account Technician						0.0%	0	9.0%	3377					9.0%	3,377
Site Coordinators						0.0%	0	36.4%	51239					36.4%	51,239
Cooks						0.0%	0	50.0%	59716					50.0%	59,716
Program Services Assistant						0.0%	0	32.3%	71091					32.3%	71,091
HHS Supervisor		24.3%	4,928	0.9%	177	25.2%	5,105	44.1%	8924	1.5%	310	21.0%	4,249	66.6%	13,483
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
TOTAL SALARIES			4,928		177		5,105		278,898		310		4,249		283,457
PAYROLL TAXES							0		0						0
EMPLOYEE BENEFITS							0		97,769						97,769
TOTAL PAID PERSONNEL COSTS			4,928		177		5,105		376,667		310		4,249		381,226

See below for additional personnel lines if needed

AREA PLAN BUDGET

CDA 122 (4/12) Page 7 of 12

SCHEDULE OF IN-KIND PERSONNEL COSTS

ADMIN, TITLE III , TITLE VII, OMBUDSMAN SDF, & OMBUDSMAN SNF-QAF

BUDGET PERIOD: July 1, 2012 - June 30, 2013 | [ ] ORIGINAL [X] REVISION #1 | CONTRACT NO.: AP-1213-16 | DATE: 12/27/12 | PSA # 16

POSITION CLASSIFICATION	Annual Wage Rate	FTE %	Admin	FTE %	Direct III B	FTE %	Direct III C-1	FTE %	Direct III C-2	FTE %	Direct III D	FTE %	Direct III E	FTE %	Total Title III
														0.0%	0
														0.0%	0
														0.0%	0
														0.0%	0
														0.0%	0
														0.0%	0
														0.0%	0
														0.0%	0
														0.0%	0
														0.0%	0
														0.0%	0
														0.0%	0
														0.0%	0
														0.0%	0
														0.0%	0
														0.0%	0
														0.0%	0
TOTAL SALARIES			0		0		0		0		0		0		0
PAYROLL TAXES															0
EMPLOYEE BENEFITS															0
TOTAL IN-KIND PERSONNEL COSTS			0		0		0		0		0		0		0

POSITION CLASSIFICATION	Annual Wage Rate	FTE %	Direct VII A	FTE %	Direct VII B	FTE %	Total Title VII	FTE %	Total Title III & VII	FTE %	Direct Omb SDF	FTE %	Direct Omb SNF-QAF	Total %	Total Area Plan
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
0						0.0%	0	0.0%	0					0.0%	0
TOTAL SALARIES			0		0		0		0		0		0		0
PAYROLL TAXES							0		0						0
EMPLOYEE BENEFITS							0		0						0
TOTAL IN-KIND PERSONNEL COSTS			0		0		0		0		0		0		0

SCHEDULE OF DIRECT SUPPORTIVE SERVICES (III B)

BUDGET PERIOD: July 1, 2012 - June 30, 2013	[ ] ORIGINAL [X] REVISION #1			CONTRACT NO.: AP-1213-16	DATE: 12/27/12		PSA # 16
	(a) Total Budgeted Costs	(b) Program Income	Non-Matching Contributions (c) Cash	Non-Matching Contributions (d) In-Kind	(e) State Funds	Matching Contributions (f) Cash	Matching Contributions (g) In-Kind	(h) Federal Share
SERVICE CATEGORIES								
Personal Care (In-Home)*								0
Homemaker (In-Home)*								0
Chore (In-Home)*								0
Adult Day/Health Care (In-Home)*								0
Case Management (Access)*								0
Assisted Transportation (Access)*	66,596	1,400				19,048	7,056	39,092
Transportation (Access)*	41,331	1,400				31,290		8,641
Legal Assistance*								0
Information & Assistance (Access)*	26,286					9,584		16,702
Outreach (Access)*								0
Ombudsman	3,819							3,819
Program Development								0
Coordination								0
CARS Data Reporting								0
Other Support Services:								
Alzheimer's Day Care (In-Home)*								0
Comprehensive Assessment (Access)*								0
Health (Access) *								0
Mental Health (Access) *								0
Public Information (Access)*								0
Residenital Repairs/Modifications (In-Home)*								0
Respite Care (In-Home)*								0
Telephone Reassurance (In-Home)*	7,005					1,546		5,459
Visiting (In-Home)*								0
Cash/Material Aid								0
Community Education								0
Disaster Preparedness Materials								0
Employment								0
Housing								0
Interpretation/Translation								0
Mobility Management								0
Peer Counseling								0
Personal Affairs Assistance								0
Personal/Home Security	1,912							1,912
Registry								0
Senior Center Activities								0
Emergency Preparedness								0
Senior Center Staffing								0
Total Direct III B	146,949	2,800	0	0	0	61,468	7,056	75,625

*Denotes Priority Services

SCHEDULE OF CONTRACTED SUPPORTIVE SERVICES (III B)

BUDGET PERIOD: July 1, 2012 - June 30, 2013	[ ] ORIGINAL [X] REVISION #1			CONTRACT NO.: AP-1213-16	DATE: 12/27/12		PSA # 16
	(a) Total Budgeted Costs	(b) Program Income	Non-Matching Contributions (c) Cash	(d) In-Kind	(e) State Funds	Matching Contributions (f) Cash	(g) In-Kind	(h) Federal Share
SERVICE CATEGORIES								
Personal Care (In-Home)*								0
Homemaker (In-Home)*								0
Chore (In-Home)*								0
Adult Day/Health Care (In-Home)*								0
Case Management (Access)*								0
Assisted Transportation (Access)*	15,296					1,391		13,905
Transportation (Access)*	3,927					357		3,570
Legal Assistance*	21,596						1,964	19,632
Information & Assistance (Access)*								0
Outreach (Access)*								0
Ombudsman	12,602						1,145	11,457
Other Support Services:								
Alzheimer's Day Care (In-Home)*								0
Comprehensive Assessment (Access)*								0
Health (Access) *								0
Mental Health (Access) *								0
Public Information (Access)*								0
Residenital Repairs/Modifications (In-Home)*								0
Respite Care (In-Home)*								0
Telephone Reassurance (In-Home)*								0
Visiting (In-Home)*								0
Cash/Material Aid								0
Community Education								0
Disaster Preparedness Materials								0
Employment								0
Housing								0
Interpretation/Translation								0
Mobility Management								0
Peer Counseling								0
Personal Affairs Assistance								0
Personal/Home Security								0
Registry								0
Senior Center Activities								0
Emergency Preparedness								0
Senior Center Staffing								0
Total Contracted IIIB	53,421	0	0	0		1,748	3,109	48,564
Total Direct IIIB (from Page 8)	**146,949**	**2,800**	**0**	**0**		**61,468**	**7,056**	**75,625**
Total III B	200,370	2,800	0	0		63,216	10,165	124,189

*Denotes Priority Services

SCHEDULE OF NUTRITION (III C-1 & III C-2) & HEALTH PROMOTION (III D) PROGRAMS

BUDGET PERIOD: July 1, 2012 - June 30, 2013	[ ] ORIGINAL [X] REVISION #1			CONTRACT NO.: AP-1213-16		DATE: 12/27/12			PSA # 16
	(a) Total Budgeted	(b) Program	(c)	Non-Matching Contributions		(f) State	Matching Contributions		(i) Federal
SERVICE CATEGORIES	Costs	Income	NSIP	(d) Cash	(e) In-Kind	Funds	(g) Cash	(h) In-Kind	Share
Direct III C-1									
Congregate Meals	220,143	30,714	14,470			47,855	5,390	6,720	114,994
Nutrition Counseling *									0
Nutrition Education **	1,691								1,691
Total Direct III C-1	221,834	30,714	14,470	0	0	47,855	5,390	6,720	116,685
Contracted III C-1									
Congregate Meals	41,604		3,140			10,593	2,579		25,292
Nutrition Counseling *									0
Nutrition Education **	500								500
Total Contracted III C-1	42,104	0	3,140	0	0	10,593	2,579	0	25,792
Total III C-1	263,938	30,714	17,610	0	0	58,448	7,969	6,720	142,477
Direct III C-2									
Home-Delivered Meals	396,146	28,461	30,739			162,933	101,426	14,784	57,803
Nutrition Counseling *	1,552								1,552
Nutrition Education **	1,552								1,552
Total Direct III C-2	399,250	28,461	30,739	0	0	162,933	101,426	14,784	60,907
Contracted III C-2									
Home-Delivered Meals	44,753		4,992			27,353	4,215		8,193
Nutrition Counseling *	1,000								1,000
Nutrition Education **	1,000								1,000
Total Contracted III C-2	46,753	0	4,992	0	0	27,353	4,215	0	10,193
Total III C-2	446,003	28,461	35,731	0	0	190,286	105,641	14,784	71,100
Direct III D									
Nutrition Counseling *									0
Nutrition Education **									0
Health Promotion	3,057						247		2,810
Total Direct III D	3,057	0		0	0	0	247	0	2,810
Contracted III D									
Nutrition Counseling *									0
Nutrition Education **									0
Health Promotion									0
Total Contracted III D	0	0		0	0	0	0	0	0
Total III D	3,057	0		0	0	0	247	0	2,810

* NAPIS Category 9

* NAPIS Category 12

SCHEDULE OF FAMILY CAREGIVER SUPPORT PROGRAM SERVICES (III E)

BUDGET PERIOD: July 1, 2012 - June 30, 2013		[ ] ORIGINAL [X] REVISION #1			CONTRACT NO.: AP-1213-16	DATE: 12/27/12		PSA # 16
	(a) Total Budgeted	(b)	Non-Matching Contributions		(e)	Matching Contributions		(h)
CATEGORIES	Costs	Program Income	(c) Cash	(d) In-Kind	State Funds	(f) Cash	(g) In-Kind	Federal Share
Direct III E Family Caregivers								
Information Services								0
Access Assistance								0
Support Services	22,192					4,143	2,705	15,344
Respite Care	5000					500		4,500
Supplemental Services								0
Total Direct III E Family Caregivers	27,192	0	0	0		4,643	2,705	19,844
Direct III E Grandparents								
Information Services								0
Access Assistance								0
Support Services								0
Respite Care								0
Supplemental Services								0
Total Direct III E Grandparents	0	0	0	0		0	0	0
Total Direct III E	27,192	0	0	0		4,643	2,705	19,844
Contracted III E Family Caregivers								
Information Services								0
Access Assistance								0
Support Services								0
Respite Care								0
Supplemental Services								0
Total Contracted III E Family Caregivers	0	0	0	0		0	0	0
Contracted III E Grandparents								
Information Services								0
Access Assistance								0
Support Services								0
Respite Care								0
Supplemental Services								0
Total Contracted III E Grandparents	0	0	0	0		0	0	0
Total Contracted III E	0	0	0	0		0	0	0
Total III E	27,192	0	0	0		4,643	2,705	19,844

BUDGETED FEDERAL ONE-TIME-ONLY

BUDGET PERIOD: July 1, 2012 - June 30, 2013	[ ] ORIGINAL [X] REVISION #1	CONTRACT NO.: AP-1213-16	DATE: 12/27/12	PSA # 16

Instructions: This is not a separate budget for One-Time-Only. Include OTO costs on Pages 1-11.

SERVICE CATEGORIES	(a) Baseline Services	(b) Equipment	(c) Home & Comm-Based Projects*	(d) Innovative Pilot Projects*	(e) Total OTO
III B					
Personal Care					0
Homemaker					0
Chore					0
Adult Day/Health Care					0
Case Management					0
Assisted Transportation	919				919
Transportation	211				211
Legal Assistance					0
Information & Assistance	287				287
Outreach					0
Ombudsman	16				16
Alzheimer's Day Care					0
Comprehensive Assessment					0
Health					0
Mental Health					0
Public Information					0
Residendential Repairs/Mods.					0
Respite Care					0
Telephone Reassurance	90				90
Visiting					0
					0
					0
					0
					0
					0
CARS Data Reporting					0
Total III B OTO	1,523	0	0	0	1,523

III C-1	Baseline Services	Equipment	Home & Comm-Based Projects*	Innovative Pilot Projects*	Total OTO
Congregate Meals	1,026				1,026
Nutrition Counseling					0
Nutrition Education					0
Total III C-1 OTO	1,026	0	0	0	1,026

SERVICE CATEGORIES	(f) Baseline Services	(g) Equipment	(h) Home & Comm-Based Projects*	(i) Innovative Pilot Projects*	(j) Total OTO
III C-2					
Home-Delivered Meals	621				621
Nutrition Counseling					0
Nutrition Education					0
Total III C-2 OTO	621	0	0	0	621

III D	Baseline Services	Equipment	Home & Comm-Based Projects*	Innovative Pilot Projects*	Total OTO
Nutrition Counseling					0
Nutrition Education					0
Health Promotion	228				228
Total III D OTO	228	0	0	0	228

III E Family Caregivers	Baseline Services	Equipment	Home & Comm-Based Projects*	Innovative Pilot Projects*	Total OTO
Information Services					0
Access Assistance					0
Support Services	2,837				2,837
Respite Care					0
Supplemental Services					0
Total Family Caregivers	2,837	0	0	0	2,837
III E Grandparents					
Information Services					0
Access Assistance					0
Support Services					0
Respite Care					0
Supplemental Services					0
Total Grandparents	0	0	0	0	0
Total III E OTO	2,837	0	0	0	2,837

VII	Baseline Services	Equipment	Home & Comm-Based Projects*	Innovative Pilot Projects*	Total OTO
Ombudsman (VIIa)	199				199
Elder Abuse Prev (VIIb)	70				70

NSIP OTO is not reported on this page.

* Home & Comm-Based Projects and Innovative Pilot Projects Require Prior Approval

State of California
California Department of Aging
CDA 001 (Rev 11/05)

Award #: AP-1213-16
Date: 7/1/2012
Amendment #: #1
Date: 11/21/2012

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
Program							
Supportive Services							
Federal Title IIIB	107,406	-	107,406	-	1,507	108,913	1,507
Total Supportive Services	107,406	-	107,406	-	1,507	108,913	1,507
Ombudsman							
Federal Title IIIB	15,260	-	15,260	-	16	15,276	16
Federal Title VII Ombudsman	19,513	-	19,513	-	199	19,712	199
Special Deposit (SDF)	1,241	-	1,241	-	-	1,241	-
SNF Quality & Accountability	16,997	-	16,997	-		16,997	-
Total Ombudsman	53,011	-	53,011	-	215	53,226	215
Congregate Nutrition							
Federal Title IIIC1	141,451	-	141,451	-	1,026	142,477	1,026
General Fund C1	58,448	-	58,448	-		58,448	-
NSIP C1	15,976	-	15,976	-	1,634	17,610	1,634
Total Congregate Nutrition	215,875	-	215,875	-	2,660	218,535	2,660
Home-Delivered Meals							
Federal Title IIIC2	70,479	-	70,479	-	621	71,100	621
General Fund C2	190,286	-	190,286	-		190,286	-
NSIP C2	32,415	-	32,415	-	3,316	35,731	3,316
Total Home Delivered Meals	293,180	-	293,180	-	3,937	297,117	3,937
Disease Prevention							
Federal Title IIID	2,582	-	2,582	-	228	2,810	228
Total Disease Prevention	2,582	-	2,582	-	228	2,810	228
Family Caregiver							
Federal Title IIIE	17,007	-	17,007	-	2,837	19,844	2,837
Total Title IIIE	17,007	-	17,007	-	2,837	19,844	2,837
Elder Abuse Prevention							
Federal Title VII Elder Abuse Prevention	637	-	637	-	70	707	70
Total Elder Abuse Prevention	637	-	637	-	70	707	70
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	-	11,454	762,332	11,454
Funding Summary							
Federal Funds	483,769	-	483,769	-	11,454	495,223	11,454
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	-	11,454	762,332	11,454

State of California
California Department of Aging
CDA 001 (Rev 11/05)

Award #: AP-1213-16
Date: 7/1/2012
Amendment #: #1
Date: 11/21/2012

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

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 Elder Rights Protection Activities
		2013	13AACAT7SP	
93.042	Title VII:Ombudsman	2012	12AACAT7SP	Older Americans Act Title VII-Allotments for Vulnerable Elder Rights Protection Activities
		2013	13AACAT7SP	
93.043	IIID: Preventive Health	2012	12AACAT3SP	Older Americans Act Title III-Grants for State & Community Programs on Aging
		2013	13AACAT3SP	
93.044	IIIB: Supportive Services	2012	12AACAT3SP	Older Americans Act Title III-Grants for State & Community Programs on Aging
		2013	13AACAT3SP	
93.045	IIIC1: Congregate Meals	2012	12AACAT3SP	Older Americans Act Title III-Grants for State & Community Programs on Aging
		2013	13AACAT3SP	
93.045	IIIC2: Home-Delivered Meals	2012	12AACAT3SP	Older Americans Act Title III-Grants for State & Community Programs on Aging
		2013	13AACAT3SP	
93.052	IIIE: NFCSP	2012	12AACAT3SP	Older Americans Act Title III-Grants for State & Community Programs on Aging
		2013	13AACAT3SP	
93.053	Nutrition Services Incentive Program	2012	12AACANSIP	Older Americans Act Section 311-Nutrition Services Incentive Program
		2013	13AACANSIP	

Goal #1

Goal: Promote positive physical and mental health outcomes for seniors and their caregivers.			
Rationale: Most seniors concur that remaining in their own home is of major importance. Ensuring that the physical and mental well-being needs of our senior population are being addressed help to facilitate this outcome. Issues related to meeting the basic nutritional needs of seniors, as well as addressing access to health care services were identified as high priorities during the ESAAA needs assessment.			
Objectives:	**Projected Start and End Dates**	**Title III B Funded PD or C**	Update Status
1.1 ESAAA staff will coordinate with area service providers to establish a regular quarterly meeting with other service providers, the Long-Term Care Ombudsman, law enforcement and the District Attorney, to ensure that identified at-risk seniors are connected to appropriate resources, as well as trends or gaps are identified and steps taken to adequately address these issues within the community.	July 2012 – June 2013 and Ongoing		No Change: Adult Multi-Disciplinary Meetings established on a quarterly basis with quarterly outreach to service providers.
1.2 ESAAA staff will coordinate with the Long-Term Care Ombudsman and other County-based Social Services programs to ensure that training is provided to individuals, professionals, paraprofessionals and volunteers who provide services to the senior and dependent adult populations on the identification, prevention and treatment of elder abuse, neglect and exploitation on an annual basis. The continuum of training will ensure earlier identification and intervention of abuse and neglect.	July 2012 – June 2013 and Ongoing		Effective April 1, 2013, the Long Term Ombudsman will be housed in ESAAA and will work in coordination with other County-based social service programs to ensure training needs are met. Training brought to the community in 2012/2013 included Financial Abuse Training as well as Elder Abuse Prevention training, and Recognizing Self-Neglect.
1.3 ESAAA staff will coordinate with the County-based Social Services programs, law enforcement, and other senior service providers to bring relevant training in regards to issues impacting the safety of	July 2012 – June 2013 and Ongoing		No Change: In addition to the training outlined under 1.2, public information has

seniors, including, but not limited to financial abuse, self-neglect, and effective interventions.			been provided on a wide range of issues at the senior sites as well as via news articles.
1.4 ESAAA staff will coordinate with Behavioral Health Staff to provide training to employees who deliver meals to homebound seniors, as well as staff in congregate settings, on issues related to the identification of seniors who may be experiencing depression or other Behavioral Health issues such as substance use or medication mismanagement in an effort to support early detection and intervention.	July 2012 – June 2013 and Ongoing		No Change: Training continues at least quarterly with Behavioral Health staff providing training on topics including Recognition of Mental Illness, Delirium, and Signs of Heat Stroke.
1.5 ESAAA staff will coordinate with Behavioral Health Staff and nutrition program staff to disseminate information to the senior population on a quarterly basis on issues related to physical and emotional wellness and nutrition education in an effort to provide seniors with information to help them make better informed choices.	July 2012 – June 2013 and Ongoing		No Change: A quarterly newsletter that combines physical and emotional wellness information with nutrition education continues to provide valuable information to the senior population as well as the ESAAA site staff.
1.6 ESAAA staff will coordinate with County-based senior service and social service programs to ensure that home based services such as personal care, homemaking and telephone reassurance are available to seniors to the extent possible in an effort to maintain seniors in their own home safely.	July 2012 – June 2013 and Ongoing		No Change: ESAAA has provided outreach to social service staff in both counties regarding the available resources that support seniors' independence.
1.7 ESAAA staff will maintain congregate meal sites, providing basic nutrition services, as well as a resource for socialization and information in an effort to support physical and emotional wellness.	July 2012 – June 2013 and Ongoing		No Change: Congregate meal sites are maintained in 6 locations within the service area.
1.8 ESAAA staff will ensure home delivered nutrition services are available	July 2012 – June 2013 and		No Change: Home-delivered

to frail and elderly seniors, as well as seniors who are isolated or are not near a congregate site in an effort to promote physical and emotional well-being.	Ongoing		meal services continue to be provided to those frail and elderly seniors who are isolated and/or unable to attend the congregate setting throughout the service area.
1.9 ESAAA staff will coordinate with area service providers to establish a regular quarterly meeting with other service providers, the Long-Term Care Ombudsman, law enforcement and the District Attorney, to ensure that identified at-risk seniors are connected to appropriate resources, as well as trends or gaps are identified and steps taken to adequately address these issues within the community.	July 2012 – June 2013 and Ongoing		Delete – Repeat of 1.1.
1.10 ESAAA staff will coordinate with Public Health to conduct a health risk assessment of seniors, which will include a general health screen, medication review and an evidenced-based Disease Self-Management for Depression. Individuals identified as requiring follow up will be referred to the primary care physician and/or their pharmacist, as well as appropriate mental health services. The management for depression tool has been evaluated by the AAA to be evidence-based and is provided by an appropriately trained nurse.	July 2012 – June 2013 and Ongoing		1.10 has been amended as follows: 1.9. ESAAA staff will coordinate with Behavioral Health to identify and reduce depressive symptoms in the aging population through the implementation of the HEALTHY Ideas, an evidenced based program.

Goal #2

Goal: Maintain a minimum level of access to services, including health care services and local support services to seniors throughout our communities.			
Rationale: Communities throughout both Inyo and Mono counties are isolated from many support services, including access to primary health care services, pharmacies and grocery vendors. Specialized care is often not locally available, requiring our older adults to travel to urban areas in southern California, as well as southern and northern Nevada. This issue was identified as one of the highest priorities for seniors in both counties.			
Objectives:	**Projected Start and**	**Title III B Funded**	**Update Status**

	End Dates	PD or C	
2.1 ESAAA staff will coordinate with County-Based social service programs, such as IHSS to address the caregiving and transportation needs of seniors in an effort to promote access to health care services, both locally and out of the area.	July 2012 – June 2013 and Ongoing		No Change: Coordination of caregiving and transportation needs occurs on a regular basis.
2.2 ESAAA will coordinate with county and city agencies, as well as community based agencies to identify additional resources to support access to medical and other support services.	July 2012 – June 2013 and Ongoing		No Change: ESAAA staff regularly participate in efforts to address access issues for seniors living in the service area.
2.3 ESAAA staff will coordinate with other service organizations to ensure that a continuum of services are available and will provide information and assistance services to ensure seniors have access to information that addresses their needs.	July 2012 – June 2013 and Ongoing		No Change: Updated information regarding resources is maintained in order to ensure seniors have access to appropriate service and resource information.
2.4 ESAAA staff will coordinate with and ensure appropriate referrals are made to HICAP in order to help seniors address their medical coverage issues and remove any barriers to health care services.	July 2012 – June 2013 and Ongoing		No Change: Referrals are made as appropriate to the HICAP provider.
2.5 ESAAA staff will coordinate with the Governing Board and the Advisory Council to monitor the needs of seniors throughout the planning area and assess the available opportunities to reach underserved seniors.	July 2012 – June 2013 and Ongoing		No Change: ESAAA staff regularly coordinate with the Advisory Council and Governing Board to ensure that issues impacting underserved seniors are identified and addressed as appropriate.
2.6 ESAAA staff will monitor changing state and federal policies and will coordinate with the Governing Board and	July 2012 – June 2013 and Ongoing		No Change: ESAAA staff monitor policies at

Advisory Council to advocate on behalf of seniors to ensure issues related to adequate access to health care and support services remain a focus of policymakers.			all levels and keep the Advisory Council and Governing Board apprised of those issues that may impact the senior population and will conduct direct advocacy with policymakers as directed by the Governing Board.

Goal #3

Goal: Strengthen the service delivery system to proactively address unmet needs.			
Rationale: Both Inyo and Mono Counties have seniors living in areas that are isolated from the primary service delivery systems. In general, the senior population throughout the entire region has limited access to the wide range of medical and support services found in larger communities. Ensuring adequate information and referral services are available to all community members and actively identifying methods to fill gaps in services continues to be identified as an area of focus by seniors throughout the planning area.			
Objectives:	**Projected Start and End Dates**	**Title III B Funded PD or C**	**Update Status**
3. ESAAA staff will coordinate with both the public and private sector to identify resources to meet identified needs.	July 2012 – June 2013 and Ongoing		No Change: Efforts to identify both public and private resources continue.
3.2 ESAAA staff will utilize public information mechanisms to ensure that seniors, their caregivers and service providers are aware of the resources available to meet identified needs.	July 2012 – June 2013 and Ongoing		No Change: ESAAA staff utilize local media resources and direct distribution methods to educate seniors, caregivers and community members about available resources.
3.3 ESAAA staff will maintain resource information and disseminate information through multiple distribution modes, including web-based access.	July 2012 – June 2013 and Ongoing		No Change: ESAAA continues to maintain resource information and utilize multiple distribution modes.

SECTION 10. Service Unit Plan (SUP) Objectives **PSA 16**

TITLE III/VII SERVICE UNIT PLAN OBJECTIVES
(Units of service are reported for ALL funding sources)

1.Personal Care (In-Home) Unit of Service = 1 hour

Fiscal Year	**Proposed** Units of Service	Goal Numbers	Objective Numbers (if applicable)
2012-2013	-0-		
2013-2014	-0-		
2014-2015	-0-		
2015-2016	-0-		

2. Homemaker Unit of Service = 1 hour

Fiscal Year	**Proposed** Units of Service	Goal Numbers	Objective Numbers (if applicable)
2012-2013	-0-		
2013-2014	-0-		
2014-2015	-0-		
2015-2016	-0-		

3. Chore Unit of Service = 1 hour

Fiscal Year	**Proposed** Units of Service	Goal Numbers	Objective Numbers (if applicable)
2012-2013	-0-		
2013-2014	-0-		
2014-2015	-0-		
2015-2016	-0-		

4. Home-Delivered Meal Unit of Service = 1 meal

Fiscal Year	**Proposed** Units of Service	Goal Numbers	Objective Numbers (if applicable)
2012-2013	50,000	1	
2013-2014	Same	Same	
2014-2015	Same	Same	
2015-2016	Same	Same	

5. Adult Day Care/Adult Day Health Unit of Service = 1 hour

Fiscal Year	**Proposed** Units of Service	Goal Numbers	Objective Numbers (if applicable)
2012-2013	-0-		
2013-2014	-0-		
2014-2015	-0-		
2015-2016	-0-		

6. Case Management — Unit of Service = 1 hour

Fiscal Year	**Proposed** Units of Service	Goal Numbers	Objective Numbers (if applicable)
2012-2013	-0-		
2013-2014	-0-		
2014-2015	-0-		
2015-2016	-0-		

7. Assisted Transportation — Unit of Service = 1 one-way trip

Fiscal Year	**Proposed** Units of Service	Goal Numbers	Objective Numbers (if applicable)
2012-2013	194	1,2	
2013-2014	Same	Same	
2014-2015	Same	Same	
2015-2016	Same	Same	

8. Congregate Meals — Unit of Service = 1 meal

Fiscal Year	**Proposed** Units of Service	Goal Numbers	Objective Numbers (if applicable)
2012-2013	19,000	1,2	
2013-2014	Same	Same	
2014-2015	Same	Same	
2015-2016	Same	Same	

9. Nutrition Counseling — Unit of Service = 1 session per participant

Fiscal Year	**Proposed** Units of Service	Goal Numbers	Objective Numbers (if applicable)
2012-2013	10	1	
2013-2014	Same	Same	
2014-2015	Same	Same	
2015-2016	Same	Same	

10. Transportation — Unit of Service = 1 one-way trip

Fiscal Year	**Proposed** Units of Service	Goal Numbers	Objective Numbers (if applicable)
2012-2013	2,000	1,2	
2013-2014	Same	Same	
2014-2015	Same	Same	
2015-2016	Same	Same	

11. Legal Assistance — Unit of Service = 1 hour

Fiscal Year	**Proposed** Units of Service	Goal Numbers	Objective Numbers

			(if applicable)
2012-2013	300	1,2	
2013-2014	Same	Same	
2014-2015	Same	Same	
2015-2016	Same	Same	

12. Nutrition Education — Unit of Service = 1 session per participant

Fiscal Year	**Proposed** Units of Service	Goal Numbers	Objective Numbers (if applicable)
2012-2013	1180	1	
2013-2014	Same	Same	
2014-2015	Same	Same	
2015-2016	Same	Same	

13. Information and Assistance — Unit of Service = 1 contact

Fiscal Year	**Proposed** Units of Service	Goal Numbers	Objective Numbers (if applicable)
2012-2013	300	1,2,3	
2013-2014	Same	Same	
2014-2015	Same	Same	
2015-2016	Same	Same	

14. Telephone Reassurance- In home — Unit of Service = 1 contact

Fiscal Year	**Proposed** Units of Service	Goal Numbers	Objective Numbers (if applicable)
2012-2013	120	1	
2013-2014	Same	Same	
2014-2015	Same	Same	
2015-2016	Same	Same	

TITLE III B, OTHER SUPPORTIVE SERVICES

15. Personal Home Security — Unit of Service = 1 unit

Fiscal Year	**Proposed** Units of Service	Goal Numbers	Objective Numbers (if applicable)
2012-2013	31	1	
2013-2014	-0-		
2014-2015	-0-		
2015-2016	-0-		

TITLE III D, HEALTH PROMOTION

16. Depression Symptom Reduction (AMENDED) — Unit of Service = 1 contact

Fiscal Year	**Proposed** Units of Service	Goal Numbers	Objective Numbers

			(if applicable)
2012-2013	50	1	1.9 (amended)
2013-2014	Same	Same	
2014-2015	Same	Same	
2015-2016	Same	Same	

TITLE III D, MEDICATION MANAGEMENT

17. (Service Activity) Unit of Service = 1 contact

Fiscal Year	**Proposed** Units of Service	Goal Numbers	Objective Numbers (if applicable)
2012-2013	-0-		
2013-2014	-0-		
2014-2015	-0-		
2015-2016	-0-		

PSA 16

TITLE III B AND TITLE VII A,
LONG-TERM CARE (LTC) OMBUDSMAN PROGRAM OUTCOMES

Outcome 1. The problems and concerns of long-term care residents are solved through complaint resolution and other services of the Ombudsman Program [OAA Section 712(a)(3),(5)]

Measures and Targets:

A. Complaint Resolution Rate (AoA Report, Part I-E, Actions on Complaints)
The average California complaint resolution rate for FY 2009-2010 was 73%.

1. Fy 2010-2011 Baseline Resolution Rate: 58% Number of complaints resolved 21 + Number of partially resolved complaints 2, divided by the Total Number of Complaints Received 39 = Baseline Resolution Rate 58%**
2. FY 2012-2013 Target: Resolution Rate 85 %
3. FY 2011-2012 AoA Resolution Rate _____% FY 2013-2014 Target: Resolution Rate 85 %
4. FY 2012-2013 AoA Resolution Rate _____% FY 2014-2015 Target: Resolution Rate 85 %
5. FY 2013-2014 AoA Resolution Rate _____% FY 2015-2016 Target: Resolution Rate 85 %
Program Goals and Objective Numbers: 1,2 **Actual Cases opened were 36, which included 39 separate complaints. While only 21 were resolved to the satisfaction of the resident or complainant and two were partially resolved, the remaining were resolved and closed. This results in a resolution rate of 94%.

B. Work with Resident Councils (AoA Report, Part III-D, #8)

1. FY 2010-2011 Baseline: number of meetings attended 9
2. FY 2012-2013 Target: 10
3. FY 2011-2012 AoA Data: _____ FY 2013-2014 Target: 10
4. FY 2012-2013 AoA Data: _____ FY 2014-2015 Target: 10
5. FY 2013-2014 AoA Data: _____ FY 2015-2016 Target: 10
Program Goals and Objective Numbers: 1,2

Assist Resident Councils to transition to more self-directed oversight.

C. Work with Family Councils (AoA Report, Part III-D, #9)

1. FY 2010-2011 Baseline: number of meetings attended 0	
2. FY 2012-2013 Target: number 2	
3. FY 2011-2012 AoA Data: _____	FY 2013-2014 Target: 2
4. FY 2012-2013 AoA Data: _____	FY 2014-2015 Target: 2
5. FY 2013-2014 AoA Data: _____	FY 2015-2016 Target: 2
Program Goals and Objective Numbers: 2	
Continue to promote establishment of Family Councils	

D. Consultation to Facilities (AoA Report, Part III-D, #4) Count of instances of Ombudsman representatives' interactions with facility staff for the purpose of providing general information and assistance unrelated to a complaint. Consultation may be accomplished by telephone, letter, email, fax, or in person.

1. FY 2010-2011 Baseline: number of consultations 18	
2. FY 2012-2013 Target: 30	
3. FY 2011-2012 AoA Data: _____	FY 2013-2014 Target: 30
4. FY 2012-2013 AoA Data: _____	FY 2014-2015 Target: 30
5. FY 2013-2014 AoA Data: _____	FY 2015-2016 Target: 30
Program Goals and Objective Numbers: 1,3	
Increase contacts with facilities regarding changes in care systems.	

E. Information and Consultation to Individuals (AoA Report, Part III-D, #5) Count of instances of Ombudsman representatives' interactions with residents, family members, friends, and others in the community for the purpose of providing general information and assistance unrelated to a complaint. Consultation may be accomplished by telephone, letter, email, fax, or in person.

1. FY 2010-2011 Baseline: number of consultations 52	
2. FY 2012-2013 Target: 50	
3. FY 2011-2012 AoA Data: _____	FY 2013-2014 Target: 50
4. FY 2012-2013 AoA Data: _____	FY 2014-2015 Target: 50
5. FY 2013-2014 AoA Data: _____	FY 2015-2016 Target: 50
Program Goals and Objective Numbers: 1,3	
Advertise Services and ensure volunteers and staff are available to provide information and referrals in a timely manner.	

F. Community Education (AoA Report, Part III-D, #10) LTC Ombudsman Program participation in public events planned to provide information or instruction to community members about the LTC Ombudsman Program or LTC issues. The number of sessions refers to the number of events, not the number of participants.

1. FY 2010-2011 Baseline: number of sessions 16	
2. FY 2012-2013 Target: number 6	
3. FY 2011-2012 AoA Data: _____	FY 2013-2014 Target: 6
4. FY 2012-2013 AoA Data: _____	FY 2014-2015 Target: 6
5. FY 2013-2014 AoA Data: _____	FY 2015-2016 Target: 6
Program Goals and Objective Numbers: 1,3	

Continue to develop and provide appropriate educational materials and opportunities for the community.

G. Systems Advocacy

Systemic Advocacy Effort(s)
The Ombudsman will continue to participate in the local Transition to Care Project as a committee member along with other community agencies, to ensure that patients are aware of all available post discharge care options.

Outcome 2. Residents have regular access to an Ombudsman. [(OAA Section 712(a)(3)(D), (5)(B)(ii)]

Measures and Targets:

A. Facility Coverage (other than in response to a complaint), (AoA Report, Part III-D, #6) Percentage of nursing facilities within the PSA that were visited by an Ombudsman representative at least once each quarter **not** in response to a complaint. The percentage is determined by dividing the number of nursing facilities in the PSA that were visited at least once each quarter not in response to a complaint by the total number of nursing facilities in the PSA. NOTE: This is not the total number of visits per year. In determining the number of facilities visited for this measure, no nursing facility can be counted more than once.

1. FY 2010-2011 Baseline: 100 %
Number of Nursing Facilities visited at least once a quarter not in response to a complaint 2 divided by the number of Nursing Facilities 2
2. FY 2012-2013 Target: 100 %
3. FY 2011-2012 AoA Data: ____% FY 2013-2014 Target: 100 %
4. FY 2012-2013 AoA Data: ____% FY 2014-2015 Target: 100 %
5. FY 2013-2014 AoA Data: ____% FY 2015-2016 Target: 100 %

Program Goals and Objective Numbers: 1,3

Maintain coverage rate of 100%.

B. Facility Coverage (other than in response to a complaint) (AoA Report, Part III-D, #6) Percentage of RCFEs within the PSA that were visited by an Ombudsman representative at least once each quarter during the fiscal year **not** in response to a complaint. The percentage is determined by dividing the number of RCFEs in the PSA that were visited at least once each quarter not in response to a complaint by the total number of RCFEs in the PSA. NOTE: This is not the total number of visits per year. In determining the number of facilities visited for this measure, no RCFE can be counted more than once.

1. FY 2010-2011 Baseline: 100 %
Number of RCFEs visited at least once a quarter not in response to a complaint 1 divided by the number of RCFEs 1
2. FY 2012-2013 Target: ____%
3. FY 2011-2012 AoA Data: ____% FY 2013-2014 Target: 100 %
4. FY 2012-2013 AoA Data: ____% FY 2014-2015 Target: 100 %
5. FY 2013-2014 AoA Data: ____% FY 2015-2016 Target: 100 %

Program Goals and Objective Numbers: 1,3

Maintain coverage rate at 100%.

C. Number of Full-Time Equivalent (FTE) Staff (AoA Report, Part III.B.2 – Staff and Volunteers) (One FTE generally equates to 40 hours per **week** or 1,760 hours per year) This number may

only include staff time legitimately charged to the LTC Ombudsman Program. For example, the FTE# for a staff member who works in the Ombudsman Program 20 hours a week should be 0.5. Time spent working for or in other programs may not be included in this number. Verify number of staff FTEs with Ombudsman Program Coordinator.

1. FY 2010-2011 Baseline: .9 %
2. FY 2012-2013 Target: 1.0 FTEs
3. FY 2011-2012 AoA Data: ____ FTEs FY 2013-2014 Target: 1.0 FTEs
4. FY 2012-2013 AoA Data: ____ FTEs FY 2014-2015 Target: 1.0 FTEs
5. FY 2013-2014 AoA Data: ____ FTEs FY 2015-2016 Target: 1.0 FTEs
Program Goals and Objective Numbers: 1,3 Maintain 1.0 FTE and increase FTE as funding allows.

D. Number of Certified LTC Ombudsman Volunteers (AoA Report part III.B.2. – Staff and Volunteers) Verify number of volunteers with Ombudsman Program Coordinator.

1. FY 2010-2011 Baseline: 5 Number of certified LTC Ombudsman volunteers as of June 30, 2010
2. FY 2012-2013 Projected Number of certified LTC Ombudsman volunteers as of June 30, 2013 4 Amended: 2
3. FY 2011-2012 AoA Data: ____ certified volunteers FY 2013-2014 Projected Number of certified LTC Ombudsman volunteers as of June 30, 2014 4
4. FY 2012-2013 AoA Data: ____ certified volunteers FY 2014-2015 Projected Number of certified LTC Ombudsman volunteers as of June 30, 2015 4
5. FY 2013-2014 AoA Data: ____ certified volunteers FY 2015-2016 Projected Number of certified LTC Ombudsman volunteers as of June 30, 2016 4
Program Goals and Objective Numbers: 1 The Long Term Ombudsman Program is scheduled to transition to being a program directly provided by ESAAA as of April 1, 2013. It is hoped that at least two of the existing volunteers will transition with the program and efforts to recruit new volunteers will occur immediately. The goal is to ensure that the program maintains a core level of four (4) volunteers on an on-going basis.

Outcome 3. Ombudsman representatives accurately and consistently report data about their complaints and other program activities in a timely manner. [OAA Section 712(c)]

Reporting of NORS training no longer required.

Title VII B ELDER ABUSE PREVENTION SERVICE UNIT PLAN OBJECTIVES

PSA #16

Fiscal Year	Total # of Public Education Sessions	Fiscal Year	Total # of Training Sessions for Professionals
2012-13	2	2012-13	2
2013-14	2	2013-14	2
2014-15	2	2014-15	2
2015-16	2	2015-16	2

Fiscal Year	Total # of Training Sessions for Caregivers served by Title III E	Fiscal Year	Total # of Hours Spent Developing a Coordinated System
2012-13	2	2012-13	12
2013-14	2	2013-14	12
2014-15	2	2014-15	12
2015-16	2	2015-16	12

Fiscal Year	Total # of Copies of Educational Materials to be Distributed	Description of Educational Materials
2012-13	250	Elder Abuse/Financial Elder Abuse
	250	Psychotropic Drug Abuse
2013-14	250	
	250	
2014-15	250	
	250	
2015-16	250	
	250	

Fiscal Year	Total # of Individuals Served
2012-13	250
2013-14	250
2014-15	250
2015-16	250

SECTION 14. Notice of Intent to Provide Direct Services **PSA 16**

Check applicable direct services	*Check each applicable Fiscal Year*			
Title III B	**12-13**	**13-14**	**14-15**	**15-16**
☒ Information and Assistance	☒	☒	☒	☒
☐ Case management	☐	☐	☐	☐
☐ Outreach	☐	☐	☐	☐
☐ Program Development	☐	☐	☐	☐
☐ Coordination	☐	☐	☐	☐
☒ Long-Term Care Ombudsman	☒Partial Year/4th quarter only	☒	☒	☒
Title III D	**12-13**	**13-14**	**14-15**	**15-16**
☒ Health Promotion	☒	☒	☒	☒
☐ Medication Management	☐	☐	☐	☐
Title III E	**12-13**	**13-14**	**14-15**	**15-16**
☐ Information Services	☐	☐	☐	☐
☐ Access Assistance	☐	☐	☐	☐
☒ Support Services	☒	☒	☒	☒
☒ Respite Services	☒	☒	☒	☒
☐ Supplemental Services	☐	☐	☐	☐
Title VII A	**12-13**	**13-14**	**14-15**	**15-16**
☒ Long-Term Care Ombudsman	☒	☒	☒	☒
Title VII B	**12-13**	**13-14**	**14-15**	**15-16**
☒ Prevention of Elder Abuse, Neglect and Exploitation	☒	☒	☒	☒

Describe the methods to be used to ensure target populations will be served throughout the PSA.

ESAAA staff will provide Information and Assistance by telephone to all areas of the PSA, maintaining updated resource information for both counties. In regards to Health Promotion, ESAAA staff will provide service at least once per year at each identified congregate site in both counties. Family Caregiver support services will be provided by ESAAA staff based, in part, upon referrals from the adult social service programs in both counties and will either provide respite services directly or through purchase of services. ESAAA staff will utilize demographic information, including primary language information, to prioritize target populations and to ensure that resources such as bi-lingual staff or the AT&T language line are utilized as needed.

Beginning April 1, 2013, ESAAA will provide Ombudsman services directly. ESAAA will initially have one staff person certified as the Ombudsman and acting as the Program Coordinator. A second person will be employed and once meeting the certification requirements will be the primary Ombudsman and Program Coordinator. To ensure a smooth transition, both staff members will attend the New Program Coordinator Training, as well as all other required training. Under ESAAA, the Ombudsman program will continue to make regular and consistent visits to the two skilled nursing facilities and the one residential care facility located in the service area.

SECTION 15. Request for Approval to Provide Direct Services

PSA 16

No Changes

SECTION 16 - GOVERNING BOARD

PSA 16

GOVERNING BOARD MEMBERSHIP
2012-2016 Four-Year Area Plan Cycle

CCR Article 3, Section 7302(a)(11)

Total Number of Board Members: 5

Name and Title of Officers:	Office Term Expires:
Linda Arcularius, Chairperson	January 2015
Rick Pucci, Vice Chairperson	January 2015

Names and Titles of All Members:	Board Term Expires:
Jeff Griffiths	January 2017
Mark Tillemans	January 2017
Matt Kingsley	January 2017

ADVISORY COUNCIL MEMBERSHIP
2012-2016 Four-Year Planning Cycle

45 CFR, Section 1321.57
CCR Article 3, Section 7302(a)(12)

Total Council Membership (include vacancies) 9

Number of Council Members over age 60 7

Race/Ethnic Composition	% of PSA's 60+Population	% on Advisory Council
White	____	____
Hispanic	____	____
Black	____	____
Asian/Pacific Islander	____	____
Native American/Alaskan Native	____	____
Other	____	____

Name and Title of Officers:	Office Term Expires:
Jim Copeland, Chairperson	December 31, 2013
Roger Rasche, Vice Chairperson	December 31, 2014

Name and Title of other members:	Office Term Expires:
Rachel Lober	December 31, 2014
Mary Jefferson	December 31, 2013
Phyllis Mikalowsky	December 31, 2014
Selma Calnan	December 31, 2013
Saul Sanabria	December 31, 2014
Christie Martindale	December 31, 2013
Matt Kingsley	December 31, 2013

Indicate which member(s) represent each of the "Other Representation" categories listed below.

	Yes	No
Low Income Representative	☒	☐
Disabled Representative	☒	☐
Supportive Services Provider Representative	☒	☐
Health Care Provider Representative	☒	☐
Family Caregiver Representative	☒	☐
Local Elected Officials	☒	☐
Individuals with Leadership Experience in Private and Voluntary Sectors	☒	☐

Explain any **"No"** answer(s): _____

Briefly describe the local governing board's process to appoint Advisory Council members:

Staff open a recruitment for Advisory Council members. The recruitment is announced at existing Advisory Council meetings, advertised in the local newspaper, and announced on local radio stations. Letters of interest are received and the issue of member appointment is agenized for a Governing Board meeting that is noticed in according with California's Brown Act requirements for notification of public meetings. Staff reviews the above categories with the Governing Board, and recommends appointments that meet categorical representation. The Governing Board then votes to appoint Advisory Council members.

SECTION 18 - LEGAL ASSISTANCE

PSA 16

1. The mission of ESAAA's Legal Assistance services is to ensure justice, dignity, health, security, maximum autonomy and independence to older residents by protecting and enforcing the legal rights of individuals and by promoting social change through broad elder rights advocacy. The purpose of Legal Assistance is to deliver high quality, cost-effective services designed to address the unmet legal needs of vulnerable older people throughout the PSA, with the following considerations:
   - Recognition of targeted populations: those in greatest social and economic need, disadvantaged or vulnerable older adults.
   - Recognition that Legal Assistance is part of a continuum of care that must be coordinated with other ESAAA services to economize costs and develop systems for greatest impact.
   - Address all Older Americans Act legal services (caregiver, hotline, IIIB).
   - Empowerment of older persons to secure their own rights.
   - Protection against threat/loss of basic and essential civil rights (e.g., shelter, health care, income, personal and economic security).
   - Consideration of outcomes and target resources to achieve outcomes that make a difference in the lives and well-being of disadvantaged or vulnerable older adults.
   - Balance coordination with local needs and situations.

2. The local Community Needs Assessment respondents ranked their need for legal assistance 15th (out of 20) in prioritization of their needs. The minimum percentage of Title III B funding thus was set at 10%, although the annual amount authorized is 18.3% of the III B allocation.

3. Specific to legal services, there have no significant changes noted in local needs in the past four years.

4. Specific to legal services, our targeted senior population is low-income and disabled seniors. We will reach seniors through in-person outreach at Senior Centers. Occasionally some Centers will be linked in via videoconferencing to other Centers. Written educational and outreach literature will also be used at congregate meal settings and through home-delivered meals.

5. Legal assistance service providers within PSA 16. The current contracted provider of service effective April 8, 2013 is California Indian Legal Services. Catherine Denevi, Attorney at Law provided services between December 1, 2013 through April 8, 2013. For the period of July 1, 2012 through November 30, 2012 the provider was California Indian Legal Services.

FISCAL YEAR	NUMBER OF LEGAL ASSISTANCE SERVICES PROVIDERS
2012-2013	2

2013-2014	1
2014-2015	1
2015-2016	1

6. PSA 16 does not have a hotline for legal services.
7. Outreach methods will include a combination of written materials provided at congregate meal sites and through home-delivered meals, mailings to family caregivers, and in-person and/or videoconferenced presentations at Senior Centers throughout the PSA.

8. Geographic regions covered by each provider.

FISCAL YEAR	NAME OF PROVIDER	GEOGRAPHIC REGION COVERED
2012-2013	07/01/12-11/30/12 = California Indian Legal Services 12/01/12-04/08/13 = Catherine Denevi 04/08/13-Current = California Indian Legal Services	Entire PSA
2013-2014		Entire PSA
2014-2015		Entire PSA
2015-2016		Entire PSA

9. Older adults will access Legal Assistance Services through local telephone contact to the local Legal Assistance office, and through ESAAA sites and staff.

10. Regional older adults who participated in stakeholder Needs Assessment discussions at various Senior Centers in the PSA expressed specific interest in receiving legal guidance and assistance with development of wills and trusts, and management of adult children around those same issues.

11. Previous legal assistance has provided educational information on telephone scams, debt-related problems, among other issues. The request from stakeholders for more guidance with wills and trusts is a shift of focus of legal issues.

12. Barriers to access for legal assistance within the PSA result from the expansive 13,000+ square miles in the PSA, coupled with the sparse population. These two factors combine to make it difficult for private sector for-profit businesses or health care providers to sustain in the PSA. Therefore much of the specialty care and shopping requires extensive assistance with transportation out of the PSA, and even within the PSA. The prioritization of assistance with access to services left smaller amounts of III B funding available for legal assistance. Therefore, ESAAA will be coordinating with legal assistance services to provide videoconferencing capability where possible, in an effort to extend access to legal assistance.

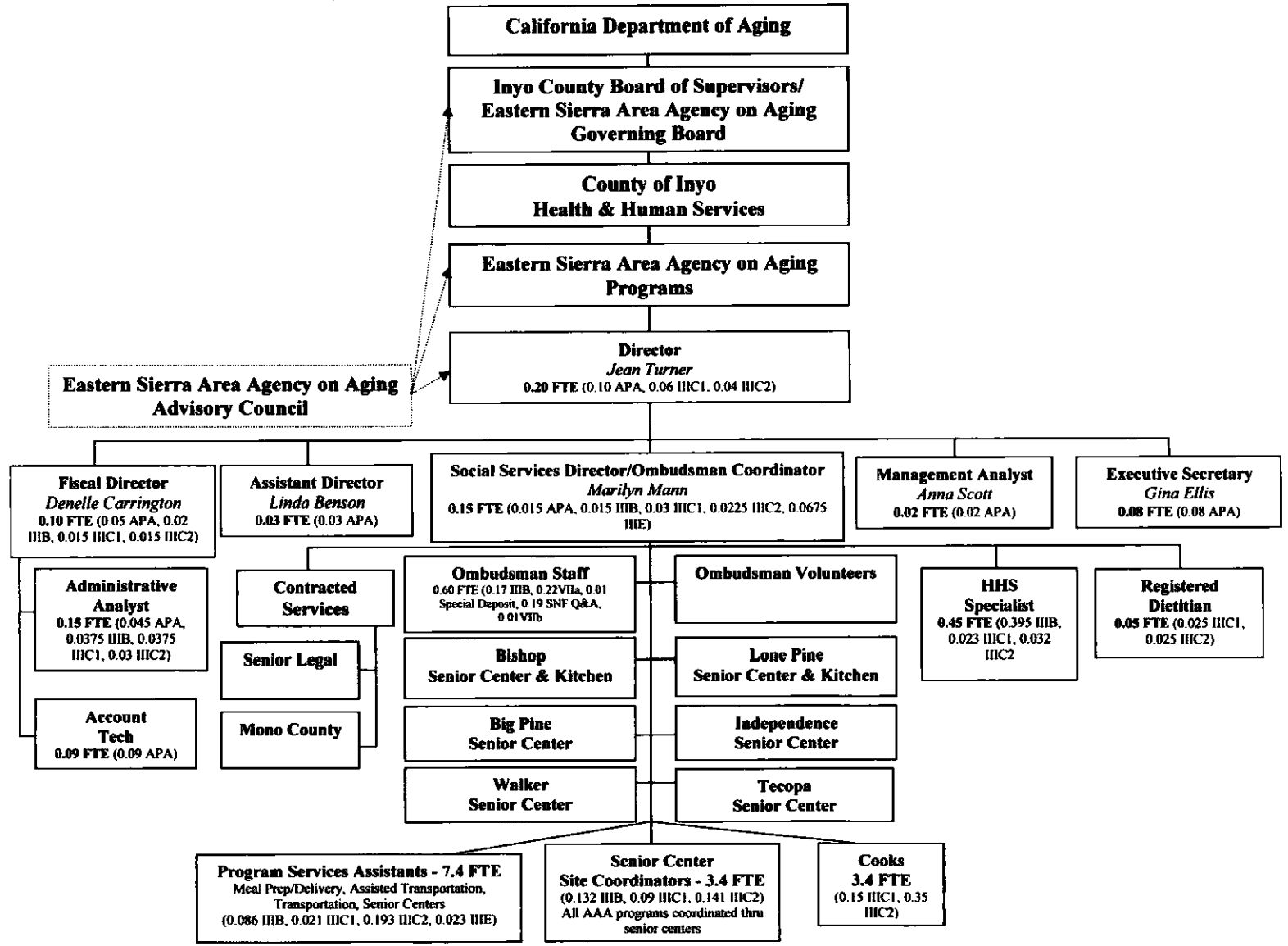
13. The legal service provider will continue to coordinate services with other ESAAA programs, the Ombudsman Coordinator, and with the local bar.

SECTION 20. Title IIIE-Family Caregiver Support Program **PSA #16**

No Changes

SECTION 21 - ORGANIZATION CHART

ESAAA ORGANIZATIONAL CHART, FY 2013-2014



Administrative (APA) FTE's is 0.43 = $45,454 in Salaries and Benefits + $39,928 in other costs (A-87, rent, etc.) for a total of $85,382, which is covered by the CDA Administrative Allocation of $61,043 and the required match amount of $20,170 cash and $4,032 in-kind

Area Plan Update – PSA 16

Eastern Sierra Area Agency on Aging

ATTACHMENT A

Population Breakdown, Income and Isolation Data

EASTERN SIERRA AREA AGENCY ON AGING - PSA 16

Population Breakdown, Income and Isolation Data

*Source: 2010 Census Data; University of North Dakota's Frontier and Remote (FAR) Methodology

	Total Population*	Population 60-69yrs	Population 70-79yrs	Population 80 and over	Total Population 60 yrs. and Older	% Total Population Age 60 yrs and Over By Community	FAR Level*
Aspendell/Bishop Creek/Starlite	no data available (included in Bishop totals)						3
Benton	280	30	22	4	56	20%	4
Big Pine	1756	231	154	100	485	28%	4
Bishop[1]	10380	1276	882	642	2800	27%	3
Bridgeport	575	75	48	20	143	25%	4
Chalfant Valley	651	81	41	26	148	23%	4
Charleston View	no data available						1
Crowley Lake/Aspen Springs/McGee Crk.	981	102	31	7	140	14%	4
Furnace Creek	24	4	1	3	8	33%	4
Independence	669	102	64	35	201	30%	4
June Lake	629	95	32	5	132	21%	4
Keeler/Darwin	109	34	15	8	57	52%	4
Lee Vining/Mono City	394	30	7	6	43	11%	4
Lone Pine	2035	256	129	141	526	26%	4
Mammoth Lakes	8234	583	247	74	904	11%	3
Olancha/Cartego/Pearsonville	284	44	15	12	71	25%	4
Tecopa/Shoshone	181	33	27	13	73	40%	2
Walker/Coleville/Topaz	1266	146	108	49	303	24%	3
Swall Meadows/Paradise/Sunny Slopes	555	103	45	14	162	29%	4
Other Unincorporated Areas of Inyo & Mono Counties	3745	496	215	101	812	22%	
Totals	32748	3721	2083	1260	7064		
% of Total Inyo/Mono Population by Age Range		11%	6%	4%	22%		

Data Source: American FactFinder 2010 Census Data, http://factfinder2.census.gov/faces/nav/jsf/pages/community_facts.xhtml#none

[1] Bishop total includes these communities: City of Bishop, Dixon Lane- Meadow Creek, Wilkerson, West Bishop, Mesa, Round Valley

Inyo and Mono County Community Population, Isolation, and Income Data

ESAAA-PSA 16

Community	Total Population	Number of Age 60+ [1]	Age 75+	Senior Center Location	Frontier and Remote (FAR) Code [2]	Federal Poverty Limit (FPL) % — FPL Income Ranges — American Communities Survey Estimated Income Ranges (Approximately relative to FPL range)													
						Estimated [3] Householders 65+	Margin of Error	100% <$10,000 <10,000	% of Total Estimated Householders	125-135% $11,170-15,080 $10,000-14,999	% of Total Estimated Householders	150-200% $15,080-22,340 $15,000-19,999	% of Total Estimated Householders	300% $22,340-33,510 $20,000-34,999	% of Total Estimated Householders	400% $33,510-44,680 $35,000-44,999	% of Total Estimated Householders	>400% >$44,680 >$45,000	% of Total Estimated Householders
Bishop Area	**10,380**	**2,800**	**1,538**	**Bishop**															
Bishop city	3,879	808	367		3	513	121	44	8.6%	22	4.3%	96	18.7%	128	25.0%	18	3.5%	205	40.0%
Dixon Lane-Meadow Creek	2,645	823	326		3	462	84	15	3.2%	115	24.9%	61	13.2%	61	13.2%	50	10.8%	160	34.6%
Mesa	251	64	40		4	40	25	0	0.0%	12	30.0%	0	0.0%	5	12.5%	8	20.0%	15	37.5%
Round Valley	435	48	29		4	20	20	0	0.0%	0	0.0%	0	0.0%	0	0.0%	8	40.0%	12	60.0%
West Bishop	2,607	891	661		3	441	82	13	2.9%	25	5.7%	32	7.3%	128	29.0%	73	16.6%	170	38.5%
Wilkerson	563	166	115		3	52	34	13	25.0%	0	0.0%	0	0.0%	0	0.0%	13	25.0%	26	50.0%
Mammoth Lakes Area	**10,793**	**1,381**	**248**	**No History of a Center**															
Aspen Springs	65	13	1		4	0	132												
Crowley Lake	875	111	16		4	13	20	13	100.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
June Lake	629	132	18		4	0	132												
Lee Vining	222	24	6		4	0	132												
Mammoth Lakes town	8234	904	172		3	327	94	0	0.0%	0	0.0%	11	3.4%	50	15.3%	80	24.5%	186	56.9%
McGee Creek	41	16	1		4	12	19	0	0.0%	0	0.0%	0	0.0%	0	0.0%	12	100.0%	0	0.0%
Mono City	172	19	1		4	0	132												
Paradise	153	57	15		4	23	15	0	0.0%	0	0.0%	3	13.0%	4	17.4%	3	13.0%	13	56.5%
Sunny Slopes	182	37	9		4	0	132												
Swall Meadows	220	68	9		4	17	17	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	17	100.0%
Lone Pine Area	**2,489**	**681**	**231**	**Lone Pine**															
Cartago	92	25	7		4	19	14	0	0.0%	0	0.0%	6	31.6%	6	31.6%	0	0.0%	7	36.8%
Darwin	43	26	7		4	13	14	0	0.0%	0	0.0%	6	46.2%	7	53.8%	0	0.0%	0	0.0%
Homewood Canyon	44	19	3		1	25	40	0	0.0%	0	0.0%	0	0.0%	25	100.0%	0	0.0%	0	0.0%
Keeler	66	31	10		4	0	132												
Lone Pine	2035	526	189		4	204	60	8	3.9%	24	11.8%	24	11.8%	8	3.9%	53	26.0%	87	42.6%
Olancha	192	46	13		4	0	132												
Pearsonville	17	8	2		1														
Big Pine	**1,756**	**485**	**169**	**Big Pine**	**4**	**195**	**63**	**2**	**1.0%**	**22**	**11.3%**	**32**	**16.4%**	**43**	**22.1%**	**8**	**4.1%**	**88**	**45.1%**
Antelope Valley, Northern Mono	**1,841**	**446**	**126**	**Walker**															
Bridgeport	575	143	33		4	25	29	0	0.0%	0	0.0%	0	0.0%	0	0.0%	12	48.0%	13	52.0%
Coleville	495	43	18		3	8	15	0	0.0%	0	0.0%	0	0.0%	8	100.0%	0	0.0%	0	0.0%
Topaz	50	18	4		0	0	132												
Walker	721	242	71		3	103	53	0	0.0%	0	0.0%	6	5.8%	52	50.5%	24	23.3%	21	20.4%
Hwy 6 Communities	**931**	**204**	**40**	**Benton Community Center**															
Benton	280	56	1		4	56	55	20	35.7%	23	41.1%	13	23.2%	0	0.0%	0	0.0%	0	0.0%
Chalfant Valley	651	148	39		4	41	28	0	0.0%	0	0.0%	8	19.5%	0	0.0%	21	51.2%	12	29.3%
Independence	**669**	**201**	**64**	**Independence**	**4**	**130**	**42**	**9**	**6.9%**	**13**	**10.0%**	**7**	**5.4%**	**25**	**19.2%**	**3**	**2.3%**	**73**	**56.2%**
Southeastern Inyo	**223**	**83**	**30**	**Tecopa**															
Furnace Creek	24	8	4		4	15	21	2	13.3%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	13	86.7%
Shoshone	31	7	2		1	10	9	0	0.0%	6	60.0%	0	0.0%	0	0.0%	0	0.0%	4	40.0%
Tecopa	150	66	24		2	54	27	0	0.0%	9	16.7%	0	0.0%	33	61.1%	5	9.3%	7	13.0%
Trona	18	2	0		1	8	12	0	0.0%	0	0.0%	0	0.0%	8	100.0%	0	0.0%	0	0.0%
Charleston View	no data				1	no data													

[1] Population Data is from **2010** Census

[2] **Frontier and Remote (FAR) Level Definitions (travel times are calculated one-way by the fastest paved route)**

Level 1: Frontier Level 1 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more population.

Level 2: Frontier Level 2 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people AND 45 minutes or greater from Urban Areas of 25,000-49,999.

Level 3: Frontier Level 3 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people AND 45 minutes or greater from Urban Areas of 25,000-49,999, AND 30 minutes or greater from Urban Areas of 10,000 to 24,999.

Level 4: Frontier Level 4 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people AND 45 minutes or greater from Urban Areas of 25,000-49,999, AND 30 minutes or greater from Urban Areas of 10,000 to 24,999 AND 15 minutes or greater from Urban Areas of 2,500-9,999.

[3] Income Data is estimates from the **2011** American Community Survey (ACS): ACS data is a statistical sample, not a head count, and therefore is less precise. The Census Bureau conducts an ACS every year. The data above is a five-year average for the years 2006-2010. The five-year average data is the only income data available at the level of State/Place, sample over a geography equal to the data related to counts of individuals by age.

Prepared 2/25/13 by A.Scott, Inyo County Health and Human Services

ESAAA - PSA 16
Frontier and Remote (FAR) Methodology - Detail

Community	Number of Age 60+ [1]	Age 75+[1]	Senior Center Location	Frontier and Remote(FAR) Code[2]	FAR Justification
Bishop Area	**2,800**	**1,538**	**Bishop**		
Bishop city	808	367		3	**Level 3:** Frontier Level 3 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people (188 minutes from Lancaster/Palmdale) AND 45 minutes or greater from Urban Areas of 25,000-49,999 (74 minutes from Ridgecrest), AND 30 minutes or greater from Urban Areas of 10,000 to 24,999 (102 minutes from California City).
Dixon Lane-Meadow Creek	823	326		3	**Level 3:** Frontier Level 3 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people (188 minutes from Lancaster/Palmdale) AND 45 minutes or greater from Urban Areas of 25,000-49,999 (74 minutes from Ridgecrest), AND 30 minutes or greater from Urban Areas of 10,000 to 24,999 (102 minutes from California City).
Mesa	64	40		4	**Level 4:** Frontier Level 4 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people (180 minutes from Carson City) AND 45 minutes or greater from Urban Areas of 25,000-49,999 (101 minutes from Ridgecrest), AND 30 minutes or greater from Urban Areas of 10,000 to 24,999 (96 minutes from Gardnerville) AND 15 minutes or greater from Urban Areas of 2,500-9,999 (Bishop is 18 minutes away).
Round Valley	48	29		4	**Level 4:** Frontier Level 4 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people (180 minutes from Carson City) AND 45 minutes or greater from Urban Areas of 25,000-49,999 (101 minutes from Ridgecrest), AND 30 minutes or greater from Urban Areas of 10,000 to 24,999 (96 minutes from Gardnerville) AND 15 minutes or greater from Urban Areas of 2,500-9,999 (Bishop is 20 minutes away).
West Bishop	891	661		3	**Level 3:** Frontier Level 3 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people (188 minutes from Lancaster/Palmdale) AND 45 minutes or greater from Urban Areas of 25,000-49,999 (74 minutes from Ridgecrest), AND 30 minutes or greater from Urban Areas of 10,000 to 24,999 (102 minutes from California City).
Wilkerson	166	115		3	**Level 3:** Frontier Level 3 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people (188 minutes from Lancaster/Palmdale) AND 45 minutes or greater from Urban Areas of 25,000-49,999 (74 minutes from Ridgecrest), AND 30 minutes or greater from Urban Areas of 10,000 to 24,999 (102 minutes from California City). Bishop is 11 minutes away.

ESAAA - PSA 16
Frontier and Remote (FAR) Methodology - Detail

Community	Number of Age 60+ [1]	Age 75+ [1]	Senior Center Location	Frontier and Remote(FAR) Code [2]	FAR Justification
Mammoth Lakes Area	**1,381**	**248**	**No History of a Center**		
Aspen Springs	13	1		4	**Level 4:** Frontier Level 4 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people (163 minutes from Carson City) AND 45 minutes or greater from Urban Areas of 25,000-49,999 (170 minutes from Ridgecrest or South Lake Tahoe), AND 30 minutes or greater from Urban Areas of 10,000 to 24,999 (132 minutes from Gardnerville) AND 15 minutes or greater from Urban Areas of 2,500-9,999 (Mammoth Lakes is 25 minutes away).
Crowley Lake	111	16		4	**Level 4:** Frontier Level 4 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people (163 minutes from Carson City) AND 45 minutes or greater from Urban Areas of 25,000-49,999 (170 minutes from Ridgecrest or South Lake Tahoe), AND 30 minutes or greater from Urban Areas of 10,000 to 24,999 (132 minutes from Gardnerville) AND 15 minutes or greater from Urban Areas of 2,500-9,999 (Mammoth Lakes is 18 minutes away).
June Lake	132	18		4	**Level 4:** Frontier Level 4 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people (142 minutes from Carson City) AND 45 minutes or greater from Urban Areas of 25,000-49,999 (149 South Lake Tahoe), AND 30 minutes or greater from Urban Areas of 10,000 to 24,999 (111 minutes from Gardnerville) AND 15 minutes or greater from Urban Areas of 2,500-9,999 (Mammoth Lakes is 23 minutes away).
Lee Vining	24	6		4	**Level 4:** Frontier Level 4 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people (126 minutes from Carson City) AND 45 minutes or greater from Urban Areas of 25,000-49,999 (131 South Lake Tahoe), AND 30 minutes or greater from Urban Areas of 10,000 to 24,999 (95 minutes from Gardnerville) AND 15 minutes or greater from Urban Areas of 2,500-9,999 (Mammoth Lakes is 31 minutes away).
Mammoth Lakes town	904	172		3	**Level 3:** Frontier Level 3 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people (155 minutes from Carson City) AND 45 minutes or greater from Urban Areas of 25,000-49,999 (163 minutes from South Lake Tahoe), AND 30 minutes or greater from Urban Areas of 10,000 to 24,999 (127 minutes from Gardnerville). The pop. of Mammoth Lakes is 7693.
McGee Creek	16	1		4	**Level 4:** Frontier Level 4 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people (163 minutes from Carson City) AND 45 minutes or greater from Urban Areas of 25,000-49,999 (170 minutes from Ridgecrest or South Lake Tahoe), AND 30 minutes or greater from Urban Areas of 10,000 to 24,999 (132 minutes from Gardnerville) AND 15 minutes or greater from Urban Areas of 2,500-9,999 (Mammoth Lakes is 16 minutes away).
Mono City	19	1		4	**Level 4:** Frontier Level 4 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people (120 minutes from Carson City) AND 45 minutes or greater from Urban Areas of 25,000-49,999 (126 South Lake Tahoe), AND 30 minutes or greater from Urban Areas of 10,000 to 24,999 (89 minutes from Gardnerville) AND 15 minutes or greater from Urban Areas of 2,500-9,999 (Mammoth Lakes is 38 minutes away).
Paradise	57	15		4	**Level 4:** Frontier Level 4 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people (181 minutes from Carson City) AND 45 minutes or greater from Urban Areas of 25,000-49,999 (184 minutes from Ridgecrest), AND 30 minutes or greater from Urban Areas of 10,000 to 24,999 (153 minutes from Gardnerville) AND 15 minutes or greater from Urban Areas of 2,500-9,999 (Bishop is 26 minutes away).
Sunny Slopes	37	9		4	**Level 4:** Frontier Level 4 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people (181 minutes from Carson City) AND 45 minutes or greater from Urban Areas of 25,000-49,999 (175 minutes from Ridgecrest), AND 30 minutes or greater from Urban Areas of 10,000 to 24,999 (150 minutes from Gardnerville) AND 15 minutes or greater from Urban Areas of 2,500-9,999 (Mammoth Lakes is 22 minutes away).
Swall Meadows	68	9		4	**Level 4:** Frontier Level 4 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people (181 minutes from Carson City) AND 45 minutes or greater from Urban Areas of 25,000-49,999 (175 minutes from Ridgecrest), AND 30 minutes or greater from Urban Areas of 10,000 to 24,999 (150 minutes from Gardnerville) AND 15 minutes or greater from Urban Areas of 2,500-9,999 (Mammoth Lakes is 34 minutes away).

ESAAA - PSA 16
Frontier and Remote (FAR) Methodology - Detail

Community	Number of Age 60+ [1]	Age 75+ [1]	Senior Center Location	Frontier and Remote(FAR) Code [2]	FAR Justification
Lone Pine Area	**681**	**231**	**Lone Pine**		
Cartago	25	7		4	**Level 4:** Frontier Level 4 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people (113 minutes from Lancaster/Palmdale) AND 45 minutes or greater from Urban Areas of 25,000-49,999 (60 minutes from Ridgecrest), AND 30 minutes or greater from Urban Areas of 10,000 to 24,999 (87 minutes from California City) AND 15 minutes or greater from Urban Areas of 2,500-9,999 (Bishop is 82 minutes away).
Darwin	26	7		4	**Level 4:** Frontier Level 4 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people (156 minutes from Lancaster/Palmdale) AND 45 minutes or greater from Urban Areas of 25,000-49,999 (102 minutes from Ridgecrest), AND 30 minutes or greater from Urban Areas of 10,000 to 24,999 (N/A) AND 15 minutes or greater from Urban Areas of 2,500-9,999 (Bishop is 104 minutes away).
Homewood Canyon	19	3		1	**Level 1:** Frontier Level 1 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more population (127 minutes from Lancaster/Palmdale) but only 37 minutes from Ridgecrest (pop. 31,155).
Keeler	31	10		4	**Level 4:** Frontier Level 4 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people (134 minutes from Lancaster/Palmdale) AND 45 minutes or greater from Urban Areas of 25,000-49,999 (79 minutes from Ridgecrest), AND 30 minutes or greater from Urban Areas of 10,000 to 24,999 (N/A) AND 15 minutes or greater from Urban Areas of 2,500-9,999 (Bishop is 74 minutes away).
Lone Pine	526	189		4	**Level 4:** Frontier Level 4 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people (132 minutes from Lancaster/Palmdale) AND 45 minutes or greater from Urban Areas of 25,000-49,999 (78 minutes from Ridgecrest), AND 30 minutes or greater from Urban Areas of 10,000 to 24,999 (106 minutes from California City) AND 15 minutes or greater from Urban Areas of 2,500-9,999 (Bishop is 62 minutes away).
Olancha	46	13		4	**Level 4:** Frontier Level 4 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people (110 minutes from Lancaster/Palmdale) AND 45 minutes or greater from Urban Areas of 25,000-49,999 (57 minutes from Ridgecrest), AND 30 minutes or greater from Urban Areas of 10,000 to 24,999 (87 minutes from California City) AND 15 minutes or greater from Urban Areas of 2,500-9,999 (Bishop is 104 minutes away).
Pearsonville	8	2		1	**Level 1:** Frontier Level 1 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more population (84 minutes from Lancaster/Palmdale) but only 30 minutes from Ridgecrest (pop. 31,155).

ESAAA - PSA 16
Frontier and Remote (FAR) Methodology - Detail

Community	Number of Age 60+ [1]	Age 75+[1]	Senior Center Location	Frontier and Remote(FAR) Code[2]	FAR Justification
Big Pine	**485**	**169**	**Big Pine**	4	**Level 4:** Frontier Level 4 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people (Lancaster is 176 minutes away) AND 45 minutes or greater from Urban Areas of 25,000-49,999 (Ridgecrest is 122 minutes away), AND 30 minutes or greater from Urban Areas of 10,000 to 24,999 (N/A) AND 15 minutes or greater from Urban Areas of 2,500-9,999 (Bishop is 17 minutes away).
Antelope Valley, Northern Mono	**446**	**126**	**Walker**		
Bridgeport	143	33		4	**Level 4:** Frontier Level 4 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people (98 minutes from Carson City) AND 45 minutes or greater from Urban Areas of 25,000-49,999 (108 minutes from South Lake Tahoe), AND 30 minutes or greater from Urban Areas of 10,000 to 24,999 (71 minutes from Gardnerville) AND 15 minutes or greater from Urban Areas of 2,500-9,999 (Mammoth Lakes is 60 minutes away).
Coleville	43	18		3	**Level 3:** Frontier Level 3 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people (61 minutes from Carson City) AND 45 minutes or greater from Urban Areas of 25,000-49,999 (67 minutes from South Lake Tahoe), AND 30 minutes or greater from Urban Areas of 10,000 to 24,999 (30 minutes from Gardnerville).
Topaz	18	4		0	**Level 1:** Frontier Level 1 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more population. Topaz is only 57 minutes from Carson City (pop. 58079)
Walker	242	71		3	**Level 3:** Frontier Level 3 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people (67 minutes from Carson City) AND 45 minutes or greater from Urban Areas of 25,000-49,999 (74 minutes from South Lake Tahoe), AND 30 minutes or greater from Urban Areas of 10,000 to 24,999 (36 minutes from Gardnerville).
Hwy 6 Communities	**204**	**40**	**Benton Community Center**		
Benton	56	1		4	**Level 4:** Frontier Level 4 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people (210 minutes from Carson City) AND 45 minutes or greater from Urban Areas of 25,000-49,999 (175 minutes from Ridgecrest), AND 30 minutes or greater from Urban Areas of 10,000 to 24,999 (152 minutes from Gardnerville) AND 15 minutes or greater from Urban Areas of 2,500-9,999 (Bishop is 37 minutes away).
Chalfant Valley	148	39		4	**Level 4:** Frontier Level 4 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people (203 minutes from Carson City) AND 45 minutes or greater from Urban Areas of 25,000-49,999 (157 minutes from Ridgecrest), AND 30 minutes or greater from Urban Areas of 10,000 to 24,999 (172 minutes from Gardnerville) AND 15 minutes or greater from Urban Areas of 2,500-9,999 (Bishop is 19 minutes away).
Independence	**201**	**64**	**Independence**	4	**Level 4:** Frontier Level 4 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people (Lancaster is 150 minutes away) AND 45 minutes or greater from Urban Areas of 25,000-49,999 (Ridgecrest is 95 minutes away), AND 30 minutes or greater from Urban Areas of 10,000 to 24,999 (N/A) AND 15 minutes or greater from Urban Areas of 2,500-9,999 (Bishop is 41 minutes away).

ESAAA - PSA 16
Frontier and Remote (FAR) Methodology - Detail

Community	Number of Age 60+ [1]	Age 75+[1]	Senior Center Location	Frontier and Remote(FAR) Code[2]	FAR Justification
Southeastern Inyo	**83**	**30**	**Tecopa**		
Furnace Creek	8	4		4	**Level 4:** Frontier Level 4 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people (132 minutes from Las Vegas) AND 45 minutes or greater from Urban Areas of 25,000-49,999 (72 minutes from Pahrump), AND 30 minutes or greater from Urban Areas of 10,000 to 24,999 (N/A) AND 15 minutes or greater from Urban Areas of 2,500-9,999 (N/A).
Shoshone	7	2		1	**Level 1:** Frontier Level 1 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more population (88 minutes from Las Vegas) but Shoshone is only 28 minutes from Pahrump (pop. 28,446).
Tecopa	66	24		2	**Level 2:** Frontier Level 2 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people (99 minutes rom Las Vegas) AND 45 minutes or greater from Urban Areas of 25,000-49,999 (45 minutes from Pahrump).
Trona	2	0		1	**Level 1:** Frontier Level 1 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people (119 minutes from Lancaster/Palmdale). Trona is only 29 minutes from Ridgecrest.
Charleston View				1	**Level 1:** Frontier Level 1 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more population (62 minutes from Las Vegas) but only 36 minutes from Pahrump (pop. 28,446).

Mileage based on information gathered from Google Maps Driving Directions http://maps.google.com/ Retrieved 2.26.13

[2] **Frontier and Remote (FAR) Level Definitions (travel times are calculated one-way by the fastest paved route)**
Level 1: Frontier Level 1 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more population.
Level 2: Frontier Level 2 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people AND 45 minutes or greater from Urban Areas of 25,000-49,999.
Level 3: Frontier Level 3 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people AND 45 minutes or greater from Urban Areas of 25,000-49,999, AND 30 minutes or greater from Urban Areas of 10,000 to 24,999.
Level 4: Frontier Level 4 areas are 60 minutes or greater from Census bureau-defined Urban Areas of 50,000 or more people AND 45 minutes or greater from Urban Areas of 25,000-49,999, AND 30 minutes or greater from Urban Areas of 10,000 to 24,999 AND 15 minutes or greater from Urban Areas of 2,500-9,999.

For Clerk's Use Only:
AGENDA NUMBER

22

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, Emergency Medical Services

FOR THE BOARD MEETING OF: April 16, 2013

SUBJECT: Appointment of Members to Emergency Medical Care Committee

DEPARTMENTAL RECOMMENDATION:
Request Board appoint two people to serve on the Emergency Medical Care Committee (EMCC) to complete existing two year terms ending December 31, 2014, from among the following recent applicants: John Scully Almeida of Sierra Lifeflight; Carl Dennett of Southern Inyo Fire Protection District; Michael Dillon, M.D. of Northern Inyo Hospital; Marty Fortney (of Big Pine Fire Department) who applied as a member at large.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:
The EMCC meets six times per year in conjunction with Inland Counties Emergency Medical Authority (ICEMA) to review, plan and approve protocols and training for pre-hospital emergency medical care. Consistent with the local EMCC by-laws, the committee shall have 13 voting members appointed for staggered terms of two years who "...shall have a professional interest in, or personal commitment to pre-hospital emergency medical care in their community. These members shall include, but not be limited to, representatives from each of the local agencies providing pre-hospital emergency medical care in the County of Inyo," including three members at large. In the most recent membership recruitment, applications were received from the four named individuals, all of whom have expertise in local emergency medical issues and would be excellent EMCC members.

The current membership roster is attached and the Department notes that some organizations already have representation, while others do not.

ALTERNATIVES:
Your Board could deny these appointments, leaving the EMCC without Board-appointed members to function in the EMCC advisory capacity.

OTHER AGENCY INVOLVEMENT:
Entities with interest include local law enforcement, Inland Counties Emergency Medical Authority (ICEMA), and Death Valley National Park.

FINANCING:
There is no financing involved with this agenda 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** *(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:_____

Inyo County
Emergency Medical Care Committee

MEMBER	AGENCY	E-MAIL ADDRESS	TERM EXPIRES
Wilson, Lloyd	Big Pine Fire Department	dlwilson41@msn.com	12/31/13
Johnson, Richard	Health and Human Services	drrickjohn@gmail.com	12/31/14
Ashworth, Phil	Independence Volunteer Fire Department	philninyo@usamedia.tv	12/31/13
Cappello, Joe	Independence Volunteer Fire Department	jcappello@cebridge.net	12/31/14
Kritz, LeRoy	Lone Pine Fire Department	LChief2401@lonepinetv.com	12/31/14
Erwin, Lisa	Northern Inyo Hospital	Lisa.Erwin@nih.org	12/31/13
Stevens, Andrew	Northern Inyo Hospital	andrew.stevens@nih.org	12/31/13
Davis, Steven	Olancha Cartago Fire Department	olanchafd@aol.com	12/31/13
Patterson, Mike	Sierra Life Flight	mike@sierraaviation.com	12/31/13
Barron, Lee	Southern Inyo Hospital	Leebee40@aol.com	12/31/14
Symons, Judd	Symons Emergency Services	juddsymons@aol.com	12/31/13
VACANT			12/31/14
VACANT			12/31/14

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
23

FROM: Planning Department

FOR THE BOARD MEETING OF: April 16, 2013

SUBJECT: Hiring of a Senior or Associate Planner, depending upon qualifications.

DEPARTMENTAL RECOMMENDATIONS:

Request your Board find consistent with the adopted Authorized Position Review Policy: (1) the availability of funding for the requested position comes from the Plannng Department budget, as certified by the Planning Director and concurred with by the County Administrator and Auditor-Controller; (2) and where if the County was facing layoffs, the position could be filled by internal candidates meeting the qualifications for the position of a Senior or Associate Planner, but since no layoffs are pending, the vacancy will be filled through an open recruitment; and c) approve the hiring of one Senior Planner, Range 76 ($4,997-$6,074) or Associate Planner, Range 74 ($4,547-$5,266), depending upon qualifications.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

The Department's Senior Planner has separated as of March 27, 2013. This leaves the Department absent a crucial senior staff person to lead complex planning projects. It is necessary to fill the position as soon as practicable to provide for senior planning expertise and begin ameliorating the backlog that resulted from the absence. As there is a potential for qualified internal candidates to apply, staff is requesting authorization to hire a Senior or Associate Planner in case backfilling is necessary.

ALTERNATIVES:

The Board could decline this ~~this~~ request. This is not recommended, as the Planning Department's case load is demanding, and several important projects of a non-critical nature have been delayed due to the absence of the Senior Planner.

OTHER AGENCY INVOLVEMENT:

Personnel Department.

FINANCING:

The funding for this position will be provided through the Planning Department Budget 023800 and funding for this position is provided for in the Board approved 2012-2013 budget.

APPROVALS

COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by County Counsel prior to submission to the board clerk.) Approved:_____ Date_____
AUDITOR/CONTROLLER	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor/controller prior to submission to the board clerk.) Approved: yes Date 4/3/13
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 4/3/13

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received) _____ Date: 4/8/18

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
24

☐ Consent ☒ Departmental ☐ Correspondence Action ☐ Public Hearing

☐ Scheduled Time for ☐ Closed Session ☐ Informational

FROM: Planning Department – Yucca Mountain Repository Assessment Office

FOR THE BOARD MEETING OF: April 16, 2013

SUBJECT: Yucca Mountain Oversight – Facility Service/Use Agreement with U.S. Geological Survey for the storage and digital imaging of a supply of geologic samples from the Yucca Mountain Project

DEPARTMENTAL RECOMMENDATION: Request that the board:

1. Authorize the Chairperson to sign the Facility Service/Use Agreement with the U.S. Geological Survey for storage and digital imaging of a supply of geologic samples;
2. Request the Board authorize a payment of $27,000 for the above services; and
3. Amend the FY 2012-013 Yucca Mountain budget (620605) as follows: increase estimated expenditures in Object Code 5265 (Professional & Special Services) by $7,000 and decrease estimated expenditures in Object Code 5331 (Travel) by $7,000.

SUMMARY DISCUSSION: On June 3, 2008, the U.S. Department of Energy (DOE) submitted a License Application (LA) for the construction of the Yucca Mountain Geologic Repository to the Nuclear Regulatory Commission (NRC), which the NRC docketed on October 22, 2008. In December 2008, Inyo County submitted a Petition to Intervene to the NRC containing 10 Inyo County contentions and 2 joint contentions with Nye County. The County was granted the right to intervene and all 10 of the County's contentions, and one of the joint contentions was accepted (the other was found to be inadmissible).

President Obama recommended termination of funding for the proposed Repository, and DOE did not disburse funding for the latter portion of the last federal fiscal year or this fiscal year. Numerous court cases regarding the project are continuing which challenge the Administration's legal authority to discontinue the project. It seems reasonably likely that the project will be discontinued; however, full termination will be determined by rulings from the NRC, the Court of Appeals, and by future actions of Congress. In the meanwhile, the County has been working on putting its programs into stasis.

As part of the County's Yucca Mountain Program, groundwater test wells were drilled in the Amargosa Valley and the Death Valley area. Funding for the wells was provided by the Department of Energy under a Cooperative Agreement. The purpose of the wells was to gather information on the groundwater flow coming from the proposed Yucca Mountain Repository. During the drilling of the wells, soil samples were collected from two of the well sites, BLM Nos. 1 and 2. These wells were located northwest of Death Valley Junction near the Nevada State Line. BLM 1 was drilled in 2004 and deepened in 2007, and BLM 2 was drilled in 2004 and deepened in 2008. These samples are important because they reveal details about the geology and hydrology of the groundwater flow from the Yucca Mountain Repository and general geological and hydrological characteristics of this area in Inyo County. There are approximately 2,500 soil samples.

Since they were collected, the samples have been stored in the Yucca Mountain Repository Office, which is not adequate for maintaining the scientific integrity of the samples. The USGS core library can provide a long-term preservation record of this scientific data in the event Inyo County decides these physical samples are no longer needed. Presently, Planning Staff is in the process of mothballing the Yucca office.

As discussed above, the core samples provide important information about the hydrogeology of the region, and that the USGS core library provides an optimal storage site where the samples can provide important information for the scientific community as well as local interests and further enhance access to this important data set. USGS is proposing to store the samples for a one-time fee of $27,000 and to retain the physical samples within their core library. The digital imagery will be added to the USGS Rock-Sample Image directory where it will remain in perpetuity.

ALTERNATIVES: The Board could not approve the Agreement. This is not recommended because these samples were expensive to obtain and it would be advantageous to store and document these samples for future scientific research and in the event that Yucca Mountain Repository licensing activities recommence.

OTHER AGENCY INVOLVEMENT: USGS

FINANCING:

Inyo County is recognized as an Affected Unit of Local Government (AULG). The Yucca Mountain Repository Assessment Office has been funded by the U.S. Department of Energy and budgeted within the Yucca Mountain Oversight Budget #620605. In FY 2012/13, $20,000 was budgeted in the Yucca Mountain budget for this purpose, but an additional $7,000 in funds is needed to cover the costs of storage and imaging. Planning requests that the additional funds be moved from Object Code 5331 (Travel) to Object Code (5265) Professional & Special Services. Sufficient funds are available to offset these costs in Object Code 5331.

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 3-26-13
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 4/3/13
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: 4/18/13

Attachment – USGS Facility Service/Use Agreement #13WSFUSA132972

United States Department of the Interior

U.S. GEOLOGICAL SURVEY
PACIFIC REGION
NEVADA WATER SCIENCE CENTER
2730 N. Deer Run Road
Carson City, Nevada 89701
Phone: 775-887-7600; Fax: 775-887-7629
Website: http://www.usgs.gov/

March 5, 2013

Linda Arcularius, Chairperson,
Inyo County, Board of Supervisors
C/o Yucca Repository Assessment Office
P.O. Drawer L
Independence, CA 93526

Dear Ms. Arcularius:

Enclosed are two (2) originals of USGS Facility Service/Use Agreement (FUSA) # 13WSFUSA132972, between the U.S. Geological Survey (USGS) and Inyo County, Board of Supervisors for the storage and digital imaging of a supply of geologic samples from the Yucca Mountain Project currently being stored by Inyo County on their premises. This agreement provides funding for these services in the amount of $27,000.00 for the period April 30, 2013 to September 30, 2013 in Fiscal Year (FY) 2013.

The USGS enters into this agreement under the legal authority of 15 U.S.C. §3710 (A) as amended. Billing for this agreement will be done on a quarterly basis on the Form DI-1040 Bill for Collection.

If you require any changes to this agreement, please mark requested revisions on one of the originals and return a scanned copy to me at the following email GS-W-NV Programs@usgs.gov. Otherwise, should you be in agreement with the document as is, please sign both original documents and return to me. Upon signature of both originals by our Center Director, I will forward an executed original to your agency point of contact. Should you have questions concerning this agreement, please see all contact information at Enclosure 1.

Sincerely,

John Sciacca, Director
USGS, Nevada Water Science Center

Enclosures

cc: G. DeMeo, R. Veley, M. Moran, USGS NV WSC
GS-W-NV Finance, GS-W-NV Programs
Chron Cy

Enclosure 1

Points of Contact
For
USGS Facility Service/Use Agreement (FUSA) #13WSFUSA132972_00

U.S. Geological Survey, Nevada Water Science Center	**Inyo County, (Planning Department) Inyo, California**
2730 N. Deer Run Road Carson City, NV 89701 Phone: 775-887-7600; FAX: 775-887-7629 DUNS: 178930541; TID: 53-0196958	C/o Yucca Repository Assessment Office PO Drawer L Independence, CA 93526 Phone: 760-878-0263 ; FAX: 760-878-0382 DUNS: 010706687; TID: 95-6005445
Technical Contact / Project Manager: Guy DeMeo, Michael Moran Phone: 702-564-4611, -4545 gademeo@usgs.gov, mmoran@usgs.gov	Technical Contact / Project Manager: Joshua Hart, Planning Director Phone: 760-878-0268
Agreement Contact: Linda McCord-Kolsky, Management Assistant Phone: 775-887-7602 GS-W-NV Programs@usgs.gov	
Executive Contact: John Sciacca, Director Phone: 775-887-7650	Executive Contact: Linda Arcularius, Chairperson, Inyo County Board of Supervisors Phone: 760-878-0268
Billing Contact: Helen Houston, Budget Analyst; 2730 N. Deer Run Road Carson City, NV 89701 Phone: 775-887-7605 GS-W-NV Finance@usgs.gov	Billing Contact: Joshua Hart, Planning Director C/o Yucca Repository Assessment Office PO Drawer L Independence, CA 93526 Phone: 760-878-0268 jhart@inyocounty.us

USGS FACILITY SERVICE/USE AGREEMENT
AUTHORIZED BY 15 USC 3710 (A) AS AMENDED

1. Name & Address USGS Facility:	Nevada Water Science Center, 2730 N. Deer Run Rd., Carson City, NV 89701
2. Name & Address of Collaborator:	Inyo County, Board of Supervisors C/o Yucca Repository Assessment Office PO Drawer L Independence, CA 93526

3. Describe type of technical assistance to be furnished by USGS: Storage and high-resolution digital imaging will be provided for rock samples from the Yucca Mountain Project at the USGS Core Library.

4. Benefit of project work to USGS missions: Inclusion of Inyo County's rock samples and digital images will add to the wealth of geologic information preserved at the Core Library, increasing access to the information while decreasing travel and project costs by shortening the time required to complete a geologic assessment. Photo documentation guarantees the preservation of over 50 years and millions of dollars of geologic data collection. These images will serve the scientific community as well as the American public for generations to come. Images will be made available in the USGS Rock-Sample Image directory (http://nevada.usgs.gov/imagefolio/cgi-bin/ImageFolio43/imagefolio.cgi

5. Collaborator explanation of how the specified research activity assists your company, program or project work. Our agency does not have the type of storage required to preserve the scientific integrity of these samples as that maintained by the USGS. The USGS Core Library can provide a long-term preservation record of these scientific data in the event Inyo County decides these physical samples are no longer needed. The images will serve the scientific community as well as the American public for generations to come.

6. Project term/Delivery date: April 30, 2013 - September 30, 2013

7. Reimbursement/Cost Share: Total cost for services under this agreement is **$27,000**

USGS will issue billing(s) utilizing Department of the Interior Bill for Collection (Form DI-1040).

Although Collaborator has agreed to the **quarterly** billing cycle per USGS policy for all Sales Orders over $25,000, Collaborator has requested a single or advance bill be generated in the amount of **$27,000** for the **total cost** of this agreement.

* For the convenience of the Collaborator requests may be processed using Credit Card or PO during the term of the agreement but should include Agreement # on all such paperwork.

8. Contacts:

USGS Technical Contact: Guy DeMeo	Inyo County Technical Contact: Joshua Hart
Phone: 702-564-4611	Phone: 760-878-0268
Email: gademeo@usgs.gov	Email: jhart@inyocounty.us
Address: US Geological Survey, Pacific Region Nevada Water Science Center 160 N. Stephanie St. Henderson, NV 89074	Address: Inyo County, Planning Dept. c/o Yucca Repository Assessment Office PO Drawer L Independence, CA 93526
USGS Financial Contact: Stacy Masters, Helen Houston	Inyo County Financial Contact: Joshua Hart
Phone: 775-887-7657, -7605	Phone: 760-878-0268
Email: GS-W-NV Finance@usgs.gov	Email: jhart@inyocounty.us
Address: US Geological Survey, Pacific Region Nevada Water Science Center 2730 N. Deer Run Rd. Carson City, NV 89701	Address: Inyo County, Planning Dept. c/o Yucca Repository Assessment Office PO Drawer L Independence, CA 93526
DUNS: 178930541; TIN: 53-0196958	DUNS: 010706687; TIN: 95-6005445

9. Other Terms:

a) Collaborator has determined that the capabilities of the above listed facility are unique, and not

readily available from the private sector.

b) Scientific results will be provided on a "best efforts" basis by USGS.

c) USGS MAKES NO WARRANTIES ABOUT THE INFORMATION IT DELIVERS OR IT'S USEFULNESS FOR A PARTICULAR PURPOSE.

d) The parties do not anticipate the development of any intellectual property (IP) as part of this agreement. However in the event that IP, which is defined as patents, copyrights, new inventions, or discoveries, is created in the course technical assistance, such IP shall be the property or joint property of the organization employing the respective individual(s) who made the invention or discovery. Any IP developed will be reported by the developer to his/her Technical Contact who will in turn notify the other party's Technical contact.

e) Collaborator/User understands that government work will have priority over this project in the event that a scheduling conflict develops in the laboratory.

f) Both USGS and Collaborator may utilize the generated information developed by USGS in databases, papers or as part of other scientific information.

g) This Agreement may be cancelled on 30 days written notice by either party to the other. Work in process at the time of cancellation will be completed and billed to the appropriate party. The obligation to make and the ability to accept payments survive the effective dates of the actual Agreement.

h) The Technical Contacts listed herein shall attempt to jointly resolve any disputes arising from the Agreement. Any dispute that they are unable to resolve shall be submitted to the Director of the USGS, or his designee; and the President or his designee of Collaborator, for final resolution.

i) For purposes of this Agreement and all services to be provided hereunder, each party shall be, and shall be deemed to be, an independent entity and not an agent or employee of the other party.

j) The terms of this Facility Use Agreement are the only terms that govern the parties' agreement and the research /technical work to be completed by USGS. USGS is not bound by and does not accept any additional or supplemental terms or conditions contained in any Purchase Order or other document used by Collaborator to order or pay for research services. Such documents are accepted by USGS solely as a convenience to the Collaborator and are not intended to modify or expand the terms of the parties' agreement.

U.S. Geological Survey		**Inyo County**	
/		/	
Signature	Date	Signature	Date
Title: Director, USGS, NV WSC		Title:	

USGS Tech Transfer Review: Date:

January 2013 Agreement # 13WSFUSA132972_00

Template 1 - No changes to terms OPA Review # FUSA-13-2972 SO#_____

USGS FACILITY SERVICE/USE AGREEMENT AUTHORIZED BY 15 USC 3710 (A) AS AMENDED

1. Name & Address USGS Facility:	Nevada Water Science Center, 2730 N. Deer Run Rd., Carson City, NV 89701
2. Name & Address of Collaborator:	Inyo County, Board of Supervisors C/o Yucca Repository Assessment Office PO Drawer L Independence, CA 93526

3. Describe type of technical assistance to be furnished by USGS: Storage and high-resolution digital imaging will be provided for rock samples from the Yucca Mountain Project at the USGS Core Library.

4. Benefit of project work to USGS missions: Inclusion of Inyo County's rock samples and digital images will add to the wealth of geologic information preserved at the Core Library, increasing access to the information while decreasing travel and project costs by shortening the time required to complete a geologic assessment. Photo documentation guarantees the preservation of over 50 years and millions of dollars of geologic data collection. These images will serve the scientific community as well as the American public for generations to come. Images will be made available in the USGS Rock-Sample Image directory (http://nevada.usgs.gov/imagefolio/cgi-bin/ImageFolio43/imagefolio.cgi

5. Collaborator explanation of how the specified research activity assists your company, program or project work. Our agency does not have the type of storage required to preserve the scientific integrity of these samples as that maintained by the USGS. The USGS Core Library can provide a long-term preservation record of these scientific data in the event Inyo County decides these physical samples are no longer needed. The images will serve the scientific community as well as the American public for generations to come.

6. Project term/Delivery date: April 30, 2013 - September 30, 2013

7. Reimbursement/Cost Share: **Total cost** for services under this agreement is **$27,000**

USGS will issue billing(s) utilizing Department of the Interior Bill for Collection (Form DI-1040).

Although Collaborator has agreed to the **quarterly** billing cycle per USGS policy for all Sales Orders over $25,000, Collaborator has requested a single or advance bill be generated in the amount of **$27,000** for the **total cost** of this agreement.

* For the convenience of the Collaborator requests may be processed using Credit Card or PO during the term of the agreement but should include Agreement # on all such paperwork.

8. Contacts:

USGS Technical Contact: Guy DeMeo	Inyo County Technical Contact: Joshua Hart
Phone: 702-564-4611	Phone: 760-878-0268
Email: gademeo@usgs.gov	Email: jhart@inyocounty.us
Address: US Geological Survey, Pacific Region Nevada Water Science Center 160 N. Stephanie St. Henderson, NV 89074	Address: Inyo County, Planning Dept. c/o Yucca Repository Assessment Office PO Drawer L Independence, CA 93526
USGS Financial Contact: Stacy Masters, Helen Houston	Inyo County Financial Contact: Joshua Hart
Phone: 775-887-7657, -7605	Phone: 760-878-0268
Email: GS-W-NV Finance@usgs.gov	Email: jhart@inyocounty.us
Address: US Geological Survey, Pacific Region Nevada Water Science Center 2730 N. Deer Run Rd. Carson City, NV 89701	Address: Inyo County, Planning Dept. c/o Yucca Repository Assessment Office PO Drawer L Independence, CA 93526
DUNS: 178930541; TIN: 53-0196958	DUNS: 010706687; TIN: 95-6005445

9. Other Terms:

a) Collaborator has determined that the capabilities of the above listed facility are unique, and not

readily available from the private sector.

b) Scientific results will be provided on a "best efforts" basis by USGS.

c) USGS MAKES NO WARRANTIES ABOUT THE INFORMATION IT DELIVERS OR IT'S USEFULNESS FOR A PARTICULAR PURPOSE.

d) The parties do not anticipate the development of any intellectual property (IP) as part of this agreement. However in the event that IP, which is defined as patents, copyrights, new inventions, or discoveries, is created in the course technical assistance, such IP shall be the property or joint property of the organization employing the respective individual(s) who made the invention or discovery. Any IP developed will be reported by the developer to his/her Technical Contact who will in turn notify the other party's Technical contact.

e) Collaborator/User understands that government work will have priority over this project in the event that a scheduling conflict develops in the laboratory.

f) Both USGS and Collaborator may utilize the generated information developed by USGS in databases, papers or as part of other scientific information.

g) This Agreement may be cancelled on 30 days written notice by either party to the other. Work in process at the time of cancellation will be completed and billed to the appropriate party. The obligation to make and the ability to accept payments survive the effective dates of the actual Agreement.

h) The Technical Contacts listed herein shall attempt to jointly resolve any disputes arising from the Agreement. Any dispute that they are unable to resolve shall be submitted to the Director of the USGS, or his designee; and the President or his designee of Collaborator, for final resolution.

i) For purposes of this Agreement and all services to be provided hereunder, each party shall be, and shall be deemed to be, an independent entity and not an agent or employee of the other party.

j) The terms of this Facility Use Agreement are the only terms that govern the parties' agreement and the research /technical work to be completed by USGS. USGS is not bound by and does not accept any additional or supplemental terms or conditions contained in any Purchase Order or other document used by Collaborator to order or pay for research services. Such documents are accepted by USGS solely as a convenience to the Collaborator and are not intended to modify or expand the terms of the parties' agreement.

U.S. Geological Survey		**Inyo County**	
/		/	
Signature	Date	Signature	Date
Title: Director, USGS, NV WSC		Title:	

USGS Tech Transfer Review: Date:

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
25

☐ Consent ☒ Departmental ☐ Correspondence Action ☐ Public Hearing

☐ Scheduled Time for ☐ Closed Session ☐ Informational

FROM: Inyo County Planning Department

FOR THE BOARD MEETING OF: April 16, 2013

SUBJECT: National Forest System Land Management Planning Directives

RECOMMENDATION: Review draft correspondence regarding the National Forest System Land Management Planning Directives, provide input, and authorize the Chair to sign.

SUMMARY DISCUSSION: The U.S. Forest Service approved a new Land Management Planning Rule in 2012 (Attachment 3). Inyo County participated extensively in development of the Rule, and was successful in influencing its final form, especially in regards to coordination. The Forest Service has released draft Directives to update its Land Management Planning Manual and Land Management Planning Handbook for review and comment (refer to Attachment 2 for the Federal Register Notice; the draft Directives are available under separate cover and the Forest Service Planning Rule website). Staff has reviewed the draft Directives and prepared draft correspondence for the Board's consideration (Attachment 1), primarily recommending enhancements to the approach to coordination and local land use planning. Comments are due April 29, 2013.

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: 4-8-13

Attachments:

1. Draft Correspondence
2. Federal Register Notice
3. 2012 Planning Rule

April 16, 2013

USDA Forest Service Planning Directives Comments
PO Box 40088
Portland, OR 97240

Re: Planning Directives

To Whom it May Concern:

On behalf of the Inyo County Board of Supervisors, thank you for the opportunity to participate in development of the Planning Directives to implement the Land Management Planning Rule. Inyo County participated extensively in development of the Rule, and we are pleased that it is being implemented in a timely manner. The Inyo National Forest Land Management Plan is one of the first Plans being revised under the new Rule, and the directives provide clarity for proceeding.

We are pleased that much of our previous input that was incorporated into the Rule has been carried forward into the proposed Directives. We offer the following comments to improve the Directives from our perspective:

1. The definitions should include a definition for coordination with local government. We suggest utilizing the coordination process identified in CFR 219.2(b) for this definition.
2. The Assessment phase should include means to gather new information if it is particularly important for the planning effort. We suggest that gathering new information be encouraged throughout update/revision efforts.
3. The assessment phase for Social, Cultural, and Economic conditions should include analysis of past actions within the Forest that have contributed to external change, especially ongoing change at the local level.
4. For all phases, local land use planning should be addressed more broadly, particularly for analyses related to Land Status, Ownership, Use, and Access Patterns. We recommend specific references to investigating local governments' General Plans, Zoning, and other Plans (e.g., Specific Plans, Master Plans, Transportation Plans, Infrastructure Plans, Emergency Response Plans, Capital Improvement Plans, etc.).
5. References to Multiple Use should be consistent with the Multiple Use Sustained Yield Act.
6. More guidance for coordination with local government should be included in Section 43.16. We suggest providing specific recommendations to contact local governments to understand their planning processes and relevant plans, policies, and regulations; working collaboratively with local governments to analyze consistency and/or inconsistency; and making efforts to achieve consistency.
7. We believe that the use of best available scientific information (BASI) is important to the planning effort, but we also believe that firsthand accounts, local knowledge, and other data sources that may not qualify for BASI should be considered; therefore, we request that the qualifiers in Section 42.1 be expanded to better convey these thoughts.
8. We believe that the wilderness criteria need to be strengthened to better direct wilderness to areas that meet wilderness criteria from the Wilderness Act.

We look forward to continuing to work with the Forest Service in implementing the Directives through the Inyo National Forest Update/Revision process. If you have any questions, please contact the

County's Administrative Officer, Kevin Carunchio, at (760) 878-0292 or kcarunchio@inyocounty.us. Thank you for your attention.

Sincerely,

Linda Arcularius, 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

Proposed Action

Alternative 3 proposes to treat 35 units totalling 14,281 acres through thinning (1,757 acres) and prescribed burning (12,524 acres). Thinning would favor large tree retention using the general priority order of whitebark and limber pine, aspen, Douglas-fir, lodgepole pine, Engelmann spruce, and subalpine fir. Thinning would leave 70 to 200 trees per acre in the non-commercial units, and 60 to 140 trees per acre in the commercial units. Conifers in and around aspen clones would be thinned to release suppressed aspen. Residual branches, logs, and other resulting debris would be hand- or machine-piled and burned in the units or on the landings, or scattered to further reduce fuel concentrations in the project area. Ladder fuels would be pruned in some units. Snags would be removed as needed for firefighter safety in portions of 27 units located in close proximity to residential areas. Road reconstruction would occur on 1.3 miles of National Forest roads and a total of 1 mile of temporary road would be constructed and then obliterated after use. Routine maintenance would occur on 11.7 miles of roads. Approximately 27 landings would be used.

Prescribed fire would reduce fire potential while creating a mosaic of burned and unburned areas. Ground and aerial ignition techniques would adhere to site-specific burn plans that identify parameters for weather, air quality, contingency resources, other resource concerns, equipment needs, and responses for potential escapes. Fire managers would use, and subsequently rehabilitate, up to seven miles of low-impact fire control lines if needed to contain prescribed fire. Natural barriers to fire spread would be used where possible.

Alternative 3 includes extensive project design features and best practices to avoid or reduce impacts to cultural resources, water resources, range, recreation, scenery, sensitive plants, air quality, soils, special areas, and wildlife.

Possible Alternatives

At this time it is planned that the EIS will examine Alternative 1 (No Action), Alternative 2 (Proposed Action originally scoped in December 2010 and modified after further analysis), and Alternative 3—Reduce Potential Impacts to Special Areas and Wildlife Habitat (developed to address public concerns after original scoping period).

Preliminary Issues

Key issues identified during the original public scoping include effects to the WSA, IRAs, and wildlife habitat. Additional public concerns addressed in the analysis include potential effects related to unauthorized motorized use, standing trees, spread of noxious weeds, road use, smoke, heavy equipment, and biodiversity.

In March 2012, the Palisades WSA map used by the Forest Service for analysis of the Teton to Snake Fuels Management Project was questioned. In July 2012, Jackson District Ranger Dale Deiter put the project on hold until more clarity was obtained regarding the WSA boundary. Since then extensive record searches have occurred uncovering many valuable maps and memos. In addition, two public meetings were held with people interested in the boundary issue. Based on the best information available at this time, the Forest Service is proceeding with the RARE II map from 1977 (Roadless Area and Review Evalaution process). The map package is expected to be assembled in March 2013 and will be submitted to the Regional and Washington Offices of the Forest Service for review and approval. Upon approval, a certified boundary and legal description will be prepared by the Forest Service lands office with final approval from the Regional Forester. A decision on the Teton to Snake Fuels Management Project would only be made after the Palisades WSA boundary is approved.

Responsible Official

Dale Deiter, District Ranger, Jackson Ranger District, Bridger-Teton National Forest

Nature of Decision To Be Made

The District Ranger will decide whether to implement one of the alternatives designed to meet the purpose and need for the project, or take no action.

Permits or Licenses Required

A permit would be required from the State of Wyoming prior to any prescribed burning. The appropriate regulatory agencies will be consulted regarding national or state required permits associated with roads used in project implementation, and required permits obtained prior to implementation.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. As noted above, comments submitted during the scoping period beginning in 2010 will be brought forward in the EIS so there is no need to re-submit them. New information and concerns describing site-specific unwanted effects related to Alternative 3 would be useful.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Include the following information with your comments: Your name, address, email (optional), and telephone number; the project name: Teton to Snake Fuels Management Project; and site-specific comments, along with supporting information you believe will help identify issues, develop alternatives, or predict environmental effects of this proposal. The most useful comments provide new information or describe unwanted environmental effects potentially caused by the proposed action. If you reference scientific literature in your comments, you must provide a copy of the entire reference you have cited and include the predicted site-specific effects supported by the literature.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however anonymous comments will not provide the agency with the ability to provide you with project updates.

Dated: February 21, 2013.

Dale Deiter

Jackson District Ranger.

[FR Doc. 2013–04498 Filed 2–26–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AD06

National Forest System Land Management Planning Directives

AGENCY: Forest Service, USDA.

ACTION: Notice of issuance of agency proposed directives; request for comment.

SUMMARY: The Forest Service has issued proposed directives to Forest Service Handbook (FSH 1909.12) and Manual (FSM 1920) establishing procedures and responsibilities for implementing the

National Forest System (NFS) land management planning regulation. Issuance of these proposed directives will provide consistent overall guidance to Forest Service Line Officers and Agency employees in developing, amending, or revising land management plans for units of the NFS. Public comment is invited and will be considered in developing the final directives.

DATES: Comments must be received in writing by April 29, 2013.

ADDRESSES: Submit comments concerning the proposed directives through one of the following methods:

1. *Public participation portal: https://cara.ecosystem-management.org/Public/CommentInput?Project=30641.* Comments may also be provided through the Federal rulemaking portal: *http://www.regulations.gov.*

2. *Facsimile:* Fax to: 503.224.1851. Please identify your comments by including "RIN 0596–AD06" or "planning directives" on the cover sheet or the first page.

3. *U.S. Postal Service:* The mailing address is: USDA Forest Service Planning Directives Comments, P.O. Box 40088, Portland, OR 97240.

FOR FURTHER INFORMATION CONTACT: Annie Eberhart Goode, Planning Specialist, Ecosystem Management Coordination Staff, 202–205–1056 or 703–605–4478.

SUPPLEMENTARY INFORMATION: The Forest Service has issued proposed directives to Forest Service Handbook (FSH 1909.12) and Manual (FSM 1920) establishing procedures and responsibilities for implementing the National Forest System (NFS) land management planning regulation set out at 36 CFR part 219. This promulgated rule was published in the **Federal Register** on April 9, 2012 (77 FR 21161).

Public Participation

Please note that the Forest Service will not be able to receive hand-delivered comments. In addition, please note that all comments, including names and addresses when provided, will be placed in the record and available for public inspection and copying. The Agency cannot confirm receipt of comments. Individuals wishing to inspect comments should call Jody Sutton at 801–517–1020 to schedule an appointment.

These proposed directives are a revision of Forest Service Handbook (FSH) 1919.12 and Forest Service Manual (FSM) 1920. Copies of the proposed directives are available on the World Wide Web/Internet at *http://www.fs.usda.gov/goto/planningrule/directives.* Copies may be obtained by contacting one of the following Regional Offices:

Region	Phone No.	Address
Northern Region—R1	406–329–3511	*Street Address:* 200 E. Broadway, Missoula, MT 59802. *Mailing address:* P.O. Box 7669, Missoula, MT 59807–7669.
Rocky Mountain Region—R2	303–275–5350	*Street Address:* 740 Simms St., Golden, CO 80401. *Mailing address:* P.O. Box 25127, Lakewood, CO 80225–0127.
Southwestern Region—R3	505–842–3292	333 Broadway SE., Albuquerque, NM 87102.
Intermountain Region—R4	801–625–5605	324 25th Street, Ogden, UT 84401.
Pacific Southwest Region—R5	707–562–8737	1323 Club Drive, Vallejo, CA 94592.
Pacific Northwest Region—R6	503–808–2468	*Street Address:* 333 SW. First Avenue, Portland, Oregon 97204. *Mailing address:* P.O. Box 3623, Portland, OR 97208–3623.
Southern Region—R8	404–347–4095	1720 Peachtree Rd. NW., Atlanta, GA 30309.
Eastern Region—R9	414–297–3600	626 East Wisconsin Ave. Milwaukee, WI 53202.
Alaska Region—R10	907–586–8806	P.O. Box 21628, Juneau, AK 99802–1628.

Readers are encouraged to obtain a copy of the proposed directives to formulate their comments and provide input for the development of the final planning directives.

Background

On April 9, 2012, the U. S. Department of Agriculture (Department or USDA) adopted final planning regulations for the NFS at 36 CFR part 219 (77 FR 21161). These regulations, known collectively as the 2012 Planning Rule, provide broad programmatic direction in developing and carrying out land management planning. The rule explicitly directs the Chief of the Forest Service to establish planning procedures in the Forest Service Directives System (36 CFR 219.1(c)).

The Forest Service is implementing the 2012 Planning Rule. Those responsible officials that are implementing the 2012 Planning Rule must follow the regulations at 36 CFR 219 and applicable existing Forest Service Directives until they are superseded.

The Forest Service Directives System consist of the Forest Service Manual (FSM) and the Forest Service Handbook (FSH), which contain the Agency's policies, practices, and procedures, and serves as the primary basis for the internal management and control of programs and administrative direction to Forest Service employees. The directives for all Agency programs are set out on the World Wide Web/Internet at *http://www.fs.fed.us/im/directives.*

Specifically, the FSM contains legal authorities, objectives, policies, responsibilities, instructions, and guidance needed on a continuing basis by Forest Service Line Officers and primary staff to plan and execute programs and activities. The FSH is the principal source of specialized guidance and instruction for carrying out the policies, objectives, and responsibilities contained in the FSM.

For these proposed directives, both the FSM and the FSH provide policy direction, objectives, instructions, and guidance for Forest Service Line Officers and primary staff to plan and execute the process of developing, revising, amending, and making administrative changes to plans.

Content of Proposed Directives

The following is an overview of the contents of the proposed directives.

FSM 1920—Land Management Planning Manual

This Forest Service Manual describes a process for developing, revising, amending, and making administrative changes to land management plans for the National Forest System (NFS). It includes authorities and responsibilities. It should be used in conjunction with the FSH.

FSH 1909.12—Land Management Planning Handbook

This FSH provides policy direction, objectives, instructions and guidance for the process of developing, revising, amending, and making administrative changes to plans for the NFS. It includes authorities and responsibilities.

Zero Code

The section known as the zero code contains authorities, responsibilities, and select definitions applicable to subsequent chapters.

Chapter 10—The Assessment

This chapter describes the procedures for writing an assessment for development, amendment, or revision of land management plans.

Chapter 20—Land Management Plan

This chapter describes the land management plan under the 2012 Planning Rule and explains the procedures for developing, amending, and revising land management plans.

Chapter 30—Monitoring

This chapter describes the plan monitoring program, broader-scale monitoring strategy, and biennial evaluation of the monitoring information for land management planning.

Chapter 40—Key Processes Supporting Land Management Planning

This chapter describes the adaptive management framework, use of best available scientific information, public participation and the role of collaboration, and tribal consultation as it relates to land management plans.

Chapter 50—Objection Process

This chapter describes the process for the public to seek administrative review of plans, plan revisions, and plan amendments before their approval. This process is referred to as the objection process.

Chapter 60—Forest Vegetation Resource Planning

This chapter provides procedures for developing plan components and other plan content to meet National Forest Management Act (NFMA) and planning rule requirements for identifying lands that are not suitable for timber production, plan components for timber harvest for timber production or other purposes, limitations on timber harvest, and display of the planned timber sale program.

Chapter 70—Wilderness Evaluation

This chapter describes the process for identifying and evaluating lands that may be suitable for inclusion in the National Wilderness Preservation System and determining whether to recommend any such lands for wilderness designation.

Chapter 80—Wild and Scenic River Evaluation

This chapter describes the process for identifying and evaluating potential additions to the National Wild and Scenic Rivers System. This chapter also addresses interim management of river segments determined to be eligible and suitable, documentation of study results, as well as the process for notifying Congress of agency wild and scenic river recommendations.

Chapter 90—References

This chapter contains exhibits or references not easily found electronically.

Regulatory Certifications

Regulatory Impact

This notice has been reviewed under USDA procedures and Executive Order (E.O.) 12866, Regulatory Planning and Review. The Office of Management and Budget (OMB) has reviewed this notice and has determined that it is a significant action. The proposed directives would 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. The proposed directives would not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, the proposed directives would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs.

Moreover, the proposed directives have been considered in light of E.O. 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). No direct or indirect financial impact on small businesses or other entities has been identified. Therefore, it is hereby certified that these proposed directives will not have a significant economic impact on a substantial number of small entities as defined by the act.

Environmental Impact

These proposed directives provide the detailed direction to agency employees necessary to carry out the provisions of the final 2012 Planning Rule adopted at 36 CFR part 219 governing land management planning. Forest Service Handbook 1909.15, section 31.12 (57 FR 43208; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The Agency's conclusion is that these proposed directives fall within this category of actions and that no extraordinary circumstances exist as currently defined that require preparation of an environmental assessment or an environmental impact statement.

No Takings Implications

These proposed directives have been analyzed in accordance with the principles and criteria contained in E.O. 12360, Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that they would not pose the risk of a taking of private property as they are limited to the establishment of administrative procedures.

Energy Effects

These proposed directives have been analyzed under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that they do not constitute a significant energy action as defined in the Executive Order.

Civil Justice Reform

These proposed directives have been reviewed under E.O. 12988, Civil Justice Reform. These proposed directives will direct the work of Forest Service employees and are not intended to preempt any State and local laws and regulations that might be in conflict or that would impede full implementation of these directives. The directives would not retroactively affect existing permits, contracts, or other instruments authorizing the occupancy and use of NFS lands and would not require the institution of administrative proceedings before parties may file suit in court challenging their 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 effects of these proposed directives on State, local, and Tribal governments, and on the private sector have been assessed and do not compel the expenditure of $100 million or more by any State, local, or Tribal government, or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Federalism

The Agency has considered these proposed directives under the requirements of E.O. 13132, Federalism. The Agency has made a preliminary assessment that they conform with the federalism principles set out in this Executive Order; would not impose any significant 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. Moreover, these proposed directives address the land management planning process on National Forests, Grasslands or other units of the NFS, which do not directly affect the States. Based on comments received on these proposed directives, the Agency will consider if any additional consultation will be needed with State and local governments prior to adopting final directives.

Consultation and Coordination With Indian Tribal Governments

The Forest Service will conduct government-to-government consultation on the planning directives. The Forest Service considers tribal consultation as an ongoing, iterative process that encompasses development of the proposed directives through the issuance of final directives. During development of the 2012 Planning Rule, between September 23, 2010, and publication of the final rule on April 9, 2012, the Agency held 16 consultation meetings across the Country. In addition, Forest Service leaders held one-on-one meetings, as requested, with tribal leaders throughout the time period of development of the rule.

The Agency will contact all federally recognized Tribes and Alaska Native Corporations by mail to formally initiate consultation on the proposed directives and seek comments within 120 days.

Controlling Paperwork Burdens on the Public

These proposed directives do not contain any record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and, therefore, impose no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and implementing regulations at 5 CFR part 1320 do not apply.

Chapter 50 of these proposed directives contains information collection requirements as defined in 5 CFR part 1320. The information collection requirements have been approved by the Office of Management and Budget and assigned control number 0596–0158.

Conclusion

The Forest Service has developed these planning directives to set forth the legal authorities, objectives, policy, responsibilities, direction, and overall guidance for Forest Service Line Officers, agency employees, and others to use the 2012 Planning Rule. The proposed directives provide consistent interpretation of the 2012 Planning Rule for Line and Staff Officers, and interdisciplinary teams.

The 2012 Planning Rule and the proposed FSM and FSH sections together provide requirements and guidance for the Agency to adaptively manage the NFS to maintain and restore NFS land and water ecosystems and protect species while providing for ecosystem services and multiple uses. The proposed directives are intended to guide the development, revision, and amendment of land management plans to provide for the sustainability of ecosystems and resources; meet the need for forest restoration and conservation, watershed protection, and species diversity and conservation; and assist the Agency in providing a sustainable flow of benefits, services, and uses of NFS lands that provide jobs and contribute to the economic and social sustainability of communities.

By seeking public notice and comment on these proposed directives, the Agency is continuing its commitment to improve public involvement and transparency in decisionmaking associated with developing, amending, or revising a land management plan.

When the Agency offers the opportunity for public notice and comment on a proposed revision of a Forest Service Manual or Handbook revision, the Agency publishes a notice of a proposed revision with a minimum 60-day comment period. The Agency then considers the comments, makes any changes, drafts, and publishes a final **Federal Register** notice explaining the final directive and the rationale for any changes made from the propose. At a minimum, this process takes 6 months but normally takes 9–12 months.

The Forest Service is committed to providing adequate opportunities for the public to comment on administrative directives that are of substantial public interest or controversy, as provided in the regulations at 36 CFR part 216. All comments on these proposed directives will be considered in the development of the final directives. The full text of these proposed directives are available on the World Wide Web/Internet at *http://www.fs.usda.gov/goto/planningrule/directives*. Single paper copies are available upon request from the address and phone numbers listed earlier in this notice as well as from the nearest Regional Office, the locations of which are also available on the Washington Office headquarters homepage on the World Wide Web/Internet: *www.fs.fed.us/*.

Dated: February 21, 2013.

Thomas L. Tidwell,

Chief.

[FR Doc. 2013–04470 Filed 2–26–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of the National Institute of Food and Agriculture (NIFA) to request an extension for a currently approved information collection (OMB No. 0524–0026) for Form NIFA–666, "Organizational Information."

DATES: Submit comments on or before April 29, 2013.

ADDRESSES: You may submit comments, identified by NIFA–2013–0008, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: rmartin@NIFA.usda.gov. Include NIFA–2013–0008 in the subject line of the message.

Fax: 202–720–0857.

Mail: Written comments concerning this notice and requests for copies of the information collection may be submitted to Robert Martin, Records Officer, Information Policy, Planning and Training; Mail: NIFA/USDA; Mail Stop 2216; 1400 Independence Avenue SW.; Washington, DC 20250–2299; Hand Delivery/Courier: 800 9th Street

be-identified adverse impacts may be possible on a regional or local scale at the unit planning level. Differences in national level effects and regional/local level effects are the result of uneven distribution of minorities, low-income populations, and variations in regional, cultural, or traditional use, and differences in local access to resources. Impacts on the national forest level will be further examined at the unit level, including NEPA analysis for plan development, plan revision, or plan amendment and site-specific projects.

The participation efforts required by the final rule have significant potential to reach and involve diverse segments of the population that historically have not played a large role in NFS planning and management. Section 219.4(a) requires that when developing opportunities for public participation, the responsible official shall take into account the discrete and diverse roles, jurisdictions, responsibilities, and skills of interested and affected parties as well as the accessibility of the process, opportunities, and information. The responsible official is required to be proactive and use contemporary tools, such as the Internet, to engage the public, and share information in an open way with interested parties. Requirements of § 219.4 to consider accessibility and requirements to encourage participation by youth, low-income populations, and minority populations may improve environmental justice outcomes.

The final rule includes provisions for filing an objection before the final decision if the objector has filed a substantive formal comment related to a new plan, plan revision, or plan amendment. In the past, substantive formal comments were required to be in writing and submitted during the formal comment period when developing land management plans. The final rule expands the definition of a substantive formal comment to include written or oral comments submitted or recorded during an opportunity for public participation provided during the local unit's planning process (§§ 219.4 and 219.16).

If implemented, there are no anticipated adverse or disproportionate impacts to underserved, protected groups, low income, or socially disadvantaged communities. The final rule requirements, including outreach and collaboration, and the requirement for NEPA analysis are designed to avoid adverse or disproportionate effects; therefore, mitigating measures are not necessary or appropriate for adopting or implementing the planning rule. Local site-specific mitigation may occur as NFS projects and activities are planned and executed consistent with Department policy.

List of Subjects in 36 CFR Part 219

Administrative practice and procedure, Environmental impact statements, Indians, Intergovernmental relations, National forests, Reporting and recordkeeping requirements, Science and technology.

Therefore, for the reasons set forth in the preamble, the Forest Service revises part 219 of Title 36 of the Code of Federal Regulations to read as follows:

PART 219—PLANNING

Subpart A—National Forest System Land Management Planning

Sec.

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Authority: 5 U.S.C. 301; 16 U.S.C. 1604, 1613.

Subpart A—National Forest System Land Management Planning

§ 219.1 Purpose and applicability.

(a) This subpart sets out the planning requirements for developing, amending, and revising land management plans (also referred to as plans) for units of the National Forest System (NFS), as required by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*) (NFMA). This subpart also sets out the requirements for plan components and other content in land management plans. This part is applicable to all units of the NFS as defined by 16 U.S.C. 1609 or subsequent statute.

(b) Consistent with the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528–531) (MUSYA), the Forest Service manages the NFS to sustain the multiple use of its renewable resources in perpetuity while maintaining the long-term health and productivity of the land. Resources are managed through a combination of approaches and concepts for the benefit of human communities and natural resources. Land management plans guide sustainable, integrated resource management of the resources within the plan area in the context of the broader landscape, giving due consideration to the relative values of the various resources in particular areas.

(c) The purpose of this part is to guide the collaborative and science-based development, amendment, and revision of land management plans that promote the ecological integrity of national forests and grasslands and other administrative units of the NFS. Plans will guide management of NFS lands so that they are ecologically sustainable and contribute to social and economic sustainability; consist of ecosystems and watersheds with ecological integrity and diverse plant and animal communities; and have the capacity to provide people and communities with ecosystem services and multiple uses that provide a range of social, economic, and ecological benefits for the present and into the future. These benefits include clean air and water; habitat for fish, wildlife, and plant communities; and opportunities for recreational, spiritual, educational, and cultural benefits.

(d) This part does not affect treaty rights or valid existing rights established by statute or legal instruments.

(e) During the planning process, the responsible official shall comply with Section 8106 of the Food, Conservation, and Energy Act of 2008 (25 U.S.C. 3056), Executive Order 13007 of May

24, 1996, Executive Order 13175 of November 6, 2000, laws, and other requirements with respect to disclosing or withholding under the Freedom of Information Act (5 U.S.C. 552) certain information regarding reburial sites or other information that is culturally sensitive to an Indian Tribe or Tribes.

(f) Plans must comply with all applicable laws and regulations, including NFMA, MUSYA, the Clean Air Act, the Clean Water Act, the Wilderness Act, and the Endangered Species Act.

(g) The responsible official shall ensure that the planning process, plan components, and other plan content are within Forest Service authority, the inherent capability of the plan area, and the fiscal capability of the unit.

§ 219.2 Levels of planning and responsible officials.

Forest Service planning occurs at different organizational levels and geographic scales. Planning occurs at three levels—national strategic planning, NFS unit planning, and project or activity planning.

(a) *National strategic planning.* The Chief of the Forest Service is responsible for national planning, such as preparation of the Forest Service strategic plan required under the Government Performance and Results Modernization Act of 2010 (5 U.S.C. 306; 31 U.S.C. 1115–1125; 31 U.S.C. 9703–9704), which is integrated with the requirements of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the NFMA. The strategic plan establishes goals, objectives, performance measures, and strategies for management of the NFS, as well as the other Forest Service mission areas: Research and Development, State and Private Forestry, and International Programs.

(b) *National Forest System unit planning.* (1) NFS unit planning results in the development, amendment, or revision of a land management plan. A land management plan provides a framework for integrated resource management and for guiding project and activity decisionmaking on a national forest, grassland, prairie, or other administrative unit. A plan reflects the unit's expected distinctive roles and contributions to the local area, region, and Nation, and the roles for which the plan area is best suited, considering the Agency's mission, the unit's unique capabilities, and the resources and management of other lands in the vicinity. Through the adaptive planning cycle set forth in this subpart, a plan can be changed to reflect new information and changing conditions.

(2) A plan does not authorize projects or activities or commit the Forest Service to take action. A plan may constrain the Agency from authorizing or carrying out projects and activities, or the manner in which they may occur. Projects and activities must be consistent with the plan (§ 219.15). A plan does not regulate uses by the public, but a project or activity decision that regulates a use by the public under 36 CFR Part 261, Subpart B, may be made contemporaneously with the approval of a plan, plan amendment, or plan revision. Plans should not repeat laws, regulations, or program management policies, practices, and procedures that are in the Forest Service Directive System.

(3) The supervisor of the national forest, grassland, prairie, or other comparable administrative unit is the responsible official for development and approval of a plan, plan amendment, or plan revision for lands under the responsibility of the supervisor, unless a regional forester; the Chief; the Under Secretary, Natural Resources and Environment; or the Secretary acts as the responsible official. Two or more responsible officials may undertake joint planning over lands under their respective jurisdictions.

(4) A plan for a unit that contains an experimental area may not be approved without the concurrence of the appropriate research station director with respect to the direction applicable to that area, and a plan amendment applicable to an experimental area may not be approved without the concurrence of the appropriate research station director.

(5) The Chief is responsible for leadership and direction for carrying out the NFS land management planning program under this part. The Chief shall:

(i) Establish planning procedures for this part in the Forest Service Directive System in Forest Service Manual 1920—Land Management Planning and in Forest Service Handbook 1909.12—Land Management Planning Handbook.

(ii) Establish and administer a national oversight process for accountability and consistency of NFS land management planning under this part.

(iii) Establish procedures in the Forest Service Directive System for obtaining inventory data on the various renewable resources, and soil and water.

(c) *Project and activity planning.* The supervisor or district ranger is the responsible official for project and activity decisions, unless a higher-level official acts as the responsible official. Requirements for project or activity planning are established in the Forest Service Directive System. Except as provided in the plan consistency requirements in § 219.15, none of the requirements of this part apply to projects or activities.

§ 219.3 Role of science in planning.

The responsible official shall use the best available scientific information to inform the planning process required by this subpart. In doing so, the responsible official shall determine what information is the most accurate, reliable, and relevant to the issues being considered. The responsible official shall document how the best available scientific information was used to inform the assessment, the plan decision, and the monitoring program as required in §§ 219.6(a)(3) and 219.14(a)(4). Such documentation must: Identify what information was determined to be the best available scientific information, explain the basis for that determination, and explain how the information was applied to the issues considered.

§ 219.4 Requirements for public participation.

(a) *Providing opportunities for participation.* The responsible official shall provide opportunities to the public for participating in the assessment process; developing a plan proposal, including the monitoring program; commenting on the proposal and the disclosure of its environmental impacts in accompanying NEPA documents; and reviewing the results of monitoring information. When developing opportunities for public participation, the responsible official shall take into account the discrete and diverse roles, jurisdictions, responsibilities, and skills of interested and affected parties; the accessibility of the process, opportunities, and information; and the cost, time, and available staffing. The responsible official should be proactive and use contemporary tools, such as the Internet, to engage the public, and should share information in an open way with interested parties. Subject to the notification requirements in § 219.16, the responsible official has the discretion to determine the scope, methods, forum, and timing of those opportunities. The Forest Service retains decisionmaking authority and responsibility for all decisions throughout the process.

(1) *Outreach.* The responsible official shall engage the public—including Tribes and Alaska Native Corporations, other Federal agencies, State and local

governments, individuals, and public and private organizations or entities—early and throughout the planning process as required by this part, using collaborative processes where feasible and appropriate. In providing opportunities for engagement, the responsible official shall encourage participation by:

(i) Interested individuals and entities, including those interested at the local, regional, and national levels.

(ii) Youth, low-income populations, and minority populations.

(iii) Private landowners whose lands are in, adjacent to, or otherwise affected by, or whose actions may impact, future management actions in the plan area.

(iv) Federal agencies, States, counties, and local governments, including State fish and wildlife agencies, State foresters and other relevant State agencies. Where appropriate, the responsible official shall encourage States, counties, and other local governments to seek cooperating agency status in the NEPA process for development, amendment, or revision of a plan. The responsible official may participate in planning efforts of States, counties, local governments, and other Federal agencies, where practicable and appropriate.

(v) Interested or affected federally recognized Indian Tribes or Alaska Native Corporations. Where appropriate, the responsible official shall encourage federally recognized Tribes to seek cooperating agency status in the NEPA process for development, amendment, or revision of a plan. The responsible official may participate in planning efforts of federally recognized Indian Tribes and Alaska Native Corporations, where practicable and appropriate.

(2) *Consultation with federally recognized Indian Tribes and Alaska Native Corporations.* The Department recognizes the Federal Government has certain trust responsibilities and a unique legal relationship with federally recognized Indian Tribes. The responsible official shall honor the government-to-government relationship between federally recognized Indian Tribes and the Federal government. The responsible official shall provide to federally recognized Indian Tribes and Alaska Native Corporations the opportunity to undertake consultation consistent with Executive Order 13175 of November 6, 2000, and 25 U.S.C. 450 note.

(3) *Native knowledge, indigenous ecological knowledge, and land ethics.* As part of tribal participation and consultation as set forth in paragraphs (a)(1)(v) and (a)(2) of this section, the responsible official shall request information about native knowledge, land ethics, cultural issues, and sacred and culturally significant sites.

(b) *Coordination with other public planning efforts.* (1) The responsible official shall coordinate land management planning with the equivalent and related planning efforts of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments.

(2) For plan development or revision, the responsible official shall review the planning and land use policies of federally recognized Indian Tribes (43 U.S.C. 1712(b)), Alaska Native Corporations, other Federal agencies, and State and local governments, where relevant to the plan area. The results of this review shall be displayed in the environmental impact statement (EIS) for the plan (40 CFR 1502.16(c), 1506.2). The review shall include consideration of:

(i) The objectives of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments, as expressed in their plans and policies;

(ii) The compatibility and interrelated impacts of these plans and policies;

(iii) Opportunities for the plan to address the impacts identified or contribute to joint objectives; and

(iv) Opportunities to resolve or reduce conflicts, within the context of developing the plan's desired conditions or objectives.

(3) Nothing in this section should be read to indicate that the responsible official will seek to direct or control management of lands outside of the plan area, nor will the responsible official conform management to meet non-Forest Service objectives or policies.

§ 219.5 Planning framework.

(a) Planning for a national forest, grassland, prairie, or other comparable administrative unit of the NFS is an iterative process that includes assessment (§ 219.6); developing, amending, or revising a plan (§§ 219.7 and 219.13); and monitoring (§ 219.12). These three phases of the framework are complementary and may overlap. The intent of this framework is to create a responsive planning process that informs integrated resource management and allows the Forest Service to adapt to changing conditions, including climate change, and improve management based on new information and monitoring.

(1) *Assessment.* Assessments rapidly evaluate existing information about relevant ecological, economic, and social conditions, trends, and sustainability and their relationship to the land management plan within the context of the broader landscape. The responsible official shall consider and evaluate existing and possible future conditions and trends of the plan area, and assess the sustainability of social, economic, and ecological systems within the plan area, in the context of the broader landscape (§ 219.6).

(2) *Plan development, plan amendment, or plan revision.*

(i) The process for developing or revising a plan includes: Assessment, preliminary identification of the need to change the plan based on the assessment, development of a proposed plan, consideration of the environmental effects of the proposal, providing an opportunity to comment on the proposed plan, providing an opportunity to object before the proposal is approved, and, finally, approval of the plan or plan revision. A new plan or plan revision requires preparation of an environmental impact statement.

(ii) The process for amending a plan includes: Preliminary identification of the need to change the plan, development of a proposed amendment, consideration of the environmental effects of the proposal, providing an opportunity to comment on the proposed amendment, providing an opportunity to object before the proposal is approved, and, finally, approval of the plan amendment. The appropriate NEPA documentation for an amendment may be an environmental impact statement, an environmental assessment, or a categorical exclusion, depending upon the scope and scale of the amendment and its likely effects.

(3) *Monitoring.* Monitoring is continuous and provides feedback for the planning cycle by testing relevant assumptions, tracking relevant conditions over time, and measuring management effectiveness (§ 219.12). The monitoring program includes plan-level and broader-scale monitoring. The plan-level monitoring program is informed by the assessment phase; developed during plan development, plan amendment, or plan revision; and implemented after plan decision. The regional forester develops broader-scale monitoring strategies. Biennial monitoring evaluation reports document whether a change to the plan or change to the monitoring program is warranted based on new information, whether a new assessment may be needed, or whether there is no need for change at that time.

(b) *Interdisciplinary team(s).* The responsible official shall establish an interdisciplinary team or teams to

prepare assessments; new plans, plan amendments, and plan revisions; and plan monitoring programs.

§ 219.6 Assessment.

The responsible official has the discretion to determine the scope, scale, and timing of an assessment described in § 219.5(a)(1), subject to the requirements of this section.

(a) *Process for plan development or revision assessments.* An assessment must be completed for the development of a new plan or for a plan revision. The responsible official shall:

(1) Identify and consider relevant existing information contained in governmental or non-governmental assessments, plans, monitoring reports, studies, and other sources of relevant information. Such sources of information may include State forest assessments and strategies, the Resources Planning Act assessment, ecoregional assessments, non-governmental reports, State comprehensive outdoor recreation plans, community wildfire protection plans, public transportation plans, State wildlife data and action plans, and relevant Agency or interagency reports, resource plans or assessments. Relevant private information, including relevant land management plans and local knowledge, will be considered if publicly available or voluntarily provided.

(2) Coordinate with or provide opportunities for the regional forester, agency staff from State and Private Forestry and Research and Development, federally recognized Indian Tribes and Alaska Native Corporations, other governmental and non-governmental parties, and the public to provide existing information for the assessment.

(3) Document the assessment in a report available to the public. The report should document information needs relevant to the topics of paragraph (b) of this section. Document in the report how the best available scientific information was used to inform the assessment (§ 219.3). Include the report in the planning record (§ 219.14).

(b) *Content of the assessment for plan development or revision.* In the assessment for plan development or revision, the responsible official shall identify and evaluate existing information relevant to the plan area for the following:

(1) Terrestrial ecosystems, aquatic ecosystems, and watersheds;

(2) Air, soil, and water resources and quality;

(3) System drivers, including dominant ecological processes, disturbance regimes, and stressors, such as natural succession, wildland fire, invasive species, and climate change; and the ability of terrestrial and aquatic ecosystems on the plan area to adapt to change;

(4) Baseline assessment of carbon stocks;

(5) Threatened, endangered, proposed and candidate species, and potential species of conservation concern present in the plan area;

(6) Social, cultural, and economic conditions;

(7) Benefits people obtain from the NFS planning area (ecosystem services);

(8) Multiple uses and their contributions to local, regional, and national economies;

(9) Recreation settings, opportunities and access, and scenic character;

(10) Renewable and nonrenewable energy and mineral resources;

(11) Infrastructure, such as recreational facilities and transportation and utility corridors;

(12) Areas of tribal importance;

(13) Cultural and historic resources and uses;

(14) Land status and ownership, use, and access patterns; and

(15) Existing designated areas located in the plan area including wilderness and wild and scenic rivers and potential need and opportunity for additional designated areas.

(c) *Plan amendment assessments.* Where the responsible official determines that a new assessment is needed to inform an amendment, the responsible official has the discretion to determine the scope, scale, process, and content for the assessment depending on the topic or topics to be addressed.

§ 219.7 New plan development or plan revision.

(a) *Plan revisions.* A plan revision creates a new plan for the entire plan area, whether the plan revision differs from the prior plan to a small or large extent. A plan must be revised at least every 15 years. But, the responsible official has the discretion to determine at any time that conditions on a plan area have changed significantly such that a plan must be revised (16 U.S.C. 1604(f)(5)).

(b) *New plan development.* New plan development is required for new NFS units. The process for developing a new plan is the same as the process for plan revision.

(c) *Process for plan development or revision.* (1) The process for developing or revising a plan includes: Public notification and participation (§§ 219.4 and 219.16), assessment (§§ 219.5 and 219.6), developing a proposed plan, considering the environmental effects of the proposal, providing an opportunity to comment on the proposed plan, providing an opportunity to object before the proposal is approved (subpart B), and, finally, approving the plan or plan revision. A new plan or plan revision requires preparation of an environmental impact statement.

(2) In developing a proposed new plan or proposed plan revision, the responsible official shall:

(i) Review relevant information from the assessment and monitoring to identify a preliminary need to change the existing plan and to inform the development of plan components and other plan content.

(ii) Consider the goals and objectives of the Forest Service strategic plan (§ 219.2(a)).

(iii) Identify the presence and consider the importance of various physical, biological, social, cultural, and historic resources on the plan area (§ 219.6), with respect to the requirements for plan components of §§ 219.8 through 219.11.

(iv) Consider conditions, trends, and stressors (§ 219.6), with respect to the requirements for plan components of §§ 219.8 through 219.11.

(v) Identify and evaluate lands that may be suitable for inclusion in the National Wilderness Preservation System and determine whether to recommend any such lands for wilderness designation.

(vi) Identify the eligibility of rivers for inclusion in the National Wild and Scenic Rivers System, unless a systematic inventory has been previously completed and documented and there are no changed circumstances that warrant additional review.

(vii) Identify existing designated areas other than the areas identified in paragraphs (c)(2)(v) and (c)(2)(vi) of this section, and determine whether to recommend any additional areas for designation. If the responsible official has the delegated authority to designate a new area or modify an existing area, then the responsible official may designate such area when approving the plan, plan amendment, or plan revision.

(viii) Identify the suitability of areas for the appropriate integration of resource management and uses, with respect to the requirements for plan components of §§ 219.8 through 219.11, including identifying lands which are not suitable for timber production (§ 219.11).

(ix) Identify the maximum quantity of timber that may be removed from the plan area (§ 219.11(d)(6)).

(x) Identify questions and indicators for the plan monitoring program (§ 219.12).

(xi) Identify potential other content in the plan (paragraph (f) of this section).

(3) The regional forester shall identify the species of conservation concern for the plan area in coordination with the responsible official.

(d) *Management areas or geographic areas.* Every plan must have management areas or geographic areas or both. The plan may identify designated or recommended designated areas as management areas or geographic areas.

(e) *Plan components.* Plan components guide future project and activity decisionmaking. The plan must indicate whether specific plan components apply to the entire plan area, to specific management areas or geographic areas, or to other areas as identified in the plan.

(1) *Required plan components.* Every plan must include the following plan components:

(i) *Desired conditions.* A desired condition is a description of specific social, economic, and/or ecological characteristics of the plan area, or a portion of the plan area, toward which management of the land and resources should be directed. Desired conditions must be described in terms that are specific enough to allow progress toward their achievement to be determined, but do not include completion dates.

(ii) *Objectives.* An objective is a concise, measurable, and time-specific statement of a desired rate of progress toward a desired condition or conditions. Objectives should be based on reasonably foreseeable budgets.

(iii) *Standards.* A standard is a mandatory constraint on project and activity decisionmaking, established to help achieve or maintain the desired condition or conditions, to avoid or mitigate undesirable effects, or to meet applicable legal requirements.

(iv) *Guidelines.* A guideline is a constraint on project and activity decisionmaking that allows for departure from its terms, so long as the purpose of the guideline is met. (§ 219.15(d)(3)). Guidelines are established to help achieve or maintain a desired condition or conditions, to avoid or mitigate undesirable effects, or to meet applicable legal requirements.

(v) *Suitability of lands.* Specific lands within a plan area will be identified as suitable for various multiple uses or activities based on the desired conditions applicable to those lands. The plan will also identify lands within the plan area as not suitable for uses that are not compatible with desired conditions for those lands. The suitability of lands need not be identified for every use or activity. Suitability identifications may be made after consideration of historic uses and of issues that have arisen in the planning process. Every plan must identify those lands that are not suitable for timber production (§ 219.11).

(2) *Optional plan component: goals.* A plan may include goals as plan components. Goals are broad statements of intent, other than desired conditions, usually related to process or interaction with the public. Goals are expressed in broad, general terms, but do not include completion dates.

(3) *Requirements for the set of plan components.* The set of plan components must meet the requirements set forth in this part for sustainability (§ 219.8), plant and animal diversity (§ 219.9), multiple use (§ 219.10), and timber (§ 219.11).

(f) *Other content in the plan.* (1) *Other required content in the plan.* Every plan must:

(i) Identify watershed(s) that are a priority for maintenance or restoration;

(ii) Describe the plan area's distinctive roles and contributions within the broader landscape;

(iii) Include the monitoring program required by § 219.12; and

(iv) Contain information reflecting proposed and possible actions that may occur on the plan area during the life of the plan, including: the planned timber sale program; timber harvesting levels; and the proportion of probable methods of forest vegetation management practices expected to be used (16 U.S.C. 1604(e)(2) and (f)(2)). Such information is not a commitment to take any action and is not a "proposal" as defined by the Council on Environmental Quality regulations for implementing NEPA (40 CFR 1508.23, 42 U.S.C. 4322(2)(C)).

(2) *Optional content in the plan.* A plan may include additional content, such as potential management approaches or strategies and partnership opportunities or coordination activities.

§ 219.8 Sustainability.

The plan must provide for social, economic, and ecological sustainability within Forest Service authority and consistent with the inherent capability of the plan area, as follows:

(a) *Ecological sustainability.* (1) *Ecosystem Integrity.* The plan must include plan components, including standards or guidelines, to maintain or restore the ecological integrity of terrestrial and aquatic ecosystems and watersheds in the plan area, including plan components to maintain or restore structure, function, composition, and connectivity, taking into account:

(i) Interdependence of terrestrial and aquatic ecosystems in the plan area.

(ii) Contributions of the plan area to ecological conditions within the broader landscape influenced by the plan area.

(iii) Conditions in the broader landscape that may influence the sustainability of resources and ecosystems within the plan area.

(iv) System drivers, including dominant ecological processes, disturbance regimes, and stressors, such as natural succession, wildland fire, invasive species, and climate change; and the ability of terrestrial and aquatic ecosystems on the plan area to adapt to change.

(v) Wildland fire and opportunities to restore fire adapted ecosystems.

(vi) Opportunities for landscape scale restoration.

(2) *Air, soil, and water.* The plan must include plan components, including standards or guidelines, to maintain or restore:

(i) Air quality.

(ii) Soils and soil productivity, including guidance to reduce soil erosion and sedimentation.

(iii) Water quality.

(iv) Water resources in the plan area, including lakes, streams, and wetlands; ground water; public water supplies; sole source aquifers; source water protection areas; and other sources of drinking water (including guidance to prevent or mitigate detrimental changes in quantity, quality, and availability).

(3) *Riparian areas.* (i) The plan must include plan components, including standards or guidelines, to maintain or restore the ecological integrity of riparian areas in the plan area, including plan components to maintain or restore structure, function, composition, and connectivity, taking into account:

(A) Water temperature and chemical composition;

(B) Blockages (uncharacteristic and characteristic) of water courses;

(C) Deposits of sediment;

(D) Aquatic and terrestrial habitats;

(E) Ecological connectivity;

(F) Restoration needs; and

(G) Floodplain values and risk of flood loss.

(ii) Plans must establish width(s) for riparian management zones around all lakes, perennial and intermittent streams, and open water wetlands, within which the plan components required by paragraph (a)(3)(i) of this section will apply, giving special attention to land and vegetation for approximately 100 feet from the edges of all perennial streams and lakes.

(A) Riparian management zone width(s) may vary based on ecological or geomorphic factors or type of water body; and will apply unless replaced by a site-specific delineation of the riparian area.

(B) Plan components must ensure that no management practices causing detrimental changes in water temperature or chemical composition, blockages of water courses, or deposits of sediment that seriously and adversely affect water conditions or fish habitat shall be permitted within the riparian management zones or the site-specific delineated riparian areas.

(4) *Best management practices for water quality.* The Chief shall establish requirements for national best management practices for water quality in the Forest Service Directive System. Plan components must ensure implementation of these practices.

(b) *Social and economic sustainability.* The plan must include plan components, including standards or guidelines, to guide the plan area's contribution to social and economic sustainability, taking into account:

(1) Social, cultural, and economic conditions relevant to the area influenced by the plan;

(2) Sustainable recreation; including recreation settings, opportunities, and access; and scenic character;

(3) Multiple uses that contribute to local, regional, and national economies in a sustainable manner;

(4) Ecosystem services;

(5) Cultural and historic resources and uses; and

(6) Opportunities to connect people with nature.

§ 219.9 Diversity of plant and animal communities.

This section adopts a complementary ecosystem and species-specific approach to maintaining the diversity of plant and animal communities and the persistence of native species in the plan area. Compliance with the ecosystem requirements of paragraph (a) is intended to provide the ecological conditions to both maintain the diversity of plant and animal communities and support the persistence of most native species in the plan area. Compliance with the requirements of paragraph (b) is intended to provide for additional ecological conditions not otherwise provided by compliance with paragraph (a) for individual species as set forth in paragraph (b). The plan must provide for the diversity of plant and animal communities, within Forest Service authority and consistent with the inherent capability of the plan area, as follows:

(a) *Ecosystem plan components.* (1) *Ecosystem integrity.* As required by § 219.8(a), the plan must include plan components, including standards or guidelines, to maintain or restore the ecological integrity of terrestrial and aquatic ecosystems and watersheds in the plan area, including plan components to maintain or restore their structure, function, composition, and connectivity.

(2) *Ecosystem diversity.* The plan must include plan components, including standards or guidelines, to maintain or restore the diversity of ecosystems and habitat types throughout the plan area. In doing so, the plan must include plan components to maintain or restore:

(i) Key characteristics associated with terrestrial and aquatic ecosystem types;

(ii) Rare aquatic and terrestrial plant and animal communities; and

(iii) The diversity of native tree species similar to that existing in the plan area.

(b) *Additional, species-specific plan components.* (1) The responsible official shall determine whether or not the plan components required by paragraph (a) of this section provide the ecological conditions necessary to: contribute to the recovery of federally listed threatened and endangered species, conserve proposed and candidate species, and maintain a viable population of each species of conservation concern within the plan area. If the responsible official determines that the plan components required in paragraph (a) are insufficient to provide such ecological conditions, then additional, species-specific plan components, including standards or guidelines, must be included in the plan to provide such ecological conditions in the plan area.

(2) If the responsible official determines that it is beyond the authority of the Forest Service or not within the inherent capability of the plan area to maintain or restore the ecological conditions to maintain a viable population of a species of conservation concern in the plan area, then the responsible official shall:

(i) Document the basis for that determination (§ 219.14(a)); and

(ii) Include plan components, including standards or guidelines, to maintain or restore ecological conditions within the plan area to contribute to maintaining a viable population of the species within its range. In providing such plan components, the responsible official shall coordinate to the extent practicable with other Federal, State, Tribal, and private land managers having management authority over lands relevant to that population.

(c) *Species of conservation concern.* For purposes of this subpart, a species of conservation concern is a species, other than federally recognized threatened, endangered, proposed, or candidate species, that is known to occur in the plan area and for which the regional forester has determined that the best available scientific information indicates substantial concern about the species' capability to persist over the long-term in the plan area.

§ 219.10 Multiple use.

While meeting the requirements of §§ 219.8 and 219.9, the plan must provide for ecosystem services and multiple uses, including outdoor recreation, range, timber, watershed, wildlife, and fish, within Forest Service authority and the inherent capability of the plan area as follows:

(a) *Integrated resource management for multiple use.* The plan must include plan components, including standards or guidelines, for integrated resource management to provide for ecosystem services and multiple uses in the plan area. When developing plan components for integrated resource management, to the extent relevant to the plan area and the public participation process and the requirements of §§ 219.7, 219.8, 219.9, and 219.11, the responsible official shall consider:

(1) Aesthetic values, air quality, cultural and heritage resources, ecosystem services, fish and wildlife species, forage, geologic features, grazing and rangelands, habitat and habitat connectivity, recreation settings and opportunities, riparian areas, scenery, soil, surface and subsurface water quality, timber, trails, vegetation, viewsheds, wilderness, and other relevant resources and uses.

(2) Renewable and nonrenewable energy and mineral resources.

(3) Appropriate placement and sustainable management of infrastructure, such as recreational facilities and transportation and utility corridors.

(4) Opportunities to coordinate with neighboring landowners to link open spaces and take into account joint management objectives where feasible and appropriate.

(5) Habitat conditions, subject to the requirements of § 219.9, for wildlife, fish, and plants commonly enjoyed and used by the public; for hunting, fishing, trapping, gathering, observing, subsistence, and other activities (in

collaboration with federally recognized Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments).

(6) Land status and ownership, use, and access patterns relevant to the plan area.

(7) Reasonably foreseeable risks to ecological, social, and economic sustainability.

(8) System drivers, including dominant ecological processes, disturbance regimes, and stressors, such as natural succession, wildland fire, invasive species, and climate change; and the ability of the terrestrial and aquatic ecosystems on the plan area to adapt to change (§ 219.8);

(9) Public water supplies and associated water quality.

(10) Opportunities to connect people with nature.

(b) *Requirements for plan components for a new plan or plan revision.* (1) The plan must include plan components, including standards or guidelines, to provide for:

(i) Sustainable recreation; including recreation settings, opportunities, and access; and scenic character. Recreation opportunities may include non-motorized, motorized, developed, and dispersed recreation on land, water, and in the air.

(ii) Protection of cultural and historic resources.

(iii) Management of areas of tribal importance.

(iv) Protection of congressionally designated wilderness areas as well as management of areas recommended for wilderness designation to protect and maintain the ecological and social characteristics that provide the basis for their suitability for wilderness designation.

(v) Protection of designated wild and scenic rivers as well as management of rivers found eligible or determined suitable for the National Wild and Scenic River system to protect the values that provide the basis for their suitability for inclusion in the system.

(vi) Appropriate management of other designated areas or recommended designated areas in the plan area, including research natural areas.

(2) Other plan components for integrated resource management to provide for multiple use as necessary.

§ 219.11 Timber requirements based on the NFMA.

While meeting the requirements of §§ 219.8 through 219.10, the plan must include plan components, including standards or guidelines, and other plan content regarding timber management within Forest Service authority and the inherent capability of the plan area, as follows:

(a) *Lands not suited for timber production.* (1) The responsible official shall identify lands within the plan area as not suited for timber production if any one of the following factors applies:

(i) Statute, Executive order, or regulation prohibits timber production on the land;

(ii) The Secretary of Agriculture or the Chief has withdrawn the land from timber production;

(iii) Timber production would not be compatible with the achievement of desired conditions and objectives established by the plan for those lands;

(iv) The technology is not currently available for conducting timber harvest without causing irreversible damage to soil, slope, or other watershed conditions;

(v) There is no reasonable assurance that such lands can be adequately restocked within 5 years after final regeneration harvest; or

(vi) The land is not forest land.

(2) The responsible official shall review lands identified in the plan as not suited for timber production at least once every 10 years, or as otherwise prescribed by law, to determine whether conditions have changed so that they have become suitable for timber production. As a result of this 10-year review, the plan may be amended to identify any such lands as suitable for timber production, if warranted by changed conditions.

(b) *Timber harvest for purposes of timber production.* A plan that identifies lands as suitable for timber production must include plan components, including standards or guidelines, to guide timber harvest for timber production or for other multiple use purposes on such lands.

(c) *Timber harvest for purposes other than timber production.* Except as provided in paragraph (d) of this section, the plan may include plan components to allow for timber harvest for purposes other than timber production throughout the plan area, or portions of the plan area, as a tool to assist in achieving or maintaining one or more applicable desired conditions or objectives of the plan in order to protect other multiple-use values, and for salvage, sanitation, or public health or safety. Examples of using timber harvest to protect other multiple use values may include improving wildlife or fish habitat, thinning to reduce fire risk, or restoring meadow or savanna ecosystems where trees have invaded.

(d) *Limitations on timber harvest.* Whether timber harvest would be for the purposes of timber production or other purposes, plan components, including standards or guidelines, must ensure the following:

(1) No timber harvest for the purposes of timber production may occur on lands not suited for timber production.

(2) Timber harvest would occur only where soil, slope, or other watershed conditions would not be irreversibly damaged;

(3) Timber harvest would be carried out in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation, and aesthetic resources.

(4) Where plan components will allow clearcutting, seed tree cutting, shelterwood cutting, or other cuts designed to regenerate an even-aged stand of timber, the plan must include standards limiting the maximize size for openings that may be cut in one harvest operation, according to geographic areas, forest types, or other suitable classifications. Except as provided in paragraphs (d)(4)(i) through (iii) of this section, this limit may not exceed 60 acres for the Douglas-fir forest type of California, Oregon, and Washington; 80 acres for the southern yellow pine types of Alabama, Arkansas, Georgia, Florida, Louisiana, Mississippi, North Carolina, South Carolina, Oklahoma, and Texas; 100 acres for the hemlock-Sitka spruce forest type of coastal Alaska; and 40 acres for all other forest types.

(i) Plan standards may allow for openings larger than those specified in paragraph (d)(4) of this section to be cut in one harvest operation where the responsible official determines that larger harvest openings are necessary to help achieve desired ecological conditions in the plan area. If so, standards for exceptions shall include the particular conditions under which the larger size is permitted and must set a maximum size permitted under those conditions.

(ii) Plan components may allow for size limits exceeding those established in paragraphs (d)(4) and (d)(4)(i) of this section on an individual timber sale basis after 60 days public notice and review by the regional forester.

(iii) The plan maximum size for openings to be cut in one harvest operation shall not apply to the size of openings harvested as a result of natural catastrophic conditions such as fire, insect and disease attack, or windstorm (16 U.S.C. 1604(g)(3)(F)(iv)).

(5) Timber will be harvested from NFS lands only where such harvest would comply with the resource protections set out in sections 6(g)(3)(E) and (F) of the NFMA (16 U.S.C. 1604(g)(3)(E) and (F)). Some of these

requirements are listed in paragraphs (d)(2) to (d)(4) of this section.

(6) The quantity of timber that may be sold from the national forest is limited to an amount equal to or less than that which can be removed from such forest annually in perpetuity on a sustained-yield basis. This limit may be measured on a decadal basis. The plan may provide for departures from this limit as provided by the NFMA when departure would be consistent with the plan's desired conditions and objectives. Exceptions for departure from this limit on the quantity sold may be made only after a public review and comment period of at least 90 days. The Chief must include in the Forest Service Directive System procedures for estimating the quantity of timber that can be removed annually in perpetuity on a sustained-yield basis, and exceptions, consistent with 16 U.S.C. 1611.

(7) The regeneration harvest of even-aged stands of trees is limited to stands that generally have reached the culmination of mean annual increment of growth. This requirement would apply only to regeneration harvest of even-aged stands on lands identified as suitable for timber production and where timber production is the primary purpose for the harvest. Plan components may allow for exceptions, set out in 16 U.S.C. 1604(m), only if such harvest is consistent with the other plan components of the land management plan.

§ 219.12 Monitoring.

(a) *Plan monitoring program.* (1) The responsible official shall develop a monitoring program for the plan area and include it in the plan. Monitoring information should enable the responsible official to determine if a change in plan components or other plan content that guide management of resources on the plan area may be needed. The development of the plan monitoring program must be coordinated with the regional forester and Forest Service State and Private Forestry and Research and Development. Responsible officials for two or more administrative units may jointly develop their plan monitoring programs.

(2) The plan monitoring program sets out the plan monitoring questions and associated indicators. Monitoring questions and associated indicators must be designed to inform the management of resources on the plan area, including by testing relevant assumptions, tracking relevant changes, and measuring management effectiveness and progress toward achieving or maintaining the plan's desired conditions or objectives. Questions and indicators should be based on one or more desired conditions, objectives, or other plan components in the plan, but not every plan component needs to have a corresponding monitoring question.

(3) The plan monitoring program should be coordinated and integrated with relevant broader-scale monitoring strategies (paragraph (b) of this section) to ensure that monitoring is complementary and efficient, and that information is gathered at scales appropriate to the monitoring questions.

(4) Subject to the requirements of paragraph (a)(5) of this section, the responsible official has the discretion to set the scope and scale of the plan monitoring program, after considering:

(i) Information needs identified through the planning process as most critical for informed management of resources on the plan area; and

(ii) The financial and technical capabilities of the Agency.

(5) Each plan monitoring program must contain one or more monitoring questions and associated indicators addressing each of the following:

(i) The status of select watershed conditions.

(ii) The status of select ecological conditions including key characteristics of terrestrial and aquatic ecosystems.

(iii) The status of focal species to assess the ecological conditions required under § 219.9.

(iv) The status of a select set of the ecological conditions required under § 219.9 to contribute to the recovery of federally listed threatened and endangered species, conserve proposed and candidate species, and maintain a viable population of each species of conservation concern.

(v) The status of visitor use, visitor satisfaction, and progress toward meeting recreation objectives.

(vi) Measurable changes on the plan area related to climate change and other stressors that may be affecting the plan area.

(vii) Progress toward meeting the desired conditions and objectives in the plan, including for providing multiple use opportunities.

(viii) The effects of each management system to determine that they do not substantially and permanently impair the productivity of the land (16 U.S.C. 1604(g)(3)(C)).

(6) A range of monitoring techniques may be used to carry out the monitoring requirements in paragraph (a)(5) of this section.

(7) This section does not apply to projects or activities. Project and activity monitoring may be used to gather information for the plan monitoring program, and information gathered through plan monitoring may be used to inform development of projects or activities. But, the monitoring requirements of this section are not a prerequisite for making a decision to carry out a project or activity.

(b) *Broader-scale monitoring strategies.* (1) The regional forester shall develop a broader-scale monitoring strategy for plan monitoring questions that can best be answered at a geographic scale broader than one plan area.

(2) When developing a monitoring strategy, the regional forester shall coordinate with the relevant responsible officials, Forest Service State and Private Forestry and Research and Development, partners, and the public. Two or more regional foresters may jointly develop broader-scale monitoring strategies.

(3) Each regional forester shall ensure that the broader-scale monitoring strategy is within the financial and technical capabilities of the region and complements other ongoing monitoring efforts.

(4) Projects and activities may be carried out under plans developed, amended, or revised under this part before the regional forester has developed a broader-scale monitoring strategy.

(c) *Timing and process for developing the plan monitoring program and broader-scale strategies.* (1) The responsible official shall develop the plan monitoring program as part of the planning process for a new plan development or plan revision. Where a plan's monitoring program has been developed under the provisions of a prior planning regulation and the unit has not initiated plan revision under this part, the responsible official shall modify the plan monitoring program within 4 years of the effective date of this part, or as soon as practicable, to meet the requirements of this section.

(2) The regional forester shall develop a broader-scale monitoring strategy as soon as practicable.

(3) To the extent practicable, appropriate, and relevant to the monitoring questions in the plan monitoring program, plan monitoring programs and broader-scale strategies must be designed to take into account:

(i) Existing national and regional inventory, monitoring, and research programs of the Agency, including from the NFS, State and Private Forestry, and Research and Development, and of other

governmental and non-governmental entities;

(ii) Opportunities to design and carry out multi-party monitoring with other Forest Service units, Federal, State or local government agencies, scientists, partners, and members of the public; and

(iii) Opportunities to design and carry out monitoring with federally recognized Indian Tribes and Alaska Native Corporations.

(d) *Biennial evaluation of the monitoring information.* (1) The responsible official shall conduct a biennial evaluation of new information gathered through the plan monitoring program and relevant information from the broader-scale strategy, and shall issue a written report of the evaluation and make it available to the public.

(i) The first monitoring evaluation for a plan or plan revision developed in accordance with this subpart must be completed no later than 2 years from the effective date of plan decision.

(ii) Where the monitoring program developed under the provisions of a prior planning regulation has been modified to meet the requirements of paragraph (c)(1) of this section, the first monitoring evaluation must be completed no later than 2 years from the date the change takes effect.

(iii) The monitoring evaluation report may be postponed for 1 year in case of exigencies, but notice of the postponement must be provided to the public prior to the date the report is due for that year (§ 219.16(c)(6)).

(2) The monitoring evaluation report must indicate whether or not a change to the plan, management activities, or the monitoring program, or a new assessment, may be warranted based on the new information. The monitoring evaluation report must be used to inform adaptive management of the plan area.

(3) The monitoring evaluation report may be incorporated into other planning documents if the responsible official has initiated a plan revision or relevant amendment.

(4) The monitoring evaluation report is not a decision document representing final Agency action, and is not subject to the objection provisions of subpart B.

§ 219.13 Plan amendment and administrative changes.

(a) *Plan amendment.* A plan may be amended at any time. Plan amendments may be broad or narrow, depending on the need for change, and should be used to keep plans current and help units adapt to new information or changing conditions. The responsible official has the discretion to determine whether and how to amend the plan. Except as provided by paragraph (c) of this section, a plan amendment is required to add, modify, or remove one or more plan components, or to change how or where one or more plan components apply to all or part of the plan area (including management areas or geographic areas).

(b) *Amendment process.* The responsible official shall:

(1) Base an amendment on a preliminary identification of the need to change the plan. The preliminary identification of the need to change the plan may be based on a new assessment; a monitoring report; or other documentation of new information, changed conditions, or changed circumstances. When a plan amendment is made together with, and only applies to, a project or activity decision, the analysis prepared for the project or activity may serve as the documentation for the preliminary identification of the need to change the plan;

(2) Provide opportunities for public participation as required in § 219.4 and public notification as required in § 219.16. The responsible official may combine processes and associated public notifications where appropriate, considering the scope and scale of the need to change the plan; and

(3) Amend the plan consistent with Forest Service NEPA procedures. The appropriate NEPA documentation for an amendment may be an environmental impact statement, an environmental assessment, or a categorical exclusion, depending upon the scope and scale of the amendment and its likely effects. A proposed amendment that may create a significant environmental effect and thus require preparation of an environmental impact statement is considered a significant change in the plan for the purposes of the NFMA.

(c) *Administrative changes.* An administrative change is any change to a plan that is not a plan amendment or plan revision. Administrative changes include corrections of clerical errors to any part of the plan, conformance of the plan to new statutory or regulatory requirements, or changes to other content in the plan (§ 219.7(f)).

(1) A substantive change to the monitoring program made outside of the process for plan revision or amendment may be made only after notice to the public of the intended change and consideration of public comment (§ 219.16(c)(6)).

(2) All other administrative changes may be made following public notice (§ 219.16(c)(6)).

§ 219.14 Decision document and planning records.

(a) *Decision document.* The responsible official shall record approval of a new plan, plan amendment, or revision in a decision document prepared according to Forest Service NEPA procedures (36 CFR 220). The decision document must include:

(1) The rationale for approval;

(2) An explanation of how the plan components meet the sustainability requirements of § 219.8, the diversity requirements of § 219.9, the multiple use requirements of § 219.10, and the timber requirements of § 219.11;

(3) A statement of how the plan, plan amendment, or plan revision applies to approved projects and activities (§ 219.15);

(4) The documentation of how the best available scientific information was used to inform planning, the plan components, and other plan content, including the plan monitoring program (§ 219.3);

(5) The concurrence by the appropriate research station director with any part of the plan applicable to any experimental forests or experimental ranges (§ 219.2(b)(4)); and

(6) The effective date of the plan, amendment, or revision.

(b) *Planning records.* (1) The responsible official shall keep the following documents readily accessible to the public by posting them online and through other means: assessment reports (§ 219.6); the plan, including the monitoring program; the proposed plan, plan amendment, or plan revision; public notices and environmental documents associated with a plan; plan decision documents; and monitoring evaluation reports (§ 219.12).

(2) The planning record includes documents that support analytical conclusions made and alternatives considered throughout the planning process. The responsible official shall make the planning record available at the office where the plan, plan amendment, or plan revision was developed.

§ 219.15 Project and activity consistency with the plan.

(a) *Application to existing authorizations and approved projects or activities.* Every decision document approving a plan, plan amendment, or plan revision must state whether authorizations of occupancy and use made before the decision document may proceed unchanged. If a plan decision document does not expressly allow such occupancy and use, the permit, contract, and other authorizing instrument for the use and occupancy must be made

consistent with the plan, plan amendment, or plan revision as soon as practicable, as provided in paragraph (d) of this section, subject to valid existing rights.

(b) *Application to projects or activities authorized after plan decision.* Projects and activities authorized after approval of a plan, plan amendment, or plan revision must be consistent with the plan as provided in paragraph (d) of this section.

(c) *Resolving inconsistency.* When a proposed project or activity would not be consistent with the applicable plan components, the responsible official shall take one of the following steps, subject to valid existing rights:

(1) Modify the proposed project or activity to make it consistent with the applicable plan components;

(2) Reject the proposal or terminate the project or activity;

(3) Amend the plan so that the project or activity will be consistent with the plan as amended; or

(4) Amend the plan contemporaneously with the approval of the project or activity so that the project or activity will be consistent with the plan as amended. This amendment may be limited to apply only to the project or activity.

(d) *Determining consistency.* Every project and activity must be consistent with the applicable plan components. A project or activity approval document must describe how the project or activity is consistent with applicable plan components developed or revised in conformance with this part by meeting the following criteria:

(1) *Goals, desired conditions, and objectives.* The project or activity contributes to the maintenance or attainment of one or more goals, desired conditions, or objectives, or does not foreclose the opportunity to maintain or achieve any goals, desired conditions, or objectives, over the long term.

(2) *Standards.* The project or activity complies with applicable standards.

(3) *Guidelines.* The project or activity:

(i) Complies with applicable guidelines as set out in the plan; or

(ii) Is designed in a way that is as effective in achieving the purpose of the applicable guidelines (§ 219.7(e)(1)(iv)).

(4) *Suitability.* A project or activity would occur in an area:

(i) That the plan identifies as suitable for that type of project or activity; or

(ii) For which the plan is silent with respect to its suitability for that type of project or activity.

(e) *Consistency of resource plans within the planning area with the land management plan.* Any resource plans (for example, travel management plans) developed by the Forest Service that apply to the resources or land areas within the planning area must be consistent with the plan components. Resource plans developed prior to plan decision must be evaluated for consistency with the plan and amended if necessary.

§ 219.16 Public notifications.

The following public notification requirements apply to plan development, amendment, or revision. Notifications may be combined where appropriate.

(a) *When formal public notification is required.* Public notification must be provided as follows:

(1) To initiate the development of a proposed plan, plan amendment, or plan revision;

(2) To invite comments on a proposed plan, plan amendment, or plan revision, and associated environmental analysis. For a new plan, plan amendment, or a plan revision for which a draft environmental impact statement (EIS) is prepared, the comment period is at least 90 days. For an amendment for which a draft EIS is not prepared, the comment period is at least 30 days;

(3) To begin the objection period for a plan, plan amendment, or plan revision before approval (§ 219.52);

(4) To approve a final plan, plan amendment, or plan revision; or

(5) To announce whenever a plan, plan amendment, or plan revision process initiated under the provisions of a previous planning regulation will be conformed to meet the provisions of this part (§ 219.17(b)(3)).

(b) *Project or activity plan amendments.* When a plan amendment is approved in a decision document approving a project or activity and the amendment applies only to the project or activity, the notification requirements of 36 CFR part 215 or part 218, subpart A, applies instead of this section.

(c) *How public notice is provided.* The responsible official should use contemporary tools to provide notice to the public. At a minimum, all public notifications required by this part must be posted online, and:

(1) When the Chief, the Under Secretary, or the Secretary is the responsible official, notice must be published in the **Federal Register**.

(2) For a new plan or plan revision, when an official other than the Chief, the Under Secretary, or the Secretary is the responsible official, notice must be published in the **Federal Register** and the applicable newspaper(s) of record.

(3) When the notice is for the purpose of inviting comments on a proposed plan, plan amendment, or plan revision for which a draft EIS is prepared, the Environmental Protection Agency (EPA) **Federal Register** notice of availability of a draft EIS shall serve as the required **Federal Register** notice.

(4) For a plan amendment when an official other than the Chief, the Under Secretary, or the Secretary is the responsible official, and for which a draft EIS is not prepared, notices must be published in the newspaper(s) of record.

(5) If a plan, plan amendment, or plan revision applies to two or more units, notices must be published in the **Federal Register** and the newspaper(s) of record for the applicable units.

(6) Additional public notice of administrative changes, changes to the monitoring program, opportunities to provide information for assessments, assessment reports, monitoring evaluation reports, or other notices not listed in paragraph (a) of this section may be made in any way the responsible official deems appropriate.

(d) *Content of public notices.* Public notices required by this section except for notices applicable to paragraph (c)(3) of this section, must clearly describe the action subject to notice and the nature and scope of the decisions to be made; identify the responsible official; describe when, where, and how the responsible official will provide opportunities for the public to participate in the planning process; and explain how to obtain additional information.

§ 219.17 Effective dates and transition.

(a) *Effective dates.* (1) A plan or plan revision is effective 30 days after publication of notice of its approval.

(2) Except as provided in paragraph (a)(3) of this section, a plan amendment for which an environmental impact statement (EIS) has been prepared is effective 30 days after publication of notice of its approval; a plan amendment for which an EIS has not been prepared is effective immediately.

(3) A plan amendment that applies to only one specific project or activity is effective on the date the project may be implemented in accordance with administrative review regulations at 36 CFR parts 215 and 218.

(b) *Plan amendment and plan revision transition.* For the purposes of this section, initiation means that the Agency has issued a notice of intent or other notice announcing the beginning of the process to develop a proposed plan, plan amendment, or plan revision.

(1) *Initiating plan development and plan revisions.* Plan development and plan revisions initiated after May 9,

2012 must conform to the requirements of this part.

(2) *Initiating plan amendments.* All plan amendments initiated after May 9, 2012 are subject to the objection process in subpart B of this part. With respect to plans approved or revised under a prior planning regulation, including the transition provisions of the reinstated 2000 rule (36 CFR part 209, published at 36 CFR parts 200 to 209, revised as of July 1, 2010), plan amendments may be initiated under the provisions of the prior planning regulation for 3 years after May 9, 2012, and may be completed and approved under those provisions (except for the optional appeal procedures of the prior planning regulation); or may be initiated, completed, and approved under the requirements of this part. After the 3-year transition period, all plan amendments must be initiated, completed, and approved under the requirements of this part.

(3) *Plan development, plan amendments, or plan revisions initiated before this part.* For plan development, plan amendments, or plan revisions that were initiated before May 9, 2012, the responsible official may complete and approve the plan, plan amendment, or plan revision in conformance with the provisions of the prior planning regulation, including its transition provisions (36 CFR part 209, published at 36 CFR parts 200 to 209, revised as of July 1, 2010), or may conform the plan, plan amendment, or plan revision to the requirements of this part. If the responsible official chooses to complete an ongoing planning process under the provisions of the prior planning regulation, but chooses to allow for an objection rather than an administrative appeal, the objection process in subpart B of this part shall apply. When the responsible official chooses to conform an ongoing planning process to this part, public notice must be made (§ 219.16(a)(5)). An objection process may be chosen only if the public is provided the opportunity to comment on a proposed plan, plan amendment, or plan revision, and associated environmental analysis.

(c) *Plans developed, amended, or revised under a prior planning regulation.* This part supersedes any prior planning regulation. No obligations remain from any prior planning regulation, except those that are specifically included in a unit's existing plan. Existing plans will remain in effect until revised. This part does not compel a change to any existing plan, except as required in § 219.12(c)(1). None of the requirements of this part apply to projects or activities on units with plans developed or revised under a prior planning rule until the plan is revised under this part, except that projects or activities on such units must comply with the consistency requirement of § 219.15 with respect to any amendments that are developed and approved pursuant to this part.

§ 219.18 Severability.

In the event that any specific provision of this part is deemed by a court to be invalid, the remaining provisions shall remain in effect.

§ 219.19 Definitions.

Definitions of the special terms used in this subpart are set out as follows.

Alaska Native Corporation. One of the regional, urban, and village native corporations formed under the Alaska Native Claims Settlement Act of 1971.

Assessment. For the purposes of this subpart, an assessment is the identification and evaluation of existing information to support land management planning. Assessments are not decisionmaking documents, but provide current information on select topics relevant to the plan area, in the context of the broader landscape.

Best management practices for water quality (BMPs). Methods, measures, or practices selected by an agency to meet its nonpoint source control needs. BMPs include but are not limited to structural and nonstructural controls and operation and maintenance procedures. BMPs can be applied before, during, and after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving waters.

Candidate species. (1) For U.S. Fish and Wildlife Service candidate species, a species for which the U.S. Fish and Wildlife Service possesses sufficient information on vulnerability and threats to support a proposal to list as endangered or threatened, but for which no proposed rule has yet been published by the U.S. Fish and Wildlife Service.

(2) For National Marine Fisheries Service candidate species, a species that is:

(i) The subject of a petition to list and for which the National Marine Fisheries Service has determined that listing may be warranted, pursuant to section 4(b)(3)(A) of the Endangered Species Act (16 U.S.C. 1533(b)(3)(A)), or

(ii) Not the subject of a petition but for which the National Marine Fisheries Service has announced in the **Federal Register** the initiation of a status review.

Collaboration or collaborative process. A structured manner in which a collection of people with diverse interests share knowledge, ideas, and resources while working together in an inclusive and cooperative manner toward a common purpose. Collaboration, in the context of this part, falls within the full spectrum of public engagement described in the Council on Environmental Quality's publication of October, 2007: Collaboration in NEPA—A Handbook for NEPA Practitioners.

Connectivity. Ecological conditions that exist at several spatial and temporal scales that provide landscape linkages that permit the exchange of flow, sediments, and nutrients; the daily and seasonal movements of animals within home ranges; the dispersal and genetic interchange between populations; and the long distance range shifts of species, such as in response to climate change.

Conservation. The protection, preservation, management, or restoration of natural environments, ecological communities, and species.

Conserve. For purposes of § 219.9, to protect, preserve, manage, or restore natural environments and ecological communities to potentially avoid federally listing of proposed and candidate species.

Culmination of mean annual increment of growth. See mean annual increment of growth.

Designated area. An area or feature identified and managed to maintain its unique special character or purpose. Some categories of designated areas may be designated only by statute and some categories may be established administratively in the land management planning process or by other administrative processes of the Federal executive branch. Examples of statutorily designated areas are national heritage areas, national recreational areas, national scenic trails, wild and scenic rivers, wilderness areas, and wilderness study areas. Examples of administratively designated areas are experimental forests, research natural areas, scenic byways, botanical areas, and significant caves.

Disturbance. Any relatively discrete event in time that disrupts ecosystem, watershed, community, or species population structure and/or function and changes resources, substrate availability, or the physical environment.

Disturbance regime. A description of the characteristic types of disturbance on a given landscape; the frequency, severity, and size distribution of these characteristic disturbance types; and their interactions.

Ecological conditions. The biological and physical environment that can affect the diversity of plant and animal communities, the persistence of native species, and the productive capacity of ecological systems. Ecological

conditions include habitat and other influences on species and the environment. Examples of ecological conditions include the abundance and distribution of aquatic and terrestrial habitats, connectivity, roads and other structural developments, human uses, and invasive species.

Ecological integrity. The quality or condition of an ecosystem when its dominant ecological characteristics (for example, composition, structure, function, connectivity, and species composition and diversity) occur within the natural range of variation and can withstand and recover from most perturbations imposed by natural environmental dynamics or human influence.

Ecological sustainability. See sustainability.

Ecological system. See ecosystem.

Economic sustainability. See sustainability.

Ecosystem. A spatially explicit, relatively homogeneous unit of the Earth that includes all interacting organisms and elements of the abiotic environment within its boundaries. An ecosystem is commonly described in terms of its:

(1) Composition. The biological elements within the different levels of biological organization, from genes and species to communities and ecosystems.

(2) Structure. The organization and physical arrangement of biological elements such as, snags and down woody debris, vertical and horizontal distribution of vegetation, stream habitat complexity, landscape pattern, and connectivity.

(3) Function. Ecological processes that sustain composition and structure, such as energy flow, nutrient cycling and retention, soil development and retention, predation and herbivory, and natural disturbances such as wind, fire, and floods.

(4) Connectivity. (see connectivity above).

Ecosystem diversity. The variety and relative extent of ecosystems.

Ecosystem services. Benefits people obtain from ecosystems, including:

(1) *Provisioning services,* such as clean air and fresh water, energy, fuel, forage, fiber, and minerals;

(2) *Regulating services,* such as long term storage of carbon; climate regulation; water filtration, purification, and storage; soil stabilization; flood control; and disease regulation;

(3) *Supporting services,* such as pollination, seed dispersal, soil formation, and nutrient cycling; and

(4) *Cultural services,* such as educational, aesthetic, spiritual and cultural heritage values, recreational experiences and tourism opportunities.

Environmental assessment (EA). See definition in § 219.62.

Environmental document. For the purposes of this part: an environmental assessment, environmental impact statement, finding of no significant impact, categorical exclusion, and notice of intent to prepare an environmental impact statement.

Environmental impact statement (EIS). See definition in § 219.62.

Even-aged stand. A stand of trees composed of a single age class.

Federally recognized Indian Tribe. An Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe under the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

Focal species. A small subset of species whose status permits inference to the integrity of the larger ecological system to which it belongs and provides meaningful information regarding the effectiveness of the plan in maintaining or restoring the ecological conditions to maintain the diversity of plant and animal communities in the plan area. Focal species would be commonly selected on the basis of their functional role in ecosystems.

Forest land. Land at least 10 percent occupied by forest trees of any size or formerly having had such tree cover and not currently developed for non-forest uses. Lands developed for non-forest use include areas for crops, improved pasture, residential or administrative areas, improved roads of any width and adjoining road clearing, and power line clearings of any width.

Geographic area. A spatially contiguous land area identified within the planning area. A geographic area may overlap with a management area.

Inherent capability of the plan area. The ecological capacity or ecological potential of an area characterized by the interrelationship of its physical elements, its climatic regime, and natural disturbances.

Integrated resource management. Multiple use management that recognizes the interdependence of ecological resources and is based on the need for integrated consideration of ecological, social, and economic factors.

Landscape. A defined area irrespective of ownership or other artificial boundaries, such as a spatial mosaic of terrestrial and aquatic ecosystems, landforms, and plant communities, repeated in similar form throughout such a defined area.

Maintain. In reference to an ecological condition: To keep in existence or continuance of the desired ecological condition in terms of its desired composition, structure, and processes. Depending upon the circumstance, ecological conditions may be maintained by active or passive management or both.

Management area. A land area identified within the planning area that has the same set of applicable plan components. A management area does not have to be spatially contiguous.

Management system. For purposes of this subpart, a timber management system including even-aged management and uneven-aged management.

Mean annual increment of growth and culmination of mean annual increment of growth. Mean annual increment of growth is the total increment of increase of volume of a stand (standing crop plus thinnings) up to a given age divided by that age. Culmination of mean annual increment of growth is the age in the growth cycle of an even-aged stand at which the average annual rate of increase of volume is at a maximum. In land management plans, mean annual increment is expressed in cubic measure and is based on the expected growth of stands, according to intensities and utilization guidelines in the plan.

Monitoring. A systematic process of collecting information to evaluate effects of actions or changes in conditions or relationships.

Multiple use. The management of all the various renewable surface resources of the NFS so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output, consistent with the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528–531).

National Forest System. See definition in § 219.62.

Native knowledge. A way of knowing or understanding the world, including traditional ecological and social knowledge of the environment derived from multiple generations of indigenous peoples' interactions, observations, and

experiences with their ecological systems. Native knowledge is place-based and culture-based knowledge in which people learn to live in and adapt to their own environment through interactions, observations, and experiences with their ecological system. This knowledge is generally not solely gained, developed by, or retained by individuals, but is rather accumulated over successive generations and is expressed through oral traditions, ceremonies, stories, dances, songs, art, and other means within a cultural context.

Native species. An organism that was historically or is present in a particular ecosystem as a result of natural migratory or evolutionary processes; and not as a result of an accidental or deliberate introduction into that ecosystem. An organism's presence and evolution (adaptation) in an area are determined by climate, soil, and other biotic and abiotic factors.

Newspaper(s) of record. See definition in § 219.62.

Objection. See definition in § 219.62.

Online. See definition in § 219.62.

Participation. Activities that include a wide range of public involvement tools and processes, such as collaboration, public meetings, open houses, workshops, and comment periods.

Persistence. Continued existence.

Plan area. The NFS lands covered by a plan.

Plan or land management plan. A document or set of documents that provide management direction for an administrative unit of the NFS developed under the requirements of this part or a prior planning rule.

Plant and animal community. A naturally occurring assemblage of plant and animal species living within a defined area or habitat.

Productivity. The capacity of NFS lands and their ecological systems to provide the various renewable resources in certain amounts in perpetuity. For the purposes of this subpart, productivity is an ecological term, not an economic term.

Project. An organized effort to achieve an outcome on NFS lands identified by location, tasks, outputs, effects, times, and responsibilities for execution.

Proposed Species. Any species of fish, wildlife, or plant that is proposed by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service in the **Federal Register** to be listed under Section 4 of the Endangered Species Act.

Recovery. For the purposes of this subpart, and with respect to threatened or endangered species: The improvement in the status of a listed species to the point at which listing as federally endangered or threatened is no longer appropriate.

Recreation. See Sustainable recreation.

Recreation opportunity. An opportunity to participate in a specific recreation activity in a particular recreation setting to enjoy desired recreation experiences and other benefits that accrue. Recreation opportunities include non-motorized, motorized, developed, and dispersed recreation on land, water, and in the air.

Recreation setting. The social, managerial, and physical attributes of a place that, when combined, provide a distinct set of recreation opportunities. The Forest Service uses the recreation opportunity spectrum to define recreation settings and categorize them into six distinct classes: primitive, semi-primitive non-motorized, semi-primitive motorized, roaded natural, rural, and urban.

Responsible official. See definition in § 219.62.

Restoration. The process of assisting the recovery of an ecosystem that has been degraded, damaged, or destroyed. Ecological restoration focuses on reestablishing the composition, structure, pattern, and ecological processes necessary to facilitate terrestrial and aquatic ecosystems sustainability, resilience, and health under current and future conditions.

Restore. To renew by the process of restoration (see restoration).

Riparian Areas. Three-dimensional ecotones of interaction that include terrestrial and aquatic ecosystems that extend down into the groundwater, up above the canopy, outward across the floodplain, up the near-slopes that drain to the water, laterally into the terrestrial ecosystem, and along the water course at variable widths.

Riparian management zone. Portions of a watershed where riparian-dependent resources receive primary emphasis, and for which plans include plan components to maintain or restore riparian functions and ecological functions.

Risk. A combination of the likelihood that a negative outcome will occur and the severity of the subsequent negative consequences.

Scenic character. A combination of the physical, biological, and cultural images that gives an area its scenic identity and contributes to its sense of place. Scenic character provides a frame of reference from which to determine scenic attractiveness and to measure scenic integrity.

Social sustainability. See sustainability.

Sole source aquifer. Underground water supply designated by the Environmental Protection Agency (EPA) as the "sole or principle" source of drinking water for an area as established under section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300h–3(e)).

Source water protection areas. The area delineated by a State or Tribe for a public water system (PWS) or including numerous PWSs, whether the source is ground water or surface water or both, as part of a State or tribal source water assessment and protection program (SWAP) approved by Environmental Protection Agency under section 1453 of the Safe Drinking Water Act (42 U.S.C. 300h–3(e)).

Stressors. For the purposes of this subpart: Factors that may directly or indirectly degrade or impair ecosystem composition, structure or ecological process in a manner that may impair its ecological integrity, such as an invasive species, loss of connectivity, or the disruption of a natural disturbance regime.

Sustainability. The capability to meet the needs of the present generation without compromising the ability of future generations to meet their needs. For purposes of this part, "ecological sustainability" refers to the capability of ecosystems to maintain ecological integrity; "economic sustainability" refers to the capability of society to produce and consume or otherwise benefit from goods and services including contributions to jobs and market and nonmarket benefits; and "social sustainability" refers to the capability of society to support the network of relationships, traditions, culture, and activities that connect people to the land and to one another, and support vibrant communities.

Sustainable recreation. The set of recreation settings and opportunities on the National Forest System that is ecologically, economically, and socially sustainable for present and future generations.

Timber harvest. The removal of trees for wood fiber use and other multiple-use purposes.

Timber production. The purposeful growing, tending, harvesting, and regeneration of regulated crops of trees to be cut into logs, bolts, or other round sections for industrial or consumer use.

Viable population. A population of a species that continues to persist over the long term with sufficient distribution to be resilient and adaptable to stressors and likely future environments.

Watershed. A region or land area drained by a single stream, river, or drainage network; a drainage basin.

Watershed condition. The state of a watershed based on physical and biogeochemical characteristics and processes.

Wild and scenic river. A river designated by Congress as part of the National Wild and Scenic Rivers System that was established in the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 (note), 1271–1287).

Wilderness. Any area of land designated by Congress as part of the National Wilderness Preservation System that was established in the Wilderness Act of 1964 (16 U.S.C. 1131–1136).

Subpart B—Pre-Decisional Administrative Review Process

§ 219.50 Purpose and scope.

This subpart establishes a pre-decisional administrative review (hereinafter referred to as objection) process for plans, plan amendments, or plan revisions. This process gives an individual or entity an opportunity for an independent Forest Service review and resolution of issues before the approval of a plan, plan amendment, or plan revision. This subpart identifies who may file objections to a plan, plan amendment, or plan revision; the responsibilities of the participants in an objection; and the procedures that apply to the review of the objection.

§ 219.51 Plans, plan amendments, or plan revisions not subject to objection.

(a) A plan, plan amendment, or plan revision is not subject to objection when the responsible official receives no substantive formal comments (§ 219.62) on that proposal during the opportunities for public comment (§ 219.53(a)).

(b) Plans, plan amendments, or plan revisions proposed by the Secretary of Agriculture or the Under Secretary for Natural Resources and Environment are not subject to the procedures set forth in this section. A decision by the Secretary or Under Secretary constitutes the final administrative determination of the U.S. Department of Agriculture.

(c) A plan, plan amendment, or plan revision is not subject to objection under this subpart if another administrative review process is used consistent with § 219.59.

(d) When a plan, plan amendment, or plan revision is not subject to objection under this subpart, the responsible official shall include an explanation with the signed decision document.

§ 219.52 Giving notice of a plan, plan amendment, or plan revision subject to objection before approval.

(a) The responsible official shall disclose during the NEPA scoping process and in the appropriate NEPA documents that the proposed plan, plan amendment, or plan revision is subject to the objection procedures in this subpart. This disclosure is in addition to the public notice that begins the objection filing period, as required at § 219.16. When a responsible official chooses to use the objection process of this subpart for a plan, plan amendment, or plan revision process initiated before the effective date of this rule, notice that the objection process will be used must be given prior to an opportunity to provide substantive formal comment on a proposed plan, plan amendment, or revision and associated environmental analysis.

(b) The responsible official shall make available the public notice for the beginning of the objection period for a plan, plan amendment, or plan revision (§ 219.16(a)(3)) to those who have requested the environmental documents or are eligible to file an objection consistent with § 219.53.

(c) The content of the public notice for the beginning of the objection period for a plan, plan amendment, or plan revision before approval (§ 219.16(a)(3)) must:

(1) Inform the public of the availability of the plan, plan amendment, or plan revision, the appropriate final environmental documents, the draft plan decision document, and any relevant assessment or monitoring evaluation report; the commencement of the objection filing period under 36 CFR part 219 Subpart B; and the process for objecting. The documents in this paragraph will be made available online at the time of public notice.

(2) Include the name of the plan, plan amendment, or plan revision, the name and title of the responsible official, and instructions on how to obtain a copy of the appropriate final environmental documents; the draft plan decision document; and the plan, plan amendment, or plan revision.

(3) Include the 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.

(4) Include a statement that objections will be accepted only from those who have previously submitted substantive formal comments specific to the proposed plan, plan amendment, or plan revision during any opportunity for public comment as provided in subpart A.

(5) Include a statement that the publication date of the public notice in the applicable newspaper of record (or the **Federal Register**, if the responsible official is the Chief) is the exclusive means for calculating the time to file an objection (§ 219.56).

(6) Include a statement that an objection, including attachments, must be filed with the appropriate reviewing officer (§ 219.62) within 60 days, if an environmental impact statement has been prepared, otherwise within 45 days of the date of publication of the public notice for the objection process.

(7) Include a statement describing the minimum content requirements of an objection (§ 219.54(c)).

§ 219.53 Who may file an objection.

(a) Individuals and entities who have submitted substantive formal comments related to a plan, plan amendment, or plan revision during the opportunities for public comment as provided in subpart A during the planning process for that decision may file an objection. Objections must be based on previously submitted substantive formal comments attributed to the objector unless the objection concerns an issue that arose after the opportunities for formal comment. The burden is on the objector to demonstrate compliance with requirements for objection. Objections that do not meet the requirements of this paragraph may not be accepted; however, objections not accepted must be documented in the planning record.

(b) Formal 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 based on membership in an entity. A member or an individual must submit substantive formal comments independently 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. Individuals or entities listed on an objection that do not meet eligibility requirements may not be considered objectors, although an objection must be accepted (if not otherwise set aside for review under § 219.55) if at least one listed individual or entity meets the eligibility requirements.

(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 may not be on official duty nor use government property or equipment in the preparation or filing of an objection. Further, employees may not include 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)).

§ 219.54 Filing an objection.

(a) All objections must be filed, in writing, with the reviewing officer for the plan. All objections must be open to public inspection during the objection process.

(b) Including documents by reference is not allowed, except for the following list of items that may be referenced by including the name, date, page number (where applicable), and relevant section of the cited document. All other documents or Web links to those documents, or both must be included with the objection, if referenced in the objection.

(1) All or any part of a Federal law or regulation.

(2) Forest Service Directive System documents and land management plans or other published Forest Service documents.

(3) Documents referenced by the Forest Service in the planning documentation related to the proposal subject to objection.

(4) Formal comments previously provided to the Forest Service by the objector during the proposed plan, plan amendment, or plan revision comment period.

(c) At a minimum, an objection must include the following:

(1) The objector's name and address (§ 219.62), along with a telephone number or email address if available;

(2) Signature or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the objection);

(3) Identification of the lead objector, when multiple names are listed on an objection (§ 219.62). Verification of the identity of the lead objector if requested;

(4) The name of the plan, plan amendment, or plan revision being objected to, and the name and title of the responsible official;

(5) A statement of the issues and/or the parts of the plan, plan amendment, or plan revision to which the objection applies;

(6) A concise statement explaining the objection and suggesting how the proposed plan decision may be improved. If applicable, the objector should identify how the objector believes that the plan, plan amendment, or plan revision is inconsistent with law, regulation, or policy; and

(7) A statement that demonstrates the link between prior substantive formal comments attributed to the objector and the content of the objection, unless the objection concerns an issue that arose after the opportunities for formal comment (§ 219.53(a)).

§ 219.55 Objections set aside from review.

(a) The reviewing officer shall set aside and not review an objection when one or more of the following applies:

(1) Objections are not filed in a timely manner (§ 219.56);

(2) The proposed plan, plan amendment, or plan revision is not subject to the objection procedures of this subpart pursuant to §§ 219.51 and 219.59;

(3) The individual or entity did not submit substantive formal comments (§ 219.53) during opportunities for public comment on the proposed decision (§ 219.16(a)(1) and (a)(2));

(4) None of the issues included in the objection is based on previously submitted substantive formal comments unless one or more of those issues arose after the opportunities for formal comment;

(5) The objection does not provide sufficient information as required by § 219.54(c);

(6) The objector withdraws the objection in writing;

(7) The 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 (§ 219.54(c)); or

(8) The objection is illegible for any reason and a legible copy cannot easily be obtained.

(b) When an objection includes an issue that is not based on previously submitted substantive formal comments and did not arise after the opportunities for formal comment, that issue will be set aside and not reviewed. Other issues raised in the objection that meet the requirements of this subpart will be reviewed.

(c) The reviewing officer shall give written notice to the objector and the responsible official when an objection or part of an objection is set aside from review and shall state the reasons for not reviewing the objection in whole or part. If the objection is set aside from review for reasons of illegibility or lack of a means of contact, the reasons must be documented in the planning record.

§ 219.56 Objection time periods and process.

(a) *Time to file an objection.* For a new plan, plan amendment, or plan revision for which an environmental impact statement (EIS) is prepared, written objections, including any attachments, must be filed within 60 days following the publication date of the public notice for a plan, plan amendment, or plan revision before approval (§§ 219.16 and 219.52). For an amendment for which an EIS is not prepared, the time to file an objection is within 45 days. It is the responsibility of the objector to ensure that the reviewing officer receives the objection in a timely manner.

(b) *Computation of time periods.* (1) All time periods are computed using calendar days, including Saturdays, Sundays, and Federal holidays in the time zone of the reviewing officer. 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 (11:59 p.m. for objections filed by electronic means such as email or facsimile machine).

(2) The day after publication of the public notice for a plan, plan amendment, or plan revision before approval (§§ 219.16 and 219.52), is the first day of the objection filing period.

(3) The publication date of the public notice for a plan, plan amendment, or plan revision before approval (§§ 219.16 and 219.52), 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.

(c) *Evidence of timely filing.* The objector is responsible for filing the objection in a timely manner. Timeliness must be determined by one of the following indicators:

(1) 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;

(2) The electronically generated posted date and time for email and facsimiles;

(3) 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

(4) The official agency date stamp showing receipt of hand delivery.

(d) *Extensions.* Time extensions for filing are not permitted except as provided at paragraph (b)(1) of this section.

(e) *Reviewing officer role and responsibilities.* 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 subpart. The reviewing officer is a line officer at the next higher administrative level above the responsible official; except that:

(1) For a plan amendment, that next higher-level line officer may delegate the reviewing officer authority and responsibility to a line officer at the same administrative level as the responsible official. Any plan amendment delegation of reviewing officer responsibilities must be made prior to the public notification of an objection filing period (§ 219.52).

(2) For an objection or part of an objection specific to the identification of species of conservation concern, the regional forester who identified the species of conservation concern for the plan area may not be the reviewing officer. The Chief may choose to act as the reviewing officer or may delegate the reviewing officer authority to a line officer at the same administrative level as the regional forester. The reviewing officer for the plan will convey any such objections or parts thereof to the appropriate line officer.

(f) *Notice of objections filed.* Within 10 days after the close of the objection period, the responsible official shall publish a notice of all objections in the applicable newspaper of record and post the notice online.

(g) *Response to objections.* The reviewing officer must issue a written response to the objector(s) concerning their objection(s) within 90 days of the end of the objection-filing period. The reviewing officer has the discretion to extend the time when it is determined to be necessary to provide adequate response to objections or to participate in discussions with the parties. The reviewing officer must notify all parties (lead objectors and interested persons) in writing of any extensions.

§ 219.57 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 must allow other interested persons to participate in such meetings. An interested person must file a request to participate in an objection within 10 days after publication of the notice of objection by the responsible official (§ 219.56(f)). The responsible official shall be a participant in all meetings involving the reviewing officer, objectors, and interested persons. During meetings with objectors and interested persons, the reviewing officer may choose to use alternative dispute resolution methods to resolve objections. All meetings are open to observation by the public.

(b) *Response to objections.* (1) The reviewing officer must render a written response to the objection(s) within 90 days of the close of the objection-filing period, unless the allowable time is extended as provided at § 219.56(g). 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. In cases involving more than one objection to a plan, plan amendment, or plan revision, the reviewing officer may consolidate objections and issue one or more responses. The response must be sent to the objecting party(ies) by certified mail, return receipt requested, and posted online.

(2) The reviewing officer's review of and response to the objection(s) is limited to only those issues and concerns submitted in the objection(s).

(3) The response of the reviewing officer will be the final decision of the U.S. Department of Agriculture on the objection.

§ 219.58 Timing of a plan, plan amendment, or plan revision decision.

(a) The responsible official may not issue a decision document concerning a plan, plan amendment, or plan revision subject to the provisions of this subpart until the reviewing officer has responded in writing to all objections.

(b) A decision by the responsible official approving a plan, plan amendment, or plan revision must be consistent with the reviewing officer's response to objections.

(c) When no objection is filed within the allotted filing period, the reviewing officer must notify the responsible official. The responsible official's approval of the plan, plan amendment, or plan revision in a plan decision document consistent with § 219.14, may occur on, but not before, the fifth business day following the end of the objection-filing period.

§ 219.59 Use of other administrative review processes.

(a) Where the Forest Service is a participant in a multi-federal agency effort that would otherwise be subject to objection under this subpart, the responsible official may waive the objection procedures of this subpart and instead adopt the administrative review procedure of another participating Federal agency. As a condition of such a waiver, the responsible official for the Forest Service must have agreement with the responsible official of the other agency or agencies that a joint agency response will be provided to those who file for administrative review of the multi-agency effort. When such an agreement is reached, the responsible official for the Forest Service shall ensure public notice required in § 219.52 sets forth which administrative review procedure is to be used.

(b) When a plan amendment is approved in a decision document approving a project or activity and the amendment applies only to the project or activity, the administrative review process of 36 CFR part 215 or part 218, subpart A, applies instead of the objection process established in this subpart. When a plan amendment applies to all future projects or activities, the objection process established in this subpart applies only to the plan amendment decision; the review process of 36 CFR part 215 or part 218 would apply to the project or activity part of the decision.

§ 219.60 Secretary's authority.

Nothing in this subpart restricts the Secretary of Agriculture from exercising any statutory authority regarding the protection, management, or administration of NFS lands.

§ 219.61 Information collection requirements.

This subpart specifies the information that objectors must give in an objection to a plan, plan amendment, or plan revision (§ 219.54(c)). As such, this subpart contains information collection requirements as defined in 5 CFR part 1320 and have been approved by the Office of Management and Budget and assigned control number 0596–0158.

§ 219.62 Definitions.

Definitions of the special terms used in this subpart are set out as follows.

Address. An individual's or entity's current mailing address used for postal service or other delivery services. An email address is not sufficient.

Decision memo. A concise written record of the responsible official's decision to implement an action that is categorically excluded from further analysis and documentation in an environmental impact statement (EIS) or environmental assessment (EA), where the action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment, and does not give rise to extraordinary circumstances

in which a normally excluded action may have a significant environmental effect.

Environmental assessment (EA). A public document that provides sufficient evidence and analysis for determining whether to prepare an EIS or a finding of no significant impact, 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; FSH 1909.15, Chapter 40).

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).

Formal comments. See substantive formal comments.

Lead objector. For an objection submitted with multiple individuals, multiple entities, or combination of individuals and entities listed, the individual or entity identified to represent all other objectors for the purposes of communication, written or otherwise, regarding the objection.

Line officer. A Forest Service official who serves in a direct line of command from the Chief.

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. The National Forest System includes national forests, national grasslands, and the National Tallgrass Prairie.

Newspaper(s) of record. The newspaper(s) of record is (are) the principal newspaper(s) of general circulation annually identified and published in the **Federal Register** by each regional forester to be used for publishing notices as required by 36 CFR 215.5. The newspaper(s) of record for projects in a plan area is (are) the newspaper(s) of record for notices related to planning.

Objection. The written document filed with a reviewing officer by an individual or entity seeking pre-decisional administrative review of a plan, plan amendment, or plan revision.

Objection period. The allotted filing period following publication of a public notice in the applicable newspaper of record (or the **Federal Register**, if the responsible official is the Chief) of the availability of the appropriate environmental documents and draft decision document, including a plan, plan amendment, or plan revision during which an objection may be filed with the reviewing officer.

Objection process. Those procedures established for pre-decisional administrative review of a plan, plan amendment, or plan revision.

Objector. An individual or entity who meets the requirements of § 219.53, and files an objection that meets the requirements of §§ 219.54 and 219.56.

Online. Refers to the appropriate Forest Service Web site or future electronic equivalent.

Responsible official. The official with the authority and responsibility to oversee the planning process and to approve a plan, plan amendment, and plan revision.

Reviewing officer. The USDA or Forest Service official having the delegated authority and responsibility to review an objection filed under this subpart.

Substantive formal comments. Written comments submitted to, or oral comments recorded by, the responsible official or his designee during an opportunity for public participation provided during the planning process (§§ 219.4 and 219.16), and attributed to the individual or entity providing them. Comments are considered substantive when they are within the scope of the proposal, are specific to the proposal, have a direct relationship to the proposal, and include supporting reasons for the responsible official to consider.

Dated: March 23, 2012.

Harris D. Sherman,

Under Secretary, Natural Resources and Environment.

[FR Doc. 2012–7502 Filed 4–6–12; 8:45 am]

BILLING CODE P

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

26

☐ Consent ☒ Departmental ☐ Correspondence Action ☐ Public Hearing

☐ Scheduled Time for ☐ Closed Session ☐ Informational

FROM: Inyo County Planning Department

FOR THE BOARD MEETING OF: April 16, 2013

SUBJECT: Initial Study and Mitigated Negative Declaration for the Owens Lake Solar Demonstration Project

RECOMMENDATION: Review the draft Initial Study and Mitigated Negative Declaration for the Owens Lake Solar Demonstration Project and potentially provide input for staff to draft correspondence for the Chair's signature.

SUMMARY DISCUSSION: The City of Los Angeles Department of Water and Power (DWP) has issued a Notice of Intent to Adopt Mitigated Negative Declaration for the Owens Lake Solar Demonstration Project (attached)[1]. Staff is reviewing and may provide correspondence for the Board's consideration on April 16. Comments are due April 29.

OTHER AGENCY INVOLVEMENT:

DWP, State Lands Commission, others interested in Owens Lake issues

FINANCING:

Resources from the general fund are utilized to monitor DWP 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.)

1 Refer to DWP's environmental document website for the Initial Study and Mitigated Negative Declaration.

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

Date: 4/8/13

Attachments: Notice of Intent

Department of Water and Power the City of Los Angeles

ANTONIO R. VILLARAIGOSA
Mayor

Commission
THOMAS S. SAYLES, *President*
ERIC HOLOMAN, *Vice President*
RICHARD F. MOSS
CHRISTINA E. NOONAN
JONATHAN PARFREY
BARBARA E. MOSCHOS, *Secretary*

RONALD O. NICHOLS
General Manager

NOTICE OF INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION

Date: March 26, 2013

To: Agencies, Organizations, and Interested Parties

Subject: Notice of Intent to Adopt a Mitigated Negative Declaration for the Owens Lake Solar Demonstration Project

The Los Angeles Department of Water and Power (LADWP) prepared an Initial Study for the Owens Lake Solar Demonstration Project. Based on the information contained in the Initial Study, LADWP intends to adopt a Mitigated Negative Declaration for the project under the California Environmental Quality Act (CEQA). LADWP is the CEQA Lead Agency for the project.

Project Location: The project site is a 5.3-acre parcel located within the 2.03-square-mile Phase 8 dust mitigation area located in the northwest section of the 110-square-mile dry Owens Lake, in Inyo County, California. The Solar Demonstration site is located on the Lone Pine 7.5 minute U.S. Geological Survey (USGS) quadrangle and the latitude/longitude of the approximate center of the area is 36.53611°N/-117.993051°W (North American Datum 1983 UTM Zone 11N).

Project Description: The Solar Demonstration Project would generate approximately 500 kW of electricity through the use of ground-mounted photovoltaic (PV) solar arrays. Solar PV panels would be installed in rows on an aluminum framework that would be attached to one of three types of foundations, two with concrete block ballasts and one with pile driven piers. The project would assist LADWP in meeting its renewable energy portfolio standards as well as provide data on the feasibility of additional solar facilities on Owens Lake.

Environmental Effects: The Initial Study describes potentially significant impacts of the proposed project on biological and cultural resources. Mitigation measures have been defined to reduce impacts to less than significant levels. Other effects found to be beneficial and less than significant are also described in the Initial Study.

Hazardous Waste Disclosure
Per Section 15087 (c)(6) of the CEQA Guidelines, the proposed project is not on any of the lists enumerated under Section 65962.5 of the California Government Code.

111 North Hope Street, Los Angeles, California 90012-2607 *Mailing address:* Box 51111, Los Angeles 90051-5700
Telephone: (213) 367-4211 *Cable address:* DEWAPOLA

Recyclable and made from recycled waste.

Public Review of the Initial Study: The public review period commences on March 28, 2013, and concludes on April 29, 2013, at 5:00 pm. A copy of the Initial Study will be posted at www.ladwp.com/envnotices. Copies of the Initial Study are also available for review at LADWP offices in Los Angeles (111 North Hope Street, Room 1044) and Bishop (300 Mandich Street), or at the following locations:

Lone Pine Library
127 Bush Street
Lone Pine, CA 93545

Inyo County Library – Independence
Branch – 168 North Edwards Street
Independence, CA 93526

Public Comments: During the public review period, written comments concerning the adequacy of the Initial Study may be submitted. Comments must be submitted by April 29, 2013. Please submit your comments to the following address:

Los Angeles Department of Water and Power
111 North Hope Street, Room 1044
Los Angeles, California 90012
Attn: Ms. Julie Van Wagner

If you require additional information, please contact Ms. Van Wagner at Julie.VanWagner@ladwp.com or (213) 367-5295.

Sincerely,

Charles C. Holloway

Charles C. Holloway
Manager of Environmental Planning and Assessment
Los Angeles Department of Water and Power

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
27

☐ Consent ☐ Departmental ☐ Correspondence Action ☐ Public Hearing

☐ Scheduled Time for ☐ Closed Session ☐ Informational

FROM: Kevin D. Carunchio, County Administrator

FOR THE BOARD MEETING OF April 16, 2013

SUBJECT: Continuation of declaration of local emergency

DEPARTMENTAL RECOMMENDATION: - Request Board discuss and consider staff's recommendation regarding continuation of the local emergency, The Death Valley Roadeater Emergency, that resulted in flooding in the eastern portion of Inyo County during the month of August 2012, per Resolution #2012-32.

SUMMARY DISCUSSION: - During your August 28, 2012 Board of Supervisors meeting your Board took action to declare a local emergency, which has been named The Death Valley Roadeater Emergency, which was a result of flooding in the southeastern portion of Inyo County during the month of August. Since the circumstances and conditions relating to this emergency persist, your Board directed that the continuation of the declaration be considered on a by-weekly basis. The recommendation is that the emergency be continued until the further evaluation of the damage is completed and staff makes the recommendation to end 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 (*Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)* Approved:_____ Date_____
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.) Approved:_____ Date_____

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

☐ Consent ☒ Departmental ☐ Correspondence Action ☐ Public Hearing

☐ Scheduled Time for ☐ Closed Session ☐ Informational

FROM: CLERK OF THE BOARD
By: Patricia Gunsolley, Assistant Clerk of the Board

FOR THE BOARD MEETING OF: April 16, 2013

SUBJECT: Approval of Minutes

DEPARTMENTAL RECOMMENDATION: - Request approval the minutes of the Board of Supervisors Meeting of March 19 and March 26, 2013.

SUMMARY DISCUSSION: - The Board is required to keep minutes of its proceedings. Once the Board has approved the minutes as requested, the minutes will be made available to the public via the County's web page at www.inyocounty.us.

ALTERNATIVES: - Staff awaits your Board's changes and/or corrections.

OTHER AGENCY INVOLVEMENT: - n/a

FINANCING: n/a

APPROVALS	
BUDGET OFFICER:	BUDGET AMENDMENTS *(Must be reviewed and approved by Budget Officer prior to being approved by others, as needed, and submission to the Assistant Clerk of the Board.)*
COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS *(Must be reviewed and approved by county counsel prior to submission to the Assistant Clerk of the Board.)* Approved: _____ Date_____
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (M*ust be reviewed and approved by the auditor-controller prior to submission to the Assistant Clerk of the Board.)* Approved:_____ Date_____
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS *(Must be reviewed and approved by the director of personnel services prior to submission to the Assistant Clerk of the Board.)* Approved:_____ Date_____

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

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
30

☐ Consent ☐ Departmental ☐ Correspondence Action ☐ Public Hearing

☒ Scheduled Time for 11:30 a.m. ☐ Closed Session ☐ Informational

FROM: Inyo County Planning Department/Commission

FOR THE BOARD MEETING OF: April 16, 2013

SUBJECT: Road Abandonment No. 2012-01/Mull

DEPARTMENTAL RECOMMENDATION: Requests the Board of Supervisors:

(1) Consider a proposed resolution entitled "A Resolution of the Board of Supervisors of the County of Inyo, State of California, Declaring its Intent to Vacate That Portion of McKenzie Street in Darwin Townsite and Setting and Providing Notice of a Public Hearing on Said Vacation.

(2) Adopt the attached Resolution.

SUMMARY DISCUSSION: The applicant David Mull has requested a road abandonment for a 60-foot wide undeveloped portion of McKenzie Street lying between Main Street and First Avenue N.W. in the Townsite of Darwin. The portion to be abandoned has never been developed (i.e.: "paper street") as a roadway and the Inyo County Road Department has no intentions to develop it. Attached is a site plan showing Mr. Mull's proposal.

On March 27, 2013, the Planning Commission found the proposed Road Abandonment No. 2012-01/Mull to be in conformance with the Inyo County General Plan, and adopted a Resolution recommending the Board of Supervisors approve the abandonment and that the applicant indemnify and hold the County h armless for and from any action associated with this approval.

Chapter 3, part 3, Division 9 of the California Streets and Highways Code, outlines the process by which a County right-of-way can be vacated. To initiate the vacation, the Board of Supervisors must, by order, declare its intent to vacate said right-of-way and set the date, hour, and place of a public hearing to consider the vacation. If the Board adopts the attached resolution, the Planning Department and Board Clerk will post and publish this Notice of Intent to in accordance with California Street and Highways Code Sections 8321, 8322, and 8323.

If the Board adopts the proposed Resolution, on May 7, 2013, the Board will need to conduct a public hearing on the vacation of said portion of McKenzie Street, an a Resolution of Vacation will be considered. Upon adoption of the Resolution of Vacation, and after the required 15-day appeal period, the Vacation will be complete.

ALTERNATIVES:

- Do NOT adopt the attached Resolution of Intent to abandon said portions of McKenzie Street in the community of Darwin. This alternative is not recommended, as the road is unneccessary and only exists on paper.
- Return to staff with direction

OTHER AGENCY INVOLVEMENT: Inyo County Road Department

FINANCING: No direct impact.

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.)* Yes DMC 4/5/13
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.)

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

Date: 4-8-13

Attachments:

(1) Proposed Board Resolution
(2) Planning Commission Resolution #2013-01
(3) Planning Commission Staff Report
(4) Exhibit A (Vicinity Map)
(5) Exhibit B (Site Map)
(6) Exhibit C (Legal Description)

RESOLUTION NO. 2013 - ___

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF INYO, STATE OF CALIFORNIA, DECLARING ITS INTENT TO VACATE THAT PORTION OF MCKENZIE STREET IN DARWIN TOWNSITE AND SETTING AND PROVIDING NOTICE OF A PUBLIC HEARING ON SAID VACATION

WHEREAS, on February 7, 2013, an application to vacate that portion of McKenzie Street in Darwin Townsite was submitted to the County by David Mull; and

WHEREAS, on March 27, 2013 the Planning Commission found that the road vacations proposed by the application are consistent with the Inyo County General Plan, pursuant to Government Code Section 65402, and adopted a Resolution recommending that the Board of Supervisors approve said abandonment and that the applicant indemnify and hold the County harmless for and from any action associated with said approval; and

WHEREAS, an abandonment shall be conducted pursuant to Chapter 3, Part 3, Division 9 of the California Streets and Highways Code, which permits the Board of Supervisors to initiate proceedings to vacate a County right-of-way by declaring its intent to vacate said right-of-way and setting a hearing on the proposed vacation, by order.

NOW, THEREFORE, BE IT RESOLVED that this Board of Supervisors hereby declares its intent to vacate portions of County right-of-ways described as follows:

> A portion of McKenzie Street as shown on the map entitled "Townsite of Darwin" and recorded in book 3 of Subdivision Maps at Pages 59-70, in the County of Inyo, State of California, and said portion also being more particularly described as follows:
>
> All said portion of McKenzie Street, sixty (60.00) feet wide, lying between Blocks 23 and 24 as shown on said map, and being further described as also lying northwesterly of the northwesterly right-of-way line of Main Street, eighty (80.00) feet wide, and southeasterly of the southeasterly right-of-way line of First Avenue N.W., seventy (70.00) feet wide; and

BE IT FURTHER RESOLVED, that in accordance with Chapter 3, Part 3, Division 9 of the California Streets and Highways Code, this Board of Supervisors hereby sets a hearing on the aforementioned proposed roadway vacation to be conducted before it on the 7th day of May, 2013, at 11:30 a.m., in the Board of Supervisors Room, County Administrative Center, Independence, California; and

BE IT FURTHER RESOLVED that this Notice of Intent shall be posted and published in accordance with California Streets and Highways Code Sections 8321, 8322, and 8323.

PASSED AND ADOPTED ON THIS 16 DAY OF APRIL, 2013 BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
Linda Arcularius, Chair
Inyo County Board of Supervisors

ATTEST:
KEVIN CARUNCHIO
Clerk of the Board

By: _____
Pat Gunsolley, Assistant

RESOLUTION NO. 2013-01

A RESOLUTION OF THE PLANNING COMMISSION OF THE COUNTY OF INYO, STATE OF CALIFORNIA, FINDING THAT PROPOSED ROAD ABANDONMENT, #2012-01/MULL IS IN CONFORMANCE WITH THE INYO COUNTY GENERAL PLAN AND RECOMMENDING THAT THE INYO COUNTY BOARD OF SUPERVISORS APPROVE THAT ROAD ABANDONMENT, SUBJECT TO CERTAIN CONDITIONS

WHEREAS, the County of Inyo has received an application to abandon a County right-of-way described as a portion of McKenzie Street as shown on the map entitled "Townsite of Darwin" and recorded in book 3 of Subdivision Maps at Pages 59-70, in the County of Inyo, State of California, and said portion also being more particularly described as follows:

All said portion of McKenzie Street, sixty (60.00) feet wide, lying between Blocks 23 and 24 as shown on said map, and being further described as also lying northwesterly of the northwesterly right-of-way line of Main Street, eighty (80.00) feet wide, and southeasterly of the southeasterly right-of-way line of First Avenue N.W., seventy (70.00) feet wide; and

WHEREAS, such an abandonment may be conducted pursuant to Chapter 3 of Part 3 of Division 9, commencing with Section 8320, of the Streets and Highways Code; and

WHEREAS, Government Code Section 65402 requires a proposed street abandonment to first be reviewed by the Planning Commission for a determination as to the proposal's conformance with the County General Plan; and

WHEREAS, the Planning Commission has found that the proposed road abandonment is consistent and in conformance with the Inyo County General Plan, including the *"Residential Rural High"* landuse designation and circulation element; and

WHEREAS, in accordance with the conditions necessary to identify viable candidates for street abandonment, the Planning Commission has determined the subject streets are not the sole route of access for any property in the vicinity and that the abandonment of said roadways will not cut off required access to contiguous properties; and

WHEREAS, the Planning Commission has found that the road abandonment is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061 (b) (3) of the CEQA Guidelines (General Rule) as the streets are "paper streets" and this action could not have a significant effect on the environment; and

NOW, THEREFORE, BE IT RESOLVED that this Planning Commission finds proposed Road Abandonment No. 2012-01/Mull to be in conformance with the Inyo County General Plan; and

BE IT FURTHER RESOLVED, that the Planning Commission makes, and recommends that the Board of Supervisors adopt, the following Conditions of Approval for the proposed project:

RECOMMNEDED CONDITIONS OF APPROVAL:

1. Hold Harmless: the applicant, landowner, and/or operator shall defend, indemnify and hold harmless Inyo County, its agents, officers and employees from any claim, action, or proceeding against the County, its advisory agencies, appeal boards, or its legislative body concerning Road Abandonment #2012-01/Mull.

Passed and adopted this 27th day of March, 2013.

AYES: Stoll, Wasson, Payne, Corner, Wahrenbrock

NOES:

ABSTAIN:

ABSENT:

Sam Wasson
Sam Wasson, Chair
Inyo County Planning Commission

ATTEST: Joshua Hart, AICP
Planning Director

By: M C B
Nolan Bobroff
Secretary of the Commission

Planning Department
168 North Edwards Street
Post Office Drawer L
Independence, California 93526

Phone: (760) 878-0263
FAX: (760) 878-0382
E-Mail: inyoplanning@inyocounty.us

AGENDA ITEM NO.: 7 (Action Item – Public Hearing)

PLANNING COMMISSION MEETING DATE: March 27, 2013

SUBJECT: Road Abandonment No. 2012-01 (Mull)

EXECUTIVE SUMMARY

The applicant, David Mull, is requesting a road abandonment for a 60-foot wide undeveloped portion of McKenzie Street located between Main Street and First Avenue N.W. in the Townsite of Darwin. The portion to be abandoned has never been developed (i.e.: "paper street") as a roadway and the Inyo County Road Department has no intentions to develop it. The Exhibit Map and Legal Description are included in Attachment "1" as well as a vicinity map.

The Public Streets, Highways, and Service Easements Vacation Law, set forth in Section 8300 et seq. of the California Street and Highway Code, allows a County Board of Supervisors to abandon a road under its jurisdiction upon making certain findings following a public hearing. Section 8313 of the Abandonment Law, states that before the Board of Supervisors may order such an abandonment, the County Planning Commission must review the proposed abandonment and find it is in conformance with the County's General Plan and adopt a resolution of their findings.

PROJECT INFORMATION

Supervisory District: Fifth

Applicants: David Mull

Landowners: David Mull / Judyth Greenburgh & Pierre Valeille

Address: Section of McKenzie Street located between Main Street and First Avenue N.W. in Darwin, CA

Community: Darwin

A.P.N.s: 035-151-04; 035-151-03; 035-152-16; & 035-152-18

General Plan: Residential Rural High Density (RRH), one dwelling unit/acre

Zoning: Rural Residential with Mobile Home (RR-1.0-MH)

Size of Parcel(s): Section of road to be abandoned is approximately 220-feet long by 60-feet wide. (.29 acres)

Surrounding Land Use:

Location	Use	General Plan Designation	Zoning
Site	Undeveloped roadway	Residential Rural High Density (RRH), 1 du/acre	Rural Residential with Mobilehome (RR-1.0-MH)
North (Across First Avenue)	Residential	Residential Rural High Density (RRH), 1 du/acre	Rural Residential with Mobilehome (RR-1.0-MH)
East (Across Main Street)	Vacant	Rural Protection (RP)	Open Space (OS-40
South (Across Main Street)	Vacant	Residential Rural High Density (RRH), 1 du/acre	Rural Residential with Mobilehome (RR-1.0-MH)
West (Across First Avenue)	Residential	Residential Rural High Density (RRH), 1 du/acre	Rural Residential with Mobilehome (RR-1.0-MH)

Recommended Action: **Find that the proposed road abandonment is consistent with the Inyo County General Plan and recommend approval of the proposed abandonment to the Board of Supervisors.**

Alternatives:

1) Find the proposed road abandonment to be inconsistent with the Inyo County General Plan, thereby effectively recommending denial of the proposed road abandonment to the Board of Supervisors.

2) Continue the public hearing to a future date, and provide specific direction to staff regarding additional information and analysis needed.

Project Planner: Nolan Bobroff, Planning Coordinator

PROJECT DESCRIPTION

The applicant has requested that an undeveloped portion of McKenzie Street (60-feet wide) lying northwesterly of the northwesterly right-of-way line of Main Street and southeasterly of the southeasterly right-of-way of First Avenue N.W. be abandoned. All involved property owners gave written consent to Mr. Mull's proposed road abandonment (Attachment "2").

Once abandoned, the section of road will be divided down the center line and becomes part of the property of APN(s) 035-151-04, 035-151-03, 035-152-16, and 035-152-18 as shown on the Exhibit Map. Applicant, David Mull owns the parcels to the east and south of the proposed road abandonment and Judyth Greenburg & Pierre Valleille owns the parcels to the north and west of the proposed road abandonment.

STAFF ANALYSIS

The townsite of Darwin was established in the early 1900's and was composed of approximately 519 parcels laid out in a grid design comprised of blocks of 10 parcels (two rows of five parcels each separated by an alley) with streets and avenues separating the blocks. Many of the originally designed streets and parcels were never developed and the property boundaries were unknown. Because of this, there are many structures in Darwin located within the road right-of-way as is the case with a garage located within the McKenzie right-of-way that was pre-existing when Mr. Mull purchased the property. Once the road is abandoned, the land that the garage is located on will become part of the existing parcel with the main residence on it.

Although the current Inyo County General Plan does not specifically address road abandonments, it does encompass the 1978 Darwin Specific Plan (DSP) which established policies encouraging abandonment of unnecessary right-of-ways and mergers of contiguous parcels to create larger lot sizes. These policies are consistent with the goals of the RRH ("Residential Rural High Density") General Plan designation and the RR ("Rural Residential") zoning designation which encourage larger lot sizes and lower densities. Specifically within the DSP, there is a policy which reads:

> *"The abandonment of unnecessary right-of-ways in favor of the adjoining private properties shall be encouraged as a means to add more private land to the community, reducing the potential development density, and eliminating unnecessary right-of-ways."*

The proposed abandonment is consistent with the current General Plan policies and the prior Specific Plan. The abandonment of road will not restrict access to any parcels and the portion of McKenzie Street to be abandoned is a "paper street" meaning it does not physically exist. Furthermore, the Inyo County Road Department has no plans to develop this as a roadway and none of the local utility providers have easements along the said portion of McKenzie Street and therefore have no concerns over the proposed abandonment.

Since the project involves the abandonment of County right-of-ways, the Board of Supervisors must act upon this proposal based upon findings by the Planning Commission that the road abandonment does not conflict with the Inyo County General Plan.

General Plan Consistency

General Plan ***Policy LU-2.6 – Residential Rural High (RRH) Density Designation*** calls for a maximum of 1 dwelling unit per acre, with a minimum parcel size of 1.0 acres. This land use designation is intended for areas on the fringe of urban communities where larger parcel sizes are preferred and for communities that lack individual sewer and water systems. The proposed abandonment is consistent with the RRH designation because it allows for the existing lots to gain additional square footage and become closer to satisfying the 1.0-acre minimum parcel size. The project is also consistent with the implementation of General Plan ***Policy RH-1.5 – Proper Access*** that states: "Provide proper access to residential, commercial, and industrial areas." Currently the portion to be abandoned only exists on paper and access for the adjacent parcels will remain the same as it is now.

Zoning Ordinance Consistency

The project site is zoned Rural Residential with a one-acre minimum and mobile home combined (RR-1.0-MH). The portion of road will become part of the adjacent parcels and remain consistent with the RR zoning designation.

Lot Size and Land Uses

	Lot Size	**Land Use**
Eastern Lot APN 035-151-03	4,202 sf (.10 acres)	Vacant with some outbuildings
Southern Lot APN 035-152-18	8,403 sf (.19 acres)	Residential
Western Lot APN 035-152-16	21,010 sf (.48 acres)	Residential
Northern Lot APN 035-151-04	8,404 sf (.19 acres)	Vacant with some outbuildings

The road abandonment will add approximately 3,000 sf to each lot.

Access/Traffic

The portion to be abandoned only exists on paper and has never been developed as a roadway. Access to the parcels will remain as it is now with access being from Main Street for the parcels to the southeast and from First Avenue for the parcels to the northwest.

Public Services

Sewer:	Individual Septic System
Water:	Darwin Community Service District
Electric:	Los Angeles Department of Water and Power (LADWP)
Telephone:	Verizon
Schools:	Lone Pine Unified School District
Fire:	No formal fire protection
Law Enforcement:	Inyo County Sheriff

ENVIRONMENTAL REVIEW

This application is exempt under Section 15061(b)(3) of the CEQA guidelines since there is no possibility that the activity in question would have a significant effect on the environment since the roadway does not exist.

RECOMMENDATIONS

Staff recommends the Planning Commission adopt the attached resolution, to be transmitted to the Board of Supervisors, with the following findings and conditions of approval:

Recommended Findings:

1. Finds Road Abandonment No. 2012-01 to be exempt from the California Environmental Quality Act pursuant to Section 15061(b)(3) of the CEQA Guidelines.

2. Finds Road Abandonment No. 2012-01 to be in conformance with the Inyo County General Plan

Recommended Conditions of Approval:

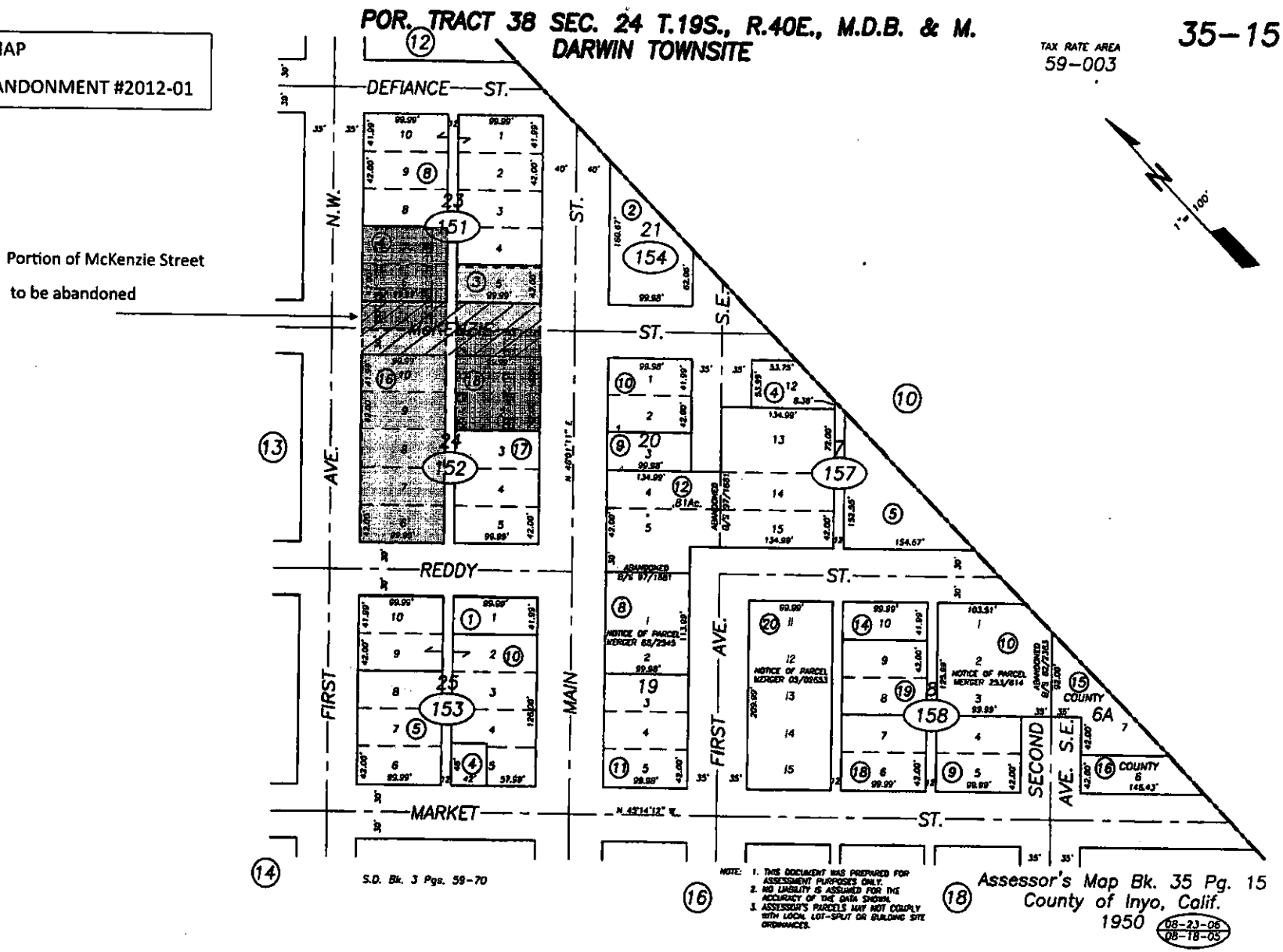
1. Hold Harmless: the applicant, landowner, and/or operator shall defend, indemnify and hold harmless Inyo County, its agents, officers and employees from any claim, action, or proceeding against the County, its advisory agencies, appeal boards, or its legislative body concerning Road Abandonment #2012-01/Mull.

Attachments:
- 1) Exhibit Map, Legal Description & Vicinity Map
- 2) Consent to Road Abandonment
- 3) Planning Commission Resolution No. 2013-01

Attachment 1

EXHIBIT MAP

ROAD ABANDONMENT #2012-01



INYO COUNTY ROAD ABANDONMENT 2012-01

LEGAL DESCRIPTION

BEING a portion of McKenzie St. as shown on the map entitled "Townsite of Darwin" and recorded in Book 3 of Subdivision Maps at Pages 59-70, in the County of Inyo, State of California, and said portion also being more particularly described as follows:

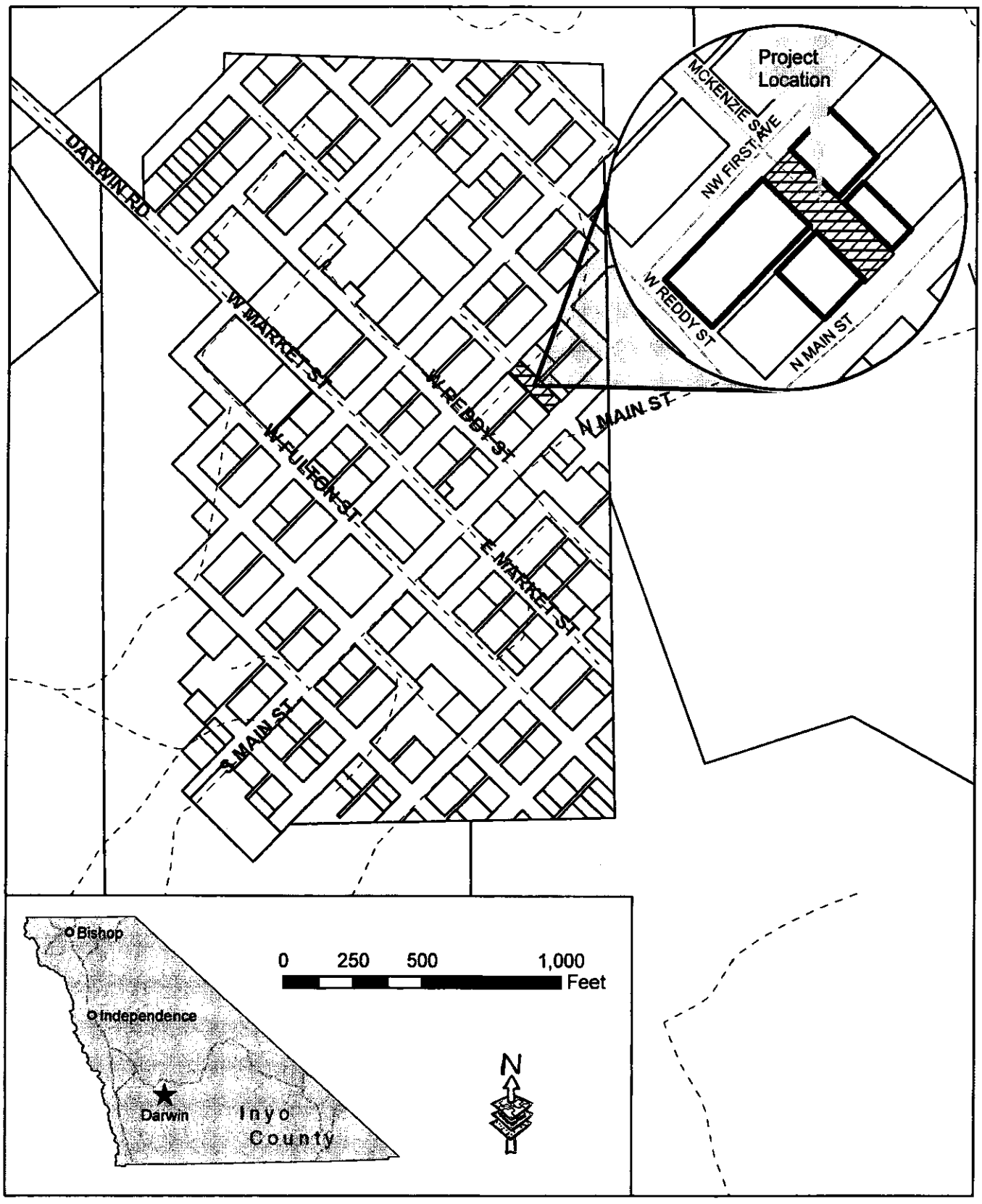
All said portion of McKenzie St., sixty (60.00) feet wide, lying between Blocks 23 and 24 as shown on said map, and being further described as also lying northwesterly of the northwesterly right-of-way line of Main St., eighty (80.00) feet wide, and southeasterly of the southeasterly right-of-way of First Ave. N.W., seventy (70.00) feet wide.

Legal Description Prepared
Under the Supervision of:

Andrew K. Holmes

Andrew K. Holmes, L.S. 4428
Lic. Expires 09/30/13

Vicinity Map



Road Abandonment No. 2012-01/Mull

Attachment 2

Date: 2/28/2013

To:
Inyo County Planning Department
PO Drawer L
Independence, CA 93526

From:

Pierre Valeille
Darwin Property Owner

APN: 035-151-04 (lots 6-7)

Dear Inyo County Planning Department:

I hereby extend my permission to include my above referenced lot in David Mull's Road Abandonment Proposal #2012-01.

Signed

Pierre Valeille
Printed Name

Mailing Address:

PO Box 45
DARWIN
CA 93522

Date: 03/06/2013

To:
Inyo County Planning Department
PO Drawer L
Independence, CA 93526

From:
JUDYTH GREENBURGH
Darwin Property Owner

APN: 035-151-04 (lots 6-7)

Dear Inyo County Planning Department:

I hereby extend my permission to include my above referenced lot in David Mull's Road Abandonment Proposal #2012-01.

Signed

Judyth Greenburgh
Printed Name

Mailing Address:

Date: 2/28/2013

To:
Inyo County Planning Department
PO Drawer L
Independence, CA 93526

From:

Pierre Valeille
Darwin Property Owner

APN: 035-152-16 (lots 6-10)

Dear Inyo County Planning Department:

I hereby extend my permission to include my above referenced lot in David Mull's Road Abandonment Proposal #2012-01.

Signed

Pierre Valeille
Printed Name

Mailing Address:
PO Box 45
DARWIN
CA 93522

Date: 03/06/2013

To:
Inyo County Planning Department
PO Drawer L
Independence, CA 93526

From:
JUDYTH GREENBURGH
Darwin Property Owner

APN: 035-152-16 (lots 6-10)

Dear Inyo County Planning Department:

I hereby extend my permission to include my above referenced lot in David Mull's Road Abandonment Proposal #2012-01.

Signed

Judyth Greenburgh
Printed Name

Mailing Address:

Attachment 3

RESOLUTION NO. 2013-01

A RESOLUTION OF THE PLANNING COMMISSION OF THE COUNTY OF INYO, STATE OF CALIFORNIA, FINDING THAT PROPOSED ROAD ABANDONMENT, #2012-01/MULL IS IN CONFORMANCE WITH THE INYO COUNTY GENERAL PLAN AND RECOMMENDING THAT THE INYO COUNTY BOARD OF SUPERVISORS APPROVE THAT ROAD ABANDONMENT, SUBJECT TO CERTAIN CONDITIONS

WHEREAS, the County of Inyo has received an application to abandon a County right-of-way described as a portion of McKenzie Street as shown on the map entitled "Townsite of Darwin" and recorded in book 3 of Subdivision Maps at Pages 59-70, in the County of Inyo, State of California, and said portion also being more particularly described as follows:

All said portion of McKenzie Street, sixty (60.00) feet wide, lying between Blocks 23 and 24 as shown on said map, and being further described as also lying northwesterly of the northwesterly right-of-way line of Main Street, eighty (80.00) feet wide, and southeasterly of the southeasterly right-of-way line of First Avenue N.W., seventy (70.00) feet wide; and

WHEREAS, such an abandonment may be conducted pursuant to Chapter 3 of Part 3 of Division 9, commencing with Section 8320, of the Streets and Highways Code; and

WHEREAS, Government Code Section 65402 requires a proposed street abandonment to first be reviewed by the Planning Commission for a determination as to the proposal's conformance with the County General Plan; and

WHEREAS, the Planning Commission has found that the proposed road abandonment is consistent and in conformance with the Inyo County General Plan, including the *"Residential Rural High"* landuse designation and circulation element; and

WHEREAS, in accordance with the conditions necessary to identify viable candidates for street abandonment, the Planning Commission has determined the subject streets are not the sole route of access for any property in the vicinity and that the abandonment of said roadways will not cut off required access to contiguous properties; and

WHEREAS, the Planning Commission has found that the road abandonment is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061 (b) (3) of the CEQA Guidelines (General Rule) as the streets are "paper streets" and this action could not have a significant effect on the environment; and

NOW, THEREFORE, BE IT RESOLVED that this Planning Commission finds proposed Road Abandonment No. 2012-01/Mull to be in conformance with the Inyo County General Plan; and

BE IT FURTHER RESOLVED, that the Planning Commission makes, and recommends that the Board of Supervisors adopt, the following Conditions of Approval for the proposed project:

RECOMMNEDED CONDITIONS OF APPROVAL:

1. Hold Harmless: the applicant, landowner, and/or operator shall defend, indemnify and hold harmless Inyo County, its agents, officers and employees from any claim, action, or proceeding against the County, its advisory agencies, appeal boards, or its legislative body concerning Road Abandonment #2012-01/Mull.

Passed and adopted this 27th day of March, 2013.

AYES:

NOES:

ABSTAIN:

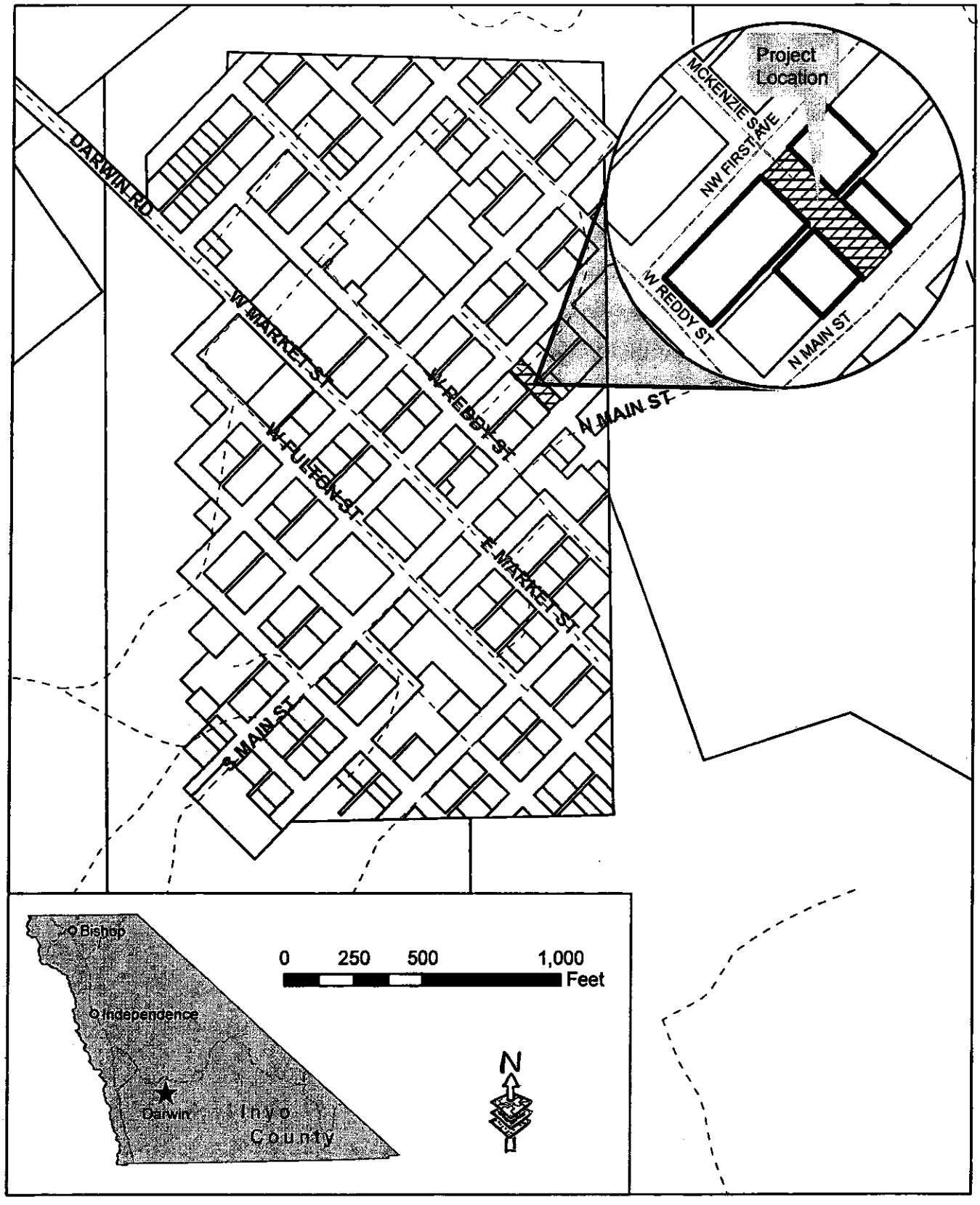
ABSENT:

Sam Wasson, Chair
Inyo County Planning Commission

ATTEST: Joshua Hart, AICP
Planning Director

By:_____
Nolan Bobroff
Secretary of the Commission

Vicinity Map

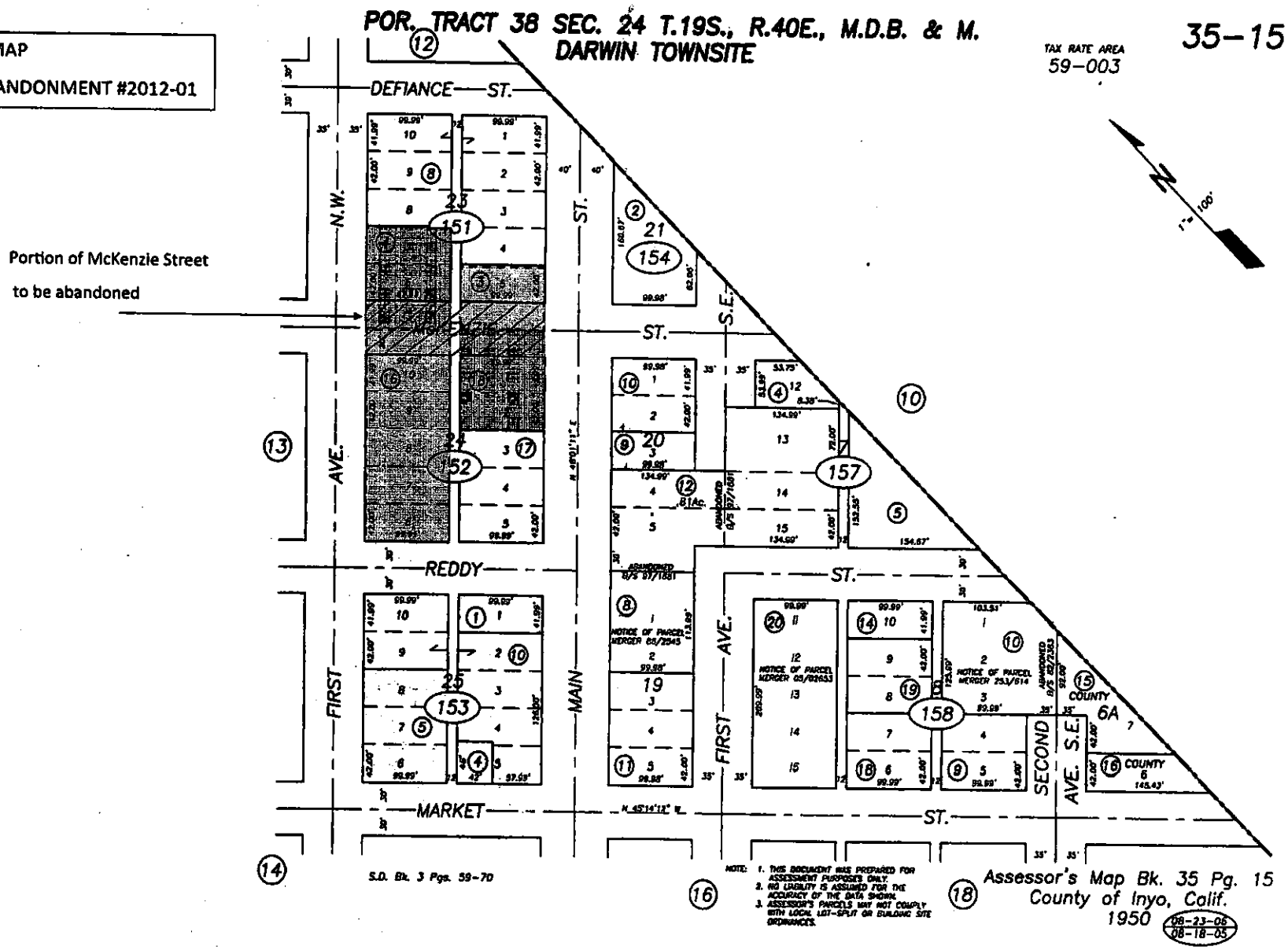


Road Abandonment No. 2012-01/Mull

Attachment 4

EXHIBIT MAP

ROAD ABANDONMENT #2012-01



Attachment 5

INYO COUNTY ROAD ABANDONMENT 2012-01

LEGAL DESCRIPTION

BEING a portion of McKenzie St. as shown on the map entitled "Townsite of Darwin" and recorded in Book 3 of Subdivision Maps at Pages 59-70, in the County of Inyo, State of California, and said portion also being more particularly described as follows:

All said portion of McKenzie St., sixty (60.00) feet wide, lying between Blocks 23 and 24 as shown on said map, and being further described as also lying northwesterly of the northwesterly right-of-way line of Main St., eighty (80.00) feet wide, and southeasterly of the southeasterly right-of-way of First Ave. N.W., seventy (70.00) feet wide.

Legal Description Prepared
Under the Supervision of:

Andrew K. Holmes

Andrew K. Holmes, L.S. 4428
Lic. Expires 09/30/13

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
32

☐ Consent ☐ Departmental ☐ Correspondence Action ☒ Public Hearing

☒ Scheduled Time for 1:00 p.m. ☐ Closed Session ☐ Informational

FROM: Inyo County Planning Commission and Planning Department

FOR THE BOARD MEETING OF: April 16, 2013

SUBJECT: Appeal No. 2013-01 (Michael A. Dorame, Loretta M. Dorame and Zinda Edgar) of Conditional Use Permit 2012-04/Branson

DEPARTMENTAL RECOMMENDATION: Request the Board of Supervisors:

Conduct a Public Hearing regarding: Appeal No. 2013-01 (Michael A. Dorame and Loretta M. Dorame and Zinda Edgar) and deny the appeal.

SUMMARY DISCUSSION: The applicant proposes to build a 30-foot tall communications tower at 1579 Indian Springs Dr., in the Alabama Hills and remove a 26-foot existing antenna attached to a garage located next door to the proposed project location at 1601 Indian Springs Dr. The proposed tower at 1579 Indian Springs Dr. will re-transmit wireless internet signals from existing towers located at 125 North Lakeview Street in Lone Pine, and 585 Alabama Drive in the Alabama Hills, making wireless internet service available to residential clients in the Alabama Hills and to a broader clientele in the future.

Pursuant to the California Environmental Quality Act (CEQA), a Draft Mitigated Negative Declaration (MND) was prepared for the project and circulated for public review and comment on October 15th 2012 (the mailing list for the MND can be found on page 4 of the February 27th staff report). The MND identified one potential impact (aesthetics, in this case, meaning views) that would be mitigated to a level of insignificance. The mitigation measures include painting the tower to reduce potential glare to the surrounding properties and planting and maintaining trees as appropriate to screen the tower from direct views. The mitigation measures are included on page 15 of the December 5th staff report as Conditions of Approval Nos. 4 and 5. The 30-day review period for the MND ended on November 13th, 2012 and four comment letters were received. Those providing comments were Robert and Sue Jaussaud of 1601 Indian Springs Drive (at the time, the Jaussauds owned the property and garage where the current antenna is located); Roberta and Bert Jarnagin at 1600 Indian Springs Drive; Zinda Edgar at 1596 Indian Springs Drive and the State of California Native American Heritage Commission. The comments and responses to the MND are in the December 5th staff report, pages 5-13.

Staff presented the staff report and public input was given during the Planning Commission meeting held December 5, 2012. There were 3 residents from the Indian Springs neighborhood present: Zinda Edgar, Roberta Jarnigan; and, Michael Dorame, as well as, the applicant Bruce Branson and Kyle Wing, Assistant Manager of Lone Pine TV. Mr. Branson and Mr. Wing explained the technical aspects of the project and introduced the information provided in two additional letters (please see Attachment B to the December 5, 2012 staff report). One letter addressed the fact that the Indian Springs Covenants, Conditions and Restrictions (CC&Rs) are invalid due to the absence of an active homeowners association and the other provided the opinion that WiFi tower/antennas can actually increase property values. Ms. Jarnigan provided an additional letter from Ms. Dorothy Alcorace (please see Attachment B to the December 5, 2012 staff report) who opposes the project. During the public comment period, the three residents of the Indian Springs neighborhood raised numerous comments and questions regarding the

application and Mr. Branson and Mr. Wing were provided time to address them. Most of these comments were the same as those provided in the original letters (please see pages 5-13 of the December, 2012 staff report), and included: CC&Rs, Public and Quasi-Public uses, why the project was not considered commercial, why the utility easement purchased by Mr. Branson for the tower was not subject to the 2.5-acre minimum required by the RR-2.5 Zone, views, taxes, if the trees that were being required to be planted for screening would be watered, property values, the effect of the trees required by the Conditions of Approval would have on the views, and why the Regulation of Wireless Communications Facilities ICC 18.76 did not apply to the project.

After a lengthy discussion, Commissioner Paul Payne moved to continue the item until the January 23, 2013 Planning Commission meeting so that he and the other Commissioners could investigate the project more on their own. The motion passed 4-0 with Commissioner Corner abstaining. The notices that were mailed to the property owners (within 300-ft. of the project) for the January 23, 2013 meeting were incorrect and Conditional Use Permit No. 2012-04/Branson was subsequently rescheduled for the February 27, 2013 Planning Commission meeting.

At the February 27, 2013 Planning Commission meeting Staff reintroduced the project and presented the staff report to the Planning Commission, which responded to the comments and questions generated at the December 5, 2012 meeting (please see pages 4-6 of the February 27, 2013 staff report.) Mr. Branson was also given time to present the project to the Commissioners. There were three people from the Indian Springs neighborhood present: Zinda Edgar, Roberta Jarnigan; and, Michael Dorame. Ms. Jarnigan stated that most of her questions had already been answered, but she did ask a question new to the discussion: it was, if the company is sold or the proposed tower is otherwise altered would it have to come before the Planning Commission for re-approval. County Counsel responded that if the owner wishes to alter the tower once it has been approved then the applicant would have to go before the Planning Commission for re-approval. Michael Dorame and Zinda Edgar each presented arguments in opposition to the project. None of these arguments were additional or different to those covered at the December 5, 2012 meeting or within the written comments, and each is stated and commented on in the February 27, 2013 staff report. After hearing all of the arguments the Planning Commission voted 4-0, with Commissioner Corner abstaining, to approve CUP 2012-04/Branson.

The premise for the appeal submitted by Michael Dorame, Loretta Dorame and Zinda Edgar focuses on the argument that the Regulation of Wireless Communications Facilities Inyo County Code (ICC) 18.76 should have been enforced on this project. Staff reviewed ICC 18.76 when the application was submitted by Mr. Branson and found that it does not directly apply to the type of antenna Mr. Branson is proposing. Staff also found that by requiring a CUP the General Requirements as stated in ICC 18.76.10 would be covered for this particular type of tower/antenna and that ICC 18.76.10 was primarily intended for mobile telephone services. Staff also found several other CUP applications for the exact same type of tower/antenna projects, none of which were deemed subject to the requirements of ICC 18.76.
The Planning Commission was advised that the County has consistently not applied ICC 18.76 to these types of wireless, internet, repeater, antennas and based their decision, in part, on this fact. This interpretation of ICC 18.76 is due primarily to two factors: 1) the Telecommunications Act of 1996, upon which ICC 18.76 is based and which portions of are incorporated by referenced does not directly address wireless internet service. With respect to the construction and installation of towers and antennas, the Act focused mainly on the co-location of antennas and towers installed by telephone companies, which are heavily regulated, unlike the purveyors of internet services. Since staff has not been able to find a direct reference to the specific technology of these repeater antennas, it has concluded that there is no need for requiring an applicant to provide a full Wireless Communications Plan per ICC 18.76 and that requiring a

Conditional Use Permit is sufficient for the scope of these types of antenna projects; and, 2) The repeater antennas are not for direct, end of the line, service. They are used to transmit signals between each other; the signals must then be delivered to an end user via some sort of cable.

Recommended Actions
The staff analysis indicates that requiring a CUP is appropriate for Mr. Branson's proposed tower/antenna project and that requiring compliance with ICC 18.76 is unnecessary. Requiring Mr. Branson to prepare a full Wireless Communications Plan cannot be justified and would result in an unfair burden on Mr. Branson. The project was presented to the Planning Commission on December 5, 2012, and again on February 27, 2013, when the Planning Commission approved it. Staff is recommending that the Board deny the appeal and uphold the Planning Commission's decision to approve CUP 2012-04/Branson

ALTERNATIVES: The Board may consider the following alternatives.

1. Do NOT approve the requested actions. Denial of the Appeal and upholding the Planning Commission decision to approve is recommended.
2. Return to staff with direction.

OTHER AGENCY INVOLVEMENT: N/A

FINANCING: Costs to process the application and appeal are paid for by the applicant and the $300 appeal fee was paid for by the appellants.

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.)* 4/9/13
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.)

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

Date: 4/10/13

Attachments:

1.) Appeal with exhibits.
2.) Staff's responses to comments in the Appeal.
3.) February 27, 2013 staff report with attachments including the December 5, 2012 staff report with attachments. Mr. Dorame's handouts for the February 27, 2013 hearing are included in the appeal Exhibits.

Attachment 1

March 9, 2013

RECEIVED
2013 MAR 11 AM 11: 29
INYO
BOS
CLERK

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

Appellant:	Michael A. Dorame
Co-Appellants:	Loretta M. Dorame – Zinda Edgar
Subject:	Letter of Appeal to Inyo County Board of Supervisors
Decision Appealed:	Conditional Use Permit #2012-04/Branson

P1 Pg. 1 On Wednesday, February 27, 2013, the Inyo County Planning Commission made a finding, determination and decision that usurps the responsibility and authority of the Inyo County Board of Supervisors to regulate **wireless communications facilities** in unincorporated Inyo County.

P2 Pg. 1 With this letter of appeal, I find myself in the unique position of defending the intent of the language of Inyo County Code, Chapter 18.76-"Regulation of Wireless Communications Facilities". The following narrative explains why I am appealing this decision.

P3 Pg. 1 I read about the proposed project and scheduled hearing in the Inyo Register on Thanksgiving weekend. On Thursday, November 29, I called the Planning Department and spoke with the Associate Planner, Cathreen Richards. During our conversation, I asked her if she was aware of the **county code pertaining to wireless communications facilities**; she abruptly stated that Mr. Branson's tower project was not regulated by the Ordinance, without any further explanation. After giving me her opinion on other zoning questions, we terminated our call.

P4 Pg. 1 I attended both public hearings, December 5, 2012 and February 27, 2013. At the December hearing I advised the commission that according to Inyo County Code Chapter 18.76-"Regulation of Wireless Communications Facilities", a hearing on an application for a conditional use permit, as set forth in the Ordinance, was not properly before them to consider. I also informed the commission that I was told by Ms. Richards that Mr. Branson's' Wireless Facility project wasn't covered by the Ordinance. They had no reaction or response. No reason was given as justification for her opinion about the Ordinance.

P5 pg 1-2 At the hearing of February 27th, I read a three page testimony that included the history of the Ordinance and why it was enacted and codified. I urged them to read the Ordinance, so as to understand why I did not believe a hearing for a conditional use permit was properly before them to take action. I also stated, "For the record, I ask that you please provide the justification for exempting Mr. Branson's' project from the Ordinance, there are no provisions in the Ordinance to allow for this exemption". (See Ord. Section 18.76.030, Subsection E, 1-4/Exemptions)

Again, I received no reaction or response. Upon completion of my testimony, I provided each Commissioner a copy of my testimony, and one copy for county staff. In addition, I provided one copy of each attachment:

6-7 Exhibit "A" - Telecommunications Easement Conveyance Documents and
Exhibit "B" – Inyo County Code – Chapter 18.76-"Regulation of Wireless Communications Facilities" Sections: 18.76.010 through 18.76.150 inclusive
g2

I am including those documents as attachments to this appeal letter for your Board's perusal.

8 For the February 27th, 2013 hearing the Planning Department issued an executive summary document of continuation, wherein, for the first time since the inception of this project, it uses the acronym "WiFi", which actually confirms my point: this is a WIRELESS COMMUNICATIONS FACILITY that is regulated under the Ordinance.
g.2

P9 On page 2 despite the planning departments recommended action to approve the C.U.P. the Commission had an opportunity to, instead, vote on an alternative.
Pg.2

P10 On page 5 under the third comment/question and response the Planner includes language that states "the County has consistently used Public/Quasi Public", and finishes that sentence, "for other WiFi antenna towers throughout the County". Does this indicate that the Wireless Communications Facilities Ordinance was ignored in the past? It seems to infer just that!
g2

P11 On page 6 under comment/question the Planner erroneously refers to a "Telecommunications Ordinance" and under the response states, "It was not the intent of the County when it adopted the "Telecommunications Ordinance to apply it to "WiFi Antennas".
Pg.2

12 As your Board goes through the "Wireless Communications Facilities Ordinance" it is very apparent what the intent of the language was then, and is now. The Ordinance is very clear under its "exemptions' clause as to what is exempt; **and a tower/antenna array that is used for commercial "wireless internet service" falls under the regulation of the Ordinance.**
g.2

13 So, I ask, who erroneously arrived at the conclusion that it wasn't the intent of the County to regulate "Wireless Communications Facilities" with this ordinance? I was there, I know what the intent was then and is now. Also, on page 6, comment/question regarding the requirement for water. It is not the "Negative Declaration" that addresses the need for water; it is the "Inyo County Planning Department Environmental Checklist Form" that was attached to the "Draft Mitigated Negative Declaration of the Environmental Impact and Initial Study" and "Inyo County Planning Department CEQA Appendix G: initial Study & Environmental Checklist Form". See Page 15 of the "Checklist Form" at Section IX.a, Hydrology and Water Quality.
2

See Pages 19 & 20 of the Checklist Form at Section XVII.b, and d, Utilities and Service Systems.

P14 93 This is where the issue of "little or no water is needed at the proposed tower site". It's the Planning Departments Checklist and they should have known how they commented on the document. In conclusion, I believe that my appealing argument has merit and legal standing. The "Wireless Communications Facilities" Ordinance is a well written and comprehensive legal document that is compliant with State and Federal Law. It provides the responsibility and authority to regulate the placement and permitting process of those "Wireless Facilities" that are not exempt.

P15 93 The usurpation of any legal responsibility and authority of the Inyo County Board of Supervisors cannot and must not be allowed. No County staff or Commission member should presume to know what the intent of the language in any ordinance means; only your Board has the legal authority to modify the intent of an ordinance, using a transparent public process to do so as it sees the need. If Mr. Branson's **wireless facilities project** is subjected to the rigors of the Ordinance, following the rules as set forth therein, I would have no argument with his commercial endeavor to provide quality wireless (WiFi) service to the Alabama Hills residents.

P16 93 I pray that your Board acknowledges the merit of my appeal and overturns the decision to approve the issuance of the Conditional Use Permit made by the Inyo County Planning Commission of February 27, 2013.

Respectfully Submitted:

Michael A. Dorame

Co-Appellants:

Loretta M. Dorame

Loretta M. Dorame

Zinda Edgar

Zinda Edgar

See Attachments on Page 4

Exhibit "A" - Telecommunications Easement Conveyance Documents
Exhibit "B"- Inyo County Ordinance Chapter 18.76
"Regulation of Wireless Communications Facilities" Sections 18.76.010 Through 18.76.150 inclusive
Exhibit "C" - Michael Dorame Testimony Presented to Inyo County Planning Commission February 27, 2013
Exhibit "D"- February 27, 2013 Planning Department Executive Summary Document of Continuation
Exhibit "E" - Planning Department Environmental Checklist Commentaries Indicating "No Requirement For Water" at Tower Project Site

EXHIBIT "A"

RECORDING REQUESTED BY:
Bruce S. Branson

WHEN RECORDED RETURN TO:
Lone Pine Television
PO Box 867
Lone Pine, CA. 93545

INYO, County Recorder
KAMMI FOOTE Co Recorder Office
DOC- 2012-0002193-00
Check Number 3687
Friday, AUG 03, 2012 14:36:17
MIC $1.00:S21 $11.00:REC $22.00
SYS $12.00:DTC $5.50:SST $1.00
Ttl Pd $52.50 Rcpt # 0000092031
MJH/R1/1-12

THE AREA ABOVE THIS LINE IS FOR RECORDER'S USE

DOCUMENT TITLE(S)

docu

DOCUMENTARY TRANSFER TAX DECLARATION

As per R & T code 11932 the following declaration must appear on the face of a document conveying property:

The undersigned declares:
☒ Documentary transfer tax is $ 5.50 and is computed on:
☐ Full value of interest or property conveyed
☐ Full value less liens/encumbrances remaining thereon at time of sale
Property is located in:
☒ Unincorporated area
☐ City of _____

Signature of Declarant

20122193

WHEN RECORDED, RETURN TO:

Bruce Branson
c/o Lone Pine Television
P.O. Box 867
Lone Pine, California 93545

TELECOMMUNICATIONS EASEMENT

In consideration of Five Thousand Dollars ($5,000.00), and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, RAY SISSON and BETTE SISSON, husband and wife, ("Grantor"), does hereby give, grant and convey to LONE PINE TELEVISION, INC., a California corporation, and its successors and assigns (collectively, "Grantee"), a perpetual easement ten (10) feet by ten (10) feet squared in width to maintain, inspect, repair, replace and remove a Telecommunications Tower (the "Tower") upon, below and above the surface of the premises hereinafter described (the "Easement"). In exchange, Grantee shall provide cable television and internet access free of charge to Ray Sisson and Bette Sisson as long as they personally reside on the property.

Grantor is the fee owner of the real property located at 1579 Indian Springs Drive, Assessment Parcel Number 26-340-04, and known as Indian Springs Lot 4 RS15/33, more particularly described on **Exhibit A** ("Grantor's Premises"). The Easement granted herein is located within Grantor's Premises and is approximately depicted in **Exhibit B** (the "Easement Area").

The Easement granted hereby to Grantee includes the right of Grantee, either using its own personnel or contractors (Grantee's Permittees") to (i) enter in and upon the Easement Area with personnel and machinery, vehicles and material at any and all reasonable times to operate, repair, replace and maintain the Tower, (ii) remove trees, bushes, undergrowth and any other obstructions interfering with Grantee's enjoyment of its rights granted herein, and (iii) do anything reasonably necessary for its use, operation, maintenance of, and access to the Tower. Grantee will have unrestricted access to the Easement Area granted herein for the activities described above. Grantor acknowledges that the Tower is primarily above ground and that the maintenance, repair and replacement of the Tower may require the use of heavy equipment by Grantee. Additionally, the Tower may require maintenance and/or repair anytime, day or night.

The Easement shall include a double electrical meter on the garage structure currently located on the Grantor's Premises. If at any time such structure is destroyed or removed, a reasonable placement of double electrical meter shall be permitted by

Grantor at Grantee's expense. The Easement shall also include underground access for electrical cables traveling to and from the Tower to the double electrical meter.

The right of Grantor to freely use and enjoy its interest in the Easement Area is reserved to Grantor, its successors and assigns, insofar as the exercise thereof does not endanger or interfere with Grantee's exercise of its rights under this Easement.

Grantee shall restore, or cause Grantee's Permittees to restore any property damaged, destroyed or disturbed, to substantially the condition existing prior to the entry upon Grantor's Premises by Grantee or Grantee's Permittees pursuant to this Easement all without cost to Grantor.

Nothing herein contained shall be deemed to be a dedication of any portion of Grantee's Premises to or for the general public or for any public purposes whatsoever, it being the intention of the parties that this Easement shall be strictly limited to and for the purposes herein expressed.

Grantee covenants and agrees, with respect to the use of the Tower and Easement Area, to comply with all laws, rules, regulations and requirements of all applicable public authorities and governmental entities.

In the event that either party hereto commences any action or proceeding against the other in order to enforce or interpret the provisions hereof, the prevailing party in such action shall be entitled to recover, in addition to any amounts or relief otherwise awarded, all reasonable costs incurred in connection therewith, including attorneys' fees.

The terms and conditions of this Easement shall be governed and construed under the laws of the State of California.

This Easement and the exhibits hereto contain all of the representations and the entire easement between the parties with respect to the subject matter hereof. Any prior correspondence, memoranda or easements between the parties or any of them with respect to the subject matter hereof are merged herein and replaced by this Easement.

This Easement constitutes a perpetual covenant running with the land for the benefit of the Grantee, its successors and assigns.

Exhibits A and B are attached hereto and incorporated herein by this reference.

This instrument may be executed in counterparts, and the executed original signature and notary/acknowledgment pages from each such counterpart may be attached to a single, and otherwise complete, counterpart of this instrument to be recorded in the records of Pinal County, Arizona.

IN WITNESS THEREOF, the Grantor and Grantee have executed this Easement as of the day and year first written below.

Ray Sisson

Bette Sisson

STATE OF _____)
) ss.
County of _____)

THE ABOVE INSTRUMENT IS HEREBY ACKNOWLEDGED BEFORE ME this ____ day of _____, 2012 by _____ and _____ husband and wife.

_____
Notary Public

My commission expires:

20122193

LONE PINE TELEVISION, INC.

By: Bruce J Branson
BRUCE J BRANSON

Its: Owner

STATE OF _____)
) ss.
County of _____)

THE ABOVE INSTRUMENT IS HEREBY ACKNOWLEDGED BEFORE ME this ____ day of_____, 2012 by _____, the _____ of Lone Pine Television, Inc., a California corporation, on behalf of the corporation.

_____
Notary Public

My commission expires:
see attached acknowledgement

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Inyo

On Aug 2, 2012 (Date) before me, Kathleen Jo New, Notary Public (Here Insert Name and Title of the Officer)

personally appeared Bette Jo Sisson & Ray Sisson (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Kathleen Jo New (Signature of Notary Public)

KATHLEEN JO NEW
COMM. # 1848029
NOTARY PUBLIC-CALIFORNIA
INYO COUNTY
MY COMM. EXP. JUL. 4, 2013

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER — Top of thumb here

Signer's Name: _____
- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER — Top of thumb here

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

20122193

State of California

County of Orange

On Dec 2, 2012 (Date) before me, Kathleen Jo New, Notary Public (Here Insert Name and Title of the Officer)

personally appeared Bruce J Branson (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Kathleen Jo New (Signature of Notary Public)

KATHLEEN JO NEW
COMM. # 1848029
NOTARY PUBLIC-CALIFORNIA
ORANGE COUNTY
MY COMM. EXP. JUL 4, 2013

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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List of Exhibits

Exhibit A	Grantor's Premises (Parcel information from Inyo County Recorder's Office)
Exhibit B	Easement Area (Tower placement and engineering scheme)

20122193

Exhibit A
Legal Description

Commencing at the Surveyed Southwest corner of Lot 4 an undivided 1/20th interest of Parcel A of the Indian Springs Subdivision, County of Inyo, State of California, as recorded in Book 2 of Subdivision Maps, Page 26, in the office of the County Recorder, Inyo County, State of California in the Southwest quarter of the Northwest quarter of Section 9, Township 6 South, Range 36 East: thence a 10 foot by 10 foot plot 115 feet east and 38 feet north. Sketch in provided.

EXHIBIT A
cont.

8/1/12

0 (1583*2144)

20122193

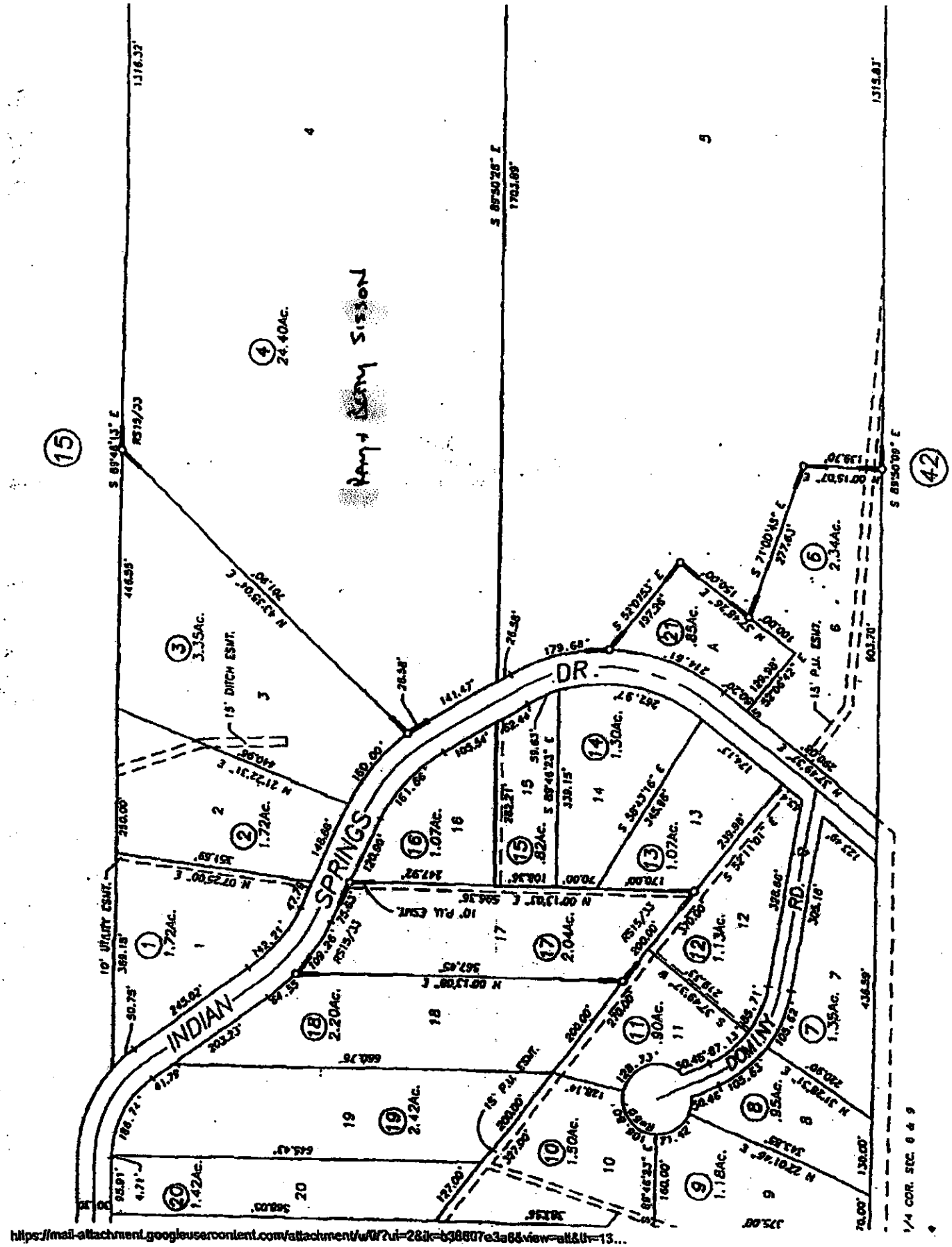

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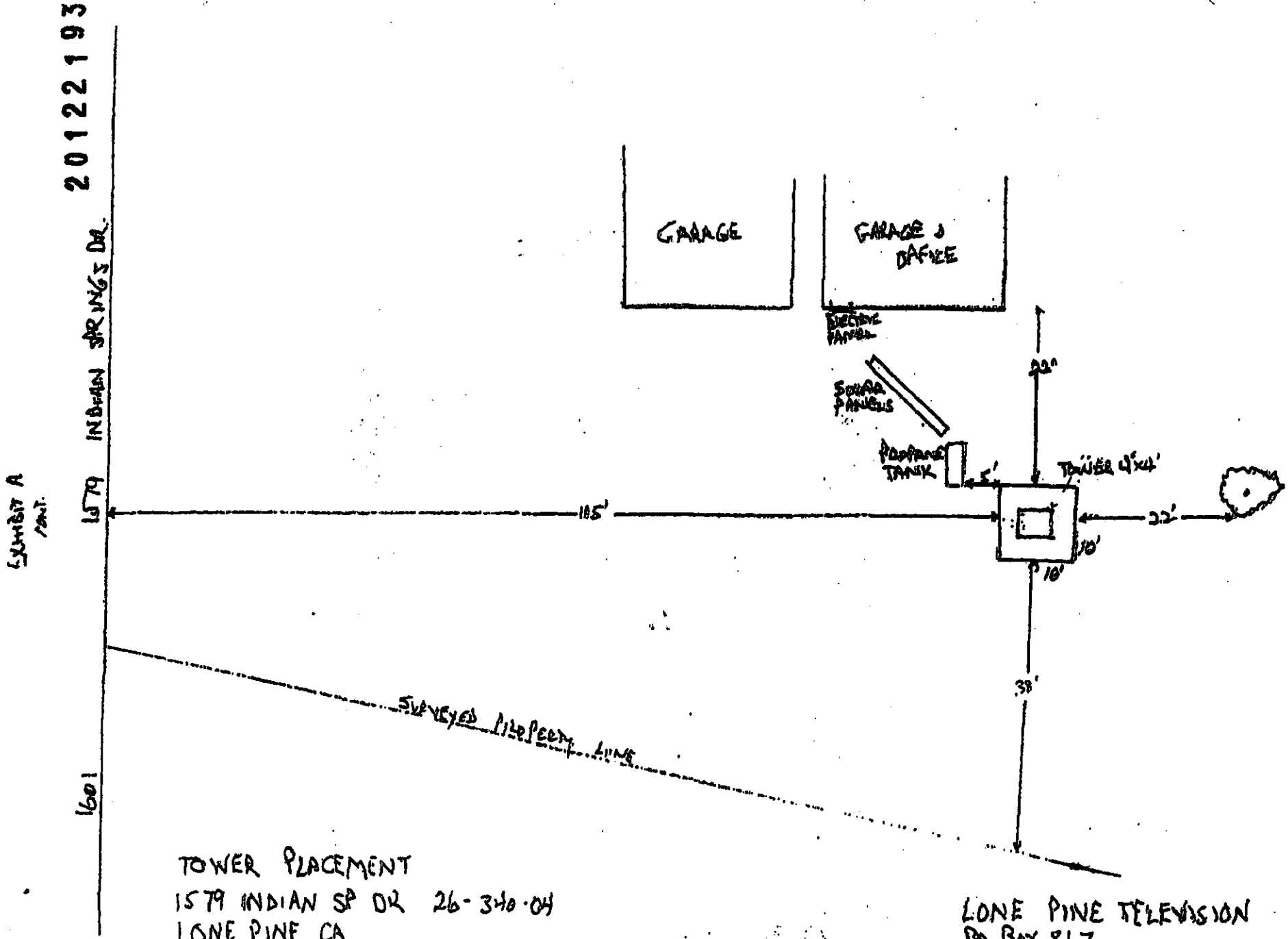
EXHIBIT A
cont.

20122193



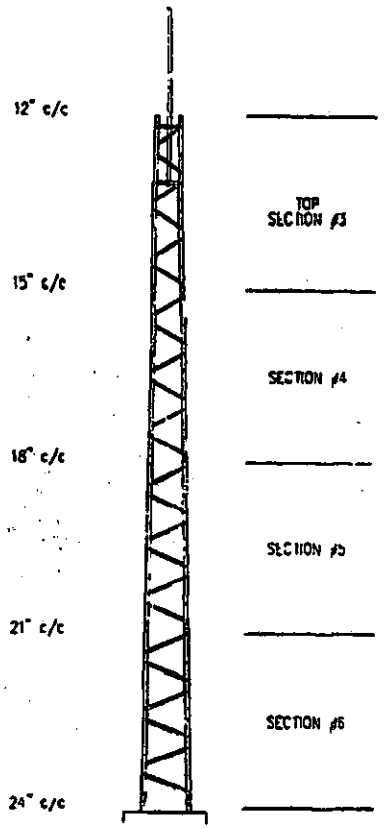
TOWER PLACEMENT
1579 INDIAN SP DR 26-340-04
LONE PINE, CA

LONE PINE TELEVISION
PO BOX 867
LONE PINE, CA 93545

Exhibit B

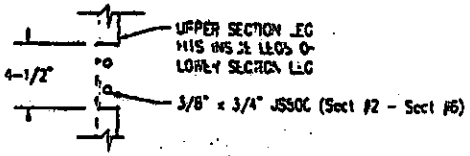
20122193

32' T300 TITAN TOWER
(P/N 4.95.0303.000)

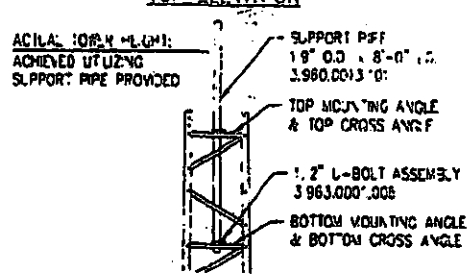


MAXIMUM ALLOWABLE ANTENNA AREA		
SURVIVAL DESIGN NO ICE (ROUND/FLAT)		
70mph WIND	85mph WIND	100mph WIND
24/16 (sqft)	13/9 (sqft)	6/4 (sqft)

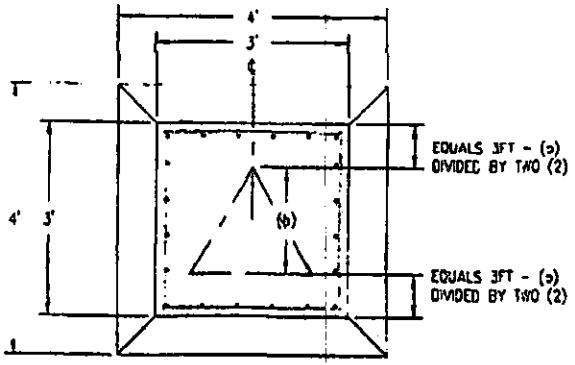
SECTION SPLICE

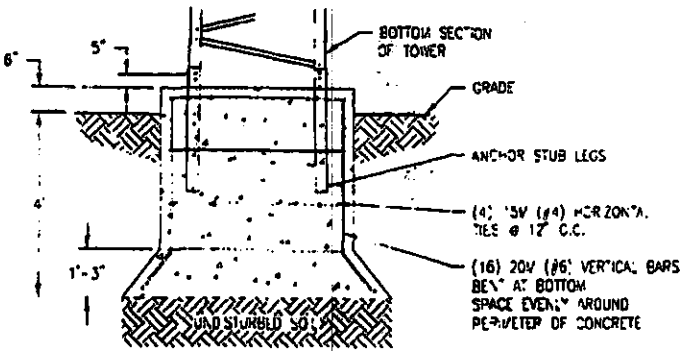


TOP ELEVATION



FOUNDATION DESIGN (NORMAL DRY SOIL)





FOUNDATION LOADS:
MAX. OVERTURNING MOMENT (K*FT) = 17.00
MAX. SHEAR (kips) = 0.7
DESIGN UPLIFT PER
INDIVIDUAL LEG (kips) = 10.0

CONCRETE VOLUME:
2.0 CUBIC YARDS

COMPIDENTIAL ALL INTELLECTUAL PROPERTY RIGHTS HEREIN ARE THE PROPERTY OF TRYLON MANUFACTURING COMPANY LTD. ALL DUPLICATION, RECORDING, DISCLOSURE OR USE IS PROHIBITED WITHOUT WRITTEN CONSENT OF TRYLON MANUFACTURING COMPANY LTD

NOTES:
1) PRE-ASSEMBLED PART NUMBER 4.95.0303.000.
2) MAX. ANTENNA LOADS ARE CENTRALLY LOCATED AND BALANCED, 3FT OR LESS ABOVE THE TOWER TOP.
3) "SURVIVAL" DESIGN IS NOT THE SAME AS EIA-222. FOR EIA COMPLIANCE SEE OUR SUPERTITAN MODELS.
4) MINIMUM 32ksi YIELD FOR ALL COMPONENTS.
5) CONSTRUCTED FROM PASSIVATED G-90 COAT GALVANIZED STEEL SHEET.
6) TOWERS COME ASSEMBLED IN 8FT SECTIONS.
7) TOP SUPPORT PIPE IS INCLUDED.
8) FOR OPTIONAL ROCK BOLT FOUNDATION SEE DWG 000001.610.0033 AND 000001.610.0021.

REV	REV BY	CHK BY	DESCRIPTION	DATE
A	MRH	CR	ISSUED FOR DISTRIBUTION	5 APR 07

TRYLON TSF

CUSTOMER	SITE:	SCALE: 60.000	
DATE: 07 MAR 07	BY: MRH	CHK: CR	APP: JB
TITLE: 32' T300 TITAN TOWER		DRAWING NO. 000001.610.0065	

EXHIBIT "B"

Chapter 18.76

REGULATION OF WIRELESS COMMUNICATIONS FACILITIES

Sections:

18.76.010	**Findings.**
18.76.020	**Purpose and authority.**
18.76.030	**Scope and applicability.**
18.76.040	**Definition of terms.**
18.76.050	**Wireless communications plans and subsequent applications.**
18.76.060	**Conditional use permits.**
18.76.070	**Application requirements.**
18.76.080	**Review and approval factors—Conditional use permits.**
18.76.090	**Term, expiration, and renewal of conditional use permits.**
18.76.100	**General requirements.**
18.76.110	**Financial assurances.**
18.76.120	**Notification of transfer of ownership.**
18.76.130	**Abandoned facilities.**
18.76.140	**Modification and revocation of permits.**
18.76.150	**Responsibility for inspection costs.**

18.76.010 Findings.

In enacting this ordinance the board of supervisors finds that:

A. The scenic beauty of Inyo County is a resource that benefits both those who reside in the county as well as those who visit it, and that aesthetic beauty and the benefits it provides can and will be diminished by the unregulated placement of wireless communications facilities in the county.

B. The unregulated placement of wireless communications facilities in the unincorporated part of the county may result in incompatible land uses and may cause a threat to the health, safety, and welfare of county residents.

C. The unregulated placement of wireless communications facilities in the unincorporated part of Inyo County may impede and pose a hazard to general aviation airports in the county as well as to the missions of the various U. S. Department of Defense facilities within and adjacent to the county; specifically, the United States Air Force's Flight Test Center at Edwards Air Force Base, the Department of the Navy's Naval Air Warfare Center Weapons Division at China Lake, and the Army's Bicycle Lake Army Airfield at Fort Irwin, as well as to those of the California Institute of Technology's Owens Valley Radio Observatory.

D. County-wide wireless communications coverage and capability is and will be beneficial to the health, welfare, safety, and convenience of Inyo County residents as well as to those who visit or do business in the county.

E. For these reasons, the addition of this chapter to the Inyo County Code is necessary to establish and provide county policies, procedures, and standards to govern the location, construction, appearance, modification, and removal of wireless communications facilities and their ancillary facilities in the unincorporated part of Inyo County. (Ord. 1052 § 1 (part), 2002.)

18.76.020 Purpose and authority.

A. The purpose of this chapter is to facilitate the provision of county-wide wireless communications while addressing the concerns set forth in Section 18.76.010; specifically, to:

1. Ensure that sufficient wireless communications facilities are established to allow for countywide wireless communications for the safety and convenience of the public;

2. Implement Inyo County's goals of supporting and expanding tourism while maintaining the county's natural environment and rural quality of life;

3. Require that those who intend to construct or operate wireless communications facilities in Inyo County to submit plans concerning those facilities to the county prior to the construction thereof;

4. Avoid the over-concentration of wireless communications facilities on the limited amount of privately owned open space, residential, and commercial land in Inyo County;

5. Enhance the ability of providers of wireless communications services to provide such services in an efficient manner, with minimal adverse impact to the visual and economic character of the county;

6. Protect residential areas and residential land uses from any adverse impacts of wireless communications facilities and the other structures and construction that support those facilities;

7. Avoid damage and injury to persons and property that could result from the structural failure of wireless communications facilities and/or supporting structures, through the careful engineering and siting of such facilities and structures;

8. Minimize the number of wireless communications facilities, support structures, and ancillary facilities in the county;

9. Ensure that, to the extent feasible, all wireless communications facilities and ancillary facilities in Inyo County are located and designed in a manner that minimizes their visual impact through careful design, siting, landscaping, and the use of alternative designs and camouflaging;

10. Encourage the placement and joint use or "co-location" of wireless communications facilities on existing structures, as opposed to the construction of new structures and facilities;

11. Avoid any incompatibility between wireless communication facility-generated radio emissions and the United States military's operations and test programs at Edwards Air Force Base, China Lake Naval Air Weapons Station, and the Fort Irwin National Training Center and the civilian radio astronomy operations of the California Institute of Technology at the Owens Valley Radio Observatory;

12. Avoid the blight of abandoned wireless communications facilities by ensuring that those who construct or install such facilities post adequate financial mechanisms to assure that such facilities, if abandoned, can be removed and the affected sites reclaimed;

13. Minimize light pollution from wireless communications facilities.

B. This chapter is enacted pursuant to the authority given the board of supervisors by Section 7 of article XI of the California Constitution, Section 704 of the Telecommunications Act of 1996 (47 U.S.C. § 332(c)(7)), the Planning and Zoning Law of California (Government Code § 65000 et seq.), and, with respect to lands owned by the United States, by the authority of local governments to apply and enforce environmental laws thereon as recognized by the U.S. Supreme Court in California Coastal Commission v Granite Rock Company, 480 U.S. 572 (1987). (Ord. 1052 § 1 (part), 2002.)

18.76.030 Scope and applicability.

A. Any person who proposes to construct, install, establish, modify, or expand a wireless communications facility in the unincorporated part of Inyo County shall be subject to and comply with all applicable provisions of this chapter.

B. Any telecommunications facility existing in the unincorporated part of Inyo County on the effective date of the ordinance enacting this chapter shall, to the extent it is not in compliance with the provisions of this chapter, be considered and treated as a nonconforming use; and on that date the owner or operator of, and any other person responsible for, any such facility shall be subject to and comply with this chapter including, without limit, the requirement for submission and approval of a wireless communications plan in accordance with Section 18.76.050.

C. The provisions of this chapter shall apply to, and be met by the proponent of, any application or proposal for the modification, expansion, installation, or construction of a wireless communications facility submitted to the Inyo County Planning Department during the time that the interim urgency ordinances enacted by Inyo County concerning such facilities were in effect.

D. The provisions of this chapter shall apply to, and be met by the proponent of, any application or proposal for the modification, expansion, installation, or construction of a wireless communications facility on land in the unincorporated part of the county owned by the United States but, by such declaration of applicability, the county of Inyo asserts only environmental-review authority, and not land-use authority, over such lands.

E. Exemptions. Persons who own, operate, or are responsible for the communications facilities listed below shall be exempt from the provisions of this chapter:

1. Any facility used, exclusively, for public safety purposes by a Public Safety Network or for non-commercial governmental purposes by a public entity;

2. Any facility used exclusively for the transmission of television and/or radio broadcasts;

3. Any tower antenna that is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive-only antennas;

4. Any parabolic dish antenna used exclusively for transmission or reception of radio signals associated with satellites. (Ord. 1052 § 1 (part), 2002.)

18.76.040 Definition of terms.

The following terms have the following meanings in this chapter:

A. "Alternative Design" means the design or configuration of a wireless communications facility such that it is not readily recognizable as communications equipment.

B. "Ancillary facilities" means all of the buildings, structures, cabinets, vaults, and equipment associated with or required for operation of wireless communications facilities and systems including, without limit, repeaters, equipment housing, fencing, ventilation, and other mechanical equipment; this term shall be interpreted broadly in the administration of this chapter.

C. "Antenna" means any exterior apparatus designed or intended for telephonic, radio, or television communications through the sending and/or receiving of electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless communications signals, or other communication signals; a parabolic dish antenna used for satellite communications is not included within this definition.

D. "Applicant" means any person who seeks or who has applied for issuance of any permit or approval required by this chapter, regardless of whether that person has already received a permit or approval pursuant to this chapter.

E. "CEQA" means the California Environmental Quality Act (Public Resources Code § 21000 et seq.) and the regulatory Guidelines promulgated hereunder.

F. "Co-location" means the placement of two or more wireless communications facilities in the same or proximate location or on the same support structure.

G. "Height" means, when referring to ground-mounted wireless communications facilities, the distance between the lowest natural undisturbed ground surface at the base of the facility and the top of the facility or the

top of the highest antenna or piece of equipment attached thereto, whichever is greater; for building-mounted wireless communications facilities, "height" means the distance between the top of the building on which the facility is mounted and the top of the facility or any or screening structure, whichever is higher. In determining whether a building-mounted facility exceeds or will exceed the height limitations of the zoning district in which it is or will be located, the height of the facility is the combined height of the building and the facility and/or screening structure.

H. "Monopole" means a type of tower or structure supporting a wireless communications facility or facilities that is self-supporting and made of a single shaft of wood, steel, concrete, or other material and a platform or racks for the placement of panel antennas.

I. "Mount" means the structure or surface upon which a wireless communications facility is mounted, and includes the following types of mounts:

1. Building-mount: A mount in which the facility is placed on the roof or side of a building;
2. Ground-mounted: A mount in which the facility is mounted on the ground;
3. Structure-mounted: A mount in which the facility is mounted on or in a structure other than a building.

J. "Personal wireless service facility" means a facility for the provision of personal wireless services (PCS) as that term is defined in the Telecommunications Act of 1996.

K. "Wireless communications" means any personal wireless services, as that term is defined in the Federal Telecommunications Act of 1996, including FCC-licensed commercial wireless telecommunications services such as cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging, and similar services that currently exist or that may in the future be developed to provide wireless communications services; the term does not include services of any amateur radio facility owned and operated by a federally-licensed amateur radio station operator or used exclusively for "receive-only" antennas, nor does it include noncellular telephone service.

L. "Wireless communications facility" means a facility designed and/or used for the purpose of transmitting, receiving, or relaying voice and/or data signals from various wireless communication devices and includes any transmission tower, antenna, or other facility designed or used for that purpose. For purposes of this chapter, amateur radio transmission facilities, facilities operated exclusively as part of a public safety network, and facilities used exclusively for the transmission of television and/or radio broadcasts are not "wireless communications facilities." (Ord. 1052 § 1 (part), 2002.)

18.76.050 Wireless communications plans and subsequent applications.

A. Any person wishing to construct, install, expand, or modify any wireless telecommunications facility in the unincorporated part of Inyo County shall, prior to such activity, apply for and gain approval by the Inyo County planning commission of a wireless communications plan in accordance with this chapter.

B. To be considered by the planning commission, a proposed wireless service plan shall include, at a minimum, the following:

1. A detailed description of the applicant's existing wireless communications facilities in Inyo County, by size, type, frequency range, configuration design, coverage area, and relationship to other such facilities;
2. A detailed description of the applicant's plans with respect to wireless communications facilities in Inyo County including the types, configurations, locations, and coverage areas of the facilities it intends to modify, expand, install, construct, operate, lease, or deploy, and the present or anticipated commitments received by the applicant from wireless communications service providers with respect to the use of such facilities;
3. The applicant's commitment to and its methods for meeting, to the maximum extent feasible, the standards and measures in this chapter concerning the design, location, configuration, deployment, and removal of

wireless communications facilities in Inyo County, as well as the remediation of former facility sites, and a description of its policies and practices for doing so, all on both a county-wide and facility-specific basis;

4. The applicant's certification that it has provided a copy of its proposed plan to the Department of Defense installations listed below, to the Owens Valley Radio Observatory, and to the operator of every general aviation airport in Inyo County, and a description or copy of any response:

a. Air Force Flight Center at Edwards Air Force Base,

b. China Lake Naval Air Weapons Station,

c. Bicycle Lake Army Airfield at Fort Irwin.

5. The name and address of the applicant's agent for the receipt of correspondence and notices from Inyo County pursuant to this chapter.

C. Information in an applicant's proposed or approved wireless communications service plan that is either proprietary or a trade secret shall be clearly designated as such by the applicant and shall not be disclosed by the county to third parties unless authorized in writing by the applicant or required by law.

D. Upon a determination by the planning director that an applicant's proposed wireless communications plan is complete, the planning commission shall hold a public hearing to consider whether to approve the plan; the planning commission shall be the decision-making body with respect to that act, and its consideration of the plan shall be a discretionary act under CEQA.

E. After discharging its duties as the environmental review board in accordance with Section 15.12.040, the planning commission shall approve the wireless communications plan if it finds:

1. That the plan is in substantial compliance with the requirements of this chapter;

2. That the applicant has made a good faith effort and commitment to meeting the standards and goals of this chapter;

3. That none of the entities listed in subsection B.4. have interposed an objection to the plan; and

4. That execution of the plan will not pose or create a threat to the health, safety, or welfare of the public.

F. Following approval by the planning commission of an applicant's wireless communications facilities plan, the applicant may submit to the Inyo County planning director applications for the modification, expansion, installation, or construction of wireless communications facilities in the unincorporated part of Inyo County in accordance with Section 18.76.070.

G. The planning director shall review the application and determine whether the activity proposed will require a conditional use permit pursuant to this chapter and/or a variance pursuant to Chapter 18.81; if it does, the application will be processed accordingly, unless the applicant modifies the application to eliminate that requirement.

H. If the planning director determines that the activity proposed does not require a conditional use permit or a variance and that it is or will be in substantial conformance with the applicant's approved wireless communications plan, the director shall, except as provided in subsection J., approve and issue a permit for that activity; otherwise the director shall deny the application; in either case the director's decision shall be a ministerial act under CEQA.

I. In order to provide notice to the public and to commence the period for filing any appeal, the planning director shall post notice of the director's approval of any application pursuant to this chapter in a manner similar to that followed with respect to the notice of exemption filed under CEQA.

J. If the planning director determines that extraordinary or unique circumstances attend an application for an activity not requiring a conditional use permit or variance, the director shall forward the application for consideration by the planning commission at a public hearing; in that case the planning commission's consideration of the application shall be a discretionary act under CEQA and, in making its decision on the application, the commission shall apply the standards and be guided by the factors set forth in Section 18.76.060 concerning condi-

tional use permits; for purposes of this section, any application which proposes the construction of a road or substantial new construction shall be considered to be an application to which extraordinary circumstances attend.

K. Once approved, a wireless communications plan may be amended only upon application to, and approval by, the planning commission; in considering whether to approve such an amendment, the planning commission shall be guided by the relevant portions of this chapter. (Ord. 1052 § 1 (part), 2002.)

18.76.060 Conditional use permits.

Any person desiring to modify, expand, install, or construct a wireless communications facility in the unincorporated portion of Inyo County that will be either:

A. Located within, or within three hundred feet of, any residential zoning district, i.e., R-1, R-2, R-3, RR, RR-0.5, or RMH; or

B. Located within an OS, C-1, C-2, C-3, C-4, C-5, M-1, or M-2 zoning district and which, if constructed, will exceed the maximum height allowed in that district for principal permitted uses, shall first procure a conditional use permit in accordance with this chapter and Chapter 18.81; no conditional use permit may be sought unless the applicant has a planning commission-approved wireless communications plan on file with the planning department. (Ord. 1052 § 1 (part), 2002.)

18.76.070 Application requirements.

A. Any person wishing to modify, expand, install, or construct a wireless communications facility in the unincorporated portion of Inyo County shall, pursuant to Section 18.76.050 F. and regardless of the type of approval sought, provide the following to the Inyo County planning department:

1. A reference to the portion of the applicant's approved wireless communications plan in which the proposed activity is described and a statement as to how the desired activity or facility is consistent with that plan, as well as a map showing how the proposed facility relates to the applicant's network, if any, of existing and/or proposed facilities sites as described in that plan;

2. Site plans for the proposed activity or facility, drawn to scale, including any landscaping plans;

3. A statement that the applicant owns the site or has permission from the landowner to engage in the activity or construct the facility applied for;

4. A description of all easements on the affected property;

5. A U.S. Geological Survey topographic map or other similarly-detailed survey, showing topographic contours, the proposed facility and any existing at the site, and all existing and proposed ancillary facilities, roads, fencing, etc.; the map shall depict the site upon which the construction or activity is proposed to be located or occur and the area within a minimum of three hundred feet in all directions thereof;

6. A description of the number, type, dimensions, and radio frequencies of all antennas and equipment cabinets/structures present or proposed for use by the applicant at or near the site;

7. A map depicting all existing wireless communications facilities within two miles of the proposed facility or site;

8. A statement as to whether the proposed wireless communications facility is intended to increase the quality or capacity of wireless communications service in an area to which such service has already been extended, or to extend wireless communication service to an unserved area and, in the case of an application for approval of a new wireless communications facility, a certification or other proof that the facility will forthwith be utilized to provide wireless communications service; such other proof shall consist of a lease for the use of the facility, or a letter of intent to enter into such a lease, executed by a provider of wireless communications services;

9. A statement as to whether and, if so, how the facility is or will be designed to allow for co-location, as well as a description of how or to what extent the facility and the site upon which it is proposed to be located will meet the General Requirements set forth in Section 18.76.100 including, to the extent relevant:

a. A description of how the proposed facility has been designed and/or will be installed or constructed so as to be as inconspicuous as possible, including landscaping plans,

b. Sample exterior materials and colors of the proposed facility and any ancillary facilities and associated structures such as equipment cabinets and fences,

c. Visual impact demonstrations including before and after photo-simulations showing the height, location, and appearance of the proposed facility, as viewed from residences and public thoroughfares and places in the vicinity both at night and during the day.

10. A statement describing the applicant's site selection process and explaining why the applicant is seeking to locate the facility on the site proposed;

11. For applications for facilities intended to extend wireless communications services to an unserved area, a map based on either radio frequency propagation or similar engineering data, or drive tests at the proposed site and its vicinity, showing estimated coverage of the proposed facility;

12. A statement verifying that the radio-frequency radiation and electromagnetic field emissions of or associated with the proposed facility will, when operating at full strength and capacity, fall within the applicable standards adopted by the Federal Communications Commission and, if the proposed facility is to be co-located with other wireless communications facilities, a similar verification with respect to the cumulative emissions from those facilities;

13. The applicant's certification that it has provided notice of the application to the Department of Defense installations listed below, to the Owens Valley Radio Observatory, and to the operators of all general aviation airports within five miles of the site of the proposed facility or activity and a description or copy of any response:

a. Air Force Flight Test Center at Edwards Air Force Base,

b. China Lake Naval Air Weapons Station,

c. Bicycle Lake Army Airfield at Fort Irwin.

14. A plan for the removal of the facility and reclamation of the site upon which it is or will be located, including a time frame for doing so;

15. In the case of a facility proposed to be located on land owned by the United States, either written approval of the facility from an authorized representative of the federal agency that administers that land, or a statement from that agency stating that it will not consider the proposal until the applicant has first obtained approval thereof from Inyo County pursuant to this chapter.

B. An applicant may combine or consolidate the maps, data, statements, and other items required by this section as long as that information is fully and clearly provided.

C. In addition to the above requirements, if an applicant is proposing to place or construct a wireless communications facility on or within three hundred feet of a residentially-zoned parcel of land, the planning department may, prior to formal acceptance of the application for the facility, convene a "Pre-Development Meeting" concerning the proposed facility among the applicant, members of the planning department and other affected county departments, and representatives of other interested public agencies to address any special or unique concerns posed by the application. (Ord. 1052 § 1 (part), 2002.)

18.76.080 Review and approval factors—Conditional use permits.

A. In addition to the considerations in Section 18.81.100, the Inyo County planning commission shall consider the following factors in determining whether to approve an application for a conditional use permit for a wireless communications facility:

1. The height of the proposed wireless communications facility, and its proportionality to and compatibility with existing structures;

2. The proximity of the proposed facility to any residences and/or residential district boundaries;

3. The zoning and the nature of existing uses on adjacent and nearby properties;

4. The nature, type, and extent of surrounding tree coverage, foliage, and other landscape features;

5. The design of the facility, with particular regard for design characteristics that will reduce or eliminate its conspicuousness and/or obtrusiveness;

6. The proposed ingress and egress to the site of the facility;

7. The availability and suitability of existing facilities and structures, especially whether suitable alternative sites, for which a conditional use permit would not be required, are available to the applicant.

B. The planning commission shall not approve a conditional use permit for the modification, expansion, installation, or construction of a wireless communications facility unless it finds, in addition to the determinations required by Section 18.81.100, that the applicant has, to the maximum extent feasible, designed and configured the facility to meet the requirements and standards set forth in Section 18.76.100 and, in the case of a facility to be installed or constructed in a residential zoning district, that the location of the facility in that district is necessary to provide wireless communications services in that area. (Ord. 1052 § 1 (part), 2002.)

18.76.090 Term, expiration, and renewal of conditional use permits.

A. Conditional use permits for wireless communications facilities issued pursuant to this chapter shall expire ten years after their issuance unless the planning commission specifies a lesser period when it approves the permit.

B. Conditional use permits for such facilities may be renewed by the planning commission for additional periods if it finds either that:

1. The facility has not had and will not have a significant adverse effect on surrounding land uses or the public; or

2. Despite its adverse effects, replacement or modification of the facility to remove its deleterious effects is not reasonably feasible and removal of the facility would result in a significant and irreplaceable loss of wireless communication coverage.

C. Notwithstanding the forgoing in this section, the planning commission shall renew a conditional use permit when it is shown to the satisfaction of the commission that failure to do so would deprive the owner, operator, or other responsible person of a reasonable return on the investment made by that person in the permitted facility and in reliance on the conditional use permit; however, any such renewal shall be for the minimum period necessary for the owner, operator, or other responsible person to recoup that investment. (Ord. 1052 § 1 (part), 2002.)

18.76.100 General requirements.

A. Regardless of the type of county approval required, the following standards, as they may be deemed applicable by the planning department, shall be met with respect to any wireless communications facility that is modified, expanded, installed, operated, or constructed in the unincorporated part of Inyo County, and shall be conditions of approval in any permit issued by the county with respect to any such facility:

1. Separation from Residential Use: No wireless communications facility that is designed to be taller than the maximum height allowed for principal permitted uses in the zoning district in which the facility is to be located shall be placed or erected closer than a distance equal to one hundred ten percent of the height of the facility from any residence.

2. Minimization of Visual Impact: All wireless communications facilities governed by this chapter shall be designed, configured, installed, and constructed so as to minimize their visibility. To this end, the applicant for a county permit for any such activity and the owner or operator of, or other person responsible for, any such facility shall, to the maximum extent reasonably feasible, observe and implement the following measures with respect thereto:

a. Co-location/Alternative Design of Facilities: The applicant shall co-locate facilities when it is feasible to do so and when it will mitigate or minimize the adverse effects of the facility on land use compatibility, visual resources, public safety, and/or other environmental factors. Co-location is not required when it will create or increase such adverse effects or technical evidence demonstrates to the satisfaction of the planning director or the planning commission, as the case may be, that it is not feasible due to physical, spatial, or technological limitations. Fiscal constraints or competitive conflicts are not considered justifiable reasons for not co-locating a new facility. No new wireless communications facility may be installed on an undeveloped site unless the facility will blend in with the surrounding natural and/or manmade environment in such a manner so as to be effectively unnoticeable, unless reliable evidence demonstrating all of the following is provided to the planning director or the planning commission, as the case may be:

i. A clear and convincing need for the facility;

ii. The infeasibility or undesirability of co-locating the facility; and

iii. The inability to develop an alternative design for the facility.

b. Ridgeline Sites: Wireless communications facilities shall be sited below ridgeline and be designed to minimize their profile, e.g. screened, depressed, or located behind berms that match the landscape at the site.

c. Alternative-Design/Use of Camouflage: Wireless communications facilities and all ancillary facilities shall be designed and constructed or installed using such alternative-design techniques, architectural treatments, and/or camouflaging or screening as will, to the greatest extent possible, minimize their visual impact and allow them to blend in with the existing landscape.

d. Colors/Painting: The paint or other finish applied to wireless communications facilities and ancillary facilities, and to all buildings, poles, towers, antenna supports, antennas, fencing, equipment, gates, and other components associated with a wireless communications facility and/or the site upon which it is located and/or the materials out of which they are made, shall be of such non-reflective colors as will, to the greatest extent possible, minimize their visual impact and allow them to blend in with the existing landscape.

e. Support Facilities: Freestanding, above-ground wireless communications support facilities including equipment shelters shall be no taller than one story and shall be designed and constructed to resemble a structure or facility typically found in the area, or to otherwise blend in with the surroundings; the design must be approved by the Inyo County planning director before a building permit for the structure may be issued.

f. Lighting: Outside lighting is prohibited on wireless communications facilities, ancillary facilities, and supporting structures, and at the site upon which those facilities and structures are located except, and only, to the extent required by the Federal Aviation Administration, the Federal Communications Commission, the Department of Defense, or the Uniform Building Code; to the extent such lighting is required by any of these entities or by the Uniform Building Code, it shall, to the maximum extent feasible, be directed towards the ground and neither cast glare onto adjacent properties, nor disperse into the night sky, nor be a hazard to birds. If necessary, any such required lighting shall be shielded or placed within cowling to prevent it from causing these effects.

g. Dish Design: Open-mesh design shall be utilized for microwave dishes whenever possible.

h. Area Disturbance/Landscaping: Disturbance of/to the landscape and terrain shall be avoided, minimized, and mitigated to the degree feasible in the construction, installation, use, and maintenance of any facility governed by this chapter. All applicants and permit holders shall reclaim disturbed landscape areas immediately fol-

lowing construction of the facility. Disturbance of areas surrounding the site shall be avoided or minimized by utilizing existing disturbed areas for the storage of construction materials and equipment, flagging boundaries of the construction area, and notifying workers of these boundaries and other limits of construction and the need to minimize site damage and disturbance.

i. Vegetation: Wireless communications facilities shall be constructed and installed in such a manner as to maintain and enhance vegetation at the site and existing vegetation shall, to the degree reasonably feasible, be used to screen the facilities. Native and/or fire-resistant, noninvasive adapted vegetation shall be planted and maintained around the facility, in the vicinity of the project site, and along access roads in appropriate situations, when necessary or desirable to provide screening for the facilities and/or to prevent erosion.

j. Facade-Mounted Facilities: Facade-mounted wireless communications facilities shall be camouflaged or incorporated into the building upon which it is placed as part of the dominant design element of the building.

k. Building-Mounted Facilities: Facilities attached to buildings or structures shall be painted to match the existing structure, unless they are used as a design element consistently throughout the building and will add visual interest to the building. When used as a design element, dummy elements may be required to be installed in order to retain the architectural continuity of the building.

3. Compatibility with Military Operations: Any applicant proposing to install or construct a wireless communications facility that will exceed eighty-five feet in height shall, before submitting an application for approval of such facility to Inyo County, notify the Air Force Flight Test Center at Edwards Air Force Base, the Frequency Management Office at the China Lake Naval Air Weapons Station, and the National Training Center and Aviation Air Traffic Control Office at the Bicycle Lake Army Airfield at Fort Irwin of the application and receive written approval thereof from each of those installations.

If an applicant provides such notification but receives no response within forty-five days thereof, Inyo County shall deem the application approved by the military installation failing to respond.

4. Harm to Animals: All wireless communications facilities, and all ancillary facilities and other structures associated with or auxiliary to such facilities shall be designed, configured, located, installed, and constructed so as to minimize their deleterious effects on birds and other animals to the greatest extent possible.

5. Security: Ground-mounted wireless communications facilities shall have appropriate security fencing, gates, and locks. In the instance of a proposed siting on school grounds, day care facility grounds, or in a park or recreational facility, the wireless communications facility, including vehicular ingress and egress. shall be as isolated from, and as minimally intrusive on, those facilities as possible.

6. Roads: Existing roads shall be utilized for the construction of wireless communications facilities and, once a facility is constructed, for access to the facility for any reason; if no roads exist, they shall be designed and constructed so as to minimize their visibility and erosion-causing effects.

7. County Zoning Preferences: The county has determined that wireless communications facilities are more compatible with certain land uses than with others, and therefore establishes the following preferential hierarchy to be followed by an applicant, to the extent feasible, when selecting sites for the location of such facilities: the applicant shall attempt first to select sites in the public zoning district, then those in an industrial/manufacturing zoning district, then those in a commercial zoning district, and lastly those in the open space zoning district; sites within a residential zoning district are disfavored.

8. County Mounting-Style Preferences: The county has determined that certain types of wireless communications facility mountings have less visual impact than others, and therefore establishes the following preferential hierarchy to be followed by an applicant, to the extent feasible, when designing or selecting among mounts for such facilities: the applicant shall attempt first to use a facade mount, then a roof mount, then a ground mount, and lastly a free-standing monopole.

9. Construction Standards: The design, construction, modification, installation, and expansion of any wireless communication facility or ancillary facility governed by this chapter shall be in conformance with the Uniform Building Code.

10. Conflict with Federal Law: An applicant need not comply with the requirements of this section to the extent they are preempted by federal law. (Ord. 1052 § 1 (part), 2002.)

18.76.110 Financial assurances.

A. The planning director or the planning commission, as the case may be, shall, as a condition of approval of any permit issued pursuant to this chapter for the installation or construction of any wireless communications facility, require the applicant to post a financial assurance mechanism to assure the removal of the facility and reclamation of the site upon which it is located in the event the facility becomes abandoned.

B. The financial assurance mechanism shall be held until the wireless communications facility is removed, and shall be made payable to the Inyo County planning department, which shall use the mechanism solely for the purposes described in subsection A.

C. The financial assurance may take the form of a surety bond, an irrevocable letter of credit, a certificate of deposit, cash, or such other form as the planning department determines is adequate; in any event, the mechanism shall meet the applicable financial assurance guidelines and regulations developed and promulgated under the Surface Mining and Reclamation Act of 1975 (Public Resources Code § 2710 et seq.).

D. The amount of the financial assurance mechanism shall be calculated based on the reasonably-anticipated cost to remove the facility and to reclaim the site upon which it is located; the amount of the mechanism may be adjusted in the event the facility is modified, a portion thereof is removed, the site upon which it is located is partially reclaimed, or for any other legitimate reason.

E. No wireless communications facility shall be installed, constructed, or operated unless the financial assurance mechanism required to be posted in connection with that facility is in full force and effect. (Ord. 1052 § 1 (part), 2002.)

18.76.120 Notification of transfer of ownership.

Any person to whom a permit has been issued pursuant to this chapter shall notify the planning department in writing of the particulars of any purchase, sale, transfer, merger, acquisition, or other event affecting ownership of the entitlements and privileges associated with or arising from that permit; such notification shall be provided within six months of the ownership-affecting event. (Ord. 1052 § 1 (part), 2002.)

18.76.130 Abandoned facilities.

Any wireless communications facility that is not operated on a functional basis for a period of twelve consecutive months shall be deemed abandoned, and the owner or operator of, or other person responsible for, the facility shall remove same within ninety days of its receipt of notification of the planning department's determination that the facility has been abandoned. Failure of owner, operator, or other responsible person to timely remove the facility following its receipt of such notice of abandonment shall result in the institution of proceedings for forfeiture of the financial assurance mechanism posted in connection with the facility. (Ord. 1052 § 1 (part), 2002.)

18.76.140 Modification and revocation of permits.

If the Inyo County planning commission finds, following a public hearing, that the conditions of approval of any conditional use permit or other permit or authorization issued pursuant to this chapter have not been fulfilled, or that the use or uses allowed by any such permit has or have resulted in a substantial adverse effect on

the general welfare of the public or any persons owning, occupying, or using property adjacent or proximate to the site of the permitted activity, or is detrimental to the provision of public facilities or services, the commission may modify or revoke the permit. If the permit is revoked, the owner or operator of, or other person responsible for, the subject facility shall promptly remove same and reclaim the site upon which it was located to the satisfaction of the Inyo County planning director. (Ord. 1052 § 1 (part), 2002.)

18.76.150 Responsibility for inspection costs.

The owner or operator of, or other person responsible for, a wireless communications facility authorized by a permit issued pursuant to this chapter shall be responsible to the county of Inyo for the payment of all reasonable costs associated with the necessary inspections of the conditions of approval associated with the permit, including costs incurred by the Inyo County planning department, the Inyo County public works department, and any other department of Inyo County. (Ord. 1052 § 1 (part), 2002.)

EXHIBIT "C"

Testimony Presented by:

Michael A. Dorame
1564 Indian Springs Drive
Lone Pine, CA 93545
1-760-876-5086

February 27, 2013

Inyo County Planning Commission Chairman, Commissioners and County Staff Members;

First of all, and most important to me personally, is that none of my comments or any part of my testimony is to be misconstrued as "an attempt to malign or embarrass" the applicant or any county staff personnel associated with this project, titled: Conditional Use Permit #2012-04/Branson.

After considerable research, I have several points that lead me to question the veracity of the draft mitigated negative declaration of environmental impact and initial study.

POINT#1

This document describes the project as a proposal to build a 30 foot tall tower to provide wireless internet access. All other related documents, including the public hearing agenda refer to a 30 foot tower. The document also states that "the tower will be limited to 30' in height based on the zoning district (RRM) regulations that it is located in".

Why is this point so important?

Because when I went to the County Clerk's office and purchased a copy of the easement conveyance paperwork, it included a schematic drawing of the proposed tower. **It is described as a 32' T300 Titan Tower, and according to its manufacturer, it is 32' tall because they are assembled in 8' sections. How tall will the tower be when it is completed with the addition of the Airstream antenna?** Who will inspect, measure and ensure that it doesn't exceed 30' when completed? Can the tower size discrepancy of 30' or 32' be simply a case of unintentional misrepresentation? Questions that take me to:

POINT#2

Mr. Branson is attributed with making the statement that the 26' antenna that is attached to the garage at 1601 Indian Springs Drive **was attached without proper county permitting**. Do these two examples indicate a pattern of deception that enable the applicant to circumvent the public process as set forth in the ordinance regulating the placement of wireless communication facilities?

Regarding "Inyo County Code, Chapter 18.76 Entitled "Regulation of Wireless Communications Facilities" I respectfully disagree and take exception to the statement made to me by the Planning Associate that this "Wireless Communications Facilities" ordinance does not apply to this particular application process.

I will elaborate by stating that I was a member of the Inyo County Board of Supervisors at the time the ordinance was drafted and subsequently codified by our Board. Prior to my election to the Board, I worked in the telecommunications industry for 31 years. Needless to say, I had some experience with the technology of wireless communications and took a special interest in the Ordinance. The Associate Planner who worked on this Ordinance, met with me, one on one, numerous times in order to keep me and our Board on track. We had to be expedient at the time, because wireless technology was moving us into the future and we recognized the need for addressing concerns relative to the placement of wireless facilities in Inyo County.

If your Commission were to peruse this ordinance, being carefully thorough, I'm sure you would understand why I don't believe that this Conditional Use Permit Application hearing is properly before you at this time; especially read the following sections:

- SECTION 18.76.050 "Wireless Communications Plans and Subsequent Applications".
- SECTION 18.76.060 "Conditional Use Permits".
- SECTION 18.76.070 "Application Requirements".
- SECTION 18.76.080 "Review and Approval Factors – Conditional Use Permits"
- SECTION 18.76.090 "Term, Expiration and Renewal of Conditional Use Permits"
- SECTION 18.76.100 "General Requirements"

The intent of the language in the Ordinance was to ensure compliance by ALL WIRELESS COMMUNICATIONS FACILITIES APPLICANTS, PERIOD!

One last point regarding the "Public Hearing Notice" letter that was sent to the affected residents, we were admonished about challenging any decision, determination or finding by your Commission in a court of law. What I found interesting is that the letter did not advise us of our right to appeal your decision, determination or finding to the Inyo County Board of Supervisors and the process by which to do so. Was this an unintentional omission or just standard policy?

Please consider that the Planning Department and your Commission have a public service responsibility to properly inform your constituency of rules and regulations that may better enable them to understand the processes and complexities of their local government bureaucracy. It's easy to understand this concept if you think of yourselves as a public service organization.

In closing, I appreciate the time and consideration you've given me and I do expect that you'll provide timely answers to my questions.

I also request that no decision of approval be given to the applicant until such time that he is fully compliant with the "Wireless Communications Facilities Ordinance".

Respectfully Submitted by,

Michael A. Dorame

ATTACHMENTS:

EXHIBIT "A"
"Telecommunications Easement Conveyance Documents"

EXHIBIT "B"
"Inyo County Ordinance" 18.76.010 Chapter 18.76
"Regulation of Wireless Communications Facilities"
SECTIONS: 18.76.010 Through 18.76.150 inclusive

EXHIBIT "D"

Planning Department
168 North Edwards Street
Post Office Drawer L
Independence, California 93526

Phone: (760) 878-0263
FAX: (760) 878-0382
E-Mail: inyoplanning@inyocounty.us

AGENDA ITEM NO. **5 (Continuation, Action Item - Public Hearing)**

DATE: **February 27, 2013**

SUBJECT: **Conditional Use Permit No. 2012-04/Branson**

EXECUTIVE SUMMARY

The applicant proposes to build a 30-foot tall communications tower at 1579 Indian Springs Dr., in the Alabama Hills and remove a 26-foot existing antenna attached to a garage located next door to the proposed project location at 1601 Indian Springs Dr. The proposed tower at 1579 Indian Springs Dr. will re-transmit wireless internet signals from existing towers located at 125 North Lakeview Street in Lone Pine, and 585 Alabama Drive in the Alabama Hills, making wireless internet service available to residential clients in the Alabama Hills and to a broader clientele area in the future.

Staff presented the staff report and public input was given during the Planning Commission meeting held December 5, 2012. Commissioner Paul Payne moved to continue the item until the January 23, 2013 Planning Commission meeting. The motion passed 4-0 with Commissioner Corner abstaining. The notices that were mailed to property owners for the January 23, 2013 meeting were incorrect and Conditional Use Permit No. 2012-04/Branson was rescheduled for the February 27, 2013 Planning Commission meeting.

PROJECT INFORMATION

Supervisorial District: Fifth

Applicant: Bruce Branson, Lone Pine TV

Landowner: Bruce Branson

Addresses/ Community: 1579 Indian Springs Drive, Alabama Hills, Lone Pine

A.P.N.: 026-340-04

General Plan: Parcel 026-340-04 has two General Plan designations. The portion of the parcel the proposed project will be located is Residential Rural Medium Density (RRM).

Zoning: Parcel 026-340-04 has two zoning designations. The portion of the parcel the proposed project will be located is Rural Residential with a 2.5-acre minimum (RR-2.5)

Size of Lot: Approximately 24-acres

Existing Use: The project site is developed with a single-family dwelling, and two garages.

Surrounding Land Use:

Location:	Use:	Gen. Plan Designation	Zoning
Site	Residential/OpenSpace	RRM/OSR	RR-2.5/OS-40
North	Residential	RRM	RR-2.5
East	Vacant	OSR	OS-40
South	Residential	RRM	RR-2.5
West	Residential	RRM	RR-2.5

Recommended Action: **Make Findings and Approve Conditional Use Permit No. 2012-04/Branson.**

Alternatives: 1.) **Deny** the Conditional Use Permit thereby not allowing the applicant to improve wireless internet service to the Alabama Hills and the potential to serve a broader clientele in the future.
2.) **Add To or Modify** the conditions of approval.
3.) **Direct** Planning Staff to provide specific information at a future Planning Commission hearing

Project Planner: Cathreen Richards, Associate Planner

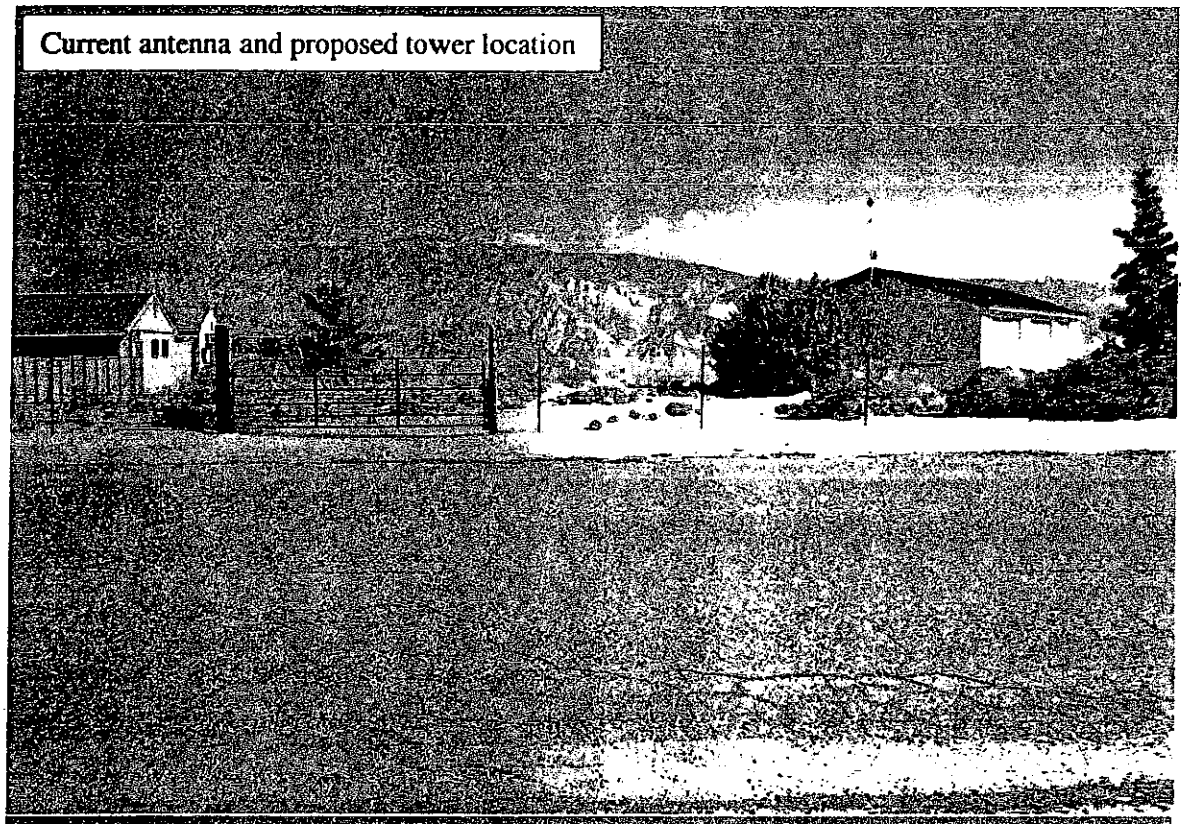
STAFF ANALYSIS

Background/Overview

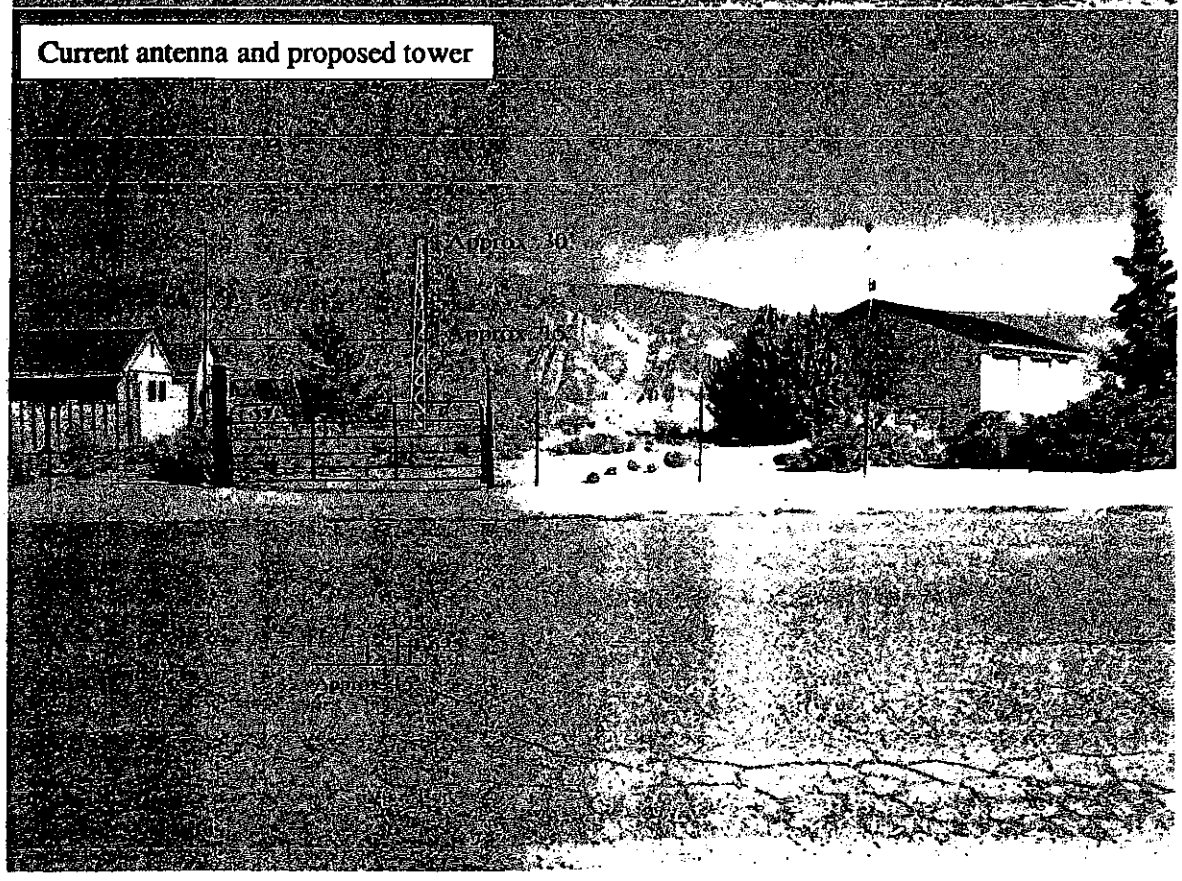
Mr. Branson, who represents Lone Pine Television, is applying to place a 30-foot tall communications tower at 1579 Indian Springs Drive. The goal for the project is to provide high speed cable internet access to residents of the Alabama Hills and allow the ability to provide access to wireless internet service to a broader clientele in the future.

The property can be seen below. The tower will be located on the left side of the photograph to the south of the Arizona Cypress tree. The antenna on the garage located on the right side of the photograph will be removed. The photograph below has had a rendition of the communications tower (draw to scale based on the relative height of the garage, which is approximately 15') placed on it.

Current antenna and proposed tower location



Current antenna and proposed tower



2) Mitigated Negative Declaration

Staff presented the application to the Planning Commission at December 5, 2012 meeting (please see attachment A). There were 3 people from the Indian Springs neighborhood present: Zinda Edgar, Roberta Jarnigan; and, Michael Dorame, as well as, the applicant Bruce Branson and Kyle Wing, Assistant Manager of Lone Pine TV. Mr. Branson and Mr. Wing explained the technical aspects of the project and introduced the information provided in 2 additional letters (please see Attachment B) that were passed out to the Commissioners at the beginning of the meeting. One letter addressed the fact that the Indian Springs CC&Rs are invalid due to the absence of an active homeowners association and the other provided the opinion that WiFi tower/antennas can actually increase property values. Ms. Jarnigan provided an additional letter from Ms. Dorothy Alcorace (please see Attachment B) who opposes the project. During the public comment period numerous comments and questions were given by the 3 residents of the Indian Springs neighborhood regarding the application. Many of these comments were the same as those provided in the original letters (please see attachment A). Staff has provided responses to the comments/questions generated at the meeting, as follows:

Comment/Question: The new tower will not will not improve internet service in the Alabama Hills.
Response: Please see 'Response to Comments' in the December 5, 2012 staff report, attachment A.

Comment/Question: Existing Covenants, Conditions and Restrictions should be enforced.
Response: Please see 'Response to Comments' in the December 5, 2012 staff report, attachment A.

Comment/Question: Notices were sent to only 3 neighbors due to the 300' requirement.
Response: CEQA notifications were sent to the following:

CEQA mailing list

Name	Address	City State Zip
LADWP	300 Mandich St.	Bishop, CA 93514
USA BLM	2800 Cottage Way	Sacramento, CA 95825
Robert and Sue Jaussaud	PO Box 5279	Mohave Valley, CA 86446
Michale and Loretta Dorame	1564 Indian Springs Dr.	Lone Pine, CA 93545
Elaine Didge	624 Seabright Lane	Solana Beach, CA 92075
Robert and Gayle Frickel	297 N. Tumbleweed Road	Bishop, CA 93514
Jarnagin and Roberta Barton	PO Box 531	Lone Pine, CA 93545
John Replogle	1520 Indian Springs Dr.	Lone Pine, CA 93545
Ila Lauten	1575 Indian Springs Dr.	Lone Pine, CA 93545
Zinda Edgar	1596 Indian Springs Dr.	Lone Pine, CA 93545
Lone Pine TV	PO Box 867	Lone Pine, CA 93545
Lone Pine Chamber	P.O. Box 749	Lone Pine, CA 93545
Lone Pine Fire Department	P.O. Box 1007	Lone Pine, CA 93545
Lone Pine Paiute-Shoshone Reservation	P.O. Box 747	Lone Pine, CA 93545
Bishop Public Library	210 Academy Street	Bishop, CA 93514
Big Pine Public Library	P.O. Box 760	Big Pine, CA 93513
Lone Pine Public Library	168 N. Edwars Street	Lone Pine, CA 93545

Email list

Tim Fox - China Lake	timothy.h.fox@navy.mil
Kevin Mazzu - Alabama Hills Stewardship Group	kevin.mazzu@dww-inc.com
Burnadette Lovato - BLM	Bernadette_Lovato@blm.gov

Response: The property was sold as a utility easement, not as a new or different parcel. This is a common practice where a piece of land is sold specifically for the siting of a utility's infrastructure. The easement is subject to the same zoning as the parcel that it is part of. Therefore, the antenna and tower have to meet the setback and height requirements per the RR-2.5 Zone, which they do; and, since it is located on a 24-acre parcel it does meet the 2.5-acre minimum.

Comment/Question: Why didn't the County follow the Telecommunications Ordinance?
Response: It was not the intent of the County when it adopted the Telecommunications Ordinance to apply it to WiFi antennas.

Comment/Question: Will the property be taxed as a commercial use or as a Public/Quasi-Public use?
Response: The County uses the same tax rate for Commercial and Residential uses. The easement will be valued with the tower/antenna and this will be reflected in Lone Pine TV's taxes.

Comment/Question: The Negative Declaration states that the project will require little to no water.
Response: Staff cannot find this statement in the Negative Declaration; however, the Conditions of Approval for this project include the planting and **maintaining** of Arizona Cypress trees or trees of similar height, width, and climate adaptability, at the maximum height they are available from a retailer to expedite their reaching the 30-foot height required to screen the tower. Maintaining includes watering.

Comment/Question: The project will have an effect on the viewshed and could detract from property values.
Response: Staff and the applicant recognize the impact the tower can have on the viewshed and have included Condition of Approval #5 to screen the tower (please see Conditions of Approval in the December 5th staff report). It should also be noted that the tower will affect the views from 4 homes that are located on Indian Springs Drive, not the entire area. The claim that the tower will have negative effects on property values has not been supported. The applicant did, however, provided a letter (handed out at the December 5, 2012 Planning Commission meeting) indicating that WiFi towers can have a positive effect on property values.

Comment/Question: Power poles do not run through the neighborhood.
Response: There are power poles located to the west of the project location that is part of immediate neighborhood.

Comment/Question: What will happen to service provision from now until the tower is built or if the tower is not built?
Response: The applicant has stated that the new owner of the property, with the garage that currently houses the antenna, has agreed to allow it to stay if there are no better options for the applicant.

Attachments:

A. December 5, 2012 Staff Report.
B. Letters submitted at the December 5, 2012 meeting.

Prepared By:

Cathreen Richards
Associate Planner

Approved By:

Josh Hart
Planning Director, Inyo County

EXHIBIT "E"

No, the communications tower will be located in already developed residential area. The project proposes no additional development of structures for humans.

IX. HYDROLOGY AND WATER QUALITY: Would the project:

a) Violate any water quality standards or waste discharge requirements? *No, the project consists of one communications tower that will not require or affect water or waste water systems.*	☐	☐	☐	☒
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)? *No, the placement of the communications tower on an already developed residential lot will not require additional extraction of groundwater, and the project will not interfere with groundwater recharge, as it will create only a 4'x4' (16sq.ft.) of impermeable surface area on already disturbed land.*	☐	☐	☐	☒
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site? *No, the project requires no alteration of existing drainages or landscape ditches.*	☐	☐	☐	☒
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on or off-site? *No, the project will only create approximately 4'x4' (16sq.ft.) of impermeable surface. This is a less than significant increase in potential runoff.*	☐	☐	☐	☒
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff? *No, the project will only create approximately 16sq.ft. of impermeable surface. This is a less than significant increase in potential runoff.*	☐	☐	☐	☒
f) Otherwise substantially degrade water quality? *No, the project will not degrade water quality.*	☐	☐	☐	☒
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	☐	☐	☐	☒

facilities, the construction of which could cause significant environmental effects?
No, the proposed project is a single communications tower that will not generate additional stormwater.

d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?
No, the proposed project is a single communications tower that will not require water.

e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?
No, the proposed project is a single communications tower that will not generate wastewater.

f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?
No, the proposed project is a single communications tower that will not generate waste.

g) Comply with federal, state, and local statutes and regulations related to solid waste?
No, the proposed project is a single communications tower that will not generate waste.

XVIII. MANDATORY FINDINGS OF SIGNIFICANCE:

a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?
No, there are no threatened, protected, or species of concern on the proposed project property. In addition, there are no critical, protected, or sensitive habitats on the surrounding developed residential properties. Therefore, the quality of the environment in the rural residential Alabama Hills' neighborhood will not be impacted.

b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?
No, the project is small in scope and will have no impact on existing or future development. There are no project impacts that are cumulatively considerable.

c) Does the project have environmental effects which will cause substantial adverse effects on human beings,

establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including, but not limited to, intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit? *No, the proposed project is a single communications tower that will not generate traffic.*				
b) Conflict with an applicable congestion management program, including, but not limited to, level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways? *No, the proposed project is a single communications tower that will not generate traffic.*	☐	☐	☐	☒
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks? *No, the proposed project is a single communications tower that will not generate traffic, ground or air.*	☐	☐	☐	☒
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)? *No, the proposed project is a single communications tower that will not require new, or changes to the existing, road systems.*	☐	☐	☐	☒
e) Result in inadequate emergency access? *No, the proposed project is a single communications tower that will not affect emergency access to the site or to the surrounding vicinity.*	☐	☐	☐	☒
f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities? *No, the proposed project is a single communications tower that will not generate traffic.*	☐	☐	☐	☒
XVII. UTILITIES AND SERVICE SYSTEMS – Would the project:				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board? *No, the proposed project is a single communications tower that will not generate wastewater.*	☐	☐	☐	☒
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? *No, the proposed project is a single communications tower that will not require water or generate wastewater.*	☐	☐	☐	☒
c) Require or result in the construction of new storm water drainage facilities or expansion of existing	☐	☐	☐	☒

Attachment 2

Responses to Appeal 2013-01, Comments submitted by Michael Dorame and on behalf of Loretta Dorame, and Zinda Edgar, regarding Conditional Use Permit #2012-04/Branson. Staff's responses coincide with the paragraphs as marked on the appellant's letter included in Attachment 1.

Paragraph 1, Page 1: On Wednesday February 27, 2013 the Inyo County Planning Commission approved Conditional Use Permit (CUP) 2012-04/Branson. This decision did not usurp the authority of the Board of Supervisors, as the Planning Commission has the legal authority to approve CUP applications.

Paragraph 2, page 1: CUP 2012-04/Branson was not subject to Inyo County Code 18.76, Regulation of Wireless Communications Facilities.

Paragraph 3, page 1: Mr. Dorame was also mailed a notice on November 16, 2012 to the address indicated on Page 4 of the February 27, 2013 staff report, per State and County noticing requirements. Mr. Dorame and Associate Planner Cathreen Richards did have a phone conversation after Mr. Dorame read the notice. Ms. Richards' notes indicate that they discussed a wide range of topics regarding the CUP. These subjects included: Covenants, Conditions and Restrictions (CC&Rs), Public and Quasi-Public uses, why the project was not considered commercial, why the utility easement purchased by Mr. Branson for the tower was not subject to the 2.5-acre minimum required by the RR-2.5 Zone, views, if the trees that were being required to be planted for screening would be watered, and why the Regulation of Wireless Communications Facilities ICC 18.76 did not apply to the project. Ms. Richards told Mr. Dorame that the County has consistently not applied ICC 18.76 to these types of towers/antennas; Mr. Dorame did not pursue the subject further. Due to this conversation Ms. Richards added to the Conditions of Approval #5 the word ***'maintain'*** so that Condition of Approval #5 includes both plant and maintain the tree(s). Ms. Richards did not provide Mr. Dorame with personal opinions during this conversation. The discussion centered on what is and is not allowed, per the Inyo County Code, to the best of Ms. Richards' understanding.

Paragraph 4, page 1: again, this was not Ms. Richards' personal opinion. It is an established opinion used consistently by the County for the application of ICC 18.76. The Planning Commission was aware that the County has consistently not applied ICC 18.76 to these types of wireless, internet, repeater, antennas. Both Planning Commission staff reports (December 5, 2013 and February 27, 2013) address the County's application of ICC 18.76 in the response to comments sections. The basis of these interpretations are due primarily to two factors 1) the Telecommunications Act of 1996, Section 704 that the County's Regulation of Wireless Communications Facilities ICC 18.76 is based on, and is referenced to, does not directly address wireless internet service. With respect to the construction and installation of towers and antennas, the Act focused mainly on the co-location of antennas and towers installed by telephone companies which are heavily regulated, unlike the purveyors of internet service. Since staff has not been able to find a direct reference to the specific technology it has concluded that

there is no nexus for requiring an applicant to provide a Wireless Communications Plan, and that requiring a Conditional Use Permit is sufficient for the scope of these types of antenna projects; and, 2) The repeater antennas are not for direct, end of the line, service. They are used to transmit signals between each other; the signals must then be delivered to an end user via some sort of cable and ICC 18.76 does not directly address these types of wireless internet antennas.

Paragraph 5, page 1-2: the Planning Commission took a break to look through Mr. Dorame's handouts and he verbally presented their contents. The issues surrounding the application of ICC 18.76 were also included in both the December 5, 2012 and February 27, 2013 staff reports, in the response to comments sections and the Planning Commission is familiar with ICC 18.76. These were not hearings to exempt Mr. Branson's project from ICC 18.76; they were hearings for a CUP for a project that ICC 18.76 does not apply to. The Planning Commission did not pursue the Regulation of Wireless Communications Facilities ICC 18.76 argument further, as there was no apparent reason to do so.

Paragraphs 6-7, page 2: All of Mr. Dorame's Exhibits (including A and B) are included in the Board's materials. It should also be noted that Exhibit A, shows the tower as 32-ft in height. The height discrepancy in this diagram with the project's description of a '30-ft tower' was also argued by Mr. Dorame at the February 27, 2013 hearing. The applicant (Mr. Branson) explained at the February 27, 2013 that the tower can be adjusted to different heights and will be 30-ft. Staff also stated that the tower is limited to 30-ft, per the RR-2.5 Zone that it is located in.

Paragraph 8, page 2: WiFi is a colloquial, acronym/term often used to describe a wide range of wireless services; its use in the executive summary does not, in any way, confirm that the project is subject to ICC 18.76.

Paragraph 9, page 2: the Planning Commission had the opportunity to vote for several alternatives:
1.) **Deny** the Conditional Use Permit thereby not allowing the applicant to improve wireless internet service to the Alabama Hills and the potential to serve a broader clientele in the future.
2.) **Add To or Modify** the conditions of approval.
3.) **Direct** Planning Staff to provide specific information at a future Planning Commission hearing.

Paragraph 10, page 2: the response to comments on page 5 of the February 27, 2013 staff report the appellant is referring to, reads: The County has consistently used the Public/Quasi-Public designation for small, neighborhood serving, utilities' infrastructure, and more specifically, for other WiFi antenna towers throughout the County. This statement does not state, nor does it indicate, that ICC 18.76 has been ignored in the past. ICC 18.76 has been applied appropriately to the appropriate projects by County staff. Also, this specific statement was provided in response to the comment: *There are problems with staff using the Public/Quasi-Public use designation for this project* ***when it is a for profit commercial business***; using this specific response to comments in the manner that Mr. Dorame has in the appeal, is out of context.

Paragraph 11, page 2: Please see above under Paragraph 4, page 1.

Paragraph 12, page 2: ICC 18.76 does not, in any section, refer to, or provide language that directly applies to **"wireless internet service"**. This lack of direct language instructing the application of ICC 18.76 to wireless internet services is a primary reason why staff has consistently not enforced ICC 18.76 for these types of wireless internet service tower/antenna projects. Please also see above under Paragraph 4, page 1.

Paragraph 13, page 2: Staff's response to each of the CEQA sections the appellant is referring to was: *No, the project consists of one communications tower that will not require water.*

Further, in addition to the tower itself, Mr. Branson will have to ***maintain*** the tree(s) per Condition of Approval #5, that are to be planted to screen the tower/antenna from the neighbors' views. Mr. Branson has indicated that he will purchase water from the property owners where the tower/antenna tree(s) will be located. The tower/antenna itself will not require water for its operation. The minimal water required for the tree(s) maintenance will not signifcanly affect the water usage on the residential property that it is located.

Paragraph 14, page 3:
Again, *the tower and antenna require no water*. There will be a *minimal (little) need for water* to maintain the trees that must be planted, as a Condition of Approval for the project, to screen the tower from the views of the four homes it will effect. This water will be procured from the property owners where the tree will be planted, which requires no additional water or waste-water services. The County has a consistent history in its intrepretation and enforcement of ICC 18.76. The type of facilities that the CUP 2012-04/Branson application was submitted for does not fit the language in ICC 18.76. Due to the lack of direct language regarding wireless internet service, staff has consistently not enforced ICC 18.76. for wireless internet service repeater antennas, as there is no apparent intent to apply it to them.

Paragraph 15, page 3: The Inyo County Planning Commission has the full legal authority to hold hearings and approve or deny applications for CUPs, which is exactly what was presented to them on December 5, 2012 and February 27, 2013. When Mr. Dorame brought up the issues regarding ICC 18.76, the intent of the language was reexamined by staff. The intent of an ordinace can be presumed, when there is no language addressing the specific item for which the intent is being questioned. As it is in this case, there is no direct language in ICC 18.76 for wireless internet service. The intent of ICC 18.76 and/or the legal authority of your Board has not been modified by staff; ICC 18.76 simply was not inappropriately applied. Enforcing ICC 18.76 on a project that it does not directly provide language for would also be inconsistent with an established pattern of decisions for the same types of tower/antennas projects.

Paragraph 16, page 3: There is no apparent nexus for the application of ICC 18.76 on the project CUP 2012-04/Branson. The applicant has been through the full CUP process, including two Planning Commission hearings and is subject to the Conditions of Approval that are part of the Planning Commission's decision, including: mitigating the effects on the views of the neighboring homes. The Planning Commission's decision was thoughtful and appropriate.

Attachment 3

Planning Department
168 North Edwards Street
Post Office Drawer L
Independence, California 93526

Phone: (760) 878-0263
FAX: (760) 878-0382
E-Mail: inyoplanning@inyocounty.us

AGENDA ITEM NO. 5 (Continuation, Action Item - Public Hearing)

DATE: February 27, 2013

SUBJECT: Conditional Use Permit No. 2012-04/Branson

EXECUTIVE SUMMARY

The applicant proposes to build a 30-foot tall communications tower at 1579 Indian Springs Dr., in the Alabama Hills and remove a 26-foot existing antenna attached to a garage located next door to the proposed project location at 1601 Indian Springs Dr. The proposed tower at 1579 Indian Springs Dr. will re-transmit wireless internet signals from existing towers located at 125 North Lakeview Street in Lone Pine, and 585 Alabama Drive in the Alabama Hills, making wireless internet service available to residential clients in the Alabama Hills and to a broader clientele area in the future.

Staff presented the staff report and public input was given during the Planning Commission meeting held December 5, 2012. Commissioner Paul Payne moved to continue the item until the January 23, 2013 Planning Commission meeting. The motion passed 4-0 with Commissioner Corner abstaining. The notices that were mailed to property owners for the January 23, 2013 meeting were incorrect and Conditional Use Permit No. 2012-04/Branson was rescheduled for the February 27, 2013 Planning Commission meeting.

PROJECT INFORMATION

Supervisorial District:	Fifth
Applicant:	Bruce Branson, Lone Pine TV
Landowner:	Bruce Branson
Addresses/ Community:	1579 Indian Springs Drive, Alabama Hills, Lone Pine
A.P.N.:	026-340-04
General Plan:	Parcel 026-340-04 has two General Plan designations. The portion of the parcel the proposed project will be located is Residential Rural Medium Density (RRM).

Zoning: Parcel 026-340-04 has two zoning designations. The portion of the parcel the proposed project will be located is Rural Residential with a 2.5-acre minimum (RR-2.5)

Size of Lot: Approximately 24-acres

Existing Use: The project site is developed with a single-family dwelling, and two garages.

Surrounding Land Use:

Location:	Use:	Gen. Plan Designation	Zoning
Site	Residential/OpenSpace	RRM/OSR	RR-2.5/OS-40
North	Residential	RRM	RR-2.5
East	Vacant	OSR	OS-40
South	Residential	RRM	RR-2.5
West	Residential	RRM	RR-2.5

Recommended Action: **Make Findings and Approve Conditional Use Permit No. 2012-04/Branson.**

Alternatives: 1.) **Deny** the Conditional Use Permit thereby not allowing the applicant to improve wireless internet service to the Alabama Hills and the potential to serve a broader clientele in the future.
2.) **Add To or Modify** the conditions of approval.
3.) **Direct** Planning Staff to provide specific information at a future Planning Commission hearing

Project Planner: Cathreen Richards, Associate Planner

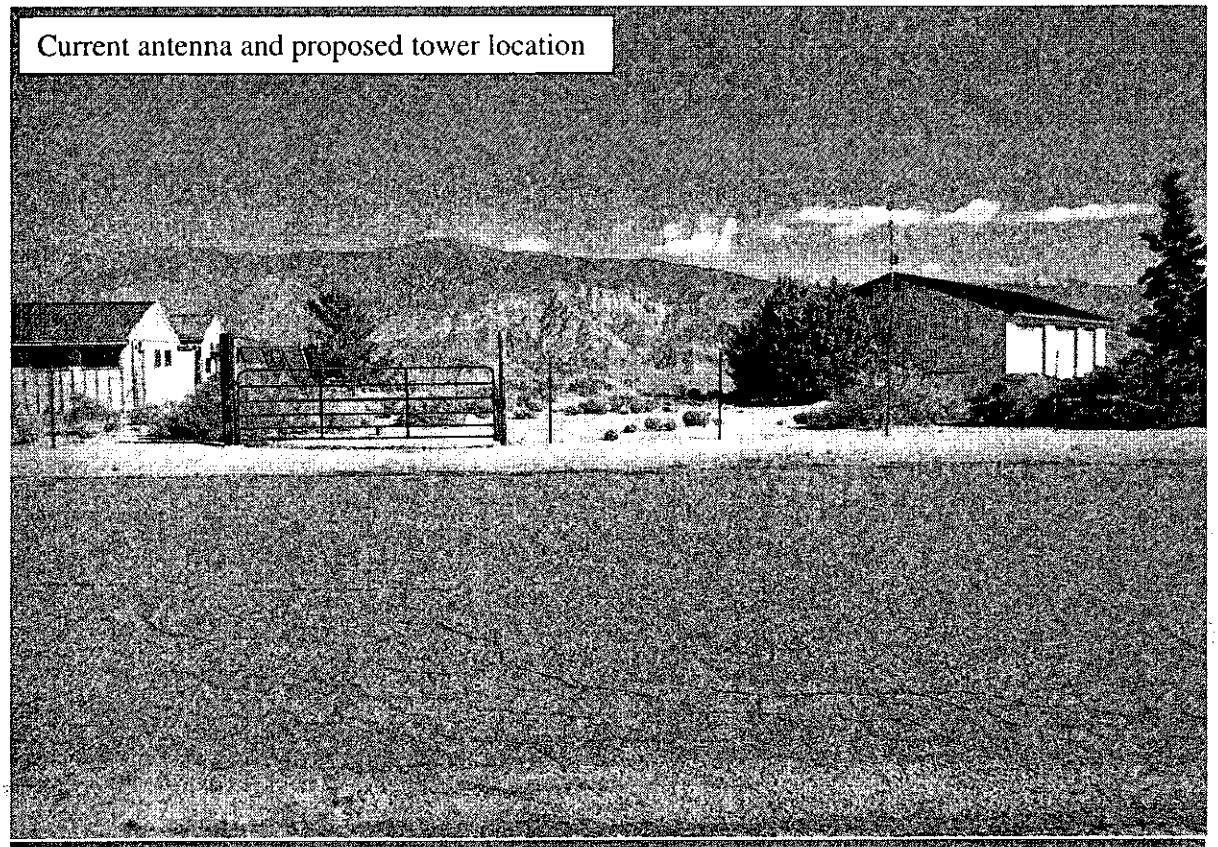
STAFF ANALYSIS

Background/Overview

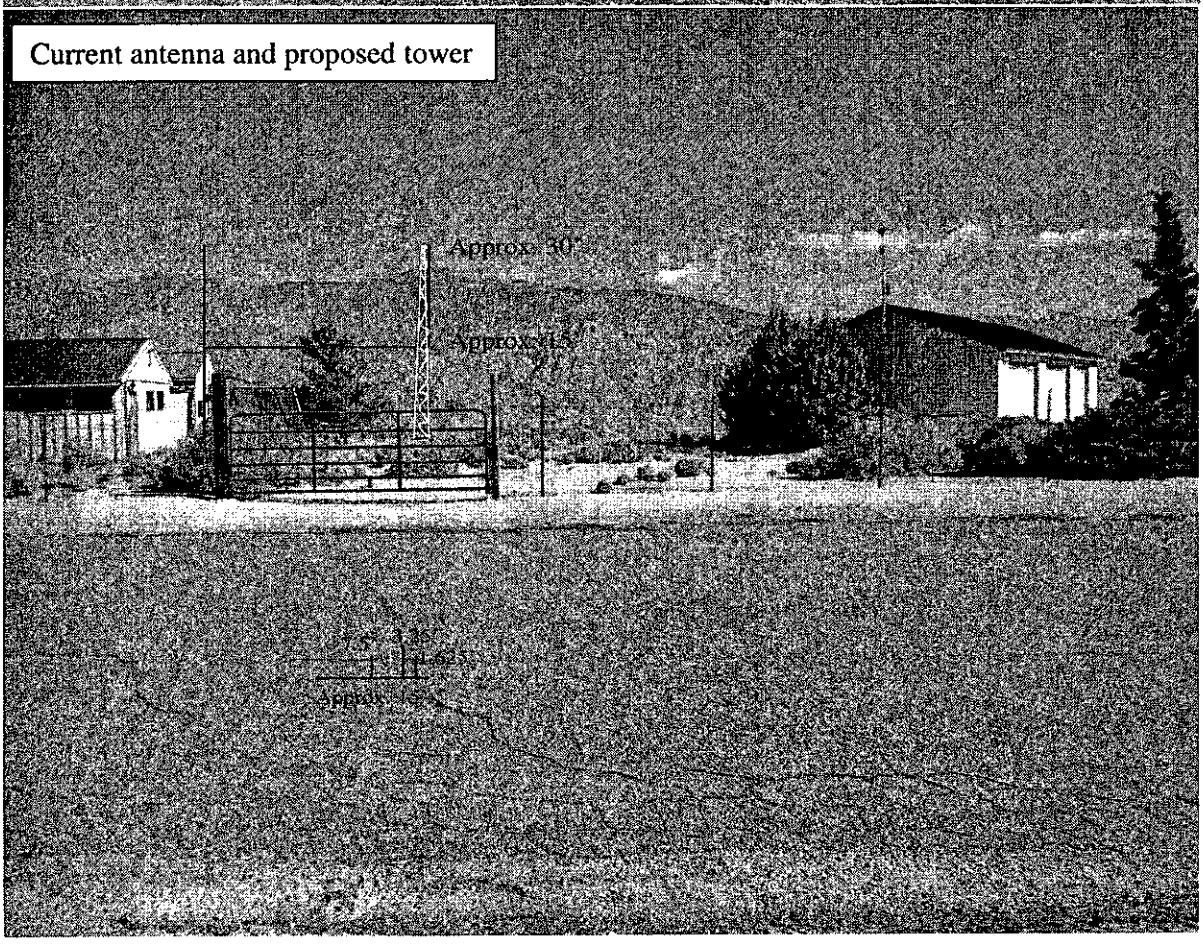
Mr. Branson, who represents Lone Pine Television, is applying to place a 30-foot tall communications tower at 1579 Indian Springs Drive. The goal for the project is to provide high speed cable internet access to residents of the Alabama Hills and allow the ability to provide access to wireless internet service to a broader clientele in the future.

The property can be seen below. The tower will be located on the left side of the photograph to the south of the Arizona Cypress tree. The antenna on the garage located on the right side of the photograph will be removed. The photograph below has had a rendition of the communications tower (draw to scale based on the relative height of the garage, which is approximately 15') placed on it.

Current antenna and proposed tower location



Current antenna and proposed tower



Staff presented the application to the Planning Commission at December 5, 2012 meeting (please see attachment A). There were 3 people from the Indian Springs neighborhood present: Zinda Edgar, Roberta Jarnigan; and, Michael Dorame, as well as, the applicant Bruce Branson and Kyle Wing, Assistant Manager of Lone Pine TV. Mr. Branson and Mr. Wing explained the technical aspects of the project and introduced the information provided in 2 additional letters (please see Attachment B) that were passed out to the Commissioners at the beginning of the meeting. One letter addressed the fact that the Indian Springs CC&Rs are invalid due to the absence of an active homeowners association and the other provided the opinion that WiFi tower/antennas can actually increase property values. Ms. Jarnigan provided an additional letter from Ms. Dorothy Alcorace (please see Attachment B) who opposes the project. During the public comment period numerous comments and questions were given by the 3 residents of the Indian Springs neighborhood regarding the application. Many of these comments were the same as those provided in the original letters (please see attachment A). Staff has provided responses to the comments/questions generated at the meeting, as follows:

Comment/Question: The new tower will not will not improve internet service in the Alabama Hills.
Response: Please see 'Response to Comments' in the December 5, 2012 staff report, attachment A.

Comment/Question: Existing Covenants, Conditions and Restrictions should be enforced.
Response: Please see 'Response to Comments' in the December 5, 2012 staff report, attachment A.

Comment/Question: Notices were sent to only 3 neighbors due to the 300' requirement.
Response: CEQA notifications were sent to the following:

CEQA mailing list

Name	Address	City State Zip
LADWP	300 Mandich St.	Bishop, CA 93514
USA BLM	2800 Cottage Way	Sacramento, CA 95825
Robert and Sue Jaussaud	PO Box 5279	Mohave Valley, CA 86446
Michale and Loretta Dorame	1564 Indian Springs Dr.	Lone Pine, CA 93545
Elaine Didge	624 Seabright Lane	Solana Beach, CA 92075
Robert and Gayle Frickel	297 N. Tumbleweed Road	Bishop, CA 93514
Jarnagin and Roberta Barton	PO Box 531	Lone Pine, CA 93545
John Replogle	1520 Indian Springs Dr.	Lone Pine, CA 93545
Ila Lauten	1575 Indian Springs Dr.	Lone Pine, CA 93545
Zinda Edgar	1596 Indian Springs Dr.	Lone Pine, CA 93545
Lone Pine TV	PO Box 867	Lone Pine, CA 93545
Lone Pine Chamber	P.O. Box 749	Lone Pine, CA 93545
Lone Pine Fire Department	P.O. Box 1007	Lone Pine, CA 93545
Lone Pine Paiute-Shoshone Reservation	P.O. Box 747	Lone Pine, CA 93545
Bishop Public Library	210 Academy Street	Bishop, CA 93514
Big Pine Public Library	P.O. Box 760	Big Pine, CA 93513
Lone Pine Public Library	168 N. Edwars Street	Lone Pine, CA 93545

Email list

Tim Fox - China Lake	timothy.h.fox@navy.mil
Kevin Mazzu - Alabama Hills Stewardship Group	kevin.mazzu@dww-inc.com
Burnadette Lovato - BLM	Bernadette_Lovato@blm.gov

Notices for the December 5, 2012 Planning Commission were sent to:

LADWP	300 Mandich St.	Bishop, CA 93514
USA BLM	2800 Cottage Way	Sacramento, CA 95825
Robert and Sue Jaussaud	PO Box 5279	Mohave Valley, CA 86446
Michale and Loretta Dorame	1564 Indian Springs Dr.	Lone Pine, CA 93545
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Ila Lauten	1575 Indian Springs Dr.	Lone Pine, CA 93545
Zinda Edgar	1596 Indian Springs Dr.	Lone Pine, CA 93545

The CEQA Notice of Availability was posted by the Inyo County Clerk Recorders office on October 15, 2012 and was advertised in the Inyo County Register on Tuesday October 16, 2012; and, the Planning Commission meeting was advertised in the Inyo County Register on November 24, 2012.

Comment/Question: There are 19-families in the project area and most are uncomfortable with the project.
Response: Staff received letters and/or phone calls from 4 area residents.

Comment/Question: The existing antenna can still be used, this project is not necessary.
Response: Please see 'Response to Comments' in the December 5, 2012 staff report, attachment A.

Comment/Question: There are problems with staff using the Public/Quasi-Public use designation for this project when it is a for profit commercial business.
Response: The County has consistently used the Public/Quasi-Public designation for small, neighborhood serving, utilities' infrastructure, and more specifically, for other WiFi antenna towers throughout the County.

Comment/Question: Utility wires serving the antenna need to be underground.
Response: The applicant has stated that the electricity that is required for the antenna will be served through a metered box that will be attached to the garage on the same property as the tower. The electricity will then be sent to the antenna via underground cables.

Comment/Question: Will there also be a fence around it and will it be screened?
Response: The tower/antenna will have a 6-foot, chain link, safety fence built around it. The tree(s) that are required by Condition of Approval #5 will screen the fence as well as the tower since it will have to be planted outside of the fenced area.

Comment/Question: How can a CUP be developed when the community was not notified?
Response: The community was notified appropriately per the State's and County's regulations. Please see bullet 3 above.

Comment/Question: How was a 10'x10' parcel sold when the area is zoned with a 2.5-acre minimum?

Response: The property was sold as a utility easement, not as a new or different parcel. This is a common practice where a piece of land is sold specifically for the siting of a utility's infrastructure. The easement is subject to the same zoning as the parcel that it is part of. Therefore, the antenna and tower have to meet the setback and height requirements per the RR-2.5 Zone, which they do; and, since it is located on a 24-acre parcel it does meet the 2.5-acre minimum.

Comment/Question: Why didn't the County follow the Telecommunications Ordinance?
Response: It was not the intent of the County when it adopted the Telecommunications Ordinance to apply it to WiFi antennas.

Comment/Question: Will the property be taxed as a commercial use or as a Public/Quasi-Public use?
Response: The County uses the same tax rate for Commercial and Residential uses. The easement will be valued with the tower/antenna and this will be reflected in Lone Pine TV's taxes.

Comment/Question: The Negative Declaration states that the project will require little to no water.
Response: Staff cannot find this statement in the Negative Declaration; however, the Conditions of Approval for this project include the planting and **maintaining** of Arizona Cypress trees or trees of similar height, width, and climate adaptability, at the maximum height they are available from a retailer to expedite their reaching the 30-foot height required to screen the tower. Maintaining includes watering.

Comment/Question: The project will have an effect on the viewshed and could detract from property values.
Response: Staff and the applicant recognize the impact the tower can have on the viewshed and have included Condition of Approval #5 to screen the tower (please see Conditions of Approval in the December 5th staff report). It should also be noted that the tower will affect the views from 4 homes that are located on Indian Springs Drive, not the entire area. The claim that the tower will have negative effects on property values has not been supported. The applicant did, however, provided a letter (handed out at the December 5, 2012 Planning Commission meeting) indicating that WiFi towers can have a positive effect on property values.

Comment/Question: Power poles do not run through the neighborhood.
Response: There are power poles located to the west of the project location that is part of immediate neighborhood.

Comment/Question: What will happen to service provision from now until the tower is built or if the tower is not built?
Response: The applicant has stated that the new owner of the property, with the garage that currently houses the antenna, has agreed to allow it to stay if there are no better options for the applicant.

Attachments:

A. December 5, 2012 Staff Report.
B. Letters submitted at the December 5, 2012 meeting.

Prepared By:

Cathreen Richards
Associate Planner

Approved By:

Josh Hart
Planning Director, Inyo County

Attachment A

December 5, 2012 Staff Report

Planning Department
168 North Edwards Street
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(760) 872-2706
FAX: (760) 872-2712
E-Mail: inyoplanning@qnet.com

AGENDA ITEM NO. 5 (Action Item - Public Hearing)

DATE: December 5, 2012

SUBJECT: Conditional Use Permit No. 2012-04/Branson

EXECUTIVE SUMMARY

The applicant proposes to build a 30-foot tall communications tower at 1579 Indian Springs Dr., in the Alabama Hills and remove a 26-foot existing antenna attached to a garage located next door to the proposed project location at 1601 Indian Springs Dr. The proposed tower at 1579 Indian Springs Dr. will re-transmit wireless internet signals from existing towers located at 125 North Lakeview Street in Lone Pine, and 585 Alabama Drive in the Alabama Hills, making wireless internet service available to residential clients in the Alabama Hills and to a broader cliental area in the future.

PROJECT INFORMATION

Supervisorial District:	Fifth
Applicant:	Bruce Branson, Lone Pine TV
Landowner:	Bruce Branson
Addresses/ Community:	1579 Indian Springs Drive, Alabama Hills, Lone Pine
A.P.N.:	026-340-04
General Plan:	Parcel 026-340-04 has two General Plan designations. The portion of the parcel the proposed project will be located is Residential Rural Medium Density (RRM).
Zoning:	Parcel 026-340-04 has two zoning designations. The portion of the parcel the proposed project will be located is Rural Residential with a 2.5-acre minimum (RR-2.5)
Size of Lot:	Approximately 24-acres

Existing Use: The project site is developed with a single-family dwelling, and two garages.

Surrounding Land Use:

Location:	Use:	Gen. Plan Designation	Zoning
Site	Residental/OpenSpace	RRM/OSR	RR-2.5/OS-40
North	Residential	RRM	RR-2.5
East	Vacant	OSR	OS-40
South	Residential	RRM	RR-2.5
West	Residential	RRM	RR-2.5

Recommended Action: **Make Findings and Approve Conditional Use Permit No. 2012-04/Branson.**

Alternatives: 1.) **Deny** the Conditional Use Permit thereby not allowing the applicant to improve wireless internet service to the Alabama Hills and the potential to serve a broader cliental in the future.
2.) **Add To or Modify** the conditions of approval.
3.) **Direct** Planning Staff to provide specific information at a future Planning Commission hearing

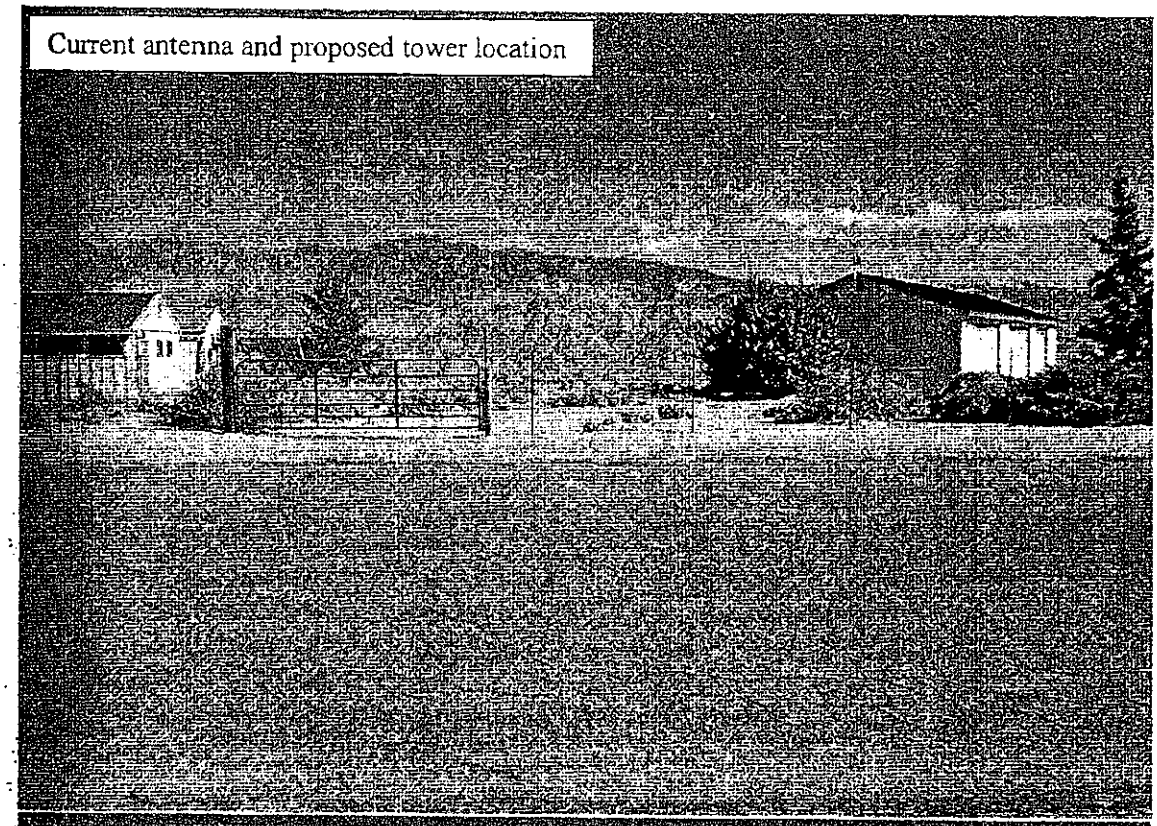
Project Planner: Cathreen Richards, Associate Planner

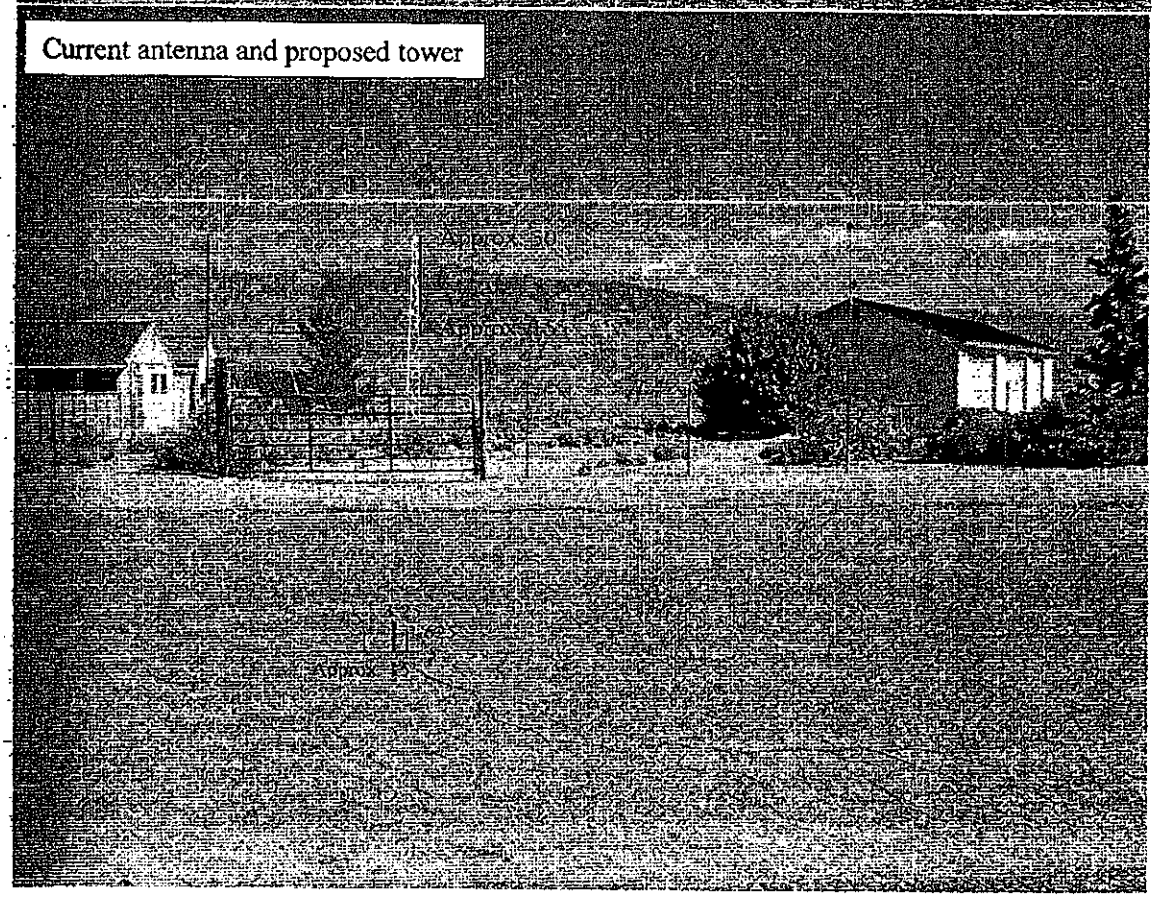
STAFF ANALYSIS

Background/Overview

Mr. Branson, who represents Lone Pine Television, is applying to place a 30-foot tall communications tower at 1579 Indian Springs Drive. The goal for the project is to provide high speed cable internet access to residents of the Alabama Hills and allow the ability to provide access to wireless internet service to a broader cliental in the future.

The property can be seen below. The tower will be located on the left side of the photograph to the south of the Arizona Cypress tree. The antenna on the garage located on the right side of the photograph will be removed. The photograph below has had a rendition of the communications tower (draw to scale based on the relative height of the garage, which is approximately 15') placed on it.


Current antenna and proposed tower location


Current antenna and proposed tower
Approx. 30'
Approx. 150'

General Plan and Zoning Consistency

The goal of this project is to provide improved communications services to the residents of the Alabama Hills. The project is consistent with the implementation of General Plan ***Policy LU-2.16 – Public, Quasi-Public, and Supporting Uses*** that states: The County may permit the siting of churches, schools, child care, social institutions, cultural institutions and/or activities, park and recreation facilities, greenbelts, and similar public facilities within a residentially designated area. The County may permit the siting of public facilities and utility system components in lands designated as NR. These uses are allowed so long as these uses are designated and operated in a manner that does not adversely impact the residential areas. The project is also consistent with the implementation of General Plan Policy ***PSU-7.1 – Provision of Services*** that states: "The County shall encourage the provision of communication and telecommunication services and facilities to serve existing and future needs." Additionally, the General Plan Residential Rural Medium Density (RRM) designation provides for "public and quasi-public facilities, and similar and compatible uses." in ***Policy LU-2.7.***

Zoning Ordinance Consistency

The Rural Residential (RR) zoning district allows, as a conditional use, Public and quasi-public buildings and uses of recreational, educational, religious, cultural and public service nature: excluding corporate yards, exterior storage, repair yards and warehouses[1]." The Rural Residential (RR) zoning district also requires minimum development standards that address the height of buildings, parcel size and setback requirements[2]. This project meets all of the required development standards for the RR district.

Aesthetics

There are two planning documents that address visual resources that may affect this project. The BLM has developed Resource Management Plans (RMP) for areas under BLM's jurisdiction. Local BLM lands in the RMP include the Alabama Hills. The Alabama Hills are designated as a Visual Resource Management Class-2 (VRM) area. BLM's enforcement of VRM Classes 2-4 areas "will be along key observation points" and the Class-2 objectives include: "The objective of this class is to retain the existing character of the landscape. The level of change to the characteristic landscape should be low. . ." "Any changes must repeat the basic elements of form, line, color, and texture found in the predominant natural features of the characteristic landscape." The property that the communications tower is proposed to be built on, is private property, located in an already established residential neighborhood that is not considered to be part of a scenic route or tourist destination; and, although the tower has the potential to affect the eastward views from the surrounding residential properties to the Inyo Mountains, it will not affect west or northward views of the unique land formations that characterize the Alabama Hills. The Communications tower will also not be visible from Highway 395 and will not obstruct westward views to the Sierra Nevada's for vehicles traveling through the area.

[1] Section 18.22.040(C.) of the Inyo County Zoning Ordinance
[2] Section 18.22.050 of the Inyo County Zoning Ordinance

The Inyo County General Plan also sets goals and policies to protect scenic vistas. General Plan ***Policy Goal VIS-1*** states: Preserve and protect resources throughout the County that contribute to a unique visual experience for visitors and quality of life for residents. The communications tower will not affect west or northward views of the unique land formations that characterize the Alabama Hills. The Communications tower will also not be visible from Highway 395 and will not obstruct westward views to the Sierra Nevada's for vehicles traveling through the area. The siting of the communications tower has the potential to have an impact on the scenic vistas of the surrounding residential neighborhood. This impact is not likely to be substantial, however, as the tower will be limited to 30-feet in height based on the Zoning district (RRM) regulations that it is located in. This residential area also has telephone and flag poles, as well as the existing antenna that the communications tower will be replacing, near the project location that are of similar height (e.g. a typical telephone pole is 40-feet). The communications tower is relatively small in the context of its proposed location. It consists of three vertical poles that make a tripod that is 24-inches wide on all three sides of the base and tapers to 12-inches at the top. Each side has metal bars running from bottom to top in a zigzag pattern with significant open, visible, space between (please see picture on pg. 3). To ensure that the tower does not have a negative impact on the scenic views of surrounding property owners, the applicant will be required to paint the tower a color to blend in with the landscape (non-reflective light brown) and plant trees as appropriate to screen it. The change in surface color, as well as appropriate screening will serve as mitigation for the project.

Health and Safety

Your Commission must make Finding No. 6 below in order to approve a use permit application stating that the project must not adversely affect "the health or safety of persons living or working in the vicinity." Compliance with California State Uniform Building Code requirements will alleviate any hazards to people living in the vicinity. Additionally, the communication tower will be located approximately 60-feet away from the nearest dwelling and will not pose a direct threat if it falls over.

ENVIRONMENTAL REVIEW

A Draft Mitigated Negative Declaration was prepared by the Planning Department and circulated for public review and comment on October 15, 2012. The Mitigated Negative Declaration identified one potential significant impact (aesthetics) that will be mitigated to a level of insignificance. The mitigation measure involves painting the tower to reduce potential glare to the surrounding properties and planting trees as appropriate to screen the tower from direct views. The mitigation is included in this Staff Report as Conditions of Approval No. 4 and 5.

The 30-day review period for the Draft Mitigated Negative Declaration ended on November 13, 2012 and four comment letters were received. Those providing comments include: Robert and Sue Jaussaud, 1601 Indian Springs Drive; Roberta and Bert Jarnagin, 1600 Indian Springs Drive; Zinda Edgar, 1596 Indian Springs Drive; and, the State of California Native American Heritage Commission.

Response to Comments

1. Robert and Sue Jaussaud
Comment:

There are CC&R's which are still in full force and effect in the project area. They specifically prohibit the activity proposed. The proposed tower is a clear violation of the CC&R's recorded in Book 160, Page 592, of Official Records.

Response:

The County recognizes CC&Rs but does not enforce them.

Comment:

The tower is a sizable commercial project in a residential area. If allowed, it will most likely lower the already reduced property values.

Response:

This is not considered a commercial project. It is a conditional use and defined as public/quasi-public buildings and uses of recreational, educational, religious, and cultural and public service nature as it provides access to improved communications opportunities. The tower and antenna are 30-feet in height. The tower consists of three vertical poles that make a tripod that is 24-inches wide on all three sides of the base and tapers to 12-inches at the top. Each side has metal bars running from bottom to top in a zigzag pattern with significant open, visible, space between (Please see Attachment 1 diagram of tower). No evidence has been provided or found to show that previous communications tower projects in the area have negatively affected property values.

Comment:

The tower will be a visual blight for the Alabama Hills. It will be visible from Lone Pine and Highway 395, as well as from the surrounding areas. The Indian Springs neighborhood has underground utilities to preserve views and the tower would undermine the neighbors' efforts in this regard. No amount of paint will camouflage the tower. The Alabama Hills are being considered, in part, for National Scenic Status and are a significant tourist draw for the area. A prominent tower may impact not only the residents, but businesses that depend on the tourist trade.

Response:

The applicant and staff agree that the tower can have an effect on the views from neighboring properties. Mitigation has been included in the proposal as Conditions of Approval No. 4 and 5. These terms of mitigation are to off-set the visual impacts and include the appropriate planting of trees for screening as well as paint, not to camouflage, but to reduce potential glare. Staff was unable to discern the potential location of the tower from Highway-395 or from various locations throughout Lone Pine. It may be visible with binoculars, but not likely with the naked eye. Both the Bureau of Land Management and the Alabama Hills Stewardship Group have been informed of this project.

Comment:

If this project is approved, it opens the door for additional such projects. The Alabama Hills could become an eyesore.

Response:

Each and every project has to go through the same process as this one. Another project, such as this one, will not automatically be approved if this one is. The applicant has indicated that additional communications towers will not be needed in the foreseeable future, which is part of the reason he is trying to upgrade now.

Comment:

This project is unnecessary. There has been an adequate, fully functional system working for several years that does not significantly impact the environment or the view. The tower is not needed.

Response:

The applicant has indicated that there are a number of reasons that this communications tower is necessary. They are:

- The antenna that is attached to the garage at 1601 Indian Springs Drive was installed without proper permitting and he wants to rectify the situation as it could suddenly become necessary to remove it. This would directly affect customer service.
- The current antenna does not have its own power source. It is currently plugged into a socket in the garage it is attached to. This means that the owner of the garage is currently paying for the electricity for the antenna. The applicant wants to put the antenna on its own dedicated meter for reliability, billing, and access purposes.
- Access to the power source is directly affected by the property owner. If the system were to need repair or maintenance it could not be done if the property owner was not home or did not want to give access at that specific time. This would directly affect customer service.
- In the event the property owner decides to sell or rent the property the new occupants might not want the antenna on the garage and remove it. This would put the applicant in a situation where there would be no antenna and he would have to try to find a proper location in a short period of time, which is not likely to be possible. This would directly affect customer service.
- The applicant needs the ability to expand services to a broader area. As the Digital-395 project comes on-line the tower will be needed to properly locate antennas that can handle the increased bandwidth.
- The applicant has had requests from locations outside the Alabama Hills for wireless internet service. The tower is necessary to for this to occur as it will allow the antenna to point signals to the necessary locations.
- It is questionable as to whether the current antenna does not actually affect the view. It can be seen very well from the properties across the street from it and it was erected without the benefit of proper process so no one had the opportunity to comment on it, and the County was unable to require screening.

2. Roberta and Bert Jarnagin

Comment:

As far as we understand it, the new 'Tower' will not necessarily provide or prep us for any new/'better functioning' services than what we have. As we understand it, in a matter of years, this tower will need to be upgraded with more elaborate/powerful receivers/transmitters that will have to receive/emit even stronger signals. So when it is stated that this is a 'more permanent' structure, it may be more 'permanent' (buried in the ground/standing alone) but not necessarily better functioning unless larger/more attachments have to be added.

Response:

The functionality of the current situation has most likely been adequate for the people in the Alabama Hills, with regard to receiving wireless internet services, although, as it is currently set up, its ability to operate is, to a certain extent, at the discretion of the property owner. If ownership changes or the owner changes their mind, there could be a sudden loss of service for the people in the Alabama Hills. The applicant is, with this project, also trying to prepare for the likely need of a different types of antenna as the Digital-395 project comes on-line. The tower will be necessary for this upgrade and will allow the expansion of services to people outside of the Alabama Hills. The tower is more permanent in that once the Digital-395 project is completed it will already be in place, whereas the antenna on the garage would still have to be replaced, but at a later time.

Comment:

So, this too becomes a concern- aren't there laws to protect citizens from such strong signals? As the tower's needs change/grow, who will oversee this to be sure they stay within what are supposed to be 'safe' limits for humans to be around? Personally, we moved here -to the Alabama Hills from the Bay

Area to live in more of a 'country' setting - carefully selecting/purchasing our home to avoid power lines and cell towers, especially one of this magnitude.

Response:

No, there are not currently laws to protect citizens from these signals, as there has been no evidence that supports that such laws are necessary. The proposed tower and antenna is part of a point-to-point system (the antenna is made by Airstream Antennas model#PTP-58-MR), per Airstream, the signals to not 'spill' outside of the point-to-point system. The system will not change in the event that the antenna is upgraded for more bandwidth. The signals will still be directed at and picked up by the other area antennas and then subsequently to receivers in individual homes. A future change in antennae to (Airstream Antennas model#PTP-58-SR) one with a greater bandwidth does not mean that the signals will spill out over a larger area and/or affect more people, per Airstream Antennas. Also, the Electromagnetic Field (EMF) levels for these wireless network devices are low and, again, in a narrow bandwidth. Even within the signal path the EMF levels of these antennas are lower than those created by personal mobile phones and distance the towers are from any nearby dwelling is large enough where this is not a significant impact. Both cell phones and individual wireless internet interface (in the home or with a handheld device) that are used adjacent to or within several feet of the user have not been judged to create a harmful impact on the user.

Comment:

This brings us to thinking that since a Broadband cable system is being installed up and down highway 395 and will be used widely in other neighboring towns why aren't cables (vs the tower's wireless system) being brought up here? There are already some telephone poles and underground cable line routes in place to use. From what we understand, although the cost would initially be more, cables' long term efficiency and costs would actually be much less. The CC&Rs of Lone Pine Springs development include that all power supplies be done with underground cables in this area- isn't this considered a power source? This makes the tower seem outdated already, so will we end up with a tower in place that won't be used within a few years? Who will be making sure it comes down when this becomes the case? The tower at 585 Alabama Drive also has large dishes on the ground around it- will they have to be installed at some point or now?

Response:

Currently, most of the infrastructure necessary to bring residential customers wireless internet service is located 'underground'. For the signals to be broadcasted out so they can subsequently be picked up and directed to customers, above ground antennas are necessary. The current utility poles located in the Alabama Hills are not located in such a way that the antennas' signals can reach the other appropriate antennas. These antenna work on line-of site, so they have to be able to be pointed at each other without obstructions. The County recognizes CC&Rs but does not enforce them. As previously mentioned, this tower will be able to handle the foreseeable changes that will be necessary once Digital-395 comes on line and it will not need to be replaced in the foreseeable future. No, large dishes will not be necessary at this location, as it will be used to retransmit signals between the locations at 585 Alabama Drive and 125 North Lakeview Street in Lone Pine, not pull them from satellites.

Comment:

As far as 'better functioning' facility goes: we seem to have ample service with the much smaller, somewhat unobtrusive antenna already in place. Yes there are some days with glitches, which create an interruption to communications, but nothing so bad that makes this tower worth installing...we're sure that there would still be days without service or glitches at the very least if the tower or cables were installed- it's the 'nature of the beast'! The request says to 'make(ing) wireless internet service available to residential clients in the Alabama Hills'...it already is, so....

Response:
As previously stated, the functionality of the current situation has most likely been adequate for the people in the Alabama Hills, with regard to receiving wireless internet services, although, as it is currently set up, its ability to operate is, to a certain extent, at the discretion of the property owner. If ownership changes or the owner changes their mind, there could be a sudden loss of service for the people in the Alabama Hills. The applicant is, with this project, also trying to prepare for the likely need of upgraded antennas as the Digital-395 project comes on-line. The tower will be necessary for this as it has the ability to handle the foreseeable changes and will allow the expansion of services to people outside of the Alabama Hills. The tower is more permanent as it will have its own location owned by the applicant, its own power source and the ability to handle upgraded antennas so that once the Digital-395 project is completed it will already be in place, whereas the antenna on the garage would still have to be replaced, but at a later time.

Comment:
The position of this tower is a visual eyesore from the street, the highway and our homes. It will help destroy one of the only rim vistas still available, especially if the few remaining rim plots are developed. Currently, only the garage (with the antenna attached) is seen from the highway, but it is not like a gleaming 30' tower. Yes, developing large structures, sprawling structures on plots and some fences do currently effect the views up here and these are mistakes made by some home owners but! why continue with this pattern- especially with a commercial project? 'No' has to be said at some point. Surely there are some sort of scenic preservation laws in place....are these being adhered to?

Response:
The applicant and staff agree that the tower can have an effect on the views from neighboring properties. Mitigation has been included in the proposal as Conditions of Approval No. 4 and 5. These terms of mitigation are to off-set the visual impacts and include the appropriate planting of trees for screening as well as paint to reduce potential glare. Staff was unable to discern the potential location of the tower from Highway-395 or from various locations throughout Lone Pine. It may be visible with binoculars, but not likely with the naked eye. Both the Bureau of Land Management and the Alabama Hills Stewardship Group have been informed of this project. This is not considered a commercial project. It is a conditional use and defined as public/quasi-public buildings and uses of recreational, educational, religious, and cultural and public service nature as it provides access to improved communications opportunities. The tower and antenna are 30-feet in height. It consists of three vertical poles that make a tripod that is 24-inches wide on all three sides of the base and tapers to 12-inches at the top.

Comment:
the current anterna not only services the area(wirelessly)as far as we know, but is just that: an antenna. The new proposed one is a communications tower which really says it all (antenna vs tower)- please do not be fooled by the unassuming written request of putting in a 4 foot difference in height facility! What gives the antenna it's height is the garage, the antenna itself is only 8-9 feet above the garage and very slender. We're sure someone will be out to look at the site and there will be more discussion but we have attached photos so you know can begin to see what the issues are. Although only people living within 300' of this structure can give voice to this project, others who live in Lone Pine and Alabama Hills who are offended by it's proposal as well.

Response:
The tower and antenna are 30-feet in height. It consists of three vertical poles that make a tripod that is 24-inches wide on all three sides of the base and tapers to 12-inches at the top. The applicant and staff agree that the tower can have an effect on the views from neighboring properties. Mitigation

has been included in the proposal as Conditions of Approval No. 4 and 5. These terms of mitigation are to off-set the visual impacts and include the appropriate planting of trees for screening as well as paint to reduce potential glare. Staff was unable to discern the potential location of the tower from Highway-395 or from various locations throughout Lone Pine. It may be visible with binoculars, but not likely with the naked eye. Staff, to date, has not received comments from anyone other than the property owners across the street and next door to the proposed project location (listed above).

Comment:

IF this were to be considered, there are compromises that might be acceptable. Such as: place the tower behind the house where most of it is covered up and the top of it (where it is presumed to 'receive/send' information) would still be available to use. This is how it is on Alabama Drive (picture attached). It would then only be half an 'eyesore' to the Alabama community and the property owners could plant trees to eventually help block it's view from 395. Another solution would be to run the more efficient/permanent cables instead, a much more forward thinking plan that assures the CC&Rs for this area are abided by, and the 'better functioning' service is truly provided and hopefully without any further upgrades. We realize this seems like a 'not in my neighborhood' outcry but truly, we think that this tower hasn't been thought out well- function, environmental safety or esthetically...that all in all seems like a lot of work/issues for a tower that maybe, truly doesn't have to be installed at all.

Response:

The applicant has stated that the proposed location is necessary for the system of point-to-point antennas to operate correctly as they work on a line-of-site principle. If they cannot effectively 'see' each other they will not work. Other locations on the proposed property were evaluated and the proposed location was deemed to provide the best line-of-site access to the other existing antennas. The applicant and staff agree that the tower can have an effect on the views from neighboring properties. Mitigation has been included in the proposal as Conditions of Approval No. 4 and 5. These terms of mitigation are to off-set the visual impacts and include the appropriate planting of trees for screening as well as paint to reduce potential glare. Staff was unable to discern the potential location of the tower from Highway-395 or from various locations throughout Lone Pine. It may be visible with binoculars, but not likely with the naked eye. The applicant believes that this is the most efficient/permanent system. There are already underground cables for the part of the system that uses them, but for the necessary signals to be broadcasted out so they can subsequently be picked up and directed to customers, above ground antennas are necessary. The County recognizes CC&Rs, but does not enforce them.

3. Zinda L. Edgar

Comment:

In answer to the Notice of Availability and Intent to build a 30-foot tall communications tower at 1579 Indian Springs Dr., this project is unnecessary. There is a fully functional system working that does not detrimental effect the environment or the view. The tower is not needed and does not need to be built. Conditional use permits provide a zoning authority the opportunity to allow uses that would improve a neighborhood to exist in a zone where they are otherwise prohibited. Indian Springs Subdivision CC&R's state; (13)(pg 5) all utility service connections shall be underground. I live directly across the street, it will hinder my view, the reason I moved here in the first place, and be ghastly visible from my front porch, my front windows, my front door, scaring the view of the Inyo's. Even though the HOA is not active the CC&R's are still valid and I ask the county to enforce them. There is a goal in a couple years to install fiber optics for the internet which would make this tower mute.

Response:
The functionality of the current situation has most likely been adequate for the people in the Alabama Hills, with regard to receiving wireless internet services, although, as it is currently set up, its ability to operate is, to a certain extent, at the discretion of the property owner. If ownership changes or the owner changes their mind, there could be a sudden loss of service for the people in the Alabama Hills. The applicant is, with this project, also trying to prepare for the likely need of a different types of antenna as the Digital-395 project comes on-line. The tower will be necessary for this upgrade and will allow the expansion of services to people outside of the Alabama Hills. The tower is more permanent in that once the Digital-395 project is completed it will already be in place, whereas the antenna on the garage would still have to be replaced, but at a later time.
Staff is unsure of where Ms. Edgar found her reference to Conditional Use Permits and cannot find language that states "would improve a neighborhood". The Inyo County Code currently describes Conditional Use Permits as "**18.81.100 Conditional uses—Generally**: Certain uses, referred to in this title as conditional uses, are declared to possess characteristics which require special appraisal by the planning commission in each instance, to determine whether or not the use is necessary or desirable and will be properly related to other uses and to transportation and service facilities in the vicinity, and whether or not the use would, under all the circumstances of the particular case, affect adversely the health or safety of persons living or working in the vicinity or be materially detrimental to the public welfare." These factors will be decided by the Planning Commission and Ms. Edgar's comments will be taken into consideration as part of that decision. The County recognizes CC&Rs but does not enforce them. The applicant and staff agree that the tower can have an effect on the views from neighboring properties. Mitigation has been included in the proposal as Conditions of Approval No. 4 and 5. These terms of mitigation are to off-set the visual impacts and include the appropriate planting of trees for screening as well as paint to reduce potential glare. Per the applicant, the installation of fiber optics (Digital-395) will require a different antenna that this tower will facilitate. It will not make the tower and antenna mute.
Comment:
According to Bruce Branson owner of Lone Pine TV, he told us the new tower would not improve service or be a better functioning facility, he just didn't like where the old one was. Wireless service is already available to residents in the Alabama Hills and would not be improved, how does this fit into "better functioning facility?"
Response:
The functionality of the current situation has most likely been adequate for the people in the Alabama Hills, with regard to receiving wireless internet services, although, as it is currently set up, its ability to operate is, to a certain extent, at the discretion of the property owner. If ownership changes or the owner changes their mind, there could be a sudden loss of service for the people in the Alabama Hills. The applicant is, with this project, also trying to prepare for the likely need of upgraded antennas as the Digital-395 project comes on-line. The tower will be necessary for this as it has the ability to handle the foreseeable changes and will allow the expansion of services to people outside of the Alabama Hills. The tower is more permanent as it will have its own location owned by the applicant, its own power source and the ability to handle upgraded antennas so that once the Digital-395 project is completed it will already be in place, whereas the antenna on the garage would still have to be replaced, but at a later time. The proposed location is necessary for the system of point-to-point antennas to operate correctly as they work on a line-of-site principle. If they cannot effectively 'see' each other they will not work. Other locations on the proposed property were evaluated and the proposed location was deemed to provide the best line-of-site access to the other existing antennas.

Comment:
The tower will be directly in the path of 70 - 100 mile an hour winds that rip roofs off of buildings, and directly facing my house, what about the sound of the wind through the tower?
Response:
The tower will be subject to building approval to ensure it does not adversely affect the health and safety of surrounding properties. It will be required to meet the standards of the Uniform Building Code enforced by the Inyo County Building and Safety Department.
Comment:
Your notice states the proposed tower would re-transmit wireless signals from the tower in Lone Pine, and Alabama Drive, the existing 26 foot tower transmits wireless signals without being attached to a 30 foot stand alone tower, with a six foot fence surrounding it. This is in a residential area not a commercial area. If allowed will lower property values on our street and significantly alters the neighborhood.
Response:
The functionality of the current situation has most likely been adequate for the people in the Alabama Hills with regard to receiving wireless internet services, although, as it is currently set up, its ability to operate is, to a certain extent, at the discretion of the property owner. If ownership changes or the owner changes their mind, there could be a sudden loss of service for the people in the Alabama Hills. This is not considered a commercial project. It is a conditional use and defined as public/quasi-public buildings and uses of recreational, educational, religious, and cultural and public service nature as it provides access to improved communications opportunities. The tower and antenna are 30-feet in height. It consists of three vertical poles that make a tripod that is 24-inches wide on all three sides of the base and tapers to 12-inches at the top. Each side has metal bars running from bottom to top in a zigzag pattern with significant open, visible, space between (Please see Attachment 1, diagram of the tower). No evidence has been provided or found to show that previous communications tower projects of this scale have affected property values. The applicant and staff agree that the tower can have an effect on the views from neighboring properties. Mitigation has been included in the proposal as Conditions of Approval No. 4 and 5. These terms of mitigation are to off-set the visual impacts and include the appropriate planting of trees for screening as well as paint to reduce potential glare.
Comment:
The tower is not needed and not wanted by the residents of Indian Springs Dr.
Response:
As it is currently set up, the antenna's (that is currently attached to the garage) ability to operate is, to a certain extent, at the discretion of the property owner. If ownership changes or the owner changes their mind, there could be a sudden loss of service for the people in the Alabama Hills. The applicant is, with this project, also trying to prepare for the likely need of an upgraded antenna as the Digital-395 project comes on-line. The tower will be necessary for this as it has the ability to handle the foreseeable changes and will allow the expansion of services to people outside of the Alabama Hills. The tower is more permanent as it will have its own location owned by the applicant, its own power source and the ability to handle upgraded antennas, so that once the Digital-395 project is completed it will already be in place, whereas the antenna on the garage would still have to be replaced, but at a later time. The proposed location is necessary for the system of point-to-point antennas to operate correctly as they work on a line-of-site principle. If they cannot effectively 'see' each other they will not work. Other locations on the proposed property were evaluated and the proposed location was deemed to provide the best line-of-site access to the other existing antennas.

4. **State of California Native American Heritage Commission**
Comment:
The State of California Native American Heritage Commission's comments included a recommendation that the County conduct a Sacred Lands File search of the proposed 'area of potential effect' (APE) as part of their due diligence and recommended that the County conduct early consultation with local Native American Tribes.
Response: This project is being proposed on an already disturbed site with residential uses; therefore, an APE is not necessary. Staff sent the Notice of Availability and Intent to the Lone Pine Paiute tribe and, to date, has not received a request for consultation or comments from them.

PUBLIC NOTICE

Notice of this pubic hearing has been published in the Inyo Register, and mailed to all property owners within 300 feet of the project location. As of the date of this Staff Report, no comments have been received.

RECOMMENDATION

Planning Department staff recommends the approval of Conditional Use Permit No. 2012-04/Branson, with the following Findings and Conditions of Approval:

Findings

1. Based upon the Initial Study and all oral and written comments received, adopt the Mitigated Negative Declaration of Environmental Impact and certify that the provisions of the California Environmental Quality Act have been satisfied.

   [Evidence: An Initial Study and Draft Mitigated Negative Declaration of Environmental Impact were prepared and circulated for public review and comment pursuant to the provisions of the California Environmental Quality Act The 30-day public comment period ended on November 13, 2012. No additional potentially significant environmental impacts from the construction and operation of the communications tower was identified in the course of that circulation. Several comment letters were received from neighboring property owners and the State of California Native American Heritage Commission. Staff has provided responses to these comments and made them available within this staff report for public access and the Planning Commission to consider as part of their decision. The Planning Department will keep these documents on site, along with all other records of this proceeding on which the Planning Commission's decision is based, for public record and access. The Planning Commission upon approving this application will be including the 'Terms of Approval' numbers 4 and 5 that provides the means in which it will monitor the applicants conditions of approval to mitigate significant environmental effects.]

2. The proposed Conditional Use Permit is consistent with the Inyo County General Plan Land Use designation of Residential Rural Medium Density (RRM).

   [Evidence: The proposed Conditional Use Permit is consistent with the goals and

objectives of the Residential Rural Medium Density land use designations of the Inyo County General Plan LU-2.7. This designation specifically provides for "public and quasi-public facilities." Cable television and internet services are considered a "quasi-public facility." No conflicts exist with policies and objectives in the other adopted elements of the General Plan.]

3. The proposed Conditional Use Permit is consistent with the Inyo County Zoning Ordinance, which permits "public or quasi-public facilities" as a conditional use in the Rural Residential.

   [Evidence: Section 18.21.040(C.) allows 'public or quasi-public facilities' with the approval of a conditional use permit. Cable and internet access is a use provided for and available to the public and thus the proposed communications tower project meets the definition of being a 'quasi-public facility'.]

4. The proposed Conditional Use Permit is necessary or desirable.

   [Evidence: General Plan Policy PSU-7.1 encourages the provision of new communications services to the residents of Inyo County. This project serves the purpose of providing wireless internet access to the Alabama Hills neighborhood and to a broader cliental in the future. Thus, this is a desirable use.]

5. The proposed Conditional Use Permit is properly related to other uses and transportation and service facilities in the vicinity.

   [Evidence: The tower will conform to the development standards of the Rural Residential zone and will have no impact on transportation and service facilities. In fact, the project will provide an additional public service to the Alabama Hills neighborhood and to a broader cliental in the future.]

6. The proposed Conditional Use Permit would not, under all the circumstances of this case, affect adversely the health or safety of persons living or working in the vicinity or be materially detrimental to the public welfare.

   [Evidence: The placement of a communications tower in a rural residential area on the edge of the Alabama Hills neighborhood will not impact on the surrounding properties. Internet communications tower signals do not create a hazard to the public. The tower will need to be built to meet the wind-load and building requirements specified in the Uniform Building Code by the Inyo County Building and Safety Department.]

7. Operating requirements necessitate the 30-feet tall communications tower location within the Rural Residential zoning district.

   [Evidence: The mechanics of the project require that the communications tower is in the general proximity of the headend which is located at 125 Lakeview Street in Lone Pine and the other retransmitting antenna located at 585 Alabama Drive in the Alabama Hills. Thus, the operating requirements necessitate the communications tower's location within the RR zone in the Alabama Hills.]

Conditions of Approval

1. **Hold Harmless**
   The applicant/developer shall defend, indemnify and hold harmless Inyo County agents, officers, and employees from any claim, action or proceeding against the County or its agents, officers, or employees to attack, set aside, void or annul an approval of the county, its advisory agencies, its appeals board, or legislative body concerning Conditional Use Permit No. 2012-04/ Branson. The County reserves the right to prepare its own defense.

2. **Compliance with County Code**
   The applicant/developer shall conform to all applicable provisions of Inyo County Code. The County Code[1] does not allow for the storage of related equipment on the property. Thus, the use of the project site for the exterior storage of equipment, materials, and company vehicles is prohibited. County Code also requires the applicant to meet the setback requirements of the RR district. The applicant is required to obtain a building permit to install the communications tower and it will be required to meet the wind-load and building requirements specified in the Uniform Building Code by the Inyo County Building and Safety Department.

3. **Conformance with Submitted Plot Plan**
   Development shall be in substantial conformance with the submitted plot plan.

4. **Paint the Tri-pole Towers**
   The tower shall be painted a color, such as beige to blend in with the surrounding environment. The applicant/developer shall paint the communications tower to the satisfaction of the Director of Planning prior to the issuance of a building permit for the installation of the towers.

5. **Plant Trees**
   Trees shall be planted to screen the tower from the views of the surrounding neighborhood. The applicant shall plant and maintain Arizona Cypress trees, or trees of similar height, width and climate adaptability, at the maximum height they are available from a retailer to expedite their reaching the 30-foot height required to screen the tower. The applicant shall plant the trees to the satisfaction of the Director of Planning prior to the final approval of the project.

6. **Revocation**
   The applicant must meet the conditions of approval to the satisfaction of the Planning Director or Conditional Use Permit 2012-04/Branson can be revoked due to non-compliance.

[1] Inyo County Zoning Ordinance Section 18.21.040(C.)
[2] Inyo County Zoning Ordinance Section 18.81.140

Attachments: 1) Diagram of the Tower
2) Mitigated Negative Declaration
3) Site Plan
4) Comment Letters

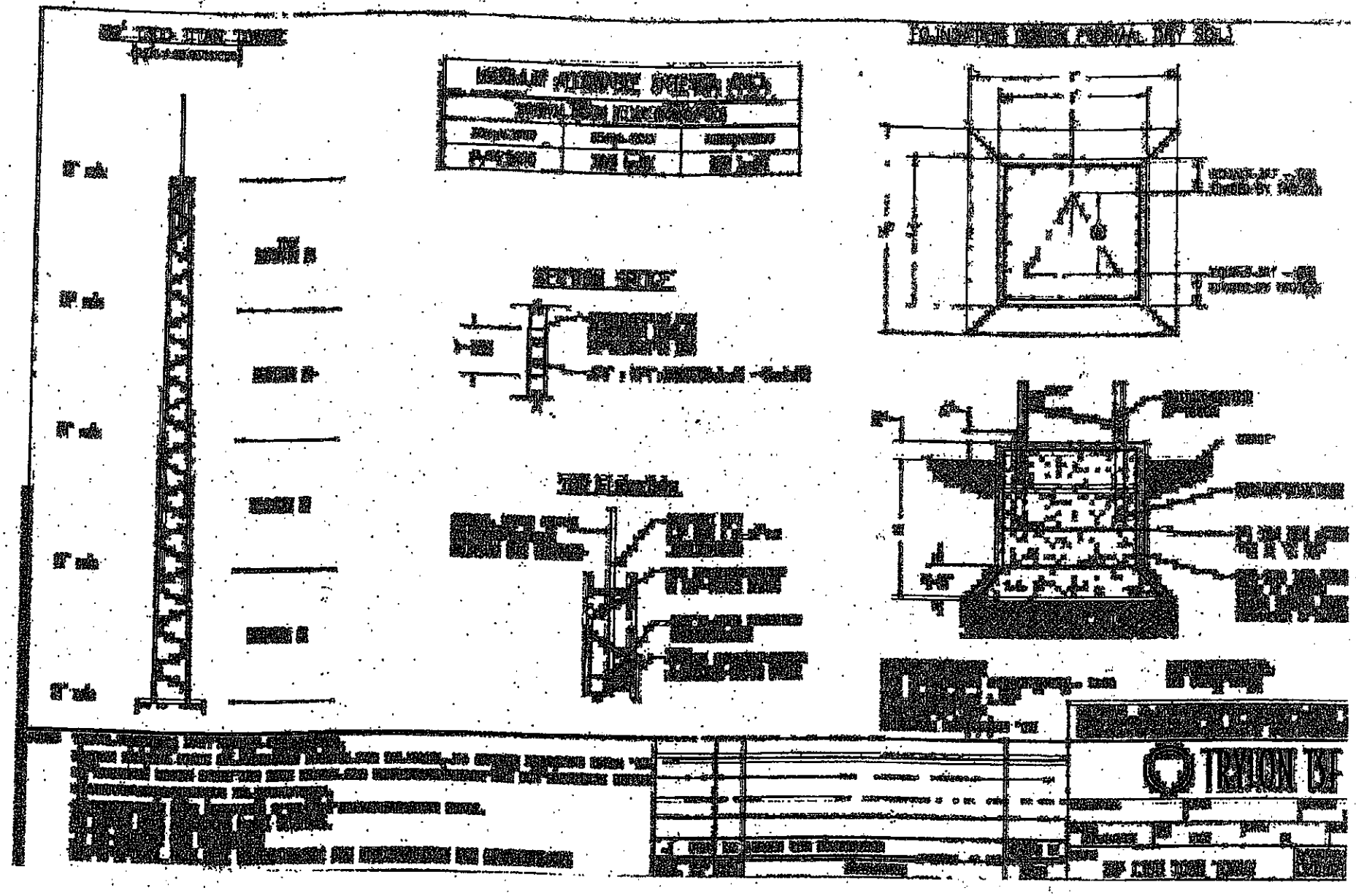
Prepared By:

Cathreen Richards
Associate Planner

Approved By:

Josh Hart
Planning Director, Inyo County

Attachment 1) Diagram of the tower



Attachment 2) Mitigated Negative Declaration

Planning Department
168 North Edwards Street
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DRAFT MITIGATED NEGATIVE DECLARATION OF ENVIRONMENTAL IMPACT AND INITIAL STUDY

PROJECT TITLE: Conditional Use Permit #2012-04/Branson

PROJECT LOCATION: 1579 Indian Springs Dr., Lone Pine, CA 93545

PROJECT DESCRIPTION: The applicant proposes to build a 30-foot tall communications tower at 1579 Indian Springs Dr., in the Alabama Hills, southwest of Lone Pine, CA and remove a 26-foot existing antenna attached to a garage located next door to the proposed project location at 1601 Indian Springs Dr. The goal of the project is to provide wireless internet access to customers in the Alabama Hills with a more permanent and better functioning facility. The proposed tower at 1579 Indian Springs Dr. will re-transmit wireless internet signals from existing towers located at 125 North Lakeview Street in Lone Pine, and 585 Alabama Drive in the Alabama Hills, making wireless internet service available to residential clients in the Alabama Hills.

The proposed project location is currently developed with residential uses. The 30-foot tall communications tower will be anchored to the ground with a 4'x4'x4' concrete pad and a 6-foot fence will be built around it. It will be located in the back/side-yard, about 22-feet south of two existing garages and approximately 60-feet south, of the existing residential dwelling. The applicant has purchased a 10'x10' utility easement from the property owners for this project.

FINDINGS:

An Initial Study and Evalnation of Potential Impacts has been prepared by the Planning Department (attached). Staff finds that the proposed project will NOT have a significant adverse impact on the environment for the following reasons:

A. The proposed project is consistent with goals and objectives of the Inyo County General Plan designation of "RRM" (Residential Rural Medium Density) as conditioned (if approved).

B. The proposed project is consistent with the provisions of the Inyo County Zoning Ordinance, Rural Residential (RR) with a 2.5-acre minimum designation, as conditioned (if approved).

C. Based upon the information submitted, the project could have the potential to create a significant adverse impact on Aesthetics. However, with the incorporation of the mitigation measures recommended below, it has been found that the project will not result in a significant adverse impact.

D. Based upon the environmental evaluation of the proposed project, the Planning Department finds that the project does not have the potential to create a significant adverse impact on flora or fauna; natural, scenic and historic resources; the local economy; public health, safety, and welfare. This constitutes a Negative Finding for the Mandatory Findings required by Section 15065 of the CEQA Guidelines.

MITIGATION MEASURES / MITIGATION MONITORING PLAN

I: Aesthetics

Potential Impact: The communications tower may produce glare on neighboring residential properties and may affect the views from neighboring residential properties.

Mitigation Measures: The applicant is required to paint the communications tower with non-reflective light brown paint that blends in with the surrounding area, as well as plant trees, as appropriate for screening.

Mitigation Level: Mitigate to a threshold of less than significant.

Lead Agency: Inyo County Planning Department.

Funding Source: Owner/Operator/Applicant shall bear sole financial responsibility.

Implementing Party: Owner/Operator/Applicant.

Monitoring Agency: Inyo County Planning Department.

Time Frame: Mitigation and monitoring measures shall be implemented when the Building and Safety Department reviews the building permit for the communications tower.

The 30-day review period for this Negative Declaration expires on **November 13, 2012**. Inyo County is not required to respond to any comments received after this date.

Additional information is available from the Inyo County Planning Department. Please contact Project Planner Cathreen Richards if you have questions regarding this project.

Josh Hart, AICP
Director, Inyo County Planning Department

10-12-12
Date

INYO COUNTY PLANNING DEPARTMENT

CEQA APPENDIX G: INITIAL STUDY & ENVIRONMENTAL CHECKLIST FORM

EVALUATION OF ENVIRONMENTAL IMPACTS:

1) A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).

2) All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.

3) Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.

4) "Negative Declaration: Less Than Significant With Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less Than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from Section XVII, "Earlier Analyses," may be cross-referenced).

5) Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063(c)(3)(D). In this case, a brief discussion should identify the following:

a) Earlier Analysis Used. Identify and state where they are available for review.

b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.

c) Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.

6) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside

document should, where appropriate, include a reference to the page or pages where the statement is substantiated.

7) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.

8) This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.

9) The explanation of each issue should identify:
a) the significance criteria or threshold, if any, used to evaluate each question; and
b) the mitigation measure identified, if any, to reduce the impact to less than significance issues.

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INYO COUNTY PLANNING DEPARTMENT

APPENDIX G: CEQA INITIAL STUDY & ENVIRONMENTAL CHECKLIST FORM

1. **Project title:** Conditional Use Permit #2012-04/Branson

2. **Lead agency name and address:** Inyo County Planning Department.

3. **Contact person and phone number:** Cathreen Richards, Associate Planner (760) 878-0263.

4. **Project location:** 1579 Indian Springs Dr., Lone Pine, CA 93545. The project parcel (APN: 026-340-04) is located in the Alabama Hills, southwest of the community of Lone Pine.

5. **Project sponsor's name and address:** Bruce Branson, Lone Pine TV. 223 Jackson St., Lone Pine, CA 93545

6. **General Plan designation:** Parcel 026-340-04 has two General Plan designations. The portion of the parcel the proposed project will be located is Residential Rural Medium Density (RRM).

7. **Zoning:** Parcel 026-340-04 has two zoning designations. The portion of the parcel the proposed project will be located is Rural Residential with a 2.5-acre minimum (RR-2.5)

8. **Description of project** (Describe the whole action involved, including but not limited to later phases of the project, and any secondary, support, or off-site features necessary for its implementation. Attach additional sheets if necessary): The applicant proposes to place a 30-foot tall communications tower at 1579 Indian Springs Dr., in the Alabama Hills, southwest of Lone Pine, CA and remove an existing antenna attached to a garage located next door to the proposed project location. The goal of the project is to provide wireless Internet access to customers in the Alabama Hills with a more permanent and better functioning facility. The proposed tower at 1579 Indian Springs Dr. will re-transmit wireless internet signals from existing towers located at 125 North Lakeview Street in Lone Pine, and 585 Alabama Drive in the Alabama Hills, making wireless internet service available to residential customers in the Alabama Hills.
The proposed project location is currently developed with residential uses. The 30-foot tall communications tower will be anchored to the ground with an 4'x4'x4' concrete pad and a 6-foot fence will be built around it. It will be located in the back/side-yard, about 22-feet south of two existing garages and approximately 60 feet south, of the existing residential dwelling. The applicant has purchased a 10'x10' utility easement from the property owners for this project.

9. **Surrounding land uses and setting:** Briefly describe the project's surroundings: The current development at 1579 Indian Springs Dr. consists of a single-family dwelling, and two garages located

on approximately 24-acres. The developed area of the parcel (west side) has a General Plan designation of Rural Residential Medium Density and is Zoned Rural Residential with a 2.5-acre minimum. The undeveloped portion (east side) has a General Plan designation of Open Space and Recreation and is Zoned Open Space with a 40-acre minimum (see attached maps for surrounding zoning and General Plan designations). The undeveloped area of the parcel drops off and slopes downward into vacant lands. The surrounding properties are described below.

Location:	Use:	Gen. Plan Designation	Zoning
Site	Residental/OpenSpace	RRM/OSR	RR-2.5/OS-40
North	Residential	RRM	RR-2.5
East	Vacant	OSR	OS-40
South	Residential	RRM	RR-2.5
West	Residential	RRM	RR-2.5

10. Other public agencies whose approval is required (e.g., permits, financing approval, or participation agreement): Inyo County Building and Safety Department (Building Permits).

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:
The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

☒ Aesthetics Resources	☐ Agriculture & Forestry	☐ Air Quality
☐ Biological Resources	☐ Cultural Resources	☐ Geology /Soils
☐ Hazards & Hazardous Materials	☐ Hydrology / Water Quality	☐ Land Use / Planning
☐ Mineral Resources	☐ Noise	☐ Population / Housing
☐ Public Services	☐ Recreation	☐ Transportation/Traffic
☐ Greenhouse Gas Emissions	☐ Utilities/Service Systems	☐ Mandatory Findings of Significance

DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

☐ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

☒ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Cathreen Richards
Associate Planner
Inyo County Planning Department

11/12/12
Date

INYO COUNTY PLANNING DEPARTMENT
ENVIRONMENTAL CHECKLIST FORM

	Potentially Significant Impact	Less Than Significant With Mitigation Incorporation	Less Than Significant Impact	No Impact
I. AESTHETICS – Would the project: a) Have a substantial adverse effect on a scenic vista?	☐	☒	☐	☐

The proposed project location is in a residential area within the Alabama Hills, located southwest of Lone Pine. The Alabama Hills are a major scenic attraction in Inyo County and the communications tower has the potential to impact the scenic vistas. There are two land use plans that address scenic vistas in Inyo County: the Bureau of Land Management (BLM) Resource Management Plan and the Inyo County General Plan.

The BLM has developed Resource Management Plans (RMP) for areas under BLM's jurisdiction. Local BLM lands in the RMP include the Alabama Hills. The Alabama Hills are designated as a Visual Resource Management Class-2 (VRM) area. BLM's enforcement of VRM Classes 2-4 areas "will be along key observation points" and the Class-2 objectives include: "The objective of this class is to retain the existing character of the landscape. The level of change to the characteristic landscape should be low. . ." "Any changes must repeat the basic elements of form, line, color, and texture found in the predominant natural features of the characteristic landscape." The property that the communications tower is proposed to be built on, is private property, located in an already established residential neighborhood that is not considered to be part of a scenic route or tourist destination; and, although the tower has the potential to effect the eastward views from the surrounding residential properties to the Inyo Mountains, it will not affect west or northward views of the unique land formations that characterize the Alabama Hills. The Communications tower will also not be visible from Highway 395 and will not obstruct westward views to the Sierra Nevada's for vehicles traveling through the area.

The Inyo County General Plan also sets goals and policies to protect scenic vistas. General Plan Goal VIS-1 states: Preserve and protect resources throughout the County that contribute to a unique visual experience for visitors and quality of life for residents. The communications tower will not affect west or northward views of the unique land formations that characterize the Alabama Hills. The Communications tower will also not be visible from Highway 395 and will not obstruct westward views to the Sierra Nevada's for vehicles traveling through the area. The siting of the communications tower has the potential to have an impact on the scenic vistas of the surrounding residential neighborhood. This impact is not likely to be substantial, however, as the tower will be limited to 30-feet in height based on the Zoning district (RRM) regulations that it is located in. This residential area also has telephone and flag poles, as well as the existing antenna that the communications tower will be replacing, near the project location that are of similar height (e.g. a typical telephone pole is 40-feet). The communications tower is relatively small in the context of its proposed location. It consists of three vertical poles that make a tripod that is 24-inches wide on all three sides of the base and tapers to 12-inches at the top. Each side has metal bars running from bottom to top in a zigzag pattern with significant open, visible, space between. To ensure that the tower does not have a negative impact on the scenic views of surrounding property owners, the applicant will be required to paint the tower a color to blend in with the landscape (non-reflective light brown) and plant trees as appropriate to screen it. The change in surface color, as well as appropriate screening will serve as mitigation for the project.

b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway? *No, The Communications tower will not be visible from Highway 395.*	☐	☐	☐	☒
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	☐	☒	☐	☐

The siting of the communications tower has the potential to have an impact on the visual character of the surrounding residential neighborhood. This impact is not likely to be substantial, however, as the tower will be limited to 30-feet in height based on the Zoning district (RRM) regulations that it is located in. This residential area also has telephone and flag poles, as well as the existing antenna that it will be replacing, near the project location that are of similar height. The existing antenna is 26-feet tall, the house is approximately 25-feet, the flag pole located in the front yard of the proposed location is at least 30-feet tall, the two garages are approximately 15-feet and the tree that the communications tower will be sited next to is approximately 20-feet high, also the average telephone pole in a residential neighborhood is 40-feet tall. Overall, the communications tower is relatively small in the context of its proposed location. It consists of three vertical poles that make a tripod that is 24-inches wide at the base and tapers to 12-inches at the top. Each side has metal bars running from bottom to top in a zigzag pattern with significant open, visible, space between. To ensure that the tower does not have a negative impact on the scenic views of surrounding property owners, the applicant will be required to paint the tower a color to blend in with the landscape (non-reflective light brown) and plant trees as appropriate to screen it. The change in surface color, as well as appropriate screening will serve as mitigation for the project.

d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area? ☐ ☒ ☐ ☐

The applicant's description of the tower includes that it will be a metallic color. The tower has the potential to create glare that could affect the residential properties surrounding it. A light brown non-reflective surface will reduce this impact to a less than significant level, and additional tree plantings, as appropriate, will be used for screening. The change in surface color, as well as appropriate screening will serve as mitigation for the project.

II. AGRICULTURE AND FOREST RESOURCES: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including The Forest and Range Assessment Project and the Forest Legacy Assessment Project; and forest carbon measurement methodology Provided in Forest Protocols adopted by the California Air Resources Board.

Would the project:

a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use? ☐ ☐ ☐ ☒

No, the area of the proposed project does not include farmland.

b) Conflict with existing zoning for agricultural use, or a Williamson Act contract? ☐ ☐ ☐ ☒

No, the area of the proposed project does not include land zoned specifically for agriculture; there are no Williamson contracts in Inyo county.

c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code ☐ ☐ ☐ ☒

section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code Section 51104(g))?
No, the project area does not include forestland or timberland.

d) Result in the loss of forest land or conversion of forest land to non-forest use?
No, the project area does not include forestland.

e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?
No, the area of the proposed project does not include farmland or forestland.

III. AIR QUALITY: Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:

a) Conflict with or obstruct implementation of the applicable air quality plan?
No, the project consists of one communication tower that will not generate emissions.

b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?
No, the project consists of one communication tower that will not generate emissions.

c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?
No. Although there are portions of Inyo County within non-attainment areas for Federal and State PM10 (particulate matter 10 microns or less in diameter) ambient air quality standards, the primary source for this pollution is the Owens dry lake, located approximately 4 miles from the project site. The project consists of one communications tower that will be anchored to a 4'x4'x4' concrete pad that will not require significant excavation and will not increase PM10 pollutants over existing levels; therefore, the project will have a less than significant impact on PM10 levels.

d) Expose sensitive receptors to substantial pollutant concentrations?
No, the project consists of one communication tower that will not generate emissions.

e) Create objectionable odors affecting a substantial number of people?
No, the project consists of one communication

tower that will not generate emissions.

IV. BIOLOGICAL RESOURCES: Would the project:

a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service? ☐ ☐ ☐ ☒

No, the proposed tower will be built on an already developed residential property and will not disturb any new area; therefore, there will be no adverse effects on habitat or species in the area.

b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service? ☐ ☐ ☐ ☒

No, the proposed tower will be built on an already developed residential property and will not disturb any new area; therefore, there will be no adverse effects on habitat or species in the area. Additionally, there is no riparian habitat in the project area.

c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filing, hydrological interruption, or other means? ☐ ☐ ☐ ☒

No, There are no federally protected wetlands in the project area.

d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites? ☐ ☐ ☐ ☒

No, the proposed tower will be built on an already developed residential property and will not disturb any new area; therefore, there will be no adverse effects on habitat or species in the area.

e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance? ☐ ☐ ☐ ☒

No, the project will not conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.

f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan? ☐ ☐ ☐ ☒

No, the project area is not subject to an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

V. CULTURAL RESOURCES: Would the project:

a) Cause a substantial adverse change in the significance of a historical resource as defined in Section 15064.5?
No, the proposed tower will be built on an already developed residential property and will not disturb any new area; therefore, there will be no adverse effects on a historical resource.

b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5?
No, the proposed tower will be built on an already developed residential property and will not disturb any new area; therefore, there will be no adverse effects on an archaeological resource.

c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?
No, the proposed tower will be built on an already developed residential property and will not disturb any new area; therefore, there will be no adverse effects on an paleontological resource or geologic feature.

d) Disturb any human remains, including those interred outside of formal cemeteries?
No, the proposed tower will be built on an already developed residential property and will not disturb any new area.

VI. GEOLOGY AND SOILS: Would the project:

a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:

i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.
No, the project area is not located within or the vicinity of a known fault zone.

ii) Strong seismic ground shaking?

Ground shaking may occur anywhere in the region, due to numerous earthquake faults, regardless of whether the project site is within an identified Alquist-Priolo zone. However, the Uniform Building Code insures that future structures shall constructed to required seismic standards (Level IV) in order to withstand such shaking, and so this potential impact is considered less than significant.

iii) Seismic-related ground failure, including liquefaction?

No, the project area is not within an area of soils known to be prone to liquefaction.

iv) Landslides? *No, the project area is not subject to landslides.*	☐	☐	☐	☒
b) Result in substantial soil erosion or the loss of topsoil? *No. All future development on the project site is required to conform to all drainage, grading, and "Best Management Practice (BMP) requirements as set forth by the Inyo County Public Works Department, Inyo County of Inyo Environmental Health Services Department, the California Regional Water Quality Control Board (Lahontan), and other associated regulatory agencies. As a result of this regulation, potential impacts are considered less than significant. Additionally, the entire project area will encompass only a 10'x10' (100sq.ft.) area of already developed land.*	☐	☐	☐	☒
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse? *No, the placement of the communication tower does not involve soil erosion or the loss of topsoil on the already disturbed residential properties. The placement of the tower involves the clearing of approximately a 10'x10'(100sq.ft.) area of already disturbed ground.*	☐	☐	☐	☒
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property? *No, the project area is not within an area of a known expansive soil type.*	☐	☐	☐	☒
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water? *No, the project will not require a wastewater disposal system.*	☐	☐	☐	☒

VII. GREENHOUSE GAS EMISSIONS:
Would the project:

a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment? *No, the communications tower will not generate emissions directly or indirectly.*	☐	☐	☐	☒
b) Conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases? *No, the communications tower will not generate*	☐	☐	☐	☒

emissions.

VIII. HAZARDS AND HAZARDOUS MATERIALS:
Would the project:

a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials? *No, the communications tower will not generate hazardous materials.*	☐	☐	☐	☒
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment? *No, the communications tower will not generate hazardous materials.*	☐	☐	☐	☒
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school? *No, the communications tower will not generate hazardous emissions or materials, additionally, there are no schools located within a ¼-mile of the project site.*	☐	☐	☐	☒
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment? *No, the communications tower will not be located on a site that is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5.*	☐	☐	☐	☒
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area? *No, the communications tower will not be located in an airport land use plan area, nor is it within two-miles of a public or private use airport.*	☐	☐	☐	☒
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area? *No, the* communications tower will *not be located in the vicinity of a* private use airstrip.	☐	☐	☐	☒
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan? *No, the communications tower will not interfere with any emergency response or evacuation plans.*	☐	☐	☐	☒
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	☐	☐	☐	☒

No, the communications tower will be located in already developed residential area. The project proposes no additional development of structures for humans.

IX. HYDROLOGY AND WATER QUALITY: Would the project:

a) Violate any water quality standards or waste discharge requirements? *No, the project consists of one communications tower that will not require or affect water or waste water systems.*	☐	☐	☐	☒
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)? *No, the placement of the communications tower on an already developed residential lot will not require additional extraction of groundwater, and the project will not interfere with groundwater recharge, as it will create only a 4'x4' (16sq.ft.) of impermeable surface area on already disturbed land.*	☐	☐	☐	☒
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site? *No, the project requires no alteration of existing drainages or landscape ditches.*	☐	☐	☐	☒
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on or off-site? *No, the project will only create approximately 4'x4' (16sq.ft.) of impermeable surface. This is a less than significant increase in potential runoff.*	☐	☐	☐	☒
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff? *No, the project will only create approximately 16sq.ft. of impermeable surface. This is a less than significant increase in potential runoff.*	☐	☐	☐	☒
f) Otherwise substantially degrade water quality? *No, the project will not degrade water quality.*	☐	☐	☐	☒
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	☐	☐	☐	☒

No, the proposed project does not include housing, additionally the project area is not located in a 100-year hazard area.

h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows? ☐ ☐ ☐ ☒
No, the proposed project area is not located in a 100-year flood hazard area.

i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam? ☐ ☐ ☐ ☒
No, the project site is outside of an inundation zone from the failure of regional dams.

j) Inundation by seiche, tsunami, or mudflow? ☐ ☐ ☐ ☒
No, the project site is outside of a seiche, tsunami or mudflow inundation threat.

X. LAND USE AND PLANNING: Would the project:

a) Physically divide an established community? ☐ ☐ ☐ ☒
No, the proposed project is a single communications tower that does not have the potential to divide a community.

b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect? ☐ ☐ ☐ ☒
No, the proposed project site is in a rural residential area. The property is designated Residential Rural Medium Density (RRM) in the General Plan, which allows for single-family residences. The property is zoned Rural Residential, 2.5-acre minimum (RR-2.5). The RR zone allows, with the approval of a conditional use permit, "Public and quasi-public buildings and uses of recreational, educational, religious, cultural and public service nature; excluding corporate yards, exterior storage, repair yards and warehouses." A cable, internet, or TV facility is considered to be a "quasi-public" use and of a public service nature. Therefore, the approval of this project will not conflict with an applicable land use plan.

c) Conflict with any applicable habitat conservation plan or natural community conservation plan? ☐ ☐ ☐ ☒
The project will not conflict with any applicable habitat conservation plan. This project consists of one communications on an already developed residential site.

XI. MINERAL RESOURCES: Would the project:

a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state? ☐ ☐ ☐ ☒
No, there are no known minerals at the project location.

b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local ☐ ☐ ☐ ☒

general plan, specific plan, or other land use plan?
No, there are no known minerals at the project location.

XII. NOISE: Would the project result in the:

a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies? ☐ ☐ ☐ ☒
No, the day-to-day operation of the tower will not generate noise.

b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels? ☐ ☐ ☐ ☒
No, the day-to-day operation of the tower will not generate noise or vibrations.

c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project? ☐ ☐ ☐ ☒
No, the day-to-day operation of the tower will not generate noise.

d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project? ☐ ☐ ☐ ☒
No, the day-to-day operation of the tower will not generate noise. There will be a minor increase in noise as the tower is being erected. This will be less than significant.

e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels? ☐ ☐ ☐ ☒
No, the project site is located over two miles from the nearest airport public or private.

f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels? ☐ ☐ ☐ ☒
No, the project site is not located within the vicinity of a private airstrip.

XIII. POPULATION AND HOUSING – Would the project:

a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)? ☐ ☐ ☐ ☒
No, the proposed project is a single communications tower.

b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere? ☐ ☐ ☐ ☒
No, the proposed project is a single communications tower.

c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere? *No, the proposed project is a single communications tower.*	☐	☐	☐	☒
XIV. PUBLIC SERVICES: Would the project: a) Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
Fire protection? *No, the proposed project is a single communications Tower that will not impact the Lone Pine Rural Fire Protection District.*	☐	☐	☐	☒
Police protection? *No, the proposed project is a single communications tower that will not impact the Inyo County Sheriff's Department.*	☐	☐	☐	☒
Schools? *No, the proposed project is a single communications tower that will not impact the Lone Pine School District.*	☐	☐	☐	☒
Parks? *No, the proposed project is a single communications tower that will not impact the Inyo County Parks and Recreation Department.*	☐	☐	☐	☒
Other public facilities? *No, the communications tower to provide wireless internet access to the Alabama Hills will not result in the need for any additional government services.*	☐	☐	☐	☒
XV. RECREATION: Would the project: a) Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated? *No, the proposed project is a single communications tower that will not result in additional park use.*	☐	☐	☐	☒
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment? *No, the proposed project is a single communications tower that will not result in needing additional recreational facilities.*	☐	☐	☐	☒
XVI. TRANSPORTATION/TRAFFIC – Would the project:				
a) Conflict with an applicable plan, ordinance, or policy	☐	☐	☐	☒

establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including, but not limited to, intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?
No, the proposed project is a single communications tower that will not generate traffic.

b) Conflict with an applicable congestion management program, including, but not limited to, level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways? ☐ ☐ ☐ ☒
No, the proposed project is a single communications tower that will not generate traffic.

c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks? ☐ ☐ ☐ ☒
No, the proposed project is a single communications tower that will not generate traffic, ground or air.

d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)? ☐ ☐ ☐ ☒
No, the proposed project is a single communications tower that will not require new, or changes to the existing, road systems.

e) Result in inadequate emergency access? ☐ ☐ ☐ ☒
No, the proposed project is a single communications tower that will not affect emergency access to the site or to the surrounding vicinity.

f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities? ☐ ☐ ☐ ☒
No, the proposed project is a single communications tower that will not generate traffic.

XVII. UTILITIES AND SERVICE SYSTEMS --
Would the project:
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board? ☐ ☐ ☐ ☒
No, the proposed project is a single communications tower that will not generate wastewater.

b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? ☐ ☐ ☐ ☒
No, the proposed project is a single communications tower that will not require water or generate wastewater.

c) Require or result in the construction of new storm water drainage facilities or expansion of existing ☐ ☐ ☐ ☒

facilities, the construction of which could cause significant environmental effects?
No, the proposed project is a single communications tower that will not generate additional stormwater.

d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?
No, the proposed project is a single communications tower that will not require water.

e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?
No, the proposed project is a single communications tower that will not generate wastewater.

f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?
No, the proposed project is a single communications tower that will not generate waste.

g) Comply with federal, state, and local statutes and regulations related to solid waste?
No, the proposed project is a single communications tower that will not generate waste.

XVIII. MANDATORY FINDINGS OF SIGNIFICANCE:

a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?
No, there are no threatened, protected, or species of concern on the proposed project property. In addition, there are no critical, protected, or sensitive habitats on the surrounding developed residential properties. Therefore, the quality of the environment in the rural residential Alabama Hills' neighborhood will not be impacted.

b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?
No, the project is small in scope and will have no impact on existing or future development. There are no project impacts that are cumulatively considerable.

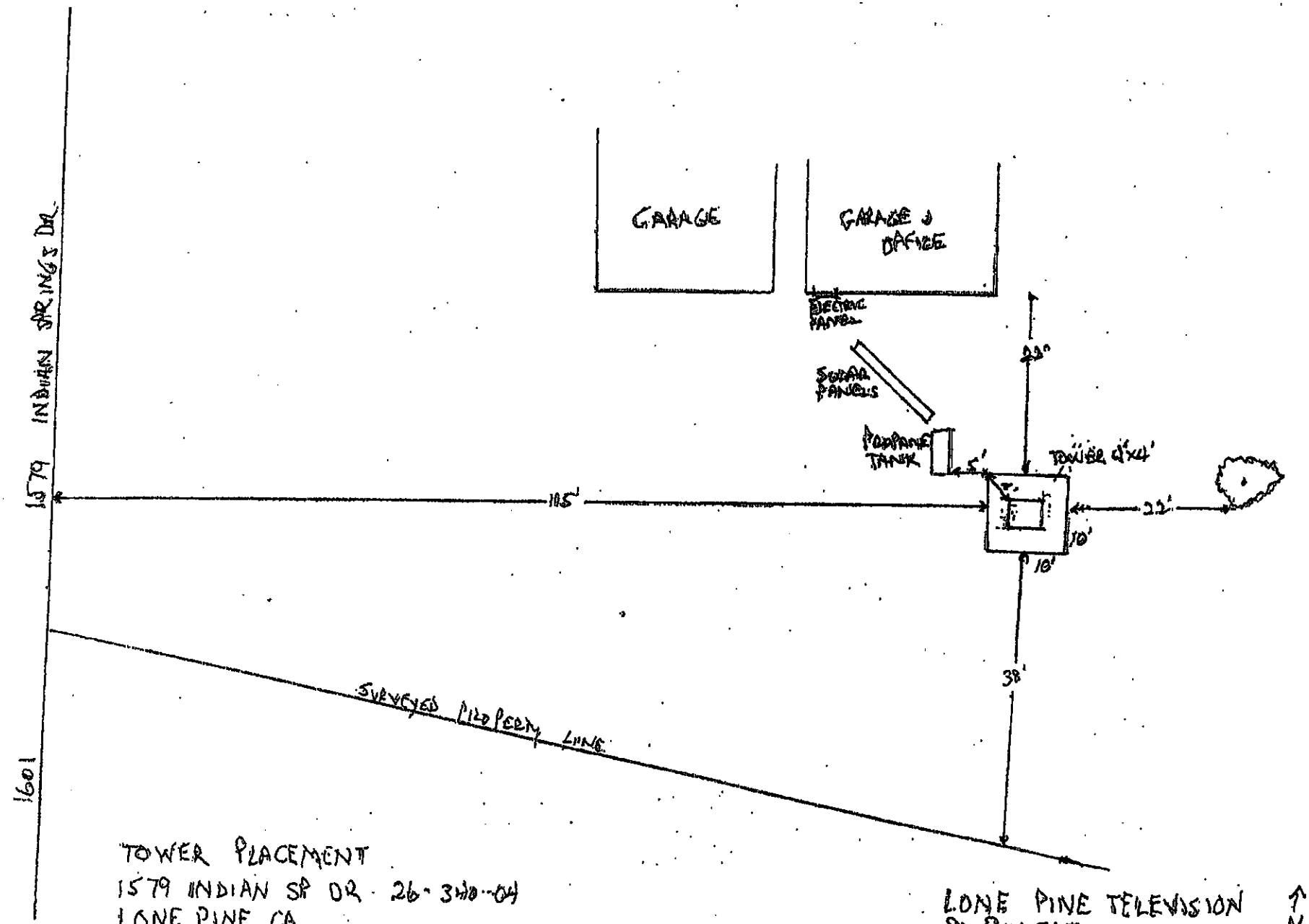
c) Does the project have environmental effects which will cause substantial adverse effects on human beings,

either directly or indirectly?

The project may result in visual impacts on neighboring residential properties. To mitigate this potential impact to a less than significant level, mitigation measures will require the communications tower to be painted a non-reflective light brown to blend in with the residential environment, as well as planting trees as appropriate for screening. Any potential building issues regarding the tower will be addressed by the requirements of the Inyo County Building and Safety Department, which will reduce any possible impacts to a less than significant level.

Inyo County Planning Department Appendix G-Environmental Checklist Form Page 21

Attachment 3) Site Plan



Attachment 4) Comment Letters

October 28, 2012

To:
Inyo County Planning Department
Independence, California

Re:
Conditional Use Permit
2012-04 Branson

This tower must not be built for several reasons:

1. There are CC&R's which are still in full force and effect in the project area. They specifically prohibit the activity proposed. The proposed tower is a clear violation of the CC&R's recorded in Book 160, Page 592, of Official Records.

2. The tower is a sizable commercial project in a residential area. If allowed, it will most likely lower the already reduced property values.

3. The tower will be a visual blight for the Alabama Hills. It will be visible from Lone Pine and Highway 395, as well as from the surrounding areas. The Indian Springs neighborhood has underground utilities to preserve views and the tower would undermine the neighbors' efforts in this regard. No amount of paint will camouflage the tower. The Alabama Hills are being considered, in part, for National Scenic Status and are a significant tourist draw for the area. A prominent tower may impact not only the residents, but businesses that depend on the tourist trade.

4. If this project is approved, it opens the door for additional such projects. The Alabama Hills could become an eyesore.

5. This project is unnecessary. There has been an adequate, fully functional system working for several years that does not significantly impact the environment or the view. The tower is not needed.

Robert & Sue Jaussaud
P.O. Box 789
1601 Indian Springs Dr.
Lone Pine, California 93545

From: Bert Jarnagin [mailto:bertnchops@yahoo.com]
Sent: Mon 11/12/2012 9:20 PM
To: InyoPlanning
Subject: Conditional Use Permit 2012-04 Branson

To:
Inyo County Planning Department
Independence, California

Re:
Conditional Use Permit
2012-04 Branson

To Whom it May Concern:

We live kitty-corner from the site being considered for this project. In the short time we have lived here.(4 years) there has been a lot of changes in the Alabama Hills. We understand the need for growth, people selling property and lightly changing the general landscape of the area for these reasons. We all like a comfortable living space with amenities for our day to day life. However, choosing to live in a location like the Alabama Hills means that sometimes we need to forego some of these comforts to protect the safety, beauty and the nature of such an area. Along with being in agreement with the reasons the Jaussauds submitted for this tower being put into place: CC&R restrictions, commercial use in a residential area, visual blight, possible further commercial development, and conditional service use(their letter is attached for details) we would like to add the following:

~As far as we understand it, the new 'Tower' will not necessarily provide or prep us for any new/better functioning' services than what we have. As we understand it, in a matter of years, this tower will need to be upgraded with more elaborate/powerful receivers/transmitters that will have to receive/emit even stronger signals. So when it is stated that this is a 'more permanent' structure, it may be more 'permanent' (buried in the ground/standing alone) but not necessarily better functioning unless larger/more attachments have to be added.

~So, this too becomes a concern- aren't there laws to protect citizens from such strong signals? As the tower's needs change/grow, who will oversee this to be sure they stay within what are supposed to be 'safe' limits for humans to be around? Personally, we moved here -to the Alabama Hills from the Bay Area to live in more of a 'country' setting - carefully selecting/purchasing our home to avoid power lines and cell towers, especially one of this magnitude.

~ This brings us to thinking that since a Broadband cable system is being installed up and down highway 395 and will be used widely in other neighboring towns why aren't cables (vs the tower's wireless system) being brought up here? There are already some telephone poles and underground cable line routes in place to use. From what we understand, although the cost would initially be more, cables' long term efficiency and costs would actually be much less. The CC&Rs of Lone Pine Springs development include that all power supplies be done with underground cables in this area- isn't this considered a power source? This makes the tower seem outdated already, so will we end up with a tower in place that won't be used within a few years? Who will be making sure it comes down when this becomes the case?The tower at 585 Alabama Drive also has large dishes on the ground around it- will they have to be installed at some point or now?

~ As far as 'better functioning' facility goes: we seem to have ample service with the much smaller, somewhat unobtrusive antenna already in place. Yes there are some days with glitches, which create an interruption to communications, but nothing so bad that makes this tower worth installing...we're sure that there would still be days without service or glitches at the very least if the tower or cables were installed- it's the 'nature of the beast'! The request says to 'make(ing) wireless internet service available to residential clients in the Alabama Hills'...it already is, so....

~ The position of this tower is a visual eyesore from the street, the highway and our homes. It will help destroy one of the only rim vistas still available, especially if the few remaining rim plots are developed. Currently, only the garage (with the antenna attached) is seen from the highway, but it is not like a gleaming 30' tower. Yes, developing large structures, sprawling structures on plots and some fences do currently effect the views up here and these are mistakes made by some home owners but! why continue with this pattern- especially with a commercial project? 'No' has to be said at some point. Surely there are some sort of scenic preservation laws in place....are these being adhered to?

~the current antenna not only services the area(wirelessly)as far as we know, but is just that: an antenna. The new proposed one is a communications tower which really says it all (antenna vs tower)- please do not be fooled by the unassuming written request of putting in a 4 foot difference in height facility! What gives the antenna it's height is the garage, the antenna itself is only 8-9 feet above the garage and very slender. We're sure someone will be out to look at the site and there will be more discussion but we have attached photos so you know can begin to see what the issues are. Although only people living within 300' of this structure can give voice to this project, others who live in Lone Pine and Alabama Hills who are offended by it's proposal as well.

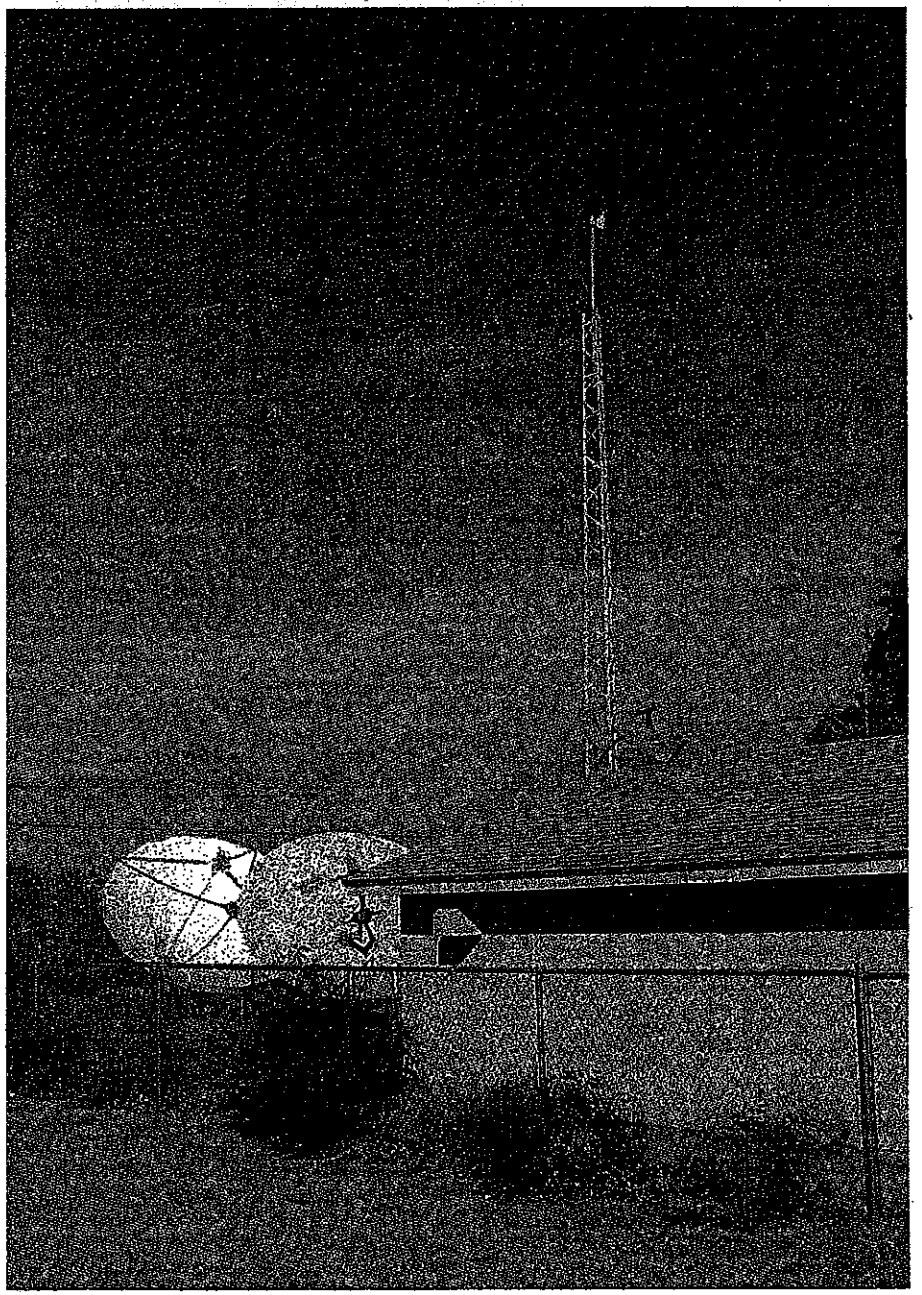
IF this were to be considered, there are compromises that might be acceptable. Such as: place the tower behind the house where most of it is covered up and the top of it (where it is presumed to 'receive/send' information) would still be available to use. This is how it is on Alabama Drive (picture attached). It would then only be half an 'eyesore' to the Alabama community and the property owners could plant trees to eventually help block it's view from 395. Another solution would be to run the more efficient/permanent cables instead, a much more forward thinking plan that assures the CC&Rs for this area are abided by, and the 'better functioning' service is truly provided and hopefully without any further upgrades. We realize this seems like a 'not in my neighborhood' outcry but truly, we think that this tower hasn't been thought out well- function, environmental safety or esthetically...that all in all seems like a lot of work/issues for a tower that maybe, truly doesn't have to be installed at all.

Please find attached the follow information:
#1 Jaussaud's letter of comments
#2 Picture of what is in place now
#3 Picture of what we believe will be built in it's place(585 Alabama Drive)
#4 and 5 home owners views that are involved (close by)
#6 view to town from where the antenna will be placed(so where it will be seen from 395)/visitor center, Lake Diaz, Lone Pine proper.

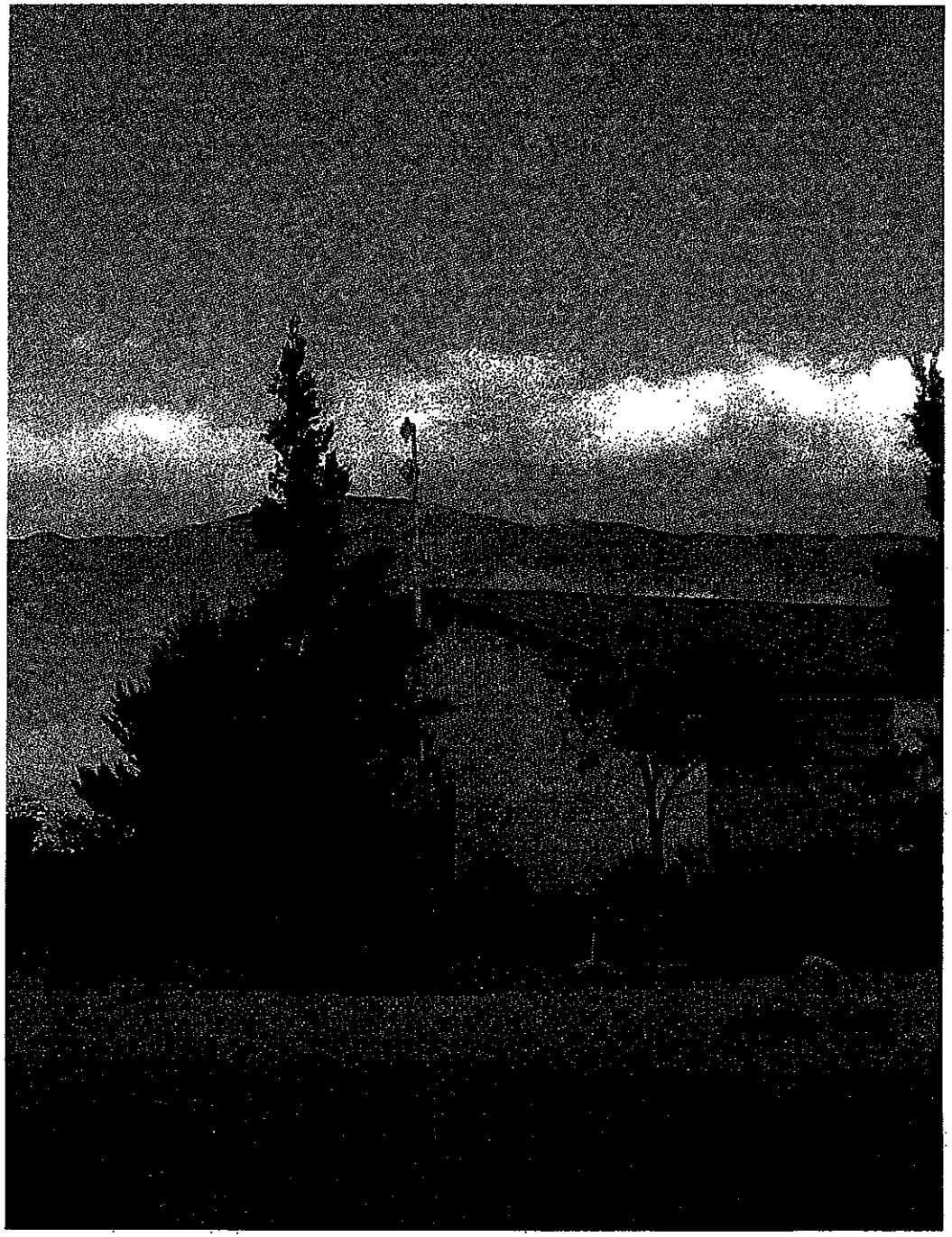
Thanks for considering our point of view (literally!).

Roberta and Bart Jamagin
P.O. Box 531
1600 Indian Springs Dr.
Lone Pine, California 93545
Email: bertnbart@lonepinetv.com

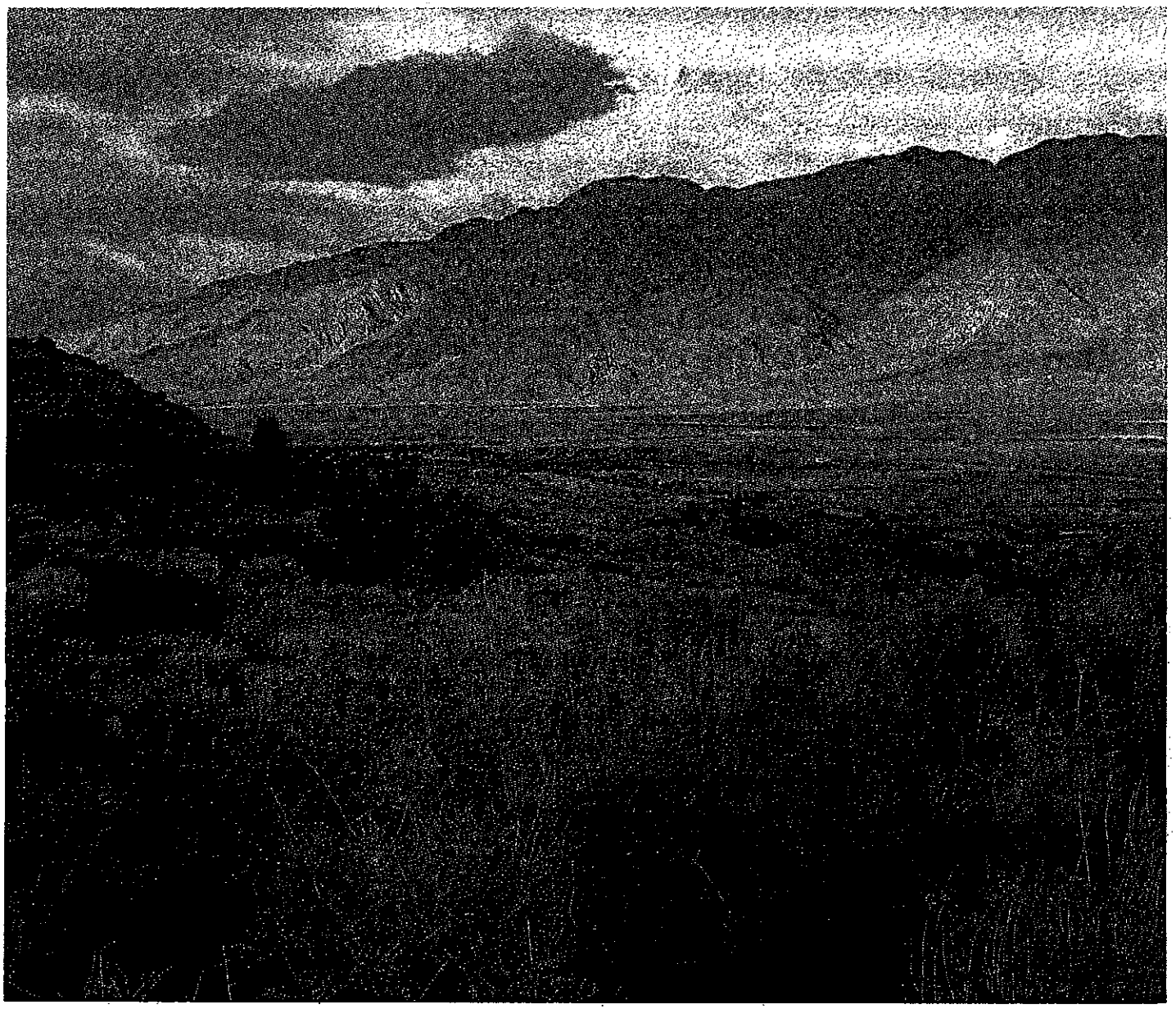
Attachment to
Jarnagin Letter:
585 Alabama Dr.



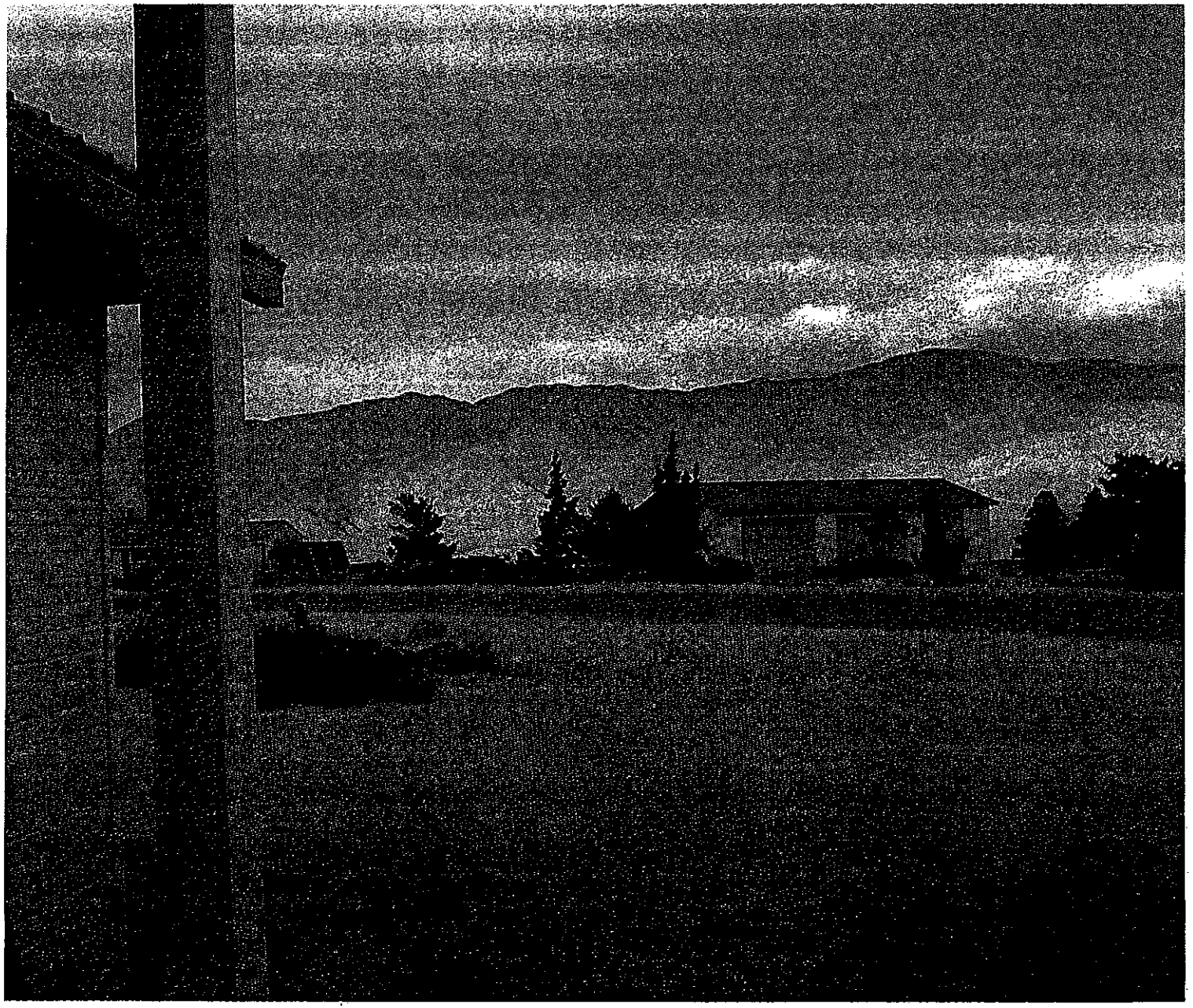
Attachment to
Jarnagin Letter:
Existing antenna



Attachment to Jarnagin Letter:
View to 395



Attachment to Jarnagin Letter: View from 1600 Indian Springs Dr.

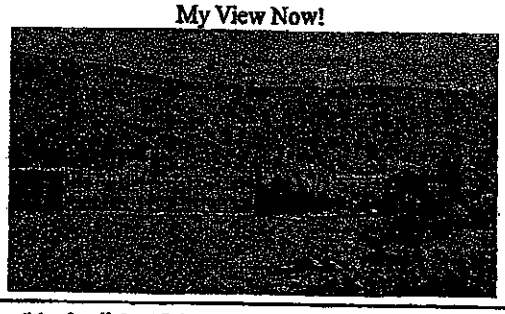


Attachment to Jarnagin Letter: View from Edgar and Dorame homes

ZINDA EDGAR
1596 INDIAN SPRINGS DRIVE
LONE PINE, CA 93545
760 382-0855

Inyo County Planning Department
P.O. Drawer "L"
Independence, CA 93526

My View Now!



November 5, 2012

Conditional Use Permit 2012-04 Branson

In answer to the Notice of Availability and Intent to build a 30-foot tall communications tower at 1579 Indian Springs Dr., this project is unnecessary. There is a fully functional system working that does not detrimental effect the environment or the view. The tower is not needed and does not need to be built. Conditional use permits provide a zoning authority the opportunity to allow uses that would improve a neighborhood to exist in a zone where they are otherwise prohibited. Indian Springs Subdivision CC&R's state; (13)(pg 5) all utility service connections shall be underground. I live directly across the street, it will hinder my view, the reason I moved here in the first place, and be ghastly visible from my front porch, my front windows, my front door, scaring the view of the Inyo's. Even though the HOA is not active the CC&R's are still valid and I ask the county to enforce them. There is a goal in a couple years to install fiber optics for the internet which would make this tower mute.

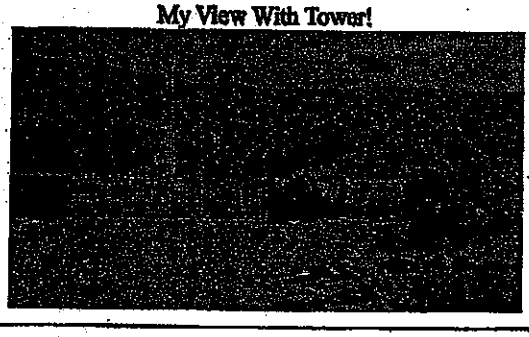
According to Bruce Branson owner of Lone Pine TV, he told us the new tower would not improve service or be a better functioning facility, he just didn't like where the old one was. Wireless service is already available to residents in the Alabama Hills and would not be improved, how does this fit into "better functioning facility?"

The tower will be directly in the path of 70 - 100 mile an hour winds that rip roofs off of buildings, and directly facing my house, what about the sound of the wind through the tower?

Your notice states the proposed tower would re-transmit wireless signals from the tower in Lone Pine, and Alabama Drive, the existing 26 foot tower transmits wireless signals without being attached to a 30 foot stand alone tower, with a six foot fence surrounding it. This is in a residential area not a commercial area. If allowed will lower property values on our street and significantly alters the neighborhood.

The tower is not needed and not wanted by the residents of Indian Springs Dr.

My View With Tower!



Sincerely,

Zinda Edgar

Cc: Jaussaud, Dorame

STATE OF CALIFORNIA Edmund G. Brown, Jr., Governor

NATIVE AMERICAN HERITAGE COMMISSION
915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814
(916) 653-6251
Fax (916) 657-5390
Web Site www.nahc.ca.gov
ds_nahc@pacbell.net

October 17, 2012

Ms. Cathreen Richards, Planner
County of Inyo Department of Planning
P.O. Box L
Independence, CA 9352

Re: SCH#2012101046; CEQA Notice of Completion; proposed Mitigated Negative Declaration for the "Conditional Use Permit 2012-04 Branson Project (Communications Tower);" located in the Alabama Hills near the Community of Lone Pine; Inyo County California

Dear Ms. Richards:

The Native American Heritage Commission (NAHC) is the State of California 'Trustee Agency' for the protection and preservation of Native American cultural resources pursuant to California Public Resources Code §21070 and affirmed by the Third Appellate Court in the case of EPIC v. Johnson (1985: 170 Cal App. 3rd 604).

This letter includes state and federal statutes relating to Native American historic properties or resources of religious and cultural significance to American Indian tribes and interested Native American individuals as 'consulting parties' under both state and federal law. State law also addresses the freedom of Native American Religious Expression in Public Resources Code §5097.9. This project is also subject to California Government Code Section 65352.3.

The California Environmental Quality Act (CEQA – CA Public Resources Code 21000-21177, amendment s effective 3/18/2010) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Report (EIR) per the CEQA Guidelines defines a significant impact on the environment as 'a substantial, or potentially substantial, adverse change in any of physical conditions within an area affected by the proposed project, including ...objects of historic or aesthetic significance." In order to comply with this provision, the lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE), and if so, to mitigate that effect. The NAHC recommends that lead agencies conduct a Sacred Lands File search of the proposed 'area of potential effect' (APE) as part of their due diligence.

The NAHC 'Sacred Sites,' as defined by the Native American Heritage Commission and the California Legislature in California Public Resources Code §§5097.94(a) and 5097.96. Items in the NAHC Sacred Lands Inventory are confidential and exempt from the Public Records Act pursuant to California Government Code §6254 (r).

Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries of cultural resources or burial sites once a project is underway. Culturally affiliated tribes and individuals may have knowledge of the religious and cultural significance of the historic properties in the project area (e.g. APE). We strongly urge that you make contact with the list of Native American Contacts on the attached list of Native American contacts, to see if your proposed project might impact Native American cultural resources and to obtain their recommendations concerning the proposed project. Pursuant to CA Public Resources Code § 5097.95, the NAHC requests cooperation from other public agencies in order that the Native American consulting parties be provided pertinent project information. Consultation with Native American communities is also a matter of environmental justice as defined by California Government Code §65040.12(e). Pursuant to CA Public Resources Code §5097.95, the NAHC requests that pertinent project information be provided consulting tribal parties, including archaeological studies. The NAHC recommends *avoidance* as defined by CEQA Guidelines §15370(a) to pursuing a project that would damage or destroy Native American cultural resources and California Public Resources Code Section 21083.2 (Archaeological Resources) that requires documentation, data recovery of cultural resources, construction to avoid sites and the possible use of covenant easements to protect sites.

Furthermore, the NAHC if the proposed project is under the jurisdiction of the statutes and regulations of the National Environmental Policy Act (e.g. NEPA; 42 U.S.C. 4321-43351). Consultation with tribes and interested Native American consulting parties, on the NAHC list, should be conducted in compliance with the requirements of federal NEPA and Section 106 and 4(f) of federal NHPA (16 U.S.C. 470 *et seq*), 36 CFR Part 800.3 (f) (2) & .5, the President's Council on Environmental Quality (CSQ, 42 U.S.C 4371 *et seq.* and NAGPRA (25 U.S.C. 3001-3013) as appropriate. The 1992 *Secretary of the Interiors Standards for the Treatment of Historic Properties* were revised so that they could be applied to all historic resource types included in the National Register of Historic Places and including cultural landscapes. Also, federal Executive Orders Nos. 11593 (preservation of cultural environment), 13175 (coordination & consultation) and 13007 (Sacred Sites) are helpful, supportive guides for Section 106 consultation. The aforementioned Secretary of the Interior's *Standards* include recommendations for all 'lead agencies' to consider the historic context of proposed projects and to "research" the cultural landscape that might include the 'area of potential effect.'

Confidentiality of "historic properties of religious and cultural significance" should also be considered as protected by California Government Code §6254(r) and may also be protected under Section 304 of he NHPA or at the Secretary of the Interior discretion if not eligible for listing on the National Register of Historic Places. The Secretary may also be advised by the federal Indian Religious Freedom Act (cf. 42 U.S.C., 1996) in issuing a decision on whether or not to disclose items of religious and/or cultural significance identified in or near the APEs and possibility threatened by proposed project activity.

Furthermore, Public Resources Code Section 5097.98, California Government Code §27491 and Health & Safety Code Section 7050.5 provide for provisions for inadvertent discovery of human remains mandate the processes to be followed in the event of a discovery of human remains in a project location other than a 'dedicated cemetery'.

To be effective, consultation on specific projects must be the result of an ongoing relationship between Native American tribes and lead agencies, project proponents and their contractors, in the opinion of the NAHC. Regarding tribal consultation, a relationship built around regular meetings and informal involvement with local tribes will lead to more qualitative consultation tribal input on specific projects.

Attachment B

Letters submitted at the December 5, 2012 meeting

Law Offices of Benjamin J. Branson

Attorney at Law

Benjamin J. Branson

14418 North Buckthorn Court
Fountain Hills, Arizona 85268

2549 Eastbluff Drive, Suite 243
Newport Beach, California 92660

Telephone: (310) 880-9693
benjamin.branson@gmail.com

*Admitted in California and Arizona

November 30, 2012

Inyo County Planning Department
c/o Ms. Cathreen Richards
168 North Edwards Street
Independence, California 93526

RE: ***Conditional Use Permit No. 2012-04*** – **Lone Pine Television, Inc.**

To Whom it May Concern:

I am writing this letter today in support of Lone Pine Television, Inc. ("LPTV") and its proposed Conditional Use Permit No.: 2012-04 before this Department for consideration. The project entails removing the current 26 foot tower located on Robert Jaussaud's property and replacing it with a 30 foot tower located on another parcel owned by Ray Sisson (the "Project").

The Project is to provide long term stability of service by constructing a structure that will endure severe weather. The Project will provide a fixed power supply and provide internet service to areas currently under-served or not provided service at all. This Project will not be replaced with Digital 395, on the contrary, LPTV is in negotiations with Digital 395 to boost service, if and when, it can be provided by that entity. Once the Department grants the Conditional Use Permit, this Project should take only about a month or two to install. LPTV has already obtained a Telecommunications Easement for the Project and has applied for a building permit for the same. The Project will provide service for approximately 70 people; there are currently four individuals who oppose this Project. This letter is to address those concerns and to encourage the County to grant the Conditional Use Permit.

I am the legal counsel for LPTV, my practice entails commercial real estate litigation and I am licensed in the State of California and the State of Arizona. I am providing my professional opinion as to the meritless opposition raised by the four individuals to the Project. This letter is my opinion based on review of California law that governs these types of transactions.

It is undisputed that LPTV is a cable television corporation under Section 216.41 of the California Public Utilities Code. LPTV has a valid and current franchise license agreement with the State of California and the County of Inyo pursuant to Section 5885 of the Code which permits the installation, construction and maintenance of its network within the public right-of-way. The law states clearly, "[t]he local entity shall allow the holder of a state franchise under this division to install, construct, and maintain a network within public rights-of-way..." Cal. Pub. Util. Code §5885(a).

LPTV has obtained and recorded a Telecommunications Easement executed by Ray and Betty Sisson granting LPTV permission to build, maintain, inspect, repair, replace and remove the tower on the proposed site. "Right-of-way means any public or private right-of-way and includes any area required for public use pursuant to any general plan or specific plan." Cal. Gov. Code §65003. By statute, LPTV has the right to use public highways to install, operate, and maintain their network. A Conditional Use Permit for installation of a tower, combined with the grant of a private right of way, should be treated in the same manner and given no additional consideration. If the Department finds that the Project would be permitted on a public right-of-way, the findings should be consistent with a private right-of-way. Cal. Pub. Util. Code §762.5.

It is also undisputed that LPTV is regulated by the Federal Communications Commission (the "FCC") which regulates communications by radio, television, wire, satellite and cable. LPTV has been in compliance with the FCC and all of the regulatory bodies governing its business and operations. There are no complaints lodged with these organizations. The concern of strong signals or any danger to health posed by radio signals is preposterous.

The complaints lodged to the Department are from a mere fraction of disappointed residences in the area. The primary argument is that the Covenants, Conditions and Restrictions ("CC&R's) somehow prohibits the Project. Any reference to the CC&R's, recorded nearly fifty years ago is misplaced. The law is clear that the County is not bound in any way by private agreements among landowners.

Even if the County felt obligated to give weight to these CC&R's, they are invalid. There is no homeowner's association to enforce the CC&R's, the declarant is insolvent, and none of the current landowners were a party to the agreement. There are serious questions of standing as well as enforcement of any of the CC&R's that govern this area. Even if the opponents to the tower were able to surmount these difficult issues, the CC&R's read in their plain meaning state that "utility service connections shall be underground, excepting the original power line..." The proposed tower is the modern equivalent to the point of entry, original source, or the original power line. The CC&R's are defective for many reasons and should not be taken into consideration when the Department makes its decision regarding the permitting of this Project.

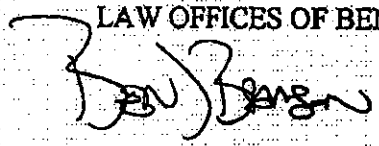
The Project is for the betterment of the Alabama Hills as a whole. Although LPTV understands the concerns of the objecting individuals, they are unwarranted and unnecessary.

Public policy warrants granting a Conditional Use Project. Public welfare must be considered from the standpoint of the community at large and not the challenges of a minority.

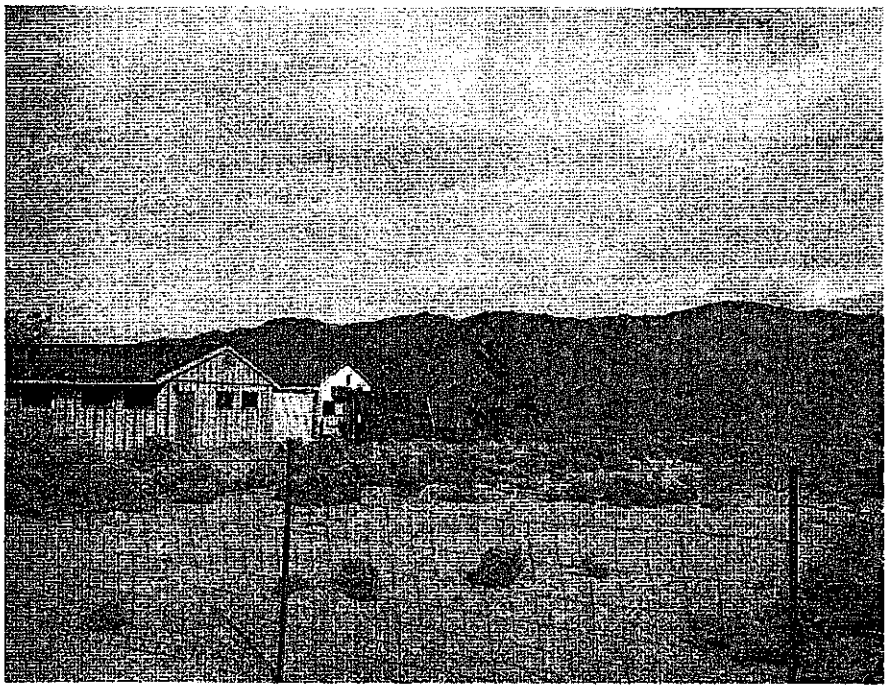
If you have any questions about the legality of this Project, I would be happy to explain further in detail if necessary. Thank you for your consideration.

Best Regards,

LAW OFFICES OF BENJAMIN J. BRANSON



BENJAMIN J. BRANSON



Proposed location

Currently location

November 22, 2012

Mr. Branson,

Per your request, I have inspected the proposed location and current location of the tower. I have completed research both State and Nation wide regarding the impact of towers and infrastructure as they pertain to single family home values.

There is a definite connection between the installation of towers that service a particular neighborhood and single family home values. The installation of towers that provide internet service have in nearly every case, has shown to be an asset with overall gains in single family home values. With regard to negative impact on single family home values, I found that unless the tower was substantially larger than proposed or entirely blocked a particular and valuable view, there was no negative impact upon the value of single family homes. There is no view in the proposed area that would be impacted in greater proportion than from existing homes, garages, solar panels, and fences. The size of the tower seems rather consistent with many of the other power poles I noticed in the area.

Historically, value increases are usually expected with the increase of infrastructure. In this particular case, the benefit for the community would result in no negative impact on single family home values. There is currently a tower installed very close to the proposed location. From the photos supplied by your office, the new tower would only move a short distance and is not much larger. The impact upon views is negligible and would not adversely impact values.

Home values are historically low at the present time. The increase in speed would likely benefit the entire Alabama Hills community, as infrastructure typically increases values.

In my research, I also found there is a nationwide movement to increase the availability of internet service, especially in rural areas. The addition of these types of towers seems to be gaining popularity throughout the nation, especially rural areas. Further, with the advance of technology, more and more people will rely on internet service. In the future, internet service will be a valuable asset.

It is my opinion that the tower will not negatively impact the value of single family homes in Alabama Hills or in particular, the homes in the immediate vicinity of the proposed tower. Throughout Inyo County, the addition of infrastructure and specifically, internet service has been beneficial. My research revealed no negative impact upon values in either Inyo or Mono Counties related to a tower project.

Sincerely,

Jim Sawyer

ASAP APPRAISAL AR008688

December 3, 2017

I have lived in the Alabama Hills for 35 years and in those 35 years I have not seen anything that could be described as improving the neighborhood. A good example is the proposed 30 foot antenna to be installed on property on Indian Springs. I can't help but believe that this planet is being used by a superior civilization to rid themselves of their lunatic fringe who believe more is better. It can't be proved but can't be disproved either.

Dorothy Alcorace
1624 Indian Springs
Alabama Hills

From: InyoPlanning
Sent: Monday, December 03, 2012 8:27 AM
To: Cathreen Richards
Subject: FW: 2012-04 Branson

From: Jaussaud [mailto:joeso@lonepinetv.com]
Sent: Sun 12/2/2012 2:31 PM
To: InyoPlanning; Inyoplanning@gnet.com
Cc: Zinda Edgar; Bert and Bart
Subject: 2012-04 Branson
December 2, 2012

To:
Inyo County Planning Department
Independence, California
Re:
Conditional Use Permit
2012-04 Branson

A Neighbor's View

Attempting to obtain information about the proposed tower, I called the Inyo County Planning Department on Wednesday, November 29, 1912 and spoke to Cathreen Richards. Several things that Ms. Richards said lead me to believe that her mind is made up on this issue and there is nothing that can dissuade her from her support of this project.

Ms. Richards told me that the tower would not be seen from Highway 395. In fact, she said that she personally had verified this. I wonder if Ms. Richards realizes that the tower relies on line of site with Lone Pine for its very function. I wonder if Ms. Richards has stood on the site, as I have, and looked at the magnificent view of almost the entire length of the Owens Valley. Does she realize that if the valley is visible from the tower site, then the tower will be visible from the valley? Also, our view from the site is from 5 to 6 feet above ground. The tower will be 30 feet high. If Branson builds his tower, would Ms. Richards be willing to stand behind her convictions and commit to having the tower removed if it is visible?

Ms. Richards said that as a mitigating factor Mr. Branson is to be required to plant a tree in front of the tower. Please... a 30 foot tree on the edge of the Alabama Hills in the winds and weather that we experience? Even if it were possible, how would the tree be maintained? Actually Ms. Richards said the tree did not have to be 30 feet tall, just have the potential to eventually grow to 30 feet sometime in the distant future. Ms. Richards said that Mr. Branson was not including a well and/or watering system in his project. Since Mr. Branson insists he must have his own electric source for the tower, won't he also need his own water source for the tree? I fear the whole tree idea is doomed to be ineffectual and fail. It smells of back door politics at the expense of everyone who enjoys the wonderful views we have from, and of, the Alabama Hills.

The tower site is in an area where property owners value their views and residential amenities. In support of these values, the utilities in the neighborhood are under ground and CC&Rs enforcing those values have been enacted. Ms. Richards told me that Inyo County is aware of the CC&R's that run with the property in question, but is not concerned with them. The CC&R's will not be a factor in Inyo County's

decision with regards to the Branson tower. Ms. Richards is not concerned with the rights of the 19 families in the area and indicated to me that Inyo County was not either. What have we come to? The only recourse, according to Ms. Richards, was legal action. In fact, if Mr. Branson goes ahead with his tower then he, the Sissons and the County will be liable for legal actions that hopefully will result in expenses, fines and removal of the tower, as our research has shown that the CC&R's, although not requiring enforcement recently, are still in full force.

The tower site is in the middle of a residentially zoned area. Ms. Richards told me that Inyo County does not consider the tower a commercial project. Are we to believe that Mr. Branson and Lone Pine TV are not in it for the money? Is Lone Pine TV not a commercial business? I believe the truth is certainly being stretched here.

Ms. Richards sent out the notifications for the Branson hearing on Wednesday afternoon, November 21, 2012, even though she knew of the meeting at least a week prior. The 21st is coincidentally the afternoon before Thanksgiving and its 4 day weekend. The Jarnigans never received a notice from Ms. Richards or the Planning Department. I received one via email only as a result of my phone conversation with Ms. Richards. We own the property adjoining the project and the Jarnigans are across the street. This letter is a result of my not being able to attend the hearing as I was not notified in a timely manner. When I brought this fact up to Ms. Richards, she basically conveyed to me that it was my tough luck.

A very significant fact is that the tower is not needed at all. There is already a very adequate system working next door to the Sissons on our property. It is comprised of a 25 foot pole and, visually, is little more that a TV satellite dish. Branson has been offered the opportunity to have this system totally under his control both physically and legally, but he has declined. For what ever reason, he is fixated on getting his tower. I would suggest that Branson be required to work with the existing system and property owners before being allowed to build his obtrusive tower.

A Possible Compromise

If Inyo County is determined to give Branson a permit to proceed with his project, I would ask the Planning Commission to please please make sure that there is minimal impact. A pole similar to the one already in use would suffice. It could be 30 foot high and installed on the Sisson property in the area designated. It would meet everyone's needs, be much less obtrusive, most likely acceptable to the neighbors, much less expensive and would probably avoid legal repercussions. It would not even require the mitigating tree. Using a hydraulic basket lift, like the power companies use, could make access for service safer and easier than working around a tree and tower.

Robert Jaussaud
1601 Indian Springs
Lone Pine, CA 93545

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
33

☐ Consent ☒ Departmental ☐ Correspondence Action ☐ Public Hearing

☒ Scheduled Time for 2:30 p.m. ☐ Closed Session ☒ Informational

FROM: Eastern Sierra Department of Child Support Services (Inyo/ Mono)

FOR THE BOARD MEETING OF: April 16, 2013

SUBJECT: Proclamation honoring the Bishop Paiute Tribe's passage of Ordinance 2012-03

DEPARTMENTAL RECOMMENDATION: Request Inyo County Board approve the proclamation honoring the Bishop Paiute Tribe's adoption of Ordinance 2012-03.

SUMMARY DISCUSSION:

Child support is an investment in our children and future. Eastern Sierra Department of Child Support Services [ESDCSS] works with parents whether they are paying or receiving child support, to ensure that children and families receive court-ordered financial and medical support. The child support program increases family self-sufficiency, reduces child poverty, and has a positive effect on children's educational achievement. ESDCSS serves tribal and non-tribal families in Inyo and Mono Counties.

With the Bishop Paiute Tribe's adoption of Ordinance 2012-03, the Bishop Paiute Tribe, a tribal sovereign, will begin honoring child support income withholding orders for tribal members employed by tribal entities. The leadership and effort undertaken by the Tribe to adopt this historic Ordinance represents the care and importance the Tribe places on the welfare of tribal children and their families.

Please join Eastern Sierra Department of Child Support Services in honoring this important achievement. The attached proclamation for your consideration recognizes the Bishop Paiute Tribe, Tribal Council, Tribal Administration, and Tribal Court's efforts in the adoption of Ordinance 2012-03.

ALTERNATIVES: N/A

***OTHER AGENCY INVOLVEMENT*:** California Department of Child Support Services Interim Director, Kathy Hrepich; California Department of Child Support Services Tribal Liaison and Regional Administrator, George Chance; Inyo County Superior Court Presiding Judge, Dean T. Stout; Inyo County Superior Court Retired IVD Commissioner, Terry Lee; Bishop Paiute Tribe Tribal Chairman, Dale Chad Delgado Jr.; Bishop Paiute Tribe Tribal Administrator, Anita Oldbull-Bigman; Bishop Paiute Tribe Tribal Court Judge, Bill Kockenmeister.

***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.)* RJ YES 4.4.13
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (M*ust be reviewed and approved by the auditor-controller prior to submission to the board clerk.)* N/A
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.) by SD/kr 4/5/13

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

_____ Date: 4/8/13

PROCLAMATION
OF THE BOARD OF SUPERVISORS
COUNTY OF INYO, STATE OF CALIFORNIA
RECOGNIZING THE BISHOP PAIUTE TRIBE FOR
THE PASSAGE OF ORDINANCE 2012-03

WHEREAS, on December 20, 2012, the Bishop Paiute Tribe, a tribal sovereign, passed Ordinance 2012-03, honoring wage withholding orders for child support; and

WHEREAS, by the passage of Ordinance 2012-03, as a matter of Tribal Law, enforcement of a child support wage withholding order or judgment will now be honored out of wages of a tribal employee; and

WHEREAS, Ordinance 2012-03, creates a procedure to notify the affected employee of the tribe's receipt of the income withholding order, notification of the tribe's intended enforcement of the order, and procedures for an employee to appeal withholding; and

WHEREAS, pursuant to Ordinance 2012-03, the Bishop Paiute Tribal Court, created under Tribal Law, has jurisdiction regarding any appeal arising out of the payroll deduction regarding the amount to be deducted; and

WHEREAS, Ordinance 2012-03 underscores the importance the Bishop Paiute Tribe places on the welfare of tribal families served by Eastern Sierra Department of Child Support Services and the Inyo County Superior Court in establishing and presiding over child support cases; and

WHEREAS, the adoption of Ordinance 2012-03 represents years of strengthened working relationships between the Tribe, Tribal Court, and outside agencies such as Eastern Sierra Department of Child Support Services and the Inyo County Superior Court in recognizing the importance of child support to tribal families; and

WHEREAS, in enacting this historic legislation, the Bishop Paiute Tribe, is worthy of recognition for this important effort to ensure the welfare of tribal families; and

WHEREAS, through the strong leadership demonstrated by the Bishop Paiute Tribe, Tribal Council, and Tribal Administration, Ordinance 2012-03 will improve the lives of tribal children.

NOW THEREFORE, **BE IT PROCLAIMED** this 16th day of April, 2013, the Inyo County Board of Supervisors, recognizes and honors the Bishop Paiute Tribe and their contribution to benefit families and our community through the adoption of Ordinance 2012-03.

_____
Chairperson, Inyo County Board of Supervisor

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

by: _____
Patricia Gunsolley, Assistant

BISHOP PAIUTE TRIBE
BISHOP PAIUTE RESERVATION

ENFORCEMENT OF CHILD SUPPORT ORDERS/JUDGMENTS

ORDINANCE NO. 2012-03

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BISHOP PAIUTE TRIBE
ORDINANCE GOVERNING ENFORCEMENT OF CHILD SUPPORT ORDERS/ JUDGMENTS', DIRECTED AGAINST THE WAGES DUE TO TRIBAL EMPLOYEES

ORDINANCE NO. 2012-03

CHAPTER 1 - GENERAL PROVISIONS

Section 101. Purpose

The Bishop Paiute Tribe ("Tribe"), in the exercise of its sovereign authority, hereby establishes the procedures under which the Tribe, as a matter of tribal law, will process requests for enforcement of orders/judgments, directed against the wages of a tribal employee that have been issued by another tribe, or a state. Once this Ordinance is adopted by the Bishop Paiute Tribal Council, it shall be within the jurisdiction of the Bishop Paiute Tribal Court.

Section 102. Definitions

The following definitions shall apply in this Ordinance:

(a) "Reservation" shall mean the Bishop Paiute Reservation, Bishop, California.

(b) "Tribe" shall mean the Bishop Paiute Tribe and any agency, department, entity, or corporation chartered or established by the Tribe.

(c) "Wage Withholding Order" shall refer to any order or judgment issued by any tribal or state court, or any tribal or state department or agency authorized by tribal or state law to make determinations on child support and issue orders or judgments, which directs the attachment or withholding of wages of a employee of the Tribe to pay child support payments, whether such order or judgment is labeled or described as a writ of attachment, levy, garnishment, payroll deduction or wage withholding order.

(d) "Tribal Court" means the Bishop Paiute Tribal Court established by the Tribe pursuant to tribal law.

(e) "Native American" means an Indian that is a member of or nonmember of any Indian Tribe whether the Tribe is recognized by the U.S. Federal government or not.

CHAPTER 2 - WAGE WITHHOLDING ORDERS TO ENFORCE CHILD SUPPORT OBLIGATIONS

Section 201. Applicability

The following procedures shall apply to any wage withholding order directed to the Tribe for wages due to an employee of the Tribe, and which is issued by either a tribal or state court or tribal or state agency with authority to determine child support obligations and for the purposes of enforcing a child support wage withholding order/judgment.

Section 202. Verification and Enforcement

(a) Upon receipt of a wage withholding order issued by either a tribal or state court, or tribal or state agency with authority to determine child support obligations, to enforce a child support order, the order shall be forwarded to the Tribal Administrator who shall forward the wage withholding order to the appropriate tribal payroll department.

(b) Upon receipt of a wage withholding order from the Tribal Administrator, the payroll department shall take appropriate steps to verify that the person whose wages are to be attached or garnished is a tribal employee and verify that the wage withholding order is one of the orders described in Section 202(a).

(c) Upon confirmation of the matters as required in Section 202(b), the payroll department shall enforce the wage withholding order as provided in the order once the notice requirements of Sec. 203 have been complied with.

(d) In the event that the individual is not a tribal employee, the payroll department shall send a written notice to the Tribal Administrator, who shall then contact the person or agency that submitted the wage withholding order so advising them that the individual identified in the Wage Withholding Order is not employed by the Tribe.

Section 203. Notice to Affected Employee

When a wage withholding order meets the requirements of Section 202, the payroll department shall provide written notice to the affected employee informing that employee of the Tribe's receipt of the wage withholding order and the Tribe's intended action in enforcing that order, and enclose a copy of the Wage Withholding order to be enforced. This notice must be given in writing to the employee within five (5) working days of receipt of the wage withholding order by the payroll department. The notice must include instructions as to the procedure by which the employee may appeal the payroll departments decision to enforce the Wage Withholding Order.

Service on an employee shall be made in one of the following ways:
(a) To the Tribal employee personally;
(b) To a person of a suitable age at the employee's residence; or
(c) By certified mail with return receipt requested.

A declaration under penalty of perjury that the Tribal employee was served with a copy of the request to enforce the wage withholding order, stating how and when service was made, shall be retained by the Tribal payroll department serving notice.

The employee has the right to appeal the amount of money to be deducted (withheld) from each payroll check if a written appeal is filed by the employee with the Tribal Court within five (5) working days of the payroll department serving the employee with a copy of the wage withholding order. However, the sole issues to be determined by the appeal are

whether the deductions actually to be withheld are to be as directed by the wage withholding order or a lesser amount.

The appealing employee may present at the hearing any and all mitigating factors, which the employee believes would justify a reduction in the amount to be withheld from each payroll period.

In any event, the wage deductions are not to exceed twenty-five (25%) percent of the employee's disposable wages for any one pay period.

If the employee does not appeal the wage withholding order within the five (5) working day period as provided hereinabove, the payroll department shall enforce the wage withholding order as presented for the following pay periods. However, an employee may file appeals for future pay periods without prejudice.

Section 204. Termination of Wage Withholding

The wage withholding order shall lapse when either: (a) notice is provided by the agency or court which issued the order that the judgment or order has been satisfied, or (b) the employee ceases to be employed by the Tribe, whichever occurs first.

Section 205. Notice of Decisions

The Tribal Court shall notify the Tribal employee of the Court's decision in writing. The Court's decision shall state the amounted of the wages of the employee to be withheld. There shall be no appeal of the Tribal Court's decision. A copy of the Tribal Court's decision shall be also sent to the appropriate Tribal payroll department for enforcement.

Section 206. Amendments

This Ordinance and the procedures promulgated hereunder may be amended or rescinded by the Tribal Council at a duly called regular or special meeting.

Section 207. Sovereign Immunity

Nothing in this ordinance is a waiver of the sovereign immunity of the Tribe or the Tribal Council or any official, agent or employee of the Tribe while acting in his or her official capacity. The employees and appointees of the Tribe, agents, the member of the Tribal Council, and personnel of the tribal Court are cloaked with the sovereign immunity of the Tribe. No individual named above shall be liable for his or her acts or failure to act under this Ordinance while acting in their lawful official capacity.

Certification

We, the undersigned, as the Chairman and Secretary of the Bishop Tribal Council, hereby certify the Bishop Tribal Council, at a duly called meeting which was convened and held on the 20th day of Dec, 2013, at the Tribal offices in the State of California adopted the foregoing Ordinance, at which a quorum was present voting 3 FOR, 0 AGAINST, 0 ABSTAINING, with the Tribal Chairman not voting, and that this Ordinance has not been rescinded or amended in any way.

ATTEST:

Dale Delgado, Jr., Tribal Chairman — Date 12/20/12

Earleen Williams, Tribal Secretary — Date 01-31-13

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
35-36-37
38-39-40
41-42-43

☐ Consent ☐ Departmental ☐ Correspondence Action ☐ Public Hearing

☐ Scheduled Time for X Closed Session ☐ Informational

FROM: COUNTY COUNSEL

FOR THE BOARD MEETING OF: APRIL 16, 2013

SUBJECT: ISSUES TO BE DISCUSSED IN CLOSED SESSION

DEPARTMENTAL RECOMMENDATION:

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION [Pursuant to Government Code§ 54956.9(d)(1)]. *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

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION [Pursuant to Government Code § 54956.9(d)(1)] - *PETER WAASDORP; KATHY WAASDORP, v. COUNTY OF INYO; SKYLENE KATHERINE MILOS; and DOES 1-50, inclusive,* Inyo County Superior Court Case No. SICVCV13-54910

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION [Pursuant to Government Code § 54956.9(a)] - *Jesse Edwin Jason v. County of Inyo,* Unfair Practice Charge No. SA-CE-814-M

PERSONNEL [Pursuant to Government Code § 54957]. Public Employee Appointment - Title: County Counsel.

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.

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: Information Services Director Brandon Shults, and Labor Relations Administrator Sue Dishion.

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

CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code §54957.6]. - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: ICEA - Negotiators: Information Services Director Brandon Shults, and Labor Relations Administrator Sue Dishion.

CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code § 54957.6]. - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: Inyo County Probation Peace Officers Association (ICPPOA) - Negotiators: Information Services Director Brandon Shults, Chief Probation Officer Jeff Thomson, and Labor Relations Administrator Sue Dishion.

CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code § 54957.6]. - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: Law Enforcement Administrators' Association (LEAA) - Negotiators: Information Services Director Brandon Shults, 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 4.10.13

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