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.

June 11, 2013

9:00 a.m. ***PLEDGE OF ALLEGIANCE***

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

1. ***PUBLIC COMMENT***

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

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

PUBLIC WORKS

3. Request Board authorize the submittal of a facility application to the National Park Service for permissions for the Inyo County Rodger Peak EMS, Road Department and Sheriff's Department Radio Repeaters; and authorize the Chairperson to sign.

4. Request Board approve Amendment No. 1 to the Contract between the County of Inyo and RE Com Development Company, for the installation of the addition to the Lone Pine Sheriff's Substation, increasing the amount of the Contract by $25,000 for a total amount not to exceed $124,619, contingent upon the Board's adoption of a FY 2013-14 budget; authorize the Chairperson to sign, contingent upon the appropriate signatures being obtained; and 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.

5. Request approval of the Contract between County of Inyo and Wadell Engineering Corporation (WEC) for on-call airport engineering services in the amount of $0 for the period of June 18, 2013 through December 30, 2018, contingent upon the Board's adoption of future budgets; and authorize the Chairperson to sign, contingent the appropriate signatures being obtained and upon the Federal Aviation Administration's (FAA's) approval of an Independent Fee Estimate.

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

6. ***Health Services*** – Request Board ratify and approve the Agreement between the County of Inyo and California Department of Public Health, Office of AIDS for the AIDS Drug Assistance Program in the amount of $6,000 for the period of July 1, 2012 through June 30, 2015, contingent upon the Board's adoption of future budgets; and authorize the Chairperson to sign the Agreement, the Certificate of Lobbying, Darfur Contracting Act Certification, and the Contractor Certification Clauses.

7. ***PLANNING*** – Request Board A) receive a presentation from Staff regarding coordination activities with the Inyo National Forest regarding the Update/Revision to the Forest Plan, B) review the draft Bioregional Assessment and authorize the Chairperson to sign correspondence in regards thereto; and C) provide direction to staff regarding designation of Critical Habitat for the Sierra Nevada Yellow-Legged Frog, the Northern Distinct Population Segment of the Mountain Yellow-Legged Frog and the Yosemite Toad.

8. ***PLANNING – SUPERVISOR KINGSLEY*** - Request Board review draft correspondence regarding the draft Recovery Action Plan and Recovery Implementation Teams for the Mojave Desert Tortoise and authorize the Chairperson and Supervisor Kingsley to sign.

9. ***COUNTY COUNSEL*** – Request approval of the Agreement between the County of Inyo and Great Basin Unified Air Pollution Control District for the County Counsel's Office to provide certain legal services to the District during the period of July 1, 2013 through June 30, 2014 for the sum of $12,500, contingent upon the Board's adoption of a FY 2013-14 budget; and authorize the Chairperson to sign.

10. ***COUNTY COUNSEL – COUNTY ADMINISTRATOR – Risk Management*** – Request approval of the Agreement between the County of Inyo and John D. Kirby, A.P.C., for the provision of litigation services for the period of July 1, 2013 through June 30, 2014 at the rate of $180 per hour with a Contract limit of $200,000, contingent upon the Board's adoption of a FY 2013-14 budget; and authorize the Chairperson to sign. *(4/5's vote required.)*

11. ***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.

12. ***COUNTY ADMINISTRATOR - Purchasing*** – Request Board A) approve a resolution titled "A Resolution of the Board of Supervisors, County of Inyo, State of California, Rescinding All Previous Resolutions Setting Forth Amounts for the Purchasing Revolving Fund and Increasing the Amount of the Existing Revolving Fund for Purchasing Agent Use;" and B) amend the FY 2012-13 Purchasing Revolving Budget Unit 200300 by increasing revenue in Other Current Charges *(Revenue Code #4825)* by $25,000 and increasing appropriations in General Operating *(Object Code #5311)* by $25, 000. *(4/5's vote required.)*

13. ***CLERK OF THE BOARD*** – Request approval of the minutes of the Board of Supervisors Meetings of A) May 21, 2013 and B) May 28, 2013.

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

11:30 a.m. 14. ***COUNTY ADMINISTRATOR – Personnel*** – Request Board A) conduct a ***public hearing*** on an Ordinance titled "An Ordinance of the Board of Supervisors, County of Inyo, State of California, Amending Section 2.88.040 of the Inyo County Code to Provide for Increases in the Salary for Certain Elected Officials, Excluding Members of the Board of Supervisors" which will increase the salary of the Sheriff to $10,699 per month; and B) waive the first reading of the ordinance and schedule the enactment for 11:30 a.m., Tuesday June 18, 2013 in the Board of Supervisors Room, at the County Administrative Center, in Independence.

15. ***AGRICULTURAL COMMISSIONER*** – conduct a ***public hearing*** for the proposed continuation of the assessments for the "Owens Valley Mosquito Abatement Program Assessment" and the "Mosquito Control and Disease Prevention Assessment" in order to receive public input on the proposed continuation of the assessments, the proposed assessment budget for Fiscal Year 2013/2014, the services and programs, the assessments fund, and any other issues related to the assessments; and B) approve a resolution approving the Engineer's Report, confirming the diagram and assessments for FY 2012-2013 for the "Owens Valley Mosquito Abatement Program Assessment" and the "Mosquito Control and Disease Prevention Assessment," and order the services and levy the assessments for FY 2013-2014 for both programs.

12:00 p.m. 16. The Board will recess at 12:00 p.m. in order to attend the Swearing-in Ceremony for Ms. Amy Shepherd, Inyo County Auditor Controller.

CORRESPONDENCE - ACTION

BOARD MEMBERS AND STAFF REPORTS

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

17. ***PUBLIC COMMENT***

CLOSED SESSION

18. ***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.

19. ***CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code §54957.6].*** - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: ICEA - Negotiators: Labor Relations Administrator Sue Dishion, and Information Services Director Brandon Shults.
20. ***PERSONNEL [Pursuant to Government Code §54957].*** Public Employee Evaluation – Title - County Administrative Officer.

REPORT ON CLOSED SESSION AS REQUIRED BY LAW

CORRESPONDENCE - INFORMATIONAL

21. ***PUBLIC WORKS*** – Agenda for the June 17, 2013 Northern Inyo Airport Advisory Committee Meeting.

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
3

FROM: Public Works/Planning Departments

FOR THE BOARD MEETING OF: June 11, 2013

SUBJECT: Submission of Facility Application to the National Park Service for Rodger Peak radio equipment

DEPARTMENTAL RECOMMENDATIONS:

1. Recommend that the Board authorize the submittal of a facility application to the National Park Service for permissions for the Inyo County Rodger Peak EMS, Road Department and Sheriff's Department Radio Repeaters and:
2. Authorize the Board Chairperson to sign the application.

SUMMARY DISCUSSION:

Last Month, Death Valley National Park sent correspondence to the County requesting the County complete and submit an SF-299 facility application to the National Park Service (NPS) for the County radio equipment on Rodgers Peak. A copy of the NPS correspondence is included in the Board package for reference. As noted in the letter, the NPS is initiating a planning process regarding the radio installations on Rodgers Peak. There are many commercial as well as public service repeaters on this mountain top. The County uses rack space in the Caltrans building and uses an antenna combiner used by other agencies. Caltrans holds the master lease for this facility. The submission of the application is a routine matter not previously requested by the NPS.

ALTERNATIVES:

The Board could choose not to approve the submittal of the application. This is not recommended because it may limit future options for the County if the NPS determines that the County Radio equipment is not permitted under their regulations.

OTHER AGENCY INVOLVEMENT:

(1) US Department of Interior, National Park Service, Death Valley Office
(2) County Counsel for review of documents

FINANCING:

Staff time for application preparation and research, Public Works Department (Budget Unit 011500, salaries and employees (Object Code 5001).

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 6/4/13
AUDITOR/CONTROLLER	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor/controller prior to submission to the board clerk.) Approved: **NA** 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: **NA** Date

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received) _____ Date: 6-5-13

United States Department of the Interior

NATIONAL PARK SERVICE
Death Valley National Park
PO Box 579
Death Valley, California 92328

May 15, 2013

Subject: Reply by June 17, 2013 - Right of Way application for Death Valley National Park

Dear Interested Party:

The National Park Service is engaging in a site planning process to identify current uses and future requirements on Rogers Peak in Death Valley, CA. Your agency or organization has identified you as the appropriate point of contact for notifications about this project.

In order to initiate the planning process, the park requests each entity with equipment currently located on Rogers Peak to submit an SF-299 application for Right of Way Agreement. The purpose of the application is to communicate each entity's current requirements and future requests at the site.

If your agency or organization does not currently have equipment on Rogers Peak but you would like to formally request a right of way at this time, please also submit an SF-299 to indicate your official interest in development at Rogers Peak.

Applicable cost recovery and rental fees will apply for commercial entities. After submitting a right of way application, your entity will be provided with an estimated cost recovery amount. Development costs associated with right of way application processing for commercial entities are expected to be in the hundreds of thousands of dollars. The right of way application fee for commercial entities is $250 and is payable by check only.

The information submitted on your entity's SF-299 application for right of way will be used by a design and engineering firm to help inform the creation of a site plan for the limited developed footprint at Rogers Peak.

Please keep in mind that the non-wilderness developed footprint at Rogers Peak is very small. No installations may be placed in federally designated wilderness. Nearly a dozen current occupants already maintain equipment at the site. The park does not anticipate a tremendous amount of opportunity for further development or expansion.

Please submit your organization's SF-299 by June 17, 2013 to the below address:

Death Valley National Park
ATTN: Office of Special Park Uses
PO Box 579
Death Valley, CA 92328

An electronic copy of the application can be found here, and is also included as an attachment to this letter for your reference: http://www.gsa.gov/portal/forms/download/117318

Applications received after June 17, 2013 will not be considered as part of this site planning process.

Please direct questions to Lauren Newman, Right of Way Program Manager, at lauren_newman@nps.gov or 760-786-3236.

Sincerely,

Kathy Billings

Kathy Billings
Superintendent

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ICIAL BUSINESS
FOR PRIVATE USE $300

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UNITED STATES POSTAGE
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MAILED FROM ZIP CODE 92328

Linda Benson
Inyo Co. Health &
Human Services
163 May Street
Bishop, CA 93514

93514270963

STANDARD FORM 299 (2/2003)
Prescribed by DOI/USDA/DOT
P.L. 96-487 and Federal
Register Notice 5-22-95

APPLICATION FOR TRANSPORTATION AND UTILITY SYSTEMS AND FACILITIES ON FEDERAL LANDS

FORM APPROVED
OMB NO. 1004-0189
Expires: October 31, 2005

FOR AGENCY USE ONLY

Application Number

Date filed

NOTE: Before completing and filing the application, the applicant should completely review this package and schedule a preapplication meeting with representatives of the agency responsible for processing the application. Each agency may have specific and unique requirements to be met in preparing and processing the application. Many times, with the help of the agency representative, the application can be completed at the preapplication meeting.

1. Name and address of applicant *(include zip code)*

Inyo County
PO Drawer Q - 168 N. Edwards Street
Independence, CA 93526

2. Name, title, and address of authorized agent if different from Item 1 *(include zip code)*

Doug Wilson,Interim Public Works Director
Inyo County, California

3. TELEPHONE *(area code)*

Applicant 760-878-0201

Authorized Agent 760-878-0201

4. As applicant are you? *(check one)*

a. ☐ Individual
b. ☐ Corporation*
c. ☐ Partnership/Association*
d. ☑ State Government/State Agency
e. ☐ Local Government
f. ☐ Federal Agency

* *If checked, complete supplemental page*

5. Specify what application is for: *(check one)*

a. ☑ New authorization
b. ☐ Renewing existing authorization No.
c. ☐ Amend existing authorization No.
d. ☐ Assign existing authorization No.
e. ☐ Existing use for which no authorization has been received*
f. ☐ Other*

* *If checked, provide details under Item 7*

6. If an individual, or partnership are you a citizen(s) of the United States? ☐ Yes ☐ No

7. Project description *(describe in detail)*: (a) Type of system or facility, *(e.g., canal, pipeline, road)*; (b) related structures and facilities; (c) physical specifications *(length, width, grading, etc.)*; (d) term of years needed; (e) time of year of use or operation; (f) Volume or amount of product to be transported; (g) duration and timing of construction; and (h) temporary work areas needed for construction *(Attach additional sheets, if additional space is needed.)*

Project Description:
(a) Maintain existing public service repeaters and antennas for Inyo County radio communications within the Caltrans building and tower on Rodger peak. These include: County Emergency Medical Services (EMS), Road and Sheriff's Department equipment.
(b) Kenwood TKR-750 repeater (3) total, antenna combiner
(c) NA
(d) 20 year term
(e) Equipment in operation 24/7/365
(f) NA
(g) NA
(h) NA

See additional notes on the attached page.

DRAFT

8. Attach a map covering area and show location of project proposal See attachment 1

9. State or local government approval: ☐ Attached ☑ Applied for ☑ Not required

10. Nonreturnable application fee: ☐ Attached ☑ Not required

11. Does project cross international boundary or affect international waterways? ☐ Yes ☑ No *(If "yes," indicate on map)*

12. Give statement of your technical and financial capability to construct, operate, maintain, and terminate system for which authorization is being requested.

The County has owned, operated and maintained this or similar equipment for more than 20 years at the Rodgers Peak site.

(Continued on page 2)

This form is authorized for local reproduction.

13a. Describe other reasonable alternative routes and modes considered.

None

b. Why were these alternatives not selected?

Because there would be new disturbance in previously undisturbed areas if new facilities were developed to house relocated radio equipment.

c. Give explanation as to why it is necessary to cross Federal Lands.

The Inyo County has previously received permission to install and maintain the equipment at this site.

14. List authorizations and pending applications filed for similar projects which may provide information to the authorizing agency. *(Specify number, date, code, or name)*

FAA Radio licensing: WPAN849, Road Department, expires 09-14-2022; KNDA381, Inyo Sheriff, expires 07-14-2022; WNBF613, EMS, expired, application pending

15. Provide statement of need for project, including the economic feasibility and items such as: (a) cost of proposal *(construction, operation, and maintenance)*; (b) estimated cost of next best alternative; and (c) expected public benefits.

The radio repeaters are needed to provide public service and emergency communication for County Road and Sheriffs Departments as well as emergency communications links for EMS responders.

16. Describe probable effects on the population in the area, including the social and economic aspects, and the rural lifestyles.

Minor to none, there is no population in this area and no potential social or economic impacts or impacts to rural lifestyles.

17. Describe likely environmental effects that the proposed project will have on: (a) air quality; (b) visual impact; (c) surface and ground water quality and quantity; (d) the control or structural change on any stream or other body of water; (e) existing noise levels; and (f) the surface of the land, including vegetation, permafrost, soil, and soil stability.

Air Quality, (none). Visual Impact, (no change) the buildings and antennas already exist.

18. Describe the probable effects that the proposed project will have on (a) populations of fish, plantlife, wildlife, and marine life, including threatened and endangered species; and (b) marine mammals, including hunting, capturing, collecting, or killing these animals.

None.

19. State whether any hazardous material, as defined in this paragraph, will be used, produced, transported or stored on or within the right-of-way or any of the right-of-way facilities, or used in the construction, operation, maintenance or termination of the right-of-way or any of its facilities. "Hazardous material" means any substance, pollutant or contaminant that is listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq., and its regulations. The definition of hazardous substances under CERCLA includes any "hazardous waste" as defined in the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 9601 et seq., and its regulations. The term hazardous materials also includes any nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq. The term does **not** include petroleum, including crude oil or any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under CERCLA Section 101(14), 42 U.S.C. 9601(14), nor does the term include natural gas.

NA

20. Name all the Department(s)/Agency(ies) where this application is being filed.

US Department of Interior, National Park Service.

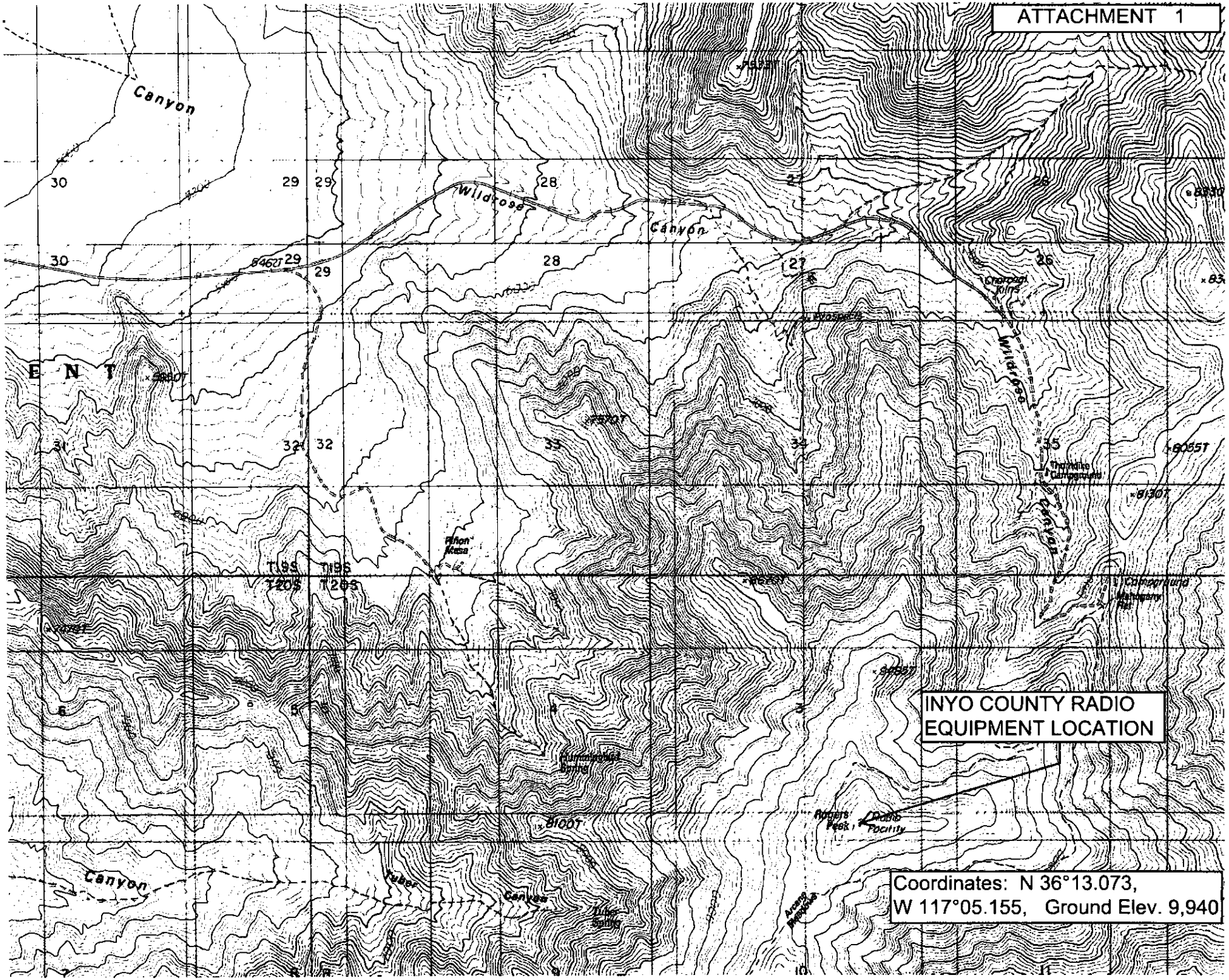
I HEREBY CERTIFY, That I am of legal age and authorized to do business in the State and that I have personally examined the information contained in the application and believe that the information submitted is correct to the best of my knowledge.

Signature of Applicant	Date

Title 18, U.S.C. Section 1001 and Title 43 U.S.C. Section 1212, make it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.

(Continued on page 3)

ATTACHMENT 1



Inyo County SF-299 Application for Rodgers Peak Radio Repeater Equipment.

Radio Frequencies

	TX	RX	PL
Inyo County Sheriff	155.415	154.725	141.3
Inyo County Road Dept.	156.014	153.800	141.3
County EMS	154.310	155.865	141.3

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
4

FROM: Public Works Department

FOR THE BOARD MEETING OF: June 11, 2013

SUBJECT: Lone Pine Sheriff's Office Addition Project

DEPARTMENTAL RECOMMENDATION:

1. Recommend the Board approve Contract Amendment Number 1 with RE Com Development Company, increasing the amount of the contract by $25,000 for a total contract amount of $124,619 and;
2. Authorize the Board Chairperson to sign the contract amendment contingent upon the appropriate signatures being obtained and contingent on the adoption of future budgets; and
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.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

Your Board recently authorized a contract for the installation of an addition to the Lone Pine Sheriff's Substation. The work includes relocation and installation of a four section modular building addition and related site improvements. The original contract amount of the for the relocation and installation is $99,619. Additional work items have been identified that take the contract amount beyond that permitted by contract code. This work includes revisions to the electrical because of DWP requirements and work not shown on the original plans. The proposed contract Amendment will also include the carpeting of the original portion of the building, which is now more than 10 year old and is starting to show its age.

ALTERNATIVES:

Not approve the contract amendment for the requested building upgrades. This is not recommended because funds are available for the work.

OTHER AGENCY INVOLVEMENT:

The Public Works Department for coordinating the installation of the modular building addition
Sheriff's Office, the lessee of the Sheriff's Substation
Los Angeles Department of Water and Power, owner of the property
County Counsel for review this agenda item

FINANCING:

The funds for this project are provided by Budget Unit No. 022705 Lone Pine Substation, (Object Code ~~5700; Construction in progress~~) 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 5/30/13
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 6/3/13
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: NA Date

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are Received) Date: 6-4-13

AMENDMENT NUMBER 1 TO
CONTRACT BETWEEN THE COUNTY OF INYO AND
RE Com Development Company
FOR THE PROVISION OF CONTRACTOR SERVICES

WHEREAS, the County of Inyo (hereinafter referred to as "County") and RE Com Development Company of Bishop, CA (hereinafter referred to as "Contractor"), have entered into a contract for the relocation and installation of a modular building addition dated February 15, 2013, a standard Inyo County Public Works Contract.

WHEREAS, County and Contractor do desire and consent to amend such Contract as set forth below.

WHEREAS, such Contract 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 Contract, and attached to the original Contract to maintain continuity.

County and Contractor hereby amend such Contract as follows:

1. Increase the amount of the contract by $25,000.00 for a total contract value of $124,619.00

The effective date of this amendment to the Contract is June 11, 2013.

All other terms and conditions of the Contract are unchanged and shall remain the same.

AMENDMENT NUMBER _1_ TO
AGREEMENT BETWEEN THE COUNTY OF INYO AND

RE Com Development Company

FOR THE PROVISION OF CONTRACTOR SERVICES

IN WITNESS WHEREOF, COUNTY and CONTRACTOR have each caused this Contract to be executed on its behalf by its duly authorized representative, effective as of the day and year first above written.

OWNER

COUNTY OF INYO

By: _____

Name: _____

Title: _____

Dated: _____

APPROVED AS TO FORM AND LEGALITY:

_____
County Counsel

APPROVED AS TO ACCOUNTING FORM:

_____
County Auditor

CONTRACTOR

_____

By: _____

Name: _____

Title: _____

Dated: _____

Taxpayer's Identification or Social Security Number:

_____

APPROVED AS TO INSURANCE REQUIREMENTS:

_____
County Risk Manager

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
5

FROM: Public Works Department

FOR THE BOARD MEETING OF: June 18, 2013

SUBJECT: Approve a contract/master agreement for on-call airport engineering and planning services with Wadell Engineering Corporation (WEC) of Burlingame, California.

DEPARTMENTAL RECOMMENDATIONS:

1. Request your board approve Inyo County Standard Contract No. 156 between the County of Inyo and WEC for airport engineering services in an amount not to exceed $0 for the period from June 18, 2013 through December 30, 2018;

2. Authorize the chairperson to execute the contract, contingent upon obtaining appropriate signatures; upon adoption of the fiscal year 2013/2014 and future budgets; and upon the Federal Aviation Administration's (FAA's) approval of an Independent Fee Estimate (IFE).

CAO RECOMMENDATION:

SUMMARY DISCUSSION: The Public Works Department recently solicited for interested consultants to provide all-inclusive on-call engineering services for the Bishop, Independence, and Lone Pine Airports for projects that are funded by the FAA's Airport Capital Improvement Program (ACIP). Six specialty consultants who provide engineering services exclusively for airport projects submitted Statements of Qualification for the work:

- Atkins North America, Inc., Reno, California.
- C&S Companies, Sacramento, California;
- Kimley-Horn and Associates, Inc., Reno, Nevada;
- Reinard W. Brandley, Consulting Airport Engineer, Loomis, California;
- Tartaglia Engineering, Atascadero, California;
- Wadell Engineering Corporation, Burlingame, California

The respondents' qualifications were rated by four of the Public Works Department engineering and airport staff. WEC was selected as the most qualified consultant to provide engineering services for these projects.

WEC's initial services are anticipated to include the design of pavement rehabilitation projects for Bishop and Lone Pine Airport Runway 16-34. These services include performing land surveys, pavement investigations, and laboratory testing of soil samples; assessment of rehabilitation alternatives; preparation of design reports, plans, specifications, cost estimates, and FAA forms; contractor inquiry assistance during bidding; and assistance with FAA/State Aeronautics coordination as requested. WEC will also prepare Airport Layout Plan (ALP) Updates and Narrative Reports for Bishop, Independence, and Lone Pine Airports. The purpose of the ALP Update and Narrative Reports is to identify needs for future development, and the cost of the proposed development.

The FAA must approve the consultant's scope of work prior to proceeding with the project. Additionally, FAA procedures require that an Independent Fee Estimate (IFE) be prepared to ensure that the consultant's prices are reasonable and justifiable, and the FAA must approve the IFE. Therefore, in order to expedite the contracting process, the Public Works Department is requesting that the Board approve this initial master agreement in the amount of zero dollars. New projects will be incorporated into the master agreement by amendments.

ALTERNATIVES: The Board could choose not to approve the contract for on-call airport engineering and planning services. This is not recommended because the Public Works Department does not have staff that is familiar with FAA specifications and design methods. Also, the sooner WEC is under contract, the sooner that entitlement funds expiring at the end of the federal fiscal year (September 30, 2013) can be accessed, and the sooner that Bishop Airport Runway 16-34 can be repaired.

OTHER AGENCY INVOLVEMENT:
The auditor's office to make payments to the contractor after the contract is awarded;
County counsel to review and approve the contract;

FINANCING: The project is funded by the FAA's ACIP, which will reimburse the county for 90 percent of the consultant engineering cost of the project. The cost of engineering will be paid through budget unit 630303, Bishop Airport Improvement Projects, object code 5265, Professional and Special Services. The The county will pay the 10 percent match through budget unit 011500, Public Works, object code 5850, In-Kind Contributions.

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 5/28/13
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 5/24/13
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: 5-28-13

AGREEMENT BETWEEN COUNTY OF INYO
AND Wadell Engineering Corporation
FOR THE PROVISION OF On Call Airport Engineering and Planning **SERVICES**

INTRODUCTION

WHEREAS, the County of Inyo (hereinafter referred to as "County") has the need for the On Call Airport Engineering and Planning services of Wadell Engineering Corporation (hereinafter referred to as "Consultant"), 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 Consultant 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 Consultant to perform under this Agreement will be made by the Inyo County Public Works Director. Requests to the Consultant 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 Consultant by the County under this Agreement. County by this Agreement incurs no obligation or requirement to request from Consultant 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 Consultant 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 and, as applicable, as set forth, in Attachment **F**, attached hereto and incorporated herein.

2. TERM.

The term of this Agreement shall be from June 18, 2013 to December 30, 2018 unless sooner terminated as provided below.

3. CONSIDERATION.

A. Compensation. County shall pay Consultant 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 Consultant at the County's request.

B. Travel and per diem. County shall reimburse Consultant for the travel expenses and per diem which Consultant incurs in providing services and work requested by County under this Agreement. Consultant shall request approval by the County prior to incurring any travel or per diem expenses. Requests by Consultant for approval to incur travel and per diem expenses shall be submitted to the Inyo County Public Works Director. Travel and per diem expenses will be reimbursed in accordance with the rates set forth in the Schedule of Travel and Per Diem Payment (Attachment **C**). County reserves the right to deny reimbursement to Consultant for travel or per diem expenses which are either in excess of the amounts that may be paid under the rates set forth in Attachment **C**, or which are incurred by the Consultant without the prior approval of the County.

C. No additional consideration. Except as expressly provided in this Agreement, Consultant 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, Consultant 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 Consultant for services and work performed under this Agreement, including travel and per diem expenses, if any, shall not exceed zero Dollars (hereinafter referred to as "contract limit"). County expressly reserves the right to deny any payment or reimbursement requested by Consultant for services or work performed, including travel or per diem, which is in excess of the contract limit.

E. Billing and payment. Consultant shall submit to the County, once a month, an itemized statement of all hours spent by Consultant 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. Consultant 's statement to the County will also include an itemization of any travel or per diem expenses, which have been approved in advance by County, incurred by Consultant during that period. The itemized statement for travel expenses and per diem will include receipts for lodging, meals, and other incidental expenses in accordance with the County's accounting procedures and rules. Upon timely receipt of the statement by the fifth (5th) day of the month, County shall make payment to Consultant 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 Consultant 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 Consultant's when it is anticipated that total annual payments to Consultant 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 Consultant under this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Consultant. County has no responsibility or liability for payment of Consultant's taxes or assessments.

(4) The total amounts paid by County to Consultant, 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, Consultant shall complete and submit to the County an Internal Revenue Service (IRS) Form W-9 upon executing this Agreement.

4. WORK SCHEDULE.

Consultant'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 Consultant that the performance of these services and work will require a varied schedule. Consultant will arrange his/her own schedule, but will coordinate with County to insure that all services and work requested by County under this Agreement will be performed within the time frame set forth by County.

5. REQUIRED LICENSES, CERTIFICATES, AND PERMITS.

A. Any licenses, certificates, or permits required by the federal, state, county, or municipal governments for Consultant to provide the services and work described in attachment A must be procured by Consultant and be valid at the time Consultant enters into this Agreement. Further, during the term of this Agreement, Consultant 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 Consultant at no expense to the County. Consultant 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 Consultant 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. Consultant 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. Consultant 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.sam.gov.

6. OFFICE SPACE, SUPPLIES, EQUIPMENT, ETC.

Consultant shall provide such office space, supplies, equipment, vehicles, reference materials, and telephone service as is necessary for Consultant to provide the services identified in Attachment A to this Agreement. County is not obligated to reimburse or pay Consultant, for any expense or cost incurred by Consultant in procuring or maintaining such items. Responsibility for the costs and expenses incurred by Consultant in providing and maintaining such items is the sole responsibility and obligation of Consultant.

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 Consultant by County pursuant to this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of County. Consultant will use reasonable care to protect, safeguard and maintain such items while they are in Consultant's possession. Consultant will be financially responsible for any loss or damage to such items, partial or total, which is the result of Consultant's negligence.

B. Products of Consultant'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, Consultant '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, Consultant will convey possession and title to all such properties to County.

8. INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES.

For the duration of this Agreement Consultant shall procure and maintain insurance of the scope and amount specified in Attachment **D** and with the provisions specified in that attachment.

9. STATUS OF CONSULTANT.

All acts of Consultant, its agents, officers, and employees, relating to the performance of this Agreement, shall be performed as independent Consultant's, and not as agents, officers, or employees of County. Consultant, 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**, Consultant 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 Consultant. It is understood by both Consultant 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 Consultant:

A. Consultant shall determine the method, details, and means of performing the work and services to be provided by Consultant under this Agreement.

B. Consultant 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 Consultant in fulfillment of this Agreement.

C. Consultant, its agents, officers, and employees are, and at all times during the term of this Agreement shall, represent and conduct themselves as independent Consultant's, and not as employees of County.

10. DEFENSE AND INDEMNIFICATION.

For design professional services rendered under this Contract, Consultant agrees to indemnify, including the cost to defend County and its officers, officials, employees, and volunteers from and against any and all claims,demands,costs,or liability that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant and its employees or agents in the performance of design professional services under this contract, but this indemnity does not apply to liability for damages arising from the sole negligence, active negligence, or willful acts of the County.

Notwithstanding the above, Consultant shall hold harmless, defend, and indemnify County and its officers, officials, employees, and volunteers from and against all claims, damages, losses, and expenses including attorney fees arising out of the performance of non-design professional services under the terms of this agreement caused in whole or in part by any negligent act or omission of the Consultant, any subconsultant, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of the County.

Consultant'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. Consultant's obligation under this paragraph extends to any claim, damage, loss, liability, expense, or other cost which is caused in whole or in part by any negligence, recklessness or willful misconduct of the Consultant, its agents, employees, suppliers, or of any one directly or indirectly employed by any of them, or anyone for whose negligence, recklessness or willful misconduct any of them may be liable.

Consultant agrees to indemnify, including the cost to defend, entity and its officers, officials, employees, and volunteers from and against any and all claims, demands, costs, or liability that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant and its employees or agents in the performance of services under this contract, but this indemnity does not apply to liability for damages arising from the sole negligence, active negligence, or willful acts of the Entity.

Consultant'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 Consultant to procure and maintain a policy of insurance.

To the extent permitted by law, County shall defend, indemnify, and hold harmless Consultant, 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.

11. RECORDS AND AUDIT.

A. Records. Consultant shall prepare and maintain all records required by the various provisions of this Agreement, federal, state, and municipal law, ordinances, regulations, and directions. Consultant shall maintain these records for a minimum of four (4) years from the termination or completion of this Agreement. Consultant 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 Consultant, 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 Consultant. Further, County has the right, at all reasonable times, to audit, inspect, or otherwise evaluate the work performed or being performed under this Agreement.

12. NONDISCRIMINATION.

During the performance of this Agreement, Consultant, 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. Consultant 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. Consultant 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.

13. CANCELLATION.

This Agreement may be canceled by County without cause, and at will, for any reason by giving to Consultant thirty (30) days written notice of such intent to cancel. Consultant 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.

14. ASSIGNMENT.

This is an agreement for the services of Consultant. County has relied upon the skills, knowledge, experience, and training of Consultant as an inducement to enter into this Agreement. Consultant shall not assign or subcontract this Agreement, or any part of it, without the express written consent of County. Further, Consultant shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

15. DEFAULT.

If the Consultant 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 Consultant in default and terminate this Agreement upon five (5) days written notice to Consultant. Upon such termination by default, County will pay to Consultant all amounts owing to Consultant for services and work satisfactorily performed to the date of termination.

16. 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-three (23) below.

17. CONFIDENTIALITY.

Consultant 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 Consultant in the course of providing services and work under this Agreement shall be privileged, restricted, or confidential. Consultant agrees to keep confidential all such information and records. Disclosure of such confidential, privileged, or protected information shall be made by Consultant only with the express written consent of the County.

18. CONFLICTS.

Consultant 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.

19. POST AGREEMENT COVENANT.

Consultant 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, Consultant 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, Consultant by virtue of this Agreement has gained access to the County's confidential, privileged, protected, or proprietary information.

20. 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.

21. 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 Consultant 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-three (23) (Amendment).

22. 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.

23. 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.

24. 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 Consultant 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:

Inyo County Public Works Department	Department
P.O. Drawer Q	Address
Independence, CA 93526	City and State

Consultant:

Wadell Engineering Corporation	Name
1350 Bayshore Highway, Suite 690	Address
Burlingame, CA 94010-1838	City and State

25. ENTIRE AGREEMENT.

This Agreement contains the entire agreement of the parties, and no representations, inducements, promises, or agreements otherwise between the parties not embodied herein or incorporated herein by reference, shall be of any force or effect. Further, no term or provision hereof may be changed, waived, discharged, or terminated, unless the same be in writing executed by the parties hereto.

/// ////

AGREEMENT BETWEEN COUNTY OF INYO
AND Wadell Engineering Corporation
FOR THE PROVISION OF On Call Airport Engineering and Planning **SERVICES**

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

COUNTY OF INYO

By: _____

Dated: _____

CONSULTANT

By: Robert P. Wadell
Signature

ROBERT P. WADELL
Print or Type Name

Dated: 5/21/13

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 INSURANCE REQUIREMENTS:

_____
County Risk Manager

ATTACHMENT A

AGREEMENT BETWEEN COUNTY OF INYO
AND Wadell Engineering Corporation
FOR THE PROVISION OF On Call Airport Engineering and Planning **SERVICES**

TERM:

FROM: June 18, 2013 **TO:** December 30, 2018

SCOPE OF WORK:

This is a master agreement. Wadell Engineering Corporation commits to providing a scope of work, schedule and fee for any project the County requests and complete the project assigned in conformance with the scope of work, schedule and fee provided. The County will assign projects based upon the scope of work, schedule and fees and will amend the scope of work, schedule and fees into this agreement through action of the Inyo County Board of Supervisors for any project Wadell Engineering Corporation is selected to perform. There is no guarantee that Wadell Engineering Corporation will be selected for any projects. All other provisions of this agreement will remain in force.

ATTACHMENT B

AGREEMENT BETWEEN COUNTY OF INYO

AND Wadell Engineering Corporation

FOR THE PROVISION OF On Call Airport Engineering and Planning **SERVICES**

TERM:

FROM: June 18, 2013 **TO:** December 30, 2018

SCHEDULE OF FEES:

This is a master agreement. Any projects assigned will include a Scope of Work, Schedule of Fees and Per Diem to be amended into this agreement by action of the Inyo County Board of Supervisors. There is no guarantee that any projects will be assigned.

ATTACHMENT C

AGREEMENT BETWEEN COUNTY OF INYO
AND Wadell Engineering Corporation
FOR THE PROVISION OF On Call Engineering and Planning **SERVICES**

TERM:

FROM: June 18, 2013 **TO:** December 30, 2018

SCHEDULE OF TRAVEL AND PER DIEM PAYMENT:

This is a master agreement. Any projects assigned will include a Scope of Work, Schedule of Fees and Per Diem to be amended into this agreement by action of the Inyo County Board of Supervisors. There is no guarantee that any projects will be assigned.

ATTACHMENT D

AGREEMENT BETWEEN COUNTY OF INYO
AND Wadell Engineering Corporation
FOR THE PROVISION OF On Call Airport Engineering and Planning **SERVICES**

TERM:

FROM: June 18, 2013 **TO:** December 30, 2018

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 Dat***e prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of ***five (5)*** years after completion of contract work.

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

ATTACHMENT E

AGREEMENT BETWEEN COUNTY OF INYO
AND Wadell Engineering Corporation
FOR THE PROVISION OF On Call Airport Engineering and Planning **SERVICES**

TERM:

FROM: June 18, 2013 **TO:** December 30, 2018

FEDERAL FUNDS ADDENDUM

1. Section 12, Part B, *Inspections and Audits,* of the contract is amended to read;

   "Any authorized representative of the County, or of a *federal, or state agency* shall have access to any books, documents, papers, records, including, but not limited to, financial records of the Consultant, which the County or *federal or state agency* 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 Consultant. Further, the County or *federal or state agency* has the right, at all reasonable times, to audit, inspect, or otherwise evaluate the work performed or being performed under this Agreement. Copies of any of these records shall be furnished, if requested."

2. **Covenant Against Contingent Fees.** The Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the consultant, to solicit or secure this agreement, and that he/she has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this agreement. For breach or violation of this warranty, the local agency shall have the right to annul this agreement without liability, or at its discretion; to deduct from the agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

3. **Delays and Extensions.** The term of the contract may be extended in the case of unavoidable delays, changes in the scope of work or level of effort required to meet the project objectives, and for consideration of corresponding warranted adjustments in payment. An extension of contract time is granted as described in Section 23, *Amendment,* of the contract.

4. **Termination or Abandonment**. The provisions of Section 15, *Default,* will also apply if the contract is terminated because of circumstances beyond the control of the consultant. The provisions of the section entitled **"County Property"** Section 7.B., shall apply to any partially completed work if the contract is terminated or abandoned.

5. **General Compliance with Laws and Wage Rates.** The consultant shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 177, and all federal, state, and local laws and ordinances applicable to the work.

Any subcontract entered into as a result of this contract if for more than $25,000 for public works construction or more than $15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article.

6. **Contractor's Endorsement on PS&E/Other Data.** The consultant's responsible engineer shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by him/her, and where appropriate, indicate his/her California registration number.

7. **Disadvantaged Business Enterprise Considerations.** Consultants must give consideration to DBE firms as specified in 23 CFR 172.5(b), 49 CFR, Part 26. The contractor shall comply with the applicable provisions of Exhibit 10-I, "Notice to Proposers Disadvantaged Business Enterprise Information," and Exhibit 10-J, "Standard Agreement for Subcontractor/DBE Participation," that were included in the Request for Statements of Qualifications,

8. **Safety**. The consultant shall comply with OSHA regulations applicable to the contractor regarding necessary safety equipment or procedures. The Consultant shall comply with safety instructions issued by the county's project manager and other county representatives. Consultant personnel shall wear hard hats and safety vests at all time when working on the construction project site.

   Pursuant to the authority contained in Section 591 of the Vehicle Code, the county has determined that such areas are within the limits of the project and are open to public traffic. The Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. The consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

   Any subcontract entered into as a result of this contract shall contain all of the provisions of the Article.

9. **Certifications.** Exhibits 10-F "Certification of Consultant, Commissions & Fees" and 10-G, "Certification of Agency" are included as attachments to the contract and made a part of.

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
5

X Consent ☐ Departmental ☐ Correspondence Action ☐ Public Hearing

☐ Scheduled Time for ☐ Closed Session ☐ Informational

FROM: Health & Human Services-Public Health Division

FOR THE BOARD MEETING OF: June 11, 2013

SUBJECT: Standard Agreement between the County of Inyo and the California Department of Public Health, AIDS Drug Assistance Program, Office of AIDS

DEPARTMENTAL RECOMMENDATION:

Request Board approve the Standard Agreement, Agreement Number 12-10594, between the County of Inyo and California Department of Public Health, AIDS Drug Assistance Program, Office of AIDS for a total amount not to exceed $6,000.00, for the period of July 1, 2012 through June 30, 2015, contingent upon Board approval of future budgets, and authorize the Chairperson to sign the Standard Agreement, Certificate of Lobbying, Darfur Contracting Act Certification, AND the Contractor Certification Clauses (CCC-307).

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

This request is coming to the Board at this time since Inyo County Health and Human Services/Public Health received this Standard Agreement on April 12, 2013.

The funds allocated to this Agreement are solely for costs associated with the administration of the AIDS Drug Assistance Program (ADAP) enrollment process provided by Inyo County Health & Human Services/Public Health Division. ADAP is a medication assistance program that benefits Inyo County clients infected with HIV, who have limited health insurance and resources to obtain needed medications. This funding pays for staff time assisting with the applications.

ALTERNATIVES:

Non-acceptance of this grant would mean that required training for ADAP would not be funded and no other funding sources for these services have been identified.

OTHER AGENCY INVOLVEMENT:

FINANCING:

Total amount of this grant is $6,000 and is 100% state funded. This revenue will be brought into the Health Budget (045100), in State Grants (4498).

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 5/17/2013
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: yes Date 5/22/13
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 5/23/13

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received) Jean Turner JE Date: 5/23/13

STATE OF CALIFORNIA

STANDARD AGREEMENT

STD 213 (CDPH Rev 12/12)

☐ Check here if additional pages are added: page(s)

REGISTRATION NUMBER	AGREEMENT NUMBER
	12-10594

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

STATE AGENCY'S NAME (Also referred to as CDPH or the State)

California Department of Public Health

CONTRACTOR'S NAME (Also referred to as Contractor)

County of Inyo

2. The term of this Agreement is: July 1, 2012 through June 30, 2015

3. The maximum amount of this Agreement is: $ 6,000 Six Thousand Dollars

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

Exhibit A – Scope of Work	4 pages
Exhibit B – Budget Detail and Payment Provisions	4 pages
Exhibit B, Attachment I – Budget (Year 1)	1 page
Exhibit B, Attachment II – Budget (Year 2)	1 page
Exhibit B, Attachment III – Budget (Year 3)	1 page
Exhibit B, Attachment IV - Invoice Template	1 page
Exhibit C * – General Terms and Conditions	4 pages
Exhibit D(F) – Special Terms and Conditions (Attached hereto as part of this agreement)	26 pages
Exhibit E – Additional Provisions	3 pages
Exhibit F – Contractor's Release	1 page
Exhibit G – Information Privacy and Security Requirements	11 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.*

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

CONTRACTOR		California Department of General Services Use Only
CONTRACTOR'S NAME *(if other than an individual, state whether a corporation, partnership, etc.)* County of Inyo		
BY *(Authorized Signature)*	DATE SIGNED *(Do not type)*	
PRINTED NAME AND TITLE OF PERSON SIGNING Linda Arcularius, Board Chairperson		
ADDRESS P.O. Drawer N Independence, CA 93526		
STATE OF CALIFORNIA		
AGENCY NAME California Department of Public Health		
BY *(Authorized Signature)*	DATE SIGNED *(Do not type)*	
PRINTED NAME AND TITLE OF PERSON SIGNING Yolanda Murillo, Chief, Contracts Management Unit		[X] Exempt per: Budget Act of 2012, Chapter 21
ADDRESS 1501 Capitol Avenue, Suite 71.5178, MS 1802, PO Box 997377 Sacramento, CA 95899-7377		

Exhibit A
Scope of Work

1. Service Overview

California Health and Safety Code 131019 designates the California Department of Public Health Office of AIDS as the lead agency within the state responsible for coordinating state programs, services and activities related to HIV and AIDS.

The Contractor agrees to provide the California Department of Public Health (CDPH), Center for Infectious Diseases, Office of AIDS (OA) the services described herein.

The funds allocated pursuant to this contract agreement are solely for costs associated with the administration of the AIDS Drug Assistance Program (ADAP) enrollment process provided by the Contractor.

2. Service Location

The services shall be performed at applicable facilities in the County of Inyo.

3. Service Hours

The services shall be provided during normal Contractor working hours.

4. Project Representatives

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

CDPH	**County of Inyo**
Irene Wong, OA ADAP Advisor	Tamara Cohn
Telephone: (916) 449-5799	Telephone: (760) 873-7868
Fax: (916) 449-5859	Fax: (760) 873-7800
Email: Irene.Wong@cdph.ca.gov	Email: tcohn@inyocounty.us

B. Direct all inquiries to:

California Department of Public Health	**County of Inyo**
OA ADAP Advisor	Tamara Cohn
Attention: Irene Wong	207A West South Street
MS 7700, P.O. Box 997426	Bishop, CA 93514
Sacramento, CA 95899-7426	
Telephone: (916) 449-5799	Telephone: (760) 873-7868
Fax: (916) 449-5859	Fax: (760) 873-7800
Email: Irene.Wong@cdph.ca.gov	Email: tcohn@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 contract agreement.

Exhibit A
Scope of Work

5. Definitions of Terms

1. OA – Works collaboratively with state and federal agencies, local health jurisdictions (LHJs), universities, and community-based organizations (CBOs) to ensure that efforts to combat the HIV/AIDS epidemic are targeted and effective.
2. ADAP – Established in 1987 to help ensure that eligible, HIV-positive uninsured and under-insured individuals have access to HIV-related medication.
3. LHJ – One of fifty-eight counties and three cities (Pasadena, Long Beach, and Berkeley) in the state of California.
4. CBO – Non-profit 501(3)(c) entities that operate within a single local community.
5. Pharmacy Benefits Manager (PBM) – Service contractor providing operational support for ADAP.
6. OA ADAP Advisor – OA ADAP staff assigned to LHJs/CBOs for technical assistance.
7. LHJ ADAP Coordinator – Contractor or other agency staff designated to act as the primary contact between the ADAP Enrollment Sites, the ADAP PBM, and ADAP.
8. ADAP Enrollment Site – ADAP-approved local ADAP Enrollment Site providing ADAP enrollment services for potentially eligible HIV-positive individuals.
9. ADAP Enrollment Worker (EW) – ADAP Enrollment Site staff trained by the ADAP PBM and authorized to provide ADAP enrollment services.
10. Fiscal Year (FY) – July 1 through June 30.

6. Services to be Performed

A. Purpose of Funds

Contractors receiving ADAP funds agree to provide ADAP client enrollment in their LHJ. Contractor may subcontract to HIV/AIDS service agencies to provide the services within the Contractor's LHJ.

B. Use of Funds

Contractor must use these funds solely for activities pertaining to the provision of ADAP client enrollment services. Acceptable and billable ADAP administrative costs incurred by the Contractor are as follows:

1. Reimbursement to the Contractor for performing ADAP client enrollment or re-certification services;
2. LHJ ADAP Coordinator's salary (or a portion thereof); or
3. Internet access for ADAP EWs to allow for submission of ADAP enrollment applications or re-certifications to the ADAP PBM via the Internet.

If the Contractor is uncertain if an activity is an acceptable and billable ADAP administrative activity, the Contractor shall seek prior written approval of the proposed activity from the OA ADAP Advisor.

Any purchase of equipment such as computers, printers, filing cabinets, etc., requires prior written approval since it is considered to be the property of CDPH OA. Since these purchases require prior written approval, they must be procured, inventoried, tagged, and disposed of in accordance with administrative equipment purchasing procedures available on the OA website.

Exhibit A
Scope of Work

C. Conditions of Award/ADAP Funds

1) The ADAP "Enrollment Procedures and Guidelines for Determining ADAP Eligibility" and any subsequent revisions, along with all instructions, policy memorandums, or directives issued by ADAP and/or the ADAP PBM, shall be adhered to in implementing and administering ADAP by the Contractor. Any changes and/or additions to these guidelines will be made in writing by ADAP and whenever possible, notification of such changes shall be made 30 days prior to implementation.

2) It is the intent of ADAP to have the Contractor coordinate and ensure high-quality, accessible ADAP client enrollment and eligibility re-certification services in its area. Each Contractor can determine how best to accomplish this intent.

   a) The Contractor agrees to designate an LHJ ADAP Coordinator to ensure the requirements of this contract agreement are adhered to by the Contractor and to act as the primary contact to ADAP and the ADAP PBM. The LHJ ADAP Coordinator will be responsible for:

      i) Reporting and disseminating ADAP-related information from ADAP and the ADAP PBM to ADAP Enrollment Site contacts and ADAP EWs within the LHJ;
      ii) Maintaining a sufficient number of ADAP Enrollment Sites to meet the local enrollment and eligibility re-certification need; and
      iii) Assisting ADAP with ADAP Enrollment Site visits and ensuring ADAP Enrollment Sites are in compliance with ADAP guidelines and policies available on the OA website. This includes ensuring all ADAP client eligibility and ADAP enrollment requirements are met and corresponding documentation is maintained by ADAP Enrollment Sites.

   b) If an ADAP LHJ Coordinator believes that a new ADAP Enrollment Site is necessary to replace an existing ADAP Enrollment Site that is no longer providing ADAP client enrollment services, or to serve an underserved population in the LHJ, the LHJ ADAP Coordinator must contact their designated OA ADAP Advisor to discuss the proposed new ADAP Enrollment Site and provide written request. Approval of any new ADAP Enrollment Site must be in writing from ADAP. In addition, the LHJ ADAP Coordinator agrees to notify the OA ADAP Advisor and the ADAP PBM of the deletion of any existing ADAP Enrollment Sites within 24 hours of such change.

   c) ADAP reserves the right to add new ADAP Enrollment Sites to ensure equitable and easy client access to ADAP enrollment services. The LHJ ADAP Coordinator in the appropriate LHJ will be notified by either ADAP, or the ADAP PBM of any new ADAP Enrollment Sites in their LHJ. Whenever possible, the OA ADAP Advisor and the LHJ ADAP Coordinator will confer in advance when new ADAP Enrollment Sites are to be added by ADAP.

   d) The Contractor agrees to ensure that all ADAP EWs must successfully complete training from the ADAP PBM prior to enrolling or re-certifying ADAP clients. All ADAP EWs must attend annual refresher trainings from the ADAP PBM and receive authorization from such training in order to continue conducting ADAP enrollment

functions. Contractor agrees to ensure that all ADAP EWs sign the OA confidentiality agreement prior enrolling or re-certifying ADAP clients.

e) The Contractor agrees to ensure all ADAP EWs must be identified by ADAP Enrollment Site-specific, individual ADAP EW identification (ID) numbers. If an ADAP EW provides ADAP client enrollment services at more than one ADAP Enrollment Site, they must acquire a unique ADAP EW ID number for each specific ADAP Enrollment Site. Enrollment of ADAP clients must be linked to that individual ADAP EW ID number. ADAP EW ID numbers can only be used by the individual to whom they are assigned.

f) The Contractor must provide written notification to the OA ADAP Advisor regarding any changes in coordinator assignment immediately upon such change in this status. In addition, the ADAP LHJ Coordinator must report any changes to an ADAP EW status to the OA ADAP Advisor and the ADAP PBM within 24 hours of such change. ADAP EWs no longer performing ADAP client enrollment/re-certification activities must be removed from the authorized ADAP EW database to ensure the confidentiality of the ADAP client eligibility database.

g) The Contractor agrees to ensure ADAP Enrollment Sites shall be limited to the following non-profit 501(3)(c) entities: community-based organizations, clinics, medical providers, and case management services. Pharmacy providers are not eligible to participate as ADAP Enrollment Sites. No ADAP EWs can be employed by, nor receive any financial compensation, including gifts or any type of incentive, from an ADAP pharmacy. This requirement is to avoid any appearance of conflict of interest and to ensure ADAP clients have clear access to the pharmacy of their choice.

3) ADAP client enrollment data received from the ADAP PBM will be used to verify the number of ADAP enrollments/re-certifications in each LHJ during each quarter and FY. In the instance where the Contractor is initially allocated funding, but does not provide any ADAP client enrollment in their LHJ during the current FY, the Contractor will not be allowed to submit invoices for reimbursement by ADAP for that FY.

4) The Contractor agrees to maintain necessary program records documenting the administrative costs submitted for reimbursement. Records shall be maintained for at least four years (current year, plus three prior years) from the ending date of this contract agreement, or until the termination of all state and federal audits, whichever is later.

5) The Contractor agrees to provide access during normal working hours to authorized representatives of ADAP and of other authorized state and federal agencies to all records, files, and documentation related to this contract agreement, subject to applicable state and federal laws concerning confidentiality.

6) The Contractor agrees to abide by all applicable laws and ADAP program guidelines regarding confidentiality of ADAP client eligibility files and protected health information when working with persons who receive eligibility under ADAP.

7) The Contractor agrees to the provisions as stated in "**Exhibit G**, **Information Privacy and Security Requirements,**" and agrees to ensure ADAP Enrollment Sites adhere to policies and procedures for the appropriate administrative, physical, and technical safeguards of protected health information as established by this contract agreement.

Exhibit B
Budget Detail and Payment Provisions

1. Invoicing and Payment

A. For services satisfactorily rendered, and approval of the invoices, the AIDS Drug Assistance Program (ADAP) agrees to compensate the Contractor for actual expenditures incurred in accordance with the budget(s) attached hereto.

B. Invoices shall include the contract agreement number. The Contractor may submit quarterly invoices of up to $30,000 (not to exceed the allocation amount), or one quarter of the Contractor allocation, whichever is greater. All invoices shall be received by ADAP no sooner than the end of the quarter, and no later than the due date noted below.

A supplemental invoice may be submitted to complete any outstanding invoicing need. The supplemental invoice shall be limited to no more than one per fiscal year (FY).

First Quarter:	July 1 – September 30
Invoice no later than:	November 15
Second Quarter:	October 1 – December 31
Invoice no later than:	February 15
Third Quarter:	January 1 – March 31
Invoice no later than:	May 15
Fourth Quarter:	April 1 – June 30
Invoice no later than:	August 15
(FINAL) Supplemental:	July 1 – June 30
Invoice no later than:	August 15

Payment may be denied at the sole discretion of ADAP for invoices that are received after the due date.

C. Direct invoices to:

Invoice Desk
California Department of Public Health
Office of AIDS
MS 7700
P.O. Box 997426
Sacramento, CA 95899-7426

D. Invoices shall:

1) Be prepared on Contractor letterhead. If invoices are not on produced letterhead, invoices must be signed by an authorized official, employee or agent certifying that the expenditures claimed represent actual expenses for the service performed under this contract agreement.
2) Bear the Contractor's name as shown on the contract agreement.
3) Identify the billing and/or performance period covered by the invoice.

Exhibit B
Budget Detail and Payment Provisions

4) Itemize costs for the billing period in the same or greater level of detail as indicated in this contract agreement. Subject to the terms of this contract agreement, reimbursement may only be sought for those costs and/or cost categories expressly identified as allowable in this contract agreement and approved by ADAP.
5) Be in the format of "Exhibit B, Attachment II," consisting of one page and made a part of this contract agreement by this reference.

2. Budget Contingency Clause

A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this contract agreement does not appropriate sufficient funds for the program, this contract agreement shall be of no further force and effect. In this event, ADAP shall have no liability to pay any funds whatsoever to the Contractor, or to furnish any other considerations under this contract agreement and the Contractor shall not be obligated to perform any provisions of this contract agreement.

B. If funding for any FY is reduced or deleted by the Budget Act for purposes of this program, ADAP shall have the option to either cancel this contract agreement with no liability occurring to ADAP, or offer a contract agreement amendment to the Contractor to reflect the reduced amount.

3. Prompt Payment Clause

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

4. Timely Submission of Final Invoice

A. A final undisputed invoice shall be submitted for payment no more than forty-five (45) calendar days at the end of each fiscal year, unless a later or alternate deadline is agreed to in writing by the ADAP Advisor. Said invoice should be clearly marked "Final Invoice," indicating that all payment obligations of ADAP under this contract agreement have ceased and that no further payments are due or outstanding for each fiscal year. ADAP may, at its discretion, choose not to honor any delinquent final invoice if the Contractor fails to obtain prior written approval from ADAP of an alternate final invoice submission deadline.

B. The Contractor is hereby advised of its obligation to submit, to ADAP, with the final invoice, a completed copy of the "Contractor's Release (Exhibit F)."

5. Expense Allowability / Fiscal Documentation

A. Invoices, received from the Contractor and accepted for payment by ADAP, shall not be deemed evidence of allowable contract agreement costs.

B. ADAP shall authorize payment in arrears up to the maximum allocation of this contract agreement upon the execution of this contract agreement. Any costs billed under this contract agreement that are determined to fall outside the purview of this contract agreement (i.e., are not directly related to the provision of ADAP client enrollment services) will not be reimbursable under this contract agreement.

Exhibit B
Budget Detail and Payment Provisions

C. Upon receipt of the quarterly ADAP invoice, ADAP will reimburse the Contractor for administrative costs associated with the provision of ADAP enrollment services in the local health jusisdiction (LHJ), not to exceed the maximum amount reimbursable under this contract agreement. Reimbursement to the Contractor will be contingent upon receipt of the signed contract agreement, the provision of ADAP client enrollment services (as verified by ADAP through ADAP enrollment data), and a completed ADAP invoice within the required timeframe.

D. It is mutually understood between the parties that this contract agreement may have been written before ascertaining the availability of federal or state funds for the mutual benefit of both parties in order to avoid program delays that would occur if the contract agreement were executed after that determination. This contract agreement is valid and enforceable only to the extent that sufficient funds are made available to ADAP by the U.S. Government and/or by the California Department of Public Health (CDPH) for the purposes of this program. If sufficient federal and/or state funds are not made available pursuant to the contract agreement, this contract agreement shall be invalid and have no further force and effect. In this event, ADAP shall have no liability to pay any state funds whatsoever to the Contractor, furnish any other considerations under this contract agreement, and the Contractor shall not thereafter be obligated to perform any duties of this contract agreement.

E. This contract agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or the State Legislature, which may affect the provisions, terms, or funding of this contract agreement in any manner.

F. Contractor shall maintain for review and audit and supply to ADAP upon request, adequate documentation of all expenses claimed pursuant to this contract agreement to permit a determination of expense allowability.

G. If the allowability of an expense cannot be determined by ADAP because of invoice detail, fiscal records, or backup documentation is nonexistent or inadequate according to generally accepted accounting principles or practices, all questionable costs may be disallowed and payment may be withheld by ADAP. Upon receipt of adequate documentation supporting a disallowed or questionable expense, reimbursement may resume for the amount substantiated and deemed allowable.

6. Recovery of Overpayments

A. Contractor agrees that claims based upon the terms of this contract agreement or an audit finding and/or an audit finding that is appealed and upheld, will be recovered by ADAP and/or the U.S. Government by one of the following options:

1) Contractor's remittance to ADAP of the full amount of the audit exception within 30 days following ADAP's request for repayment;

2) A repayment schedule which is agreeable to both ADAP and the Contractor.

B. ADAP reserves the right to select which option as indicated above in paragraph A will be employed and the Contractor will be notified by ADAP in writing of the claim procedure to be utilized.

Exhibit B
Budget Detail and Payment Provisions

C. Interest on the unpaid balance of the audit finding or debt will accrue at a rate equal to the monthly average of the rate received on investments in the Pooled Money Investment Fund commencing on the date that an audit or examination finding is mailed to the Contractor, beginning 30 days after Contractor's receipt of ADAP's demand for repayment.

D. If the Contractor has filed a valid appeal regarding the report of audit findings, recovery of the overpayments will be deferred until a final administrative decision on the appeal has been reached. If the Contractor loses the final administrative appeal, Contractor shall repay, to ADAP, the over-claimed or disallowed expenses, plus accrued interest. Interest accrues from the Contractor's first receipt of ADAP's notice requesting reimbursement of questioned audit costs or disallowed expenses.

Attachment B-1
AIDS Drug Assistance Program
Detailed Budget - Year 1
July 1, 2012 - June 30, 2013

A. PERSONNEL	Position Title	Annual Salary/Range	Total FTE %		Budget
	ADAP Coordinator	$43,471	4%	$	1,739
				$	-
				$	-
				$	-
				$	-
				$	-
				$	-
			Total Personnel	**$**	**1,739**
B. FRINGE BENEFITS					
Rate Calculated @	15.00%		**Total Fringe Benefits**	**$**	**261**
		Total Personnel & Fringe		**$**	**2,000**
C. OPERATING EXPENSES					
				$	-
			Total Operating Expenses		
D. OTHER COSTS					
				$	-
			Total Other Costs	**$**	**-**
E. INDIRECT COSTS					
			Total Indirect Costs	**$**	**-**
TOTAL BUDGET - YEAR 1				**$**	**2,000**

Attachment B-2
AIDS Drug Assistance Program
Detailed Budget - Year 2
July 1, 2013 - June 30, 2014

A. PERSONNEL	Position Title	Annual Salary/Range	Total FTE %		Budget
	ADAP Coordinator	$43,471	4%	$	1,739
				$	-
				$	-
				$	-
				$	-
				$	-
				$	-
			Total Personnel	**$**	**1,739**
B. FRINGE BENEFITS					
Rate Calculated @	15.00%		**Total Fringe Benefits**	**$**	**261**
		Total Personnel & Fringe		**$**	**2,000**
C. OPERATING EXPENSES					
				$	-
			Total Operating Expenses		
D. OTHER COSTS					
				$	-
			Total Other Costs	**$**	**-**
E. INDIRECT COSTS					
			Total Indirect Costs	**$**	**-**
TOTAL BUDGET - YEAR 2				**$**	**2,000**

Attachment B-3
AIDS Drug Assistance Program
Detailed Budget - Year 3
July 1, 2014 - June 30, 2015

A. PERSONNEL	Position Title	Annual Salary/Range	Total FTE %		Budget
	ADAP Coordinator	$43,471	4%	$	1,739
				$	-
				$	-
				$	-
				$	-
				$	-
				$	-
			Total Personnel	**$**	**1,739**
B. FRINGE BENEFITS					
Rate Calculated @	15.00%		**Total Fringe Benefits**	**$**	**261**
		Total Personnel & Fringe		**$**	**2,000**
C. OPERATING EXPENSES					
				$	-
			Total Operating Expenses		
D. OTHER COSTS					
				$	-
			Total Other Costs	**$**	**-**
E. INDIRECT COSTS					
			Total Indirect Costs	**$**	**-**
TOTAL BUDGET - YEAR 3				**$**	**2,000**

****As Per State Contract requirements, Please Print Invoice on Letterhead****
Exhibit B, Attachment IV, Invoice

County of Inyo

OA Date Stamp

Contractor Name

12-10594
Contract Number

Mailing Address

Period of Service (month / year)

(city, state and zip code)

		Amounts
A.	PERSONNEL	$ -
B.	FRINGE BENEFITS	$ -
C.	OPERATING EXPENSES	$ -
D.	OTHER COSTS	$ -
E.	INDIRECT COSTS	$ -
TOTAL INVOICE		$ -

I hereby certify that the amount claimed is accurate and a true representation of the amount owed.

Authorized Signature

Date

Print name of authorized signature

Title

OA Review:

(Initial & Date)

FOR OA USE ONLY

California Dept. of Public Health
Office of AIDS
MS 7700
P.O. Box 997426
Sacramento, CA 95899-7426

revised 2012

Signature					Date:		
Fiscal Year	PCA	Index	Object code	Agency Object	Project number		Work Phase

OA Tracking No.

GTC 610

EXHIBIT C

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.

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 the Agreement is binding on any of the parties.

3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.

4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. 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, 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. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

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

6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.

7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.
a. The Government Code Chapter on Antitrust claims contains the following definitions:
1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of $100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of $200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

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 Public Health" and "CDPH" shall 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 California Department of Public Health (CDPH) formerly known as California Department of Health Services (CDHS).)

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 CDPH, 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 CDPH 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 CDPH, the Contractor may request in writing to CDPH, 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 CDPH 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 CDPH's 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 CDPH 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 CDPH. Verbal authorization should be confirmed in writing. Written authorization may be in a form including fax or email confirmation.

3. Procurement Rules

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

a. **Equipment definitions**

Wherever the term equipment /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 CDPH 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 CDPH 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 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 and services related to such purchases for performance under this Agreement.

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

To secure equipment above the annual maximum limit of $50,000, the Contractor shall make arrangements through the appropriate CDPH Program Contract Manager, to have all remaining equipment purchased through CDPH's Purchasing Unit. The cost of equipment purchased by or through CDPH shall be deducted from the funds available in this Agreement. Contractor shall submit to the CDPH Program Contract Manager a list of equipment specifications for those items that the State must procure. The State may pay the vendor directly for such arranged equipment purchases and title to the equipment will remain with CDPH. The equipment will be delivered to the Contractor's address, as stated on the face of the Agreement, unless the Contractor notifies the CDPH Program Contract Manager, in writing, of an alternate delivery address.

(2) All equipment purchases are subject to Paragraphs d through h of Provision 3. Paragraph b of Provision 3 shall also apply, if equipment 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 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 CDPH, prior written authorization from the appropriate CDPH Program Contract Manager will be required before the Contractor will be reimbursed for any purchase of $5,000 or more for commodities, supplies, equipment, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by CDPH, 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 CDPH (e.g., when CDPH has a need to monitor certain purchases, etc.), CDPH may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. CDPH reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor purchase that CDPH 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. CDPH 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 Ownership / Inventory / Disposition

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

a. Wherever the terms equipment and/or property are used in Provision 4, the definitions in Provision 3, Paragraph a, shall apply.

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

(1) CDPH requires the reporting, tagging and annual inventorying of all equipment and/or property that is furnished by CDPH or purchased/reimbursed with funds provided through this Agreement.

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

(2) 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 CDPH Program Contract Manager using a form or format designated by CDPH's Asset Management Unit. If an inventory report form (i.e., Inventory/Disposition of CDPH-Funded Equipment) does not accompany this Agreement, Contractor shall request a copy from the CDPH 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 CDPH according to the instructions appearing on the inventory form or issued by the CDPH Program Contract Manager.

(c) Contact the CDPH 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 CDPH's 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, CDPH 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, CDPH may require the Contractor and/or Subcontractor to repair or replace, to CDPH's satisfaction, any damaged, lost or stolen state equipment and/or property. 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 CDPH 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 CDPH under the terms of this Agreement, shall only be used for performance of this Agreement or another CDPH 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 CDPH Program Contract Manager and shall, at that time, query CDPH as to the requirements, including the manner and method, of returning state equipment and/or property to CDPH. Final disposition of equipment and/or property shall be at CDPH expense and according to CDPH instructions. Equipment and/or property disposition instructions shall be issued by CDPH immediately after receipt of the final inventory report. At the termination or conclusion of this Agreement, CDPH may at its discretion, authorize the continued use of state equipment and/or property for performance of work under a different CDPH agreement.

g. **Motor Vehicles**

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

(1) If motor vehicles are purchased/reimbursed with agreement funds or furnished by CDPH 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 CDPH and shall deliver all necessary documents of title or registration to enable the proper transfer of a marketable title to CDPH.

(2) If motor vehicles are purchased/reimbursed with agreement funds or furnished by CDPH 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 CDPH 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 CDPH 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 CDPH 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 CDPH Program Contract Manager. The certificate of insurance shall identify the CDPH 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 CDPH.

(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 Public Health (CDPH)).

[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 CDPH, 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 CDPH, 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, CDPH 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) The State 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 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) Entities of any type that will provide subvention aid or direct services to the public,
(h) Entities and/or service types identified as exempt from advertising in State Contracting Manual 5.80. View this publication at the following Internet address:

http://www.ols.dgs.ca.gov/Contract+Manual/Chapters4through6.htm.

b. CDPH 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 CDPH 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 CDPH.

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 CDPH. CDPH may, at its discretion, elect to waive this right. All such waivers shall be confirmed in writing by CDPH.

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

e. CDPH 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 CDPH to the Contractor, to permit CDPH 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 CDPH, 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, and 31 or other numbered provisions herein that 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 CDPH, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by CDPH 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 CDPH, 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, 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. CDPH 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 CDPH has agreed in a signed writing to accept a license, CDPH 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 CDPH 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 CDPH's Intellectual Property in existence prior to the effective date of this Agreement. Except as otherwise set forth herein, Contractor shall not use any of CDPH's Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of CDPH. **Except as otherwise set forth herein, neither the Contractor nor CDPH 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 CDPH, Contractor agrees to abide by all license and confidentiality restrictions applicable to CDPH in the third-party's license agreement.

(4) Contractor agrees to cooperate with CDPH in establishing or maintaining CDPH's exclusive rights in the Intellectual Property, and in assuring CDPH's 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 CDPH all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or CDPH and which result directly or indirectly from this Agreement or any subcontract.

(5) Contractor further agrees to assist and cooperate with CDPH 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 CDPH's 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 CDPH 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 CDPH, 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 CDPH 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 CDPH to any work product made, conceived, derived from, or reduced to practice by Contractor or CDPH 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 CDPH and which result directly or indirectly from this Agreement, shall include CDPH's notice of copyright, which shall read in 3mm or larger typeface: "© *[Enter Current Year e.g., 2007, etc.]*, Department of Public Health. This material may not be reproduced or disseminated without prior written permission from the Department of Public Health." 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 CDPH 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 CDPH, without additional compensation, all its right, title and interest in and to such inventions and to assist CDPH 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

CDPH's prior written approval; and (ii) granting to or obtaining for CDPH, 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 CDPH 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 CDPH.

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 CDPH 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 CDPH 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) CDPH 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 CDPH 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 CDPH's 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 CDPH 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. CDPH reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against CDPH.

(2) Should any Intellectual Property licensed by the Contractor to CDPH under this Agreement become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonably and in good faith to preserve CDPH's right to use the licensed Intellectual Property in accordance with this Agreement at no expense to CDPH. CDPH 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 CDPH 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, CDPH 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 CDPH for breach of any term of this Intellectual Property Exhibit by Contractor. Contractor acknowledges CDPH would suffer irreparable harm in the event of such breach and agrees CDPH 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, CDPH 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 CDPH 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 CDPH 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 CDPH without prior written authorization from the CDPH 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 CDPH, 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 CDPH's action in the administration of an agreement. If there is a dispute or grievance between the Contractor and CDPH, the Contractor must seek resolution using the procedure outlined below.

(1) The Contractor should first informally discuss the problem with the CDPH 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 Division 25.1 (commencing with Section 38050) of the Health and Safety Code and the regulations adopted thereunder. (Title 1, Subchapter 2.5, commencing with Section 251, California Code of Regulations.)

c. Disputes arising out of an audit, examination of an agreement or other action not covered by subdivision (a) of Section 20204, of Chapter 2.1, Title 22, of the California Code of Regulations, and for which no procedures for appeal are provided in statute, regulation or the Agreement, shall be handled in accordance with the procedures identified in Sections 51016 through 51047, Title 22, California Code of Regulations.

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

e. There are organizational differences within CDPH's 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 CDPH 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 CDPH 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 CDPH 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 CDPH Program Contract Manager shall forward the audit report to CDPH's 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 CDPH 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, CDPH shall act upon the proposal within 60 days after receipt of the written proposal. CDPH 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, CDPH 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 CDPH 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 CDPH 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, CDPH 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, CDPH 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 CDPH 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.)

CDPH 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 CDPH. Negative performance evaluations may be considered by CDPH 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 CDPH 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, CDPH 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 <u>fringe benefits</u> shall be at <u>actual cost</u>.

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 CDPH, the remaining unused two weeks of vacation and seven days of sick leave may not be claimed as an allowable cost.

31. 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 CDPH 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
CALIFORNIA DEPARTMENT OF PUBLIC HEALTH

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 Public Health

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

Attachment 2

CERTIFICATION REGARDING LOBBYING

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

Approved by OMB
0348-0046

1. Type of Federal Action: [ ] a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: [ ] a. bid/offer/application b. initial award c. post-award	3. Report Type: [ ] a. initial filing b. material change For Material Change Only: Year _____ quarter _____ date of last report _____.
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier ___, if known: Congressional District, If known:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: 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. 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 appropriate classification of this report. If this is a follow-up 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 it is, 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 organizational level 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. Additional Incorporated Documents

A. The following documents and any subsequent updates are not attached, but are incorporated herein and made a part hereof by this reference. These documents may be updated periodically by the AIDS Drug Assistance Program (ADAP), as required by program directives. ADAP shall provide the Contractor with copies of said documents and any periodic updates thereto, under separate cover. ADAP will maintain on file, all documents referenced herein and any subsequent updates.

1) Published Documents:

a) ADAP Enrollment Procedures and Guidelines for Determining ADAP Eligibility
http://cdphinternet/programs/aids/Documents/ADAPGuidelines.pdf

b) Office of AIDS, ADAP Staff Assignments by Local Health Jurisdiction
http://cdphinternet/programs/aids/Documents/ADAP-LHJStaffAssignments.pdf

2) Websites:

a) Office of AIDS
Office of AIDS Home Page

b) Pharmacy Benefits Manager, Ramsell Public Health Rx
Ramsell Public Health Rx

2. Cancellation / Termination

A. This contract agreement may be cancelled by ADAP or Contractor **without cause** upon 30 calendar days advance written notice to the other party.

B. ADAP reserves the right to cancel or terminate this contract agreement immediately for cause. The Contractor may submit a written request to terminate this contract agreement only if ADAP substantially fails to perform its responsibilities as provided herein.

C. The term "for cause" shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of this contract agreement.

D. The contract agreement termination or cancellation shall be effective as of the date indicated in ADAP's notification to the Contractor. The notice shall stipulate any final performance, invoicing or payment requirements.

E. Upon receipt of a notice of termination or cancellation, the Contractor shall take immediate steps to stop performance and to cancel or reduce subsequent contract agreement costs.

F. In the event of early termination or cancellation, the Contractor shall be entitled to compensation for services performed satisfactorily under this contract agreement and

expenses incurred up to the date of cancellation and any non-cancelable obligations incurred in support of this contract agreement.

G. Notice of termination by the Contractor shall be followed within 30 days by a final report and a final claim for reimbursement, or repayment of funds disbursed, but not expended.

3. Avoidance of Conflicts of Interest by Contractor

A. ADAP intends to avoid any real or apparent conflict of interest on the part of the Contractor, subcontractors, or employees, officers and directors of the Contractor or subcontractors. Thus, ADAP reserves the right to determine, at its sole discretion, whether any information, assertion or claim received from any source indicates the existence of a real or apparent conflict of interest; and, if a conflict is found to exist, to require the Contractor to submit additional information or a plan for resolving the conflict, subject to ADAP review and prior approval.

B. Conflicts of interest include, but are not limited to:

1) An instance where the Contractor or any of its subcontractors, or any employee, officer, or director of the Contractor has an interest, financial or otherwise, whereby the use or disclosure of information obtained while performing services under the contract agreement would allow for private or personal benefit or for any purpose that is contrary to the goals and objectives of the contract agreement.

2) An instance where the Contractors or any of its subcontractors, or any employee, officer, or director of the Contractor use their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family, business or other ties.

C. If ADAP is or becomes aware of a known or suspected conflict of interest, the Contractor will be given an opportunity to submit additional information or to resolve the conflict. A Contractor with a suspected conflict of interest will have five (5) working days from the date of notification of the conflict by ADAP to provide complete information regarding the suspected conflict. If a conflict of interest is determined to exist by ADAP and cannot be resolved to the satisfaction of ADAP, the conflict will be grounds for terminating the contract agreement. ADAP may, at its discretion upon receipt of a written request from the Contractor, authorize an extension of the timeline indicated herein.

4. Insurance Requirements

Contractor shall comply with the following insurance requirements:

A. Commercial General Liability:

Exhibit E
Additional Provisions

The Contractor must furnish to ADAP a certificate of insurance stating that commercial general liability insurance of not less than $1,000,000 per occurrence for bodily injury and property damage liability combined is presently in effect for the Contractor. The commercial general liability insurance policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured agreement. The commercial general liability insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor's limit of liability.

B. The certificate of insurance must identify the agreement number for which the certificate of insurance applies and include the following provisions:

   1) The insurer will not cancel the insured's coverage without giving 30 days prior written notice to ADAP, and

   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 of California under this contract agreement.

C. The Contractor agrees that the insurance required herein will remain in effect at all times during the term of the contract agreement. In the event said insurance coverage expires at any time or times during the term of this contract agreement, the Contractor agrees to provide, at least 30 calendar days before said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the contract agreement or for a period of not less than one year. ADAP may, in addition to any other remedies it may have, terminate this contract agreement on the occurrence of such event.

D. ADAP will not be responsible for any premiums, deductibles, or assessments on the insurance policy.

Exhibit F

Contractor's Release

Instructions to Contractor:

With final invoice(s) submit one (1) original and one (1) copy. The original must bear the original signature of a person authorized to bind the Contractor. The additional copy may bear photocopied signatures.

Submission of Final Invoice

Pursuant to **contract number** 12-10594 entered into between the State of California Department of Public Health (CDPH) and the Contractor (identified below), the Contractor does acknowledge that final payment has been requested via **invoice number(s)** _____, in the **amount(s) of $** _____ and **dated** _____
If necessary, enter "See Attached" in the appropriate blocks and attach a list of invoice numbers, dollar amounts and invoice dates.

Release of all Obligations

By signing this form, and upon receipt of the amount specified in the invoice number(s) referenced above, the Contractor does hereby release and discharge the State, its officers, agents and employees of and from any and all liabilities, obligations, claims, and demands whatsoever arising from the above referenced contract.

Repayments Due to Audit Exceptions / Record Retention

By signing this form, Contractor acknowledges that expenses authorized for reimbursement does not guarantee final allowability of said expenses. Contractor agrees that the amount of any sustained audit exceptions resulting from any subsequent audit made after final payment will be refunded to the State.

All expense and accounting records related to the above referenced contract must be maintained for audit purposes for no less than three years beyond the date of final payment, unless a longer term is stated in said contract.

Recycled Product Use Certification

By signing this form, Contractor certifies under penalty of perjury that a minimum of 0% unless otherwise specified in writing of post consumer material, as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether it meets the requirements of Public Contract Code Section 12209. Contractor specifies that printer or duplication cartridges offered or sold to the State comply with the requirements of Section 12156(e).

Reminder to Return State Equipment/Property (If Applicable)

(Applies only if equipment was provided by CDPH or purchased with or reimbursed by contract funds)

Unless CDPH has approved the continued use and possession of State equipment (as defined in the above referenced contract) for use in connection with another CDPH agreement, Contractor agrees to promptly initiate arrangements to account for and return said equipment to CDPH, at CDPH's expense, if said equipment has not passed its useful life expectancy as defined in the above referenced contract.

Patents / Other Issues

By signing this form, Contractor further agrees, in connection with patent matters and with any claims that are not specifically released as set forth above, that it will comply with all of the provisions contained in the above referenced contract, including, but not limited to, those provisions relating to notification to the State and related to the defense or prosecution of litigation.

ONLY SIGN AND DATE THIS DOCUMENT WHEN ATTACHING TO THE FINAL INVOICE

Contractor's Legal Name (as on contract): County of _____

Signature of Contractor or Official Designee: _____ Date: _____

Printed Name/Title of Person Signing: _____

CDPH Distribution: Accounting (Original) Program

Exhibit G
Information Privacy and Security Requirements
(For Non-HIPAA/HITECH Act Contracts)

This Information Privacy and Security Requirements Exhibit (For Non-HIPAA/HITECH Act Contracts) (hereinafter referred to as "this Exhibit") sets forth the information privacy and security requirements Contractor is obligated to follow with respect to all personal and confidential information (as defined herein) disclosed to Contractor, or collected ,created, stored, transmitted or used by Contractor for or on **behalf** of the California Department of Public Health (hereinafter "CDPH"), pursuant to Contractor's agreement with CDPH. (Such personal and confidential information is referred to herein collectively as "CDPH PCI".) CDPH and Contractor desire to protect the privacy and provide for the security of CDPH PCI pursuant to this Privacy Exhibit and in compliance with state and federal laws applicable to the CDPH PCI.

I. Order of Precedence: With respect to information privacy and security requirements for all CDPH PCI, the terms and conditions of this Exhibit shall take precedence over any conflicting terms or conditions set forth in any other part of the agreement between Contractor and CDPH, including Exhibit A (Scope of Work), all other exhibits and any other attachments, and shall prevail over any such conflicting terms or conditions.

II. Affect on lower tier transactions: The terms of this Exhibit shall apply to all contracts, subcontracts, and subawards, regardless of whether they are for the acquisition of services, goods, or commodities. When applicable the Contractor shall incorporate the relevant provisions of this Exhibit into each subcontract or subaward to its agents, subcontractors, or independent consultants.

III. Definitions: For purposes of the agreement between Contractor and CDPH, including this Exhibit, the following definitions shall apply:

A. Breach: "Breach" means:

1. the acquisition, access, use, or disclosure of CDPH PCI, in any medium (paper, electronic, oral), in violation of any state or federal law or in a manner not permitted under the agreement between Contractor and CDPH, including this Exhibit, that compromises the privacy, security or integrity of the information. For purposes of this definition, "compromises the privacy, security or integrity of the information" means poses a significant risk of financial, reputational, or other harm to an individual or individuals; or
2. the same as the definition of "breach of the security of the system" set forth in California Civil Code section 1798.29(d).

B. Confidential Information: "Confidential information" means information that:

1. does not meet the definition of "public records" set forth in California Government Code section 6252(e), or is exempt from disclosure under any of the provisions of Section 6250, et seq. of he California Government Code or any other applicable state or federal laws; or
2. is contained in documents, files, folders, books or records that are clearly labeled, marked or designated with the word "confidential" by CDPH; or
3. is "personal information" as defined in this Exhibit.

C. Disclosure: "Disclosure" means the release, transfer, provision of, access to, or divulging in any other manner of information.

D. Personal Information: "Personal information" means information, in any medium (paper, electronic, oral) that:

Exhibit G
Information Privacy and Security Requirements
(For Non-HIPAA/HITECH Act Contracts)

1. by itself directly identifies or uniquely describes an individual; or
2. creates a substantial risk that it could be used in combination with other information to indirectly identify or uniquely describe an individual, or link an individual to the other information; or
3. meets the definition of "personal information" set forth in California Civil Code section 1798.3(a) or
4. is one of the data elements set forth in California Civil Code section 1798.29(e)(1),(2) or (3); or
5. meets the definition of "medical information" set forth in either California Civil Code section 1798.29(f)(2) or California Civil Code section 56.05(g); or
6. meets the definition of "health insurance information" set forth in California Civil Code section 1798.29(f)(3).

E. Security Incident: "Security Incident" means:

1. an attempted breach; or
2. the attempted or successful modification or destruction of CDPH PCI, in violation of any state or federal law or in a manner not permitted under the agreement between Contractor and CDPH, (including this Exhibit; or
3. the attempted or successful modification or destruction of, or interference with, Contractor's system operations in an information technology system, that negatively impacts the confidentiality, availability or integrity of CDPH PCI, or hinders or makes impossible Contractor's receipt, collection ,creation, storage, transmission or use of PCI by Contractor for or on **behalf** of CDPH, pursuant to Contractor's agreement with CDPH, including this Exhibit.

F. Use: "Use" means the sharing, employment, application, utilization, examination, or analysis of information.

IV. Disclosure Restrictions: The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure any CDPH PCI. The Contractor shall not disclose, except as otherwise specifically permitted by the agreement between Contractor and CDPH (including this Exhibit) , any CDPH PCI to anyone other than CDPH without prior written authorization from the CDPH Program Contract Manager, except if disclosure is required by State or Federal law.

V. Use Restrictions: The Contractor and its employees, agents, or subcontractors shall not use any CDPH PCI for any purpose other than carrying out the Contractor's obligations under its agreement with CDPH.

VI. Safeguards: The Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the privacy, confidentiality, security, integrity, and availability of CDPH PCI, including electronic or computerized CDPH PCI. The 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 in performing its agreement with CDPH, including this Exhibit, and which incorporates the requirements of Section VII, Security, below. Contractor shall provide CDPH with Contractor's current and updated policies.

VII. Security: The Contractor shall take any and all steps necessary to ensure the continuous security of all computerized data systems containing CDPH PCI. These steps shall include, at a minimum:

Exhibit G
Information Privacy and Security Requirements
(For Non-HIPAA/HITECH Act Contracts)

A. complying with all of the data system security precautions listed in the Contractor Data Security Standards set forth in Attachment 1 to this Exhibit;
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; and

In case of a conflict between any of the security standards contained in any of these enumerated sources of security standards, the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to CDPH PCI from breaches and security incidents.

VIII. Security Officer: The Contractor shall designate a Security Officer to oversee its compliance with this Exhibit and for communicating with CDPH on matters concerning this Exhibit.

IX. Training: The Contractor shall provide training on its obligations under this Exhibit, at its own expense, to all of its employees who assist in the performance of Contractor's obligations under Contractor's agreement with CDPH, including this Exhibit, or otherwise use or disclose CDPH PCI.

A. The Contractor shall require each employee who receives training to sign a certification, indicating the employee's name and the date on which the training was completed.
B. The Contractor shall retain each employee's written certifications for CDPH inspection for a period of three years following contract termination.

X. Employee Discipline: Contractor shall discipline such employees and other Contractor workforce members who intentionally violate any provisions of this Exhibit, including by termination of employment.

XI. Breach and Security Incident Responsibilities:

A. Notification to CDPH of Breach or Security Incident: The Contractor shall notify CDPH **immediately by telephone call plus email or fax** upon the discovery of a breach (as defined in this Exhibit), **or** within **twenty-four (24) hours by email or fax** of the discovery of any security incident (as defined in this Exhibit). Notification shall be provided to the CDPH Program Contract Manager, the CDPH Privacy Officer and the CDPH Chief Information Security Officer, using the contact information listed in Section XI(E), below. If the breach or security incident occurs after business hours or on a weekend or holiday and involves CDPH PCI in electronic or computerized form, notification to CDPH shall be provided by calling the CDPH IIT Service Desk at the telephone numbers listed in Section XI(E), below For purposes of this Section, breaches and security incidents shall be treated as discovered by Contractor as of the first day on which such breach or security incident is known to the Contractor, or, by exercising reasonable diligence would have been known to the Contractor. A Contractor shall be deemed to have knowledge of a breach or security incident if such breach or security incident is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the breach or security incident, who is an employee or agent of the Contractor.

Contractor shall take:

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Information Privacy and Security Requirements
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1. prompt corrective action to mitigate any risks or damages involved with the breach or security incident and to protect the operating environment; and
2. any action pertaining to a breach required by applicable federal and state laws, including, specifically, California Civil Code section 1798.29.

B. Investigation of Breach: The Contractor shall immediately investigate such breach or security incident, and within seventy-two (72) hours of the discovery, shall inform the CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer of:

1. what data elements were involved and the extent of the data involved in the breach, including, specifically, the number of individuals whose personal information was breached; and
2. a description of the unauthorized persons known or reasonably believed to have improperly used the CDPH PCI and/or a description of the unauthorized persons known or reasonably believed to have improperly accessed or acquired the CDPH PCI, or to whom it is known or reasonably believe have had the CDPH PCI improperly disclosed to them; and
3. a description of where the CDPH PCI is believed to have been improperly used or disclosed; and
4. a description of the probable causes of the breach or security incident; and
5. whether Civil Code sections 1798.29 or any other federal or state laws requiring individual notifications of breaches have been triggered.

C. Written Report: The Contractor shall provide a written report of the investigation to the CDPH Program Contract Manager, the CDPH Privacy Officer, and the CDPH Chief Information Security Officer within five (5) working days of the discovery of the breach or security incident. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the breach or security incident, and measures to be taken to prevent the recurrence of such breach or security incident.

D. Notification to Individuals: If notification to individuals whose information was breached is required under state or federal law, and regardless of whether Contractor is considered only a custodian and/or non-owner of the CDPH PCI, Contractor shall, at its sole expense, and at the sole election of CDPH, either:

1. make notification to the individuals affected by the breach (including substitute notification), pursuant to the content and timeliness provisions of such applicable state or federal breach notice laws. The CDPH Privacy Officer shall approve the time, manner and content of any such notifications, prior to the transmission of such notifications to the individuals; or
2. cooperate with and assist CDPH in its notification (including substitute notification) to the individuals affected by the breach.

E. CDPH Contact Information: To direct communications to the above referenced CDPH staff, the Contractor shall initiate contact as indicated herein. CDPH 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 Exhibit or the agreement to which it is incorporated.

CDPH Program Contract Manager	**CDPH Privacy Officer**	**CDPH Chief Information Security Officer (and CDPH IT Service Desk)**

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Information Privacy and Security Requirements
(For Non-HIPAA/HITECH Act Contracts)

See the Scope of Work exhibit for Program Contract Manager	Privacy Officer Privacy Office, c/o Office of Legal Services California Department of Public Health P.O. Box 997377, MS 0506 Sacramento, CA 95899-7377 Email: privacy@cdph.ca.gov Telephone: (877) 421-9634	Chief Information Security Officer Information Security Office California Department of Public Health P.O. Box 997413, MS 6302 Sacramento, CA 95899-7413 Email: cdphiso@cdph.ca.gov Telephone: IT Service Desk (916) 440-7000 or (800) 579-0874

XII. Documentation of Disclosures for Requests for Accounting: Contractor shall document and make available to CDPH or (at the direction of CDPH) to an Individual such disclosures of CDPH PCI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of personal information as required by applicable state or federal law.

XIII. Requests for CDPH PCI by Third Parties: The Contractor and its employees, agents, or subcontractors shall promptly transmit to the CDPH Program Contract Manager all requests for disclosure of any CDPH PCI emanating from third parties to the agreement between Contractor and CDPH (and not emanating from an Individual for an accounting of disclosures of personal information pursuant to applicable state or federal law).

XIV. Audits, Inspection and Enforcement: From time to time, CDPH may inspect the facilities, systems, books and records of Contractor to monitor compliance with this Exhibit. Contractor shall promptly remedy any violation of any provision of this Exhibit and shall certify the same to the CDPH Program Contract Manager in writing. The fact that CDPH 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, nor does CDPH's:

A. Failure to detect or

B. Detection, but failure to notify Contractor or require Contractor's remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of CDPH's enforcement rights under the agreement and this Exhibit.

XV. Indemnification: Contractor shall indemnify, hold harmless and defend CDPH from and against any and all claims, losses, liabilities, damages, costs and other expenses (including attorneys fees) that result from or arise directly or indirectly out of or in connection with any negligent act or omission or willful misconduct of Contractor, its officers, employees, agents or subcontractors relative to the CDPH PCI, including without limitation, any violation s of Contractor's responsibilities under the agreement between it and CDPH, including this Exhibit, with respect to the CDPH PCI.

XVI. Termination:

A. Termination Upon Breach: A breach by Contractor of any provision of the Exhibit, as determined by CDPH, shall constitute a material breach of the agreement between Contractor and CDPH and

grounds for immediate termination of the agreement by CDPH. At its sole discretion, CDPH may give Contractor 30 days to cure the breach.

B. Judicial or Administrative Proceedings: Contractor will notify CDPH if it is named as a defendant in a criminal proceeding related to a violation of this Exhibit. CDPH may terminate the agreement between Contractor and CDPH if Contractor is found guilty of a criminal violation related to a violation of this Exhibit. CDPH may terminate the agreement if a finding or stipulation that the Contractor has violated any security or privacy laws is made in any administrative or civil proceeding in which the Contractor is a party or has been joined.

XVII. Return or Destruction of CDPH PCI on Expiration or Termination: On expiration or termination of the agreement between Contractor and CDPH for any reason, Contractor shall return or destroy the CDPH PCI. If return or destruction is not feasible, Contractor shall explain to CDPH why, in writing, to the CDPH Program Contract Manager, the CDPH Privacy Officer and the CDPH Chief Information Security Officer, using the contact information listed in Section XI(c), above.

A. Retention Required by Law: If Required by state or federal law, Contractor may retain, after expiration or termination, CDPH PCI for the time specified as necessary to comply with the law.

B. Obligations Continue Until Return or Destruction: Contractor's obligations under this Exhibit shall continue until Contractor destroys the CDPH PCI or returns the CDPH PCI to CDPH; provided however, that on expiration or termination of the agreement between Contractor and CDPH, Contractor shall not further use or disclose the CDPH PCI except as Required by state or federal law.

C. Notification of Election to Destroy CDPH PCI: Contractor elects to destroy the CDPH PCI, Contractor shall certify in writing, to the CDPH Program Contract Manager, the CDPH Privacy Officer and the CDPH Chief Information Security Officer, using the contact information listed in Section XI(c), above. that the CDPH PCI has been destroyed.

XVIII. Amendment: The parties acknowledge that Federal and State laws relating to information security and privacy are rapidly evolving and that amendment of this Exhibit may be required to provide for procedures to ensure compliance with such laws. The parties specifically agree to take such action as is necessary to implement new standards and requirements imposed by regulations and other applicable laws relating to the security or privacy of CDPH PCI. Upon CDPH' request, Contractor agrees to promptly enter into negotiations with CDPH concerning an amendment to this Exhibit embodying written assurances consistent with new standards and requirements imposed by regulations and other applicable laws. CDPH may terminate this agreement upon thirty (30) days written notice in the event:

A. Contractor does not promptly enter into negotiations to amend this Exhibit when requested by CDPH pursuant to this Section or
B. Contractor does not enter into an amendment providing assurances regarding the safeguarding of CDPH PCI that CDPH in its sole discretion deems sufficient to satisfy the standards and requirements of applicable laws and regulations relating to the security or privacy of CDPH PCI.

XIX. 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 the agreement between Contractor and CDPH, available to CDPH at no cost to CDPH to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CDPH, its

director, officers or employees based upon claimed violation of laws relating to security and privacy, which involves inactions or actions by the Contractor, except where Contractor or its subcontractor, employee or agent is a named adverse party.

XX. Disclaimer: CDPH makes no warranty or representation that compliance by Contractor with this Exhibit 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 CDPH PCI.

XXI. No Third-Party Beneficiaries: Nothing express or implied in the terms and conditions of this Exhibit is intended to confer, nor shall anything herein confer, upon any person other than CDPH or Contractor and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.

XXII. Interpretation: The terms and conditions in this Exhibit shall be interpreted as broadly as necessary to implement and comply with regulations and applicable State laws. The parties agree that any ambiguity in the terms and conditions of this Exhibit shall be resolved in favor of a meaning that complies and is consistent with Federal and State regulations.

XXIII. Survival: The respective rights and obligations of Contractor under Sections VI, VII and XI of this Exhibit shall survive the termination or expiration of the agreement between Contractor and CDPH.

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Information Privacy and Security Requirements
(For Non-HIPAA/HITECH Act Contracts)

Attachment 1
Contractor Data Security Standards

1. **General Security Controls**

   a. ***Confidentiality Statement.*** All persons that will be working with CDPH PCI must sign a confidentiality statement. The statement must include 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 CDPH PCI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for CDPH inspection for a period of three (3) years following contract termination.

   b. ***Background check.*** Before a member of the Contractor's workforce may access CDPH PCI, Contractor must conduct a thorough background check of that worker and evaluate the results to assure that there is no indication that the worker may present a risk for theft of confidential data. The Contractor shall retain each workforce member's background check documentation for a period of three (3) years following contract termination.

   c. ***Workstation/Laptop encryption.*** All workstations and laptops that process and/or store CDPH PCI must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher. The encryption solution must be full disk unless approved by the CDPH Information Security Office.

   d. ***Server Security.*** Servers containing unencrypted CDPH PCI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.

   e. ***Minimum Necessary.*** Only the minimum necessary amount of CDPH PCI required to perform necessary business functions may be copied, downloaded, or exported.

   f. ***Removable media devices.*** All electronic files that contain CDPH PCI 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.). Must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher

   g. ***Antivirus software.*** All workstations, laptops and other systems that process and/or store CDPH PCI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.

   h. ***Patch Management.*** All workstations, laptops and other systems that process and/or store CDPH PCI must have 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.

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i. ***User IDs and Password Controls.*** All users must be issued a unique user name for accessing CDPH PCI. 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. Must be at least eight characters. Must be a non-dictionary word. Must not be stored in readable format on the computer. Must be changed every 60 days. Must be changed if revealed or compromised. Must be composed of characters from at least three of the following four groups from the standard keyboard:

- Upper case letters (A-Z)
- Lower case letters (a-z)
- Arabic numerals (0-9)
- Non-alphanumeric characters (punctuation symbols)

j. ***Data Sanitization.*** All CDPH PCI must be sanitized using NIST Special Publication 800-88 standard methods for data sanitization when the CDPH PSCI is no longer needed.

2. System Security Controls

A. ***System Timeout.*** The system must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.

B. ***Warning Banners.*** All systems containing CDPH PCI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only. User must be directed to log off the system if they do not agree with these requirements.

C. ***System Logging.*** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for CDPH PCI, or which alters CDPH PCI. 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 CDPH PCI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.

D. ***Access Controls.*** The system must use role based access controls for all user authentications, enforcing the principle of least privilege.

E. ***Transmission encryption.*** All data transmissions of CDPH PCI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm, such as Advanced Encryption Standard (AES), with a 128bit key or higher. Encryption can be end to end at the network level, or the data files containing CDPH PCI can be encrypted. This requirement pertains to any type of CDPH PCI in motion such as website access, file transfer, and E-Mail.

F. ***Intrusion Detection.*** All systems involved in accessing, holding, transporting, and protecting CDPH PCI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

3. Audit Controls

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A. ***System Security Review.*** All systems processing and/or storing CDPH PCI 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 shall include vulnerability scanning tools.

B. ***Log Reviews.*** All systems processing and/or storing CDPH PCI must have a routine procedure in place to review system logs for unauthorized access.

C. ***Change Control.*** All systems processing and/or storing CDPH PCI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

4. Business Continuity / Disaster Recovery Controls

a. ***Disaster Recovery.*** Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic CDPH PCI 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 CDPH PCI to maintain retrievable exact copies of CDPH PCI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and the amount of time to restore CDPH PCI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of CDPH data.

5. Paper Document Controls

A. ***Supervision of Data.*** CDPH PCI 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. CDPH PCI 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 CDPH PCI is contained shall be escorted and CDPH PHI shall be kept out of sight while visitors are in the area.

C. ***Confidential Destruction.*** CDPH PCI must be disposed of through confidential means, using NIST Special Publication 800-88 standard methods for data sanitization when the CDPH PSCI is no longer needed.

D. ***Removal of Data.*** CDPH PCI must not be removed from the premises of the Contractor except with express written permission of CDPH.

E. ***Faxing.*** Faxes containing CDPH PCI 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.

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F. ***Mailing.*** CDPH PCI shall only be mailed using secure methods. Large volume mailings of CDPH PHI shall be by a secure, bonded courier with signature required on receipt. Disks and other transportable media sent through the mail must be encrypted with a CDPH approved solution, such as a solution using a vendor product specified on the CSSI.

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.

Darfur Contracting Act

Pursuant to Public Contract Code (PCC) sections 10475-10481, the Darfur Contracting Act's intent is to preclude State agencies from contracting with scrutinized companies that do business in the African nation of Sudan. A scrutinized company is a company doing specified types of business in Sudan as defined in PCC section 10476. Scrutinized companies are ineligible to, and cannot, contract with a State agency for goods or services (PCC section 10477(a)) unless obtaining permission from the Department of General Services according to the criteria set forth in PCC section 10477(b).

Therefore, to be eligible to contract with the California Department of Public Health, please initial **one** of the following three paragraphs and complete the certification below:

1. _____ Initials — We do not currently have, or we have not had within the previous three years, business activities or other operations outside of the United States.

OR

2. _____ Initials — We are a scrutinized company as defined in Public Contract Code section 10476, but we have received written permission from the Department of General Services (DGS) to submit a bid or proposal pursuant to Public Contract Code section 10477(b) or submit a contract/purchase order. A copy of the written permission from DGS is included with our bid, proposal or contract/purchase order.

OR

3. _____ Initials — We currently have, or we have had within the previous three years, business activities or other operations outside of the United States, but we certify below that we are not a scrutinized company as defined in Public Contract Code section 10476.

CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind this company to the clause listed above. This certification is made under the laws of the State of California.

Company Name (Printed)	*Federal ID Number*
By (Authorized Signature)	
Printed Name and Title of Person Signing	
Date Executed	*Executed in the County and State of*

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: Inyo County Planning Department

FOR THE BOARD MEETING OF: June 11, 2013

SUBJECT: Inyo National Forest Plan Update/Revision – (1) Update regarding Coordination, (2) Draft Bioregional Assessment, and (3) Designation of Critical Habitat for the Sierra Nevada Yellow-Legged Frog, the Northern Distinct Population Segment of the Mountain Yellow-Legged Frog, and the Yosemite Toad

RECOMMENDATION: (1) Receive a presentation from staff regarding coordination activities with the Inyo National Forest regarding the Update/Revision to the Forest Plan, (2) Review the draft Bioregional Assessment and authorize the Chair to sign correspondence in regards thereto and (3) provide direction to staff regarding designation of Critical Habitat for the Sierra Nevada Yellow-Legged Frog, the Northern Distinct Population Segment of the Mountain Yellow-Legged Frog, and the Yosemite Toad.

SUMMARY DISCUSSION: The Inyo National Forest (INF) is working on updating its Forest Plan.[1] Staff will report on recent activities relevant to the coordination for the Plan Update.

Draft Bioregional Assessment

The Forest Service has released the draft Bioregional Assessment,[2] which provides an overview of selected topics at a broad scale. The draft Bioregional Assessment builds on previous efforts through the Sierra Cascades Dialog, Living Assessment, and the Science Synthesis, and will be utilized to frame issues for the Plan Update/Revision. Comments are due June 15, with a final Bioregional Assessment expected to be published in July or August.

The Assessment area includes ten national forests including: Modoc, Lassen, Plumas, Tahoe, Eldorado, Inyo, Stanislaus, Sierra, and Sequoia National Forests, and the Lake Tahoe Basin Management Unit, and adjacent areas that make up the Sierra Nevada bioregion. The draft Bioregional Assessment evaluates the following five themes (1) water quality and quantity, (2) fire resilience, (3) sustainable recreation, (4) ecological integrity, and (5) community resilience. Each issue is addressed in a similar framework, including assessing bioregional sustainability and relationships with the 2004 Sierra Nevada Framework. Conclusions are produced at the end of the document (Attachment 2).

Forest Service staff requests that the following be considered in evaluating the draft Bioregional Assessment:

- Clarity of the document
- Identification of overarching themes, including:

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1 Refer to http://inyoplanning.org/InyoNationalForest.htm for more information about the County's participation in the Plan Update/Revision.

2 Refer to http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5421516.pdf for the Draft Bioregional Assessment.

- Appropriateness at the bio-regional scale
- Broad level of interest
- Sustainability
- Linkages to the topic papers
- Influence of forest plans
- Consistency with the Leadership Intent for Ecological Restoration and the 2012 Planning Rule, and

- Meeting the purpose of the document, including:
  - Use of a transparent and collaborative approach
  - Context for forest assessments on cross-cutting themes
  - Trends for an expanded area
  - Identification of over-arching themes and pressures on the landscape
  - Understanding of how systems work
  - What is working well at a large landscape scale
  - Information to support the need for change, and
  - A view beyond forest boundaries during the planning process.

Staff has prepared draft correspondence for the Board's consideration (Attachment 1), primarily focusing on the need to identify means to provide for access for healthy rural communities, multiple uses, focusing on beneficial uses of the Forest and success stories, access, and socioeconomics.

Science Synthesis

Prepared by the Pacific Southwest Research Station, the Science Synthesis summarizes scholarly articles regarding a variety of topics relevant to the Sierra Nevada, including ecology, genetics, fire, soils, hydrology, wildlife, air quality, sociology, cultural resources, and economics. One critique of the document is that it focuses on the west side of the Sierra, and limited data are provided for the east side and Basin and Range. The Board previously directed staff to prepare correspondence urging an Addendum or Symposium to the Science Synthesis due to reports that the effort might not be pursued in a timely manner. Subsequently, staff has received conflicting reports about whether or not the effort will be carried forward, and has included a paragraph in the draft correspondence urging that it be pursued.

Critical Habitat

At its June 4, 2013 meeting, the Board discussed the U.S. Fish and Wildlife Service's proposal regarding critical habitat for the Sierra Nevada Yellow-Legged Frog, the Northern Distinct Population Segment of the Mountain Yellow-Legged Frog, and the Yosemite Toad, and authorized staff to submit correspondence in regards thereto. This issue is relevant to the INF Plan Update/Revision due to range of the species in the Forest and the potential to drive the Plan's policy development. The Board directed staff to investigate the potential to undertake socioeconomic analyses of the potential impacts from the proposed designation; staff will report its findings and progress.

OTHER AGENCY INVOLVEMENT: Department of Agriculture, U.S. Forest Service; Mono, Fresno, Madera, and Tuolumne counties; other interested persons and organizations.

FINANCING: General fund resources are utilized to monitor planning work in the Forest. Resources for Willdan's assistance with the effort are funded by operating transfer from the Geothermal Royalties fund.

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: 4/5/13

Attachments:

1. Draft Correspondence
2. Draft Bioregional Assessment Conclusions

June 11, 2013

Randy Moore, Regional Forester
Pacific Southwest Region, U.S. Forest Service
1323 Club Drive
Vallejo, CA 94592

Re: Draft Bioregional Assessment

Mr. Moore,

On behalf of the Inyo County Board of Supervisors, thank you for the opportunity to review the draft Bioregional Assessment. As I'm sure you're aware, Forest planning is complex, and we are expending significant resources participating. I hope that you will keep this in mind in the continuing multiple planning processes occurring presently, and work to streamline the discussions to make wise use of participants' valuable time. With this in mind, we offer the following comments regarding the document:

1. The document should focus on multiple uses per the Multiple Use Sustained Yield Act as one of the main themes.
2. Similar to previous planning efforts, the document is focused on the west side and many specific references are irrelevant to planning in the Inyo National Forest.
3. We are concerned about the identification of species of concern and that they are addressed so broadly. We suggest that a succinct closure to selection of the species will work to expedite the planning process.
4. We believe that the private sector has an important role to play in the vibrancy of our Forests, and greater emphasis on public/private partnerships should be included in the document. In particular, a clear link exists between strong local economies and activities on the Forest, and engagement with the private sector can address declining public resources, attract private investment, and benefit nearby economic development.
5. We appreciate references to access and search and rescue, and we request that these discussions be expanded.
6. We are pleased to see that smoke impacts on our communities are being addressed. We support fire management strategies that minimize catastrophic wildfires, but request that care taken in implementation.
7. We suggest that a concerted effort be taken to identify positive activities taking place on the Forest, emphasizing what's working. In particular, we hope that mitigation measures that are particularly cost effective and consistent with the doctrine of multiple use be described, including potential implementation in various settings.
8. We suggest that transmission for renewable energy development be better addressed, given its importance in meeting California's energy goals.
9. We request that more effort be focused on State-wide, regional, and local planning efforts in regards to the topic areas.
10. The discussion about Payment in lieu of taxes (PILT) should address the variability in PILT funding as well as analyzing property tax receipts relative to PILT payments if the Forests were in private ownership.

As previously discussed, we believe that an east-side symposium or addendum to the Science Synthesis should be conducted to rectify the focus of the regional planning on the west side of the Sierra. We were dismayed to hear that earlier plans to proceed with this process may be delayed, and we urge you to continue planning for this important work as soon as possible. We offer you our assistance in planning and implementing either option or both.

Thank you again for the opportunity to comment on this document. If you have any questions, please contact the County Administrative Officer, Kevin Carunchio, at (760) 878-0292 or at kcarunchio@inyocounty.us.

Sincerely,

Linda Arcularius, Chair
Inyo County Board of Supervisors

cc: Board of Supervisors
County Administrative Officer
County Counsel
Planning Department
Doug Wilson, Willdan
Regional Council of Rural Counties
California State Association of Counties
National Association of Counties
Ed Armenta, Inyo National Forest
Mary Beth Hennessy, Region 5 Forest Planner

WHAT ARE THE CONCLUSIONS?

This assessment synthesizes existing information related to social, economic, and ecological conditions and trends across the Sierra Nevada. While forest-level assessments are required by the 2012 Planning Rule, there is no requirement for a Bio-Regional Assessment. Based on input from stakeholders, information was gathered and conclusions formed at this large scale to help guide forest plan revisions, and help identify overarching themes. It was conducted rapidly, using readily available information and existing data. It highlights both our current knowledge as well as information gaps.

The Bio-Regional Assessment looked at systems and sustainability for *water quality and quantity, fire resilience, sustainable recreation, ecological integrity and community resilience.* There are pieces of the sustainability puzzle throughout each theme. For each theme, there are conditions and trends where drivers and stressors have influence and cause stability, deterioration or improvement. Our intent was to highlight these trends. Gaps in information were identified. This information will be used in the next phase of the planning process.

What did we learn?

WATER QUALITY AND QUANTITY

Increasing population, with accompanying increasing demand for water use, will put increasing pressure on water quantity and lead to more conflict over water uses.

Water emanating from the forests is of high quality.

On forests, there is the potential for water quality problems. Implementation of best management practices appears to be effective in decreasing adverse water quality problems.

People love to recreate around water. More people will result in demand for more water-based recreation, in turn putting more strain on already compromised riparian ecosystems.

Climate change will likely change the pattern and flow of water, adding stress to aquatic and terrestrial ecosystems.

Lack of fire in the riparian zone creates less patchiness, less diversity of plants and structure, and fewer animals. If minimal management in riparian zones continues, the trend will be away from natural riparian ecosystem function.

Increased conifer, overall vegetation density and uniformity in riparian areas result in higher intensity fires across large areas. With climate change come more frequent uncharacteristic fires, and this is likely to continue.

Water storage and flood control infrastructure have caused many negative effects in aquatic ecosystems. However, increased management and oversight, where possible, reduces adverse impacts.

Population growth increases the spread of aquatic invasive species. Additionally non-native fish species are planted, impacting the food cycle and health of native aquatic species.

Pesticide drift from valley agriculture may add stress to aquatic amphibians and contribute to their decline.

FIRE RESILIENCE

Predicted trends are for longer fire seasons, drier and hotter conditions, and persistent trends of over-dense and uniform vegetation. These all lead to trends in extensive high severity fires during the peak fire season. Fires are increasingly outside the range of variation of historic fire regimes for most ecosystems.

Fires can lead to death, increased personal stress, problems with health from smoke, psychological and emotional impacts, increased community tension and conflict, destruction of property, interruption to businesses, and decreased opportunities for recreation. Uncharacteristic wildfire is increasing in the bio-region, which leads to increased adverse impacts on people.

Uncharacteristic fire disrupts ecosystems and threatens the sustainability of forest benefits through interruptions and lower quality of ecosystem services provided by the forests. Wildland fires are becoming larger, more frequent and of greater severity, which will lead to reductions in ecosystem benefits.

Nearly half of the Critical Aquatic Refuges (CARS), 2/3 of the goshawk and fisher locations, and more than 80% of the spotted owl and pine marten sites are in landscapes with low to very low fire resilience. It is clear that a high percentage of important landscapes are under a threat from uncharacteristic fire.

There is a significant absence of low and moderate severity fire, in these strongly fire adapted forests of the Sierra Nevada resulting in denser, more continuous vegetation.

Restoration to lessen fire threats to wildland urban interfaces, reduce large, high severity fires, or reintroduce low to moderate severity fire means addressing far more acres than are currently managed. It is estimated that current treatment rates, including wildfires of all severities, is at a rate less than 20% of what burned historically.

Sequestering carbon is an important job of forest ecosystems and provides increased benefit globally by reducing atmospheric greenhouse gases.

The cost of fire management and suppression make up a larger and larger portion of forest budgets in the bio-region. This is likely to continue. With limited budgetary resources available for management, this increase in fire spending reduces the ability of forests in the bio-region to take care of other management needs that also threaten the sustainability of ecosystem services.

Population growth and more demand for housing results in increased development in the wildland urban interface across California. More people in these areas means greater risk to communities and more impact from fire.

As a result of the combination of heavy forest fuels and increased development in the wildland urban interface, California has experienced significantly more frequency and intensity of wildfires, and the associated impacts on communities.

Wildfires result in lower air quality and can impact human health. Unmanaged wildfires cause the highest levels of smoke. Extensive absence of fire has resulted in even greater smoke emissions when

uncontrolled wildfires burn because of high, accumulated fuel levels, burning when temperatures are hottest, and combustion is greatest.

Managed fires, and prescribed fires where smoke is managed, produce emissions, although these emissions are at generally lower levels than wildfires, and may reduce overall emissions in the long run.

The increased risk of catastrophic fires in the Sierra Nevada is thought to be a result of the absence of Native Americans in the management of these ecosystems.

The practice of suppressing fires has negatively impacted ceremonial traditions, and may negatively impact salmon species and subsistence and commercial fisheries as well.

Fire can be targeted at specific locations to enhance willows, acorns, and feeding locations for wild game, as well as to reduce insect infestations that damage traditional food sources or species gathered for traditional purposes.

Sound restoration work to retain and restore ecological resilience in the face of wildfire is being conducted; however, as wildland fires are becoming larger, more frequent and of greater severity, impacts from disturbances seem to be outpacing the benefits of this work.

Given the desire to increase the pace and scale of restoration, building or maintaining a robust local workforce and infrastructure is necessary to support the logistics and economics of restoration.

The revenue generated through stable local markets for timber and non-timber biomass from restoration activities can help offset the costs of achieving Forest Service restoration goals.

Maintaining local wood processing infrastructure in the bio-region is an important strategy for maintaining favorable economics for accomplishing ecological restoration goals, while sustaining jobs in the local wood products industry.

Any major reduction in fire suppression and fuel loading, as well as restoring the role that fire plays on the landscape, is heavily dependent on increased local, regional, and national political support.

Increased development in the wildland urban interface has added complexity to fire management, with firefighting resources redirected toward defending homes, instead of making progress on the fire line.

SUSTAINABLE RECREATION

Recreation on national forests contributes to the physical, mental, and spiritual health of people.

A wide range of recreation activities draws people from around the world to forests. These activities provide enjoyment to visitors and benefit the local economies that provide goods and services to these visitors. The intensity of this use is expected to go up.

Jobs in travel and tourism make up a high percentage of all employment in many communities throughout the bio-region, particularly the central and southern areas. However, these are generally lower paying jobs.

In addition to the economic contribution of spending to supporting jobs in communities, the counties in the bio-region receive revenue from sales tax from visitor spending, and this money supports critical county services.

Demand is going up for the Forest Service and other land management agencies to provide more and higher quality recreational opportunities in the bio-region. At the same time, Forest Service budgets are decreasing and fewer resources are available to maintain existing recreational facilities or to develop new ones.

A declining Forest Service budget to maintain the quality of existing facilities and to create new opportunities that visitors to the bio-region are looking for decreases the sustainability and quality of life in local communities.

Declining federal budgets could lead to the decline of existing facilities, resulting in a lower quality of experience.

Communities who depend on visitor income to support their economies are dependent on the Forest Service maintaining a high quality of recreational experience so that people continue to visit.

Community-based stewardship and public land volunteerism is on the rise nationally.

Privately owned special uses are another way that that the Forest Service may be able to meet the increased demand for existing and new recreational opportunities. The number of recreation special use permits issued annually is stable at this time

ECOLOGICAL INTEGITY

Overall resilience of forests to drought and fire has changed considerably. The Giant Sequoia National Monument, and the Tahoe, Stanislaus, Sierra and Sequoia National Forests are particularly vulnerable to climate change because the wetter areas that they depend on are expected to shrink.

Red fir forests are both in and outside the natural range of variability and are among the most vulnerable to climate change. Structure has shifted with homogenization, increases in small and medium trees, and decreases in large trees.

Eastside yellow pine and mixed conifer forests, westside montane pine and mixed conifer forest structure and fire regimes are outside the natural range of variability, with denser trees, more uniform forests, and larger, higher intensity fires.

Pinyon-Juniper woodlands and sagebrush are prevalent across the eastern portion of the bio-region, dominating where it is driest. Some aspects of these are in the natural range of variability and others are far outside of it.

A large portion of the bio-region, the montane pine and mixed conifer forests, are relatively productive in terms of vegetation growth, but because they are dry, decomposition is slow. This results in increasing fuels for fire and the likelihood of high intensity crown fires and widespread insect outbreak beyond natural range of variability levels.

Rate of vegetation change and carbon dynamics are important considerations with restoration. Offsetting reduced future wildfire carbon emissions from mechanical and fire treatment is debated for the relative tradeoffs.

The ability for species to move throughout a landscape is important for overall population viability and integrity. Expansion of the non-native, invasive cheatgrass reduces and fragments habitat. Overall forest cover is generally intact across much of the bio-region, but is typically more uniform in density and size. There are far fewer blocks of forest with old forest and very limited and shrinking forests with fine-scale mosaics of openings that support sun-loving plants and the animals that live or eat there. Fragmentation or breaks in connectivity from large, high severity fire, urbanization, and invasive plants all affect the ability of species to shift in response to climate change.

Uniformity in forest composition, along with the absence of low to moderate intensity fire, has resulted in a vast reduction in fine-scale forest complexity and decreased biodiversity.

The major pollutants causing ecological harm in the Sierra Nevada are ozone, which can be toxic to plants, and nitrogen deposition, which can induce undesirable effects on terrestrial and aquatic ecosystems. Ozone and nitrogen deposition interact with other environmental stressors, especially drought and climate change, to predispose forests to the impacts of pests and diseases.

Large, high intensity fires threaten to set back large areas of older or mature forest to early seral, fragmented habitat.

Despite the many benefits they provide, many ecosystems in the bio-region, the species, their respective ecological processes and ecosystem services are being negatively impacted now and in the future by development trends, rising population, habitat fragmentation, intensification of human activity, and the effects of climate change.

One threat to ecological integrity is air pollution. This can have a dramatic effect on the ability of these landscapes to provide ecosystem services.

Ecological integrity also influences the ability of ecosystems to provide many social benefits that support the diversity of values that people and communities hold. Healthy ecosystems help people and communities sustain diverse values and cultures.

National forests can also provide educational and skill building opportunities through their conservation education and volunteer programs, along with training and work programs.

The removal of Native American management from the landscape has influenced and continues to influence Sierra Nevada forests.

Forest management restoration activities to improve the integrity and functioning of ecosystems not only provide benefits to people in terms of sustaining ecosystem services, but also increase the wellbeing of communities.

Increasing the pace and scale of management that restores forest, shrub, grass, and water ecosystems will increase the ability of these systems to withstand changes and still provide for native plants and animals and other ecosystem services.

Currently less than 5% of the landscape is under any sort of restoration treatment. Treating a small fraction of the landscape does not substantially improve the ecological integrity of forests or increase habitat resilience to high intensity fires during the hottest and driest, or windiest weather.

Although it is not always easy to collaborate, given declines in agency staffing and resources, and recognizing that there can be challenges in the process, the Forest Service plans to continue to collaborate with stakeholders and find new ways to engage the public in our work and with each other.

COMMUNITY RESILIENCE

The Sierra Nevada bio-region has a rich history and culture that has always been deeply connected to the land and its natural resources, beginning when Native Americans settled here thousands of years ago.

There is still a lack of understanding regarding Native American values and traditions and their unique rights on National Forest System lands, which help sustain their culture.

The physical proximity of the communities in the bio-region to forests creates a natural connection and opportunity for forest activities to influence local economies and wellbeing.

National forests in the bio-region contribute to community identity, promoting civic involvement and social activity.

Forest-based activities influence community wellbeing in the bio-region by generating local government revenues needed to fund critical public services such as fire protection, education and transportation.

Another contribution of forest activities to job creation is through Forest Service spending, which is potentially a direct investment into the local economy.

The bio-region is more vulnerable economically than California as a whole.

Across the bio-region, the trend is a reduction in the local workforce and the infrastructure available to process timber and biomass.

Grazing on forest lands has been a traditional forest activity in local economies that has declined in recent years due to market conditions and environmental concerns that limit the herd size authorized under grazing permits.

Commodity production on national forest lands continues to contribute to local economies in some parts of the Sierra Nevada.

The bio-region is more economically vulnerable than California as a whole, but there are differences in this vulnerability across the various bio-regional sub-areas.

Local government revenue comes from sales tax on forest activities, as well as Payment in Lieu of Taxes (PIL) and Secure Rural Schools (SRS). Current conditions and expected trends in government budgets suggest that these revenues are important, as they allow local governments to provide public services such as fire protection, education and transportation, important to maintain wellbeing in communities.

Government revenues pay for the education necessary to develop a local work force and the transportation infrastructure businesses engaged in forest-based activities rely on to transport their goods.

From 2006 through 2012, forest spending in the bio-region increased mostly as a result of increases in budgets for wildland fire management. An important consideration is how much is actually spent locally to support businesses and create jobs in these communities.

Renewable energy use generated from hydropower, biomass, geothermal, solar and wind facilities on forest lands is another important commodity. This energy potential has increasing value as California looks to diversify its energy portfolio and reduce carbon emissions from energy generation.

Communities in and around the Sierra Nevada are continuously changing. They are becoming more culturally and ethnically diverse, which is expected to influence national forest outreach, engagement, and approaches to management.

Urban communities beyond the bio-region boundary also depend on and benefit from national forests in the bio-region. However, there is a growing disconnect between these communities, especially urban youth, and the outdoors. Increasing people's connection to national forests has the potential to benefit individual health and well-being, as well as to strengthen people's understanding of forest ecosystems and the importance of stewardship.

Where do we go from here?

Identifying the major bio-regional conditions and trends creates a foundation for a conversation with stakeholders. It helps develop the more local and focused forest assessments. It serves as an information resource that informs the need for changing existing forest plans. . The Bio-Regional Assessment, along with the forest assessments, the continuously updated *Living Assessment* and new science will be used to develop desired conditions, objectives, standards and guidelines and land suitability for the Sierra Nevada forests under forest plan revision,

There is a shared understanding of the various viewpoints and science relating to these complex issues. The Bio-Regional Assessment reflects information shared by both the public and the Forest Service and serves as a concise foundation to help everyone focus on topics appropriate to plan revision

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 ☐ Closed Session ☐ Informational

FROM: Inyo County Planning Department and Supervisor Kingsley

FOR THE BOARD MEETING OF: June 11, 2013

SUBJECT: Draft Recovery Action Plan for the Mojave Desert Tortoise and Recovery Implementation Teams

DEPARTMENTAL RECOMMENDATION: Review draft correspondence regarding the draft Recovery Action Plan and Recovery Implementation Teams for the Mojave Desert Tortoise and authorize the Chair and Supervisor Kingsley to sign.

SUMMARY DISCUSSION: At its September 7, 2010 meeting, the Board authorized the County to join the Quadstate Local Government Authority;[1] Supervisor Kingsley currently represents the County on the Authority Board. On December 21, 2010, the Board authorized staff to participate in a number of groups working on issues in the region, including the Desert Tortoise Management Oversight Group (MOG), which coordinates planning and management for the Bureau of Land Management's Desert Tortoise Rangewide Plan. Subsequently, a Revised Recovery Plan for the Mojave Population of the Desert Tortoise[2] was released by the U.S. Fish and Wildlife Service. The Service then formed Recovery Implementation Teams (RIT), and invited the County to participate in two of the RITs proposed for Inyo County – (1) the West Mojave and (2) the Northeast Mojave. County and Quadstate staff participated in the RITs, and the Service incorporated input from the RITs into the draft Recovery Action Plan.[3]

The Board reviewed the draft Plan on March 19, 2013, and authorized Supervisors Kingsley and Arcularius to sign correspondence to the Quadlstate Local Government Authority expressing alarm about certain aspects of the Plan for the Authority's consideration in responding to the Plan (Attachment 3). The Authority then submitted correspondence to the U.S. Fish and Wildlife Service raising these and other issues shared by the Authority's members (Attachment 2). Subsequently, Authority representatives met with USFWS staff, and agreed that it would be beneficial to forward input directly from the member counties to USFWS. Draft correspondence in Attachment 1 is provided for the Board's consideration.

ALTERNATIVES: The Board could direct changes to the correspondence, or not submit correspondence.

OTHER AGENCY INVOLVEMENT: Quadstate Local Government Authority, including the counties of San Bernardino, Kern, Imperial, Lincoln, Nye, Mohave, and Washington; Federal agencies; State of California, and; other participating entities.

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1 Refer to http://www.quadstate.org/ for more information about the Authority.

2 Refer to http://www.fws.gov/nevada/desert_tortoise/dtro/index.html for more information regarding the Plan and tortoise recovery planning.

3 The draft Recovery Action Plan was distributed to the Board previously and is available in the Planning Department offices.

FINANCING: General funds are utilized for participating in planning initiatives and in organizations such as the Quadstate Local Government Authority.

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)

Joshua Hart Date: 6/5/13

Attachments:

1. Draft Correspondence
2. Quadstate Correspondence
3. Previous Board Correspondence

June 11, 2013

Mr. Ted Koch, Field Supervisor
Nevada Field Office
U.S. Fish and Wildlife Service
1340 Financial Blvd, Suite 234
Reno, NV 89502

Re: Draft Recovery Action Plan for the Mojave Desert Tortoise and Recovery Implementation Teams

Dear Mr. Koch:

On behalf of the Inyo County Board of Supervisors, please convey our thanks to your staff, other agencies, and local governments' work regarding planning for the Mojave Desert Tortoise. We are encouraged that the U.S. Fish and Wildlife Service (USFWS) reached out to us in developing the draft Recovery Action Plan and participating in the Recovery Implementation Teams (RIT), and are optimistic that the highest ranked recovery actions promoting education and predator control will work to arrest and reverse the decline of the Mojave Desert Tortoise. We remain engaged in planning for the tortoise and are committed to coordinating with our federal, State, and local partners in development of recovery plans for the species. We have reviewed the draft Recovery Action Plan for the Mojave Desert Tortoise as it affects Inyo County, and offer the following comments.

1. We are concerned that Inyo County and other local governments could be burdened by the costs of implementing the recovery actions. While we hope and expect that these costs will be minimal, the Plan does not indicate as such, and we fear that we may be required to implement or impose recovery actions, thereby increasing costs to our citizens and entrepreneurs. The RITs did not address costs, and there was no opportunity to address and analyze potential benefits against costs. We believe implementation costs for the Plan should be fully borne by the federal implementing agencies, and the Plan should indicate as such and identify funding sources.
2. We discourage measures to require burdens to private property and County facilities that may not be manageable, unreasonably restrict private property rights, and could result in unintended secondary impacts. We are particularly opposed to measures proposed in other counties to install tortoise fencing along lightly traveled public roads and restrict private animal keeping. While we were able to discuss these concerns at the RIT meeting, counties such as ours was only one vote among eight or ten persons representing interests which would not bear any of the costs or impacts.
3. References to requiring funding from private projects on federal lands for the Desert Managers Group Raven Management Plan are alarming and will work to discourage economic development and further work to diminish economic vitality in our rural economy. Again, the federal implementing agencies should fund these activities.
4. Many of the proposed actions contradict our General Plan policies encouraging multiple uses of public lands for the benefit of all.[1] We remind USFWS and its sister agencies that multiple use is the central rationale for federal public land management, and that displacing grazing, mining,

[1] Refer to http://inyoplanning.org/general_plan/index.htm for the Inyo County General Plan, and in particular to the Government Element.

recreation, and other uses on federal lands for a singular purpose is contrary to federal law as well as good comprehensive planning practice.

5. As you know, more than 98 percent of Inyo County is public lands, and further reductions in the private land base diminish the County's right to self-reliance and sustainable economic development. Other counties impacted by tortoise planning similarly are burdened with ever larger public land bases that constrain our ability to control our destiny. We are therefore extremely distressed by the Revised Recovery Plan's encouragement of private land acquisitions, which philosophy was carried over to the RIT process, and vigorously oppose these actions.

Thank you again for all of your dedication to tortoise planning and working with us to minimize resulting impacts to people living in the desert. If you have any questions, please contact the County Administrative Officer, Kevin Carunchio, at (760) 878-0292 or at kcarunchio@inyocounty.us.

Sincerely,

Matthew Kingsley
Inyo County Fifth District Supervisor

Linda Arcularius
Inyo County First District Supervisor and Chair

cc: Board of Supervisors
County Administrative Officer
County Counsel
Planning Department
Quadstate Local Government Authority
California State Association of Counties
Regional Council of Rural Counties

QUADSTATE LOCAL GOVERNMENTS AUTHORITY

An Interstate Joint Powers Authority Established in 1999

State of Arizona
County of La Paz
County of Mohave

State of California
County of Imperial
County of Inyo
County of Kern
County of San Bernardino

State of Nevada
County of Lincoln
County of Nye

State of Utah
County of Washington

Associate Members
City of Ridgecrest, CA

March 28, 2013

Mr. Ren Lohoefener, Regional Director
U.S. Fish and Wildlife Service
2800 Cottage Way, Suite E-2606
Sacramento, CA 95825

Dear Mr. Lohoefener. Ren -

Over the past year our organization has communicated with you personally and by correspondence on a number of issues. Several of the issues upon which we expressed concern were not responded to by either you or the Desert Tortoise Recovery Office (DTRO). While not speculating on reasons for non-response, it was clear that at least two of the issues, aggressive action on predation and focusing more effort on diseases in the tortoise population, were turned over the negotiation process your staff designed for developing Recovery Action Plans. We also raised issues regarding the operation of the Recovery Implementation Teams (RITs), and the pre-selection of threats and recovery action priorities.

We appreciate that as the RITs were organized, your staff provided for a representative from each county to be seated on each of the work groups. While some counties had difficulty finding sufficient staff for coverage, we made it work, and the DTRO staff did provide for a degree of late input, though the county position in negotiating with other RIT members was lost in the process among at least three of the work groups. We also found that as the process continued the pre-done "expert" assessments of threats and possible recovery actions did not come into play directly, at least not to this point. The counties hope they will stay that way, perhaps only being used as a reference point.

Having now completed a personal review of the Proposed Recovery Action Plans (Plans) for both the California Mojave and the Northeast Mojave, I must again raise concerns regarding the outcome of the process. While I can't know the effect of all the management review that might occur prior to the March 29 due date for submitting the evaluation, **we wish to make a strong plea for restraint before the documents are ever circulated among the public, lest they take on a life of their own and become expressions of policy and commitment well in advance of any adoption action.** By distribution among all RIT members, in addition to agency managers, I believe we can safely assume that the documents are already in some circulation among interest groups.

Buster Johnson, Chairman
c/o Mohave County Board of Supervisors
2001 North College Drive, Suite 90
Lake Havasu City, AZ 86403
(928) 453-0724
(928) 453-0717 Fax
johnsbd@frontiernet.net

Gerald Hillier
Executive Director
P.O. Box 55820
Riverside, CA 92517
(951) 683-5725
(951) 683-8544 Fax
gerryhillier@quadstate.org

Attachment 2

Within the confines of this letter I cannot and will not go into a point-by-point argument on our concerns, but I will highlight several to impart to you a sense of their depth and breadth. Hopefully the discussion here will re-open dialogue and communication before this process gets completely out of hand, raising public expectations of funding and actions that few of the agencies and partners can ever hope to deliver upon. And, as will be noted, some of the actions ought never to be undertaken.

First, the Plans should have at the least contained the word "Proposed" prominently placed on the cover, and "Draft" on all of the pages. Since these had not yet had management review and no sense of adoption by anyone of authority, they should clearly have been noted as representing raw data and staff work. I well know that within any Recovery Plan they are never more than "recommendations;" but at this point they can hardly be nor should they be characterized as such emanating from the Fish and Wildlife Service as an officially endorsed document. Yet without the word "Proposed" within the Plan titles, they have effectively become official even in the absence of management review and endorsement. This is a matter of grave concern to us, as will be noted in specifics below.

This leads to questions of immediate import: Just what is or will be the effect on the document of the management review. Which managers will participate? How will their assessments and acceptance or rejection or modification of proposed recovery actions be accounted for? At various times during the process I specifically asked your DTRO staff members how the decision-making process would proceed. I received various and contradictory answers. Some said there would be review of the Plans by the Management Oversight Group (MOG); other times I was told there would be management review prior to the MOG meeting; other opinions basically said this was it, Version 1, and further input and refinement would await Version 2, next year. All of the answers, except perhaps the second, are, in our opinion, unacceptable. The management review must take place now, providing oversight and the application of some reasonableness, including a degree of economic considerations regarding some of the projects proposed. The March 29 assessments which asked questions regarding process were aimed at both RIT members and mangers, but provided little opportunity for detailed review and modification of the specific proposed recovery actions.

(I confess that in urging BLM (in February 2013) to provide some review, or at least consideration, by its Desert District Advisory Council (DAC), I received a response that this was largely a FWS program, and BLM would simply accept the outcome. The DAC had been briefed a year earlier on the process, but would not receive any of the substance. I further was told, on the record, that the participating biologists from the agency were given no direction or oversight from management, and were free to fully participate on the RITs based on their knowledge and desire to see programs initiated. I have a letter from the District Manager dated February 7, 2013, to this effect. It is this open-ended freedom, combined with interest group advocacy on the RITs that has adding to the vexing situation that results in this letter. The point of this observation should be clear: perhaps ninety percent of the proposed recovery actions would occur on public lands administered by BLM; there exists a body appointed by the Secretary of the Interior specifically for giving advice on public land management, yet even degree of review by the body is not being provided. We believe the same ignoring of Advisory Councils (RACs) has occurred in Nevada, Arizona and Utah.)

We strongly believe there must be a full management review and some formal adoption process of the Proposed Recovery Action Plans for both California and the Northeast Mojave.

Many of the proposals put forth in the documents are measures which biologists might desire, but contain little consideration of legal concerns or practical application.

At the outset, the RITs were basically unbalanced as to the user and regulated community as opposed to agency biologists and interest groups. County representatives who were able to participate brought personal knowledge to the table, but were frequently simply outvoted on the inclusion of some actions, or the exclusion of others. The three-tiered system of priorities leaves many measures on-the-table, even if a 3 means little likelihood of action being taken in the next 5 years. At the very least, I would think that those measures ranking in 2 and 3 ought to be clearly relegated to some category that shows they aren't part of any planning commitment.

Through the process where counties have fully participated, you will note dissents filed by the RIT members. While we were assured any dissents would be carried forward, and that commitment was kept, **the counties' dissents do not appear with the Recovery Action Proposal.** Rather for California, they are listed in separate tables, pages 22-24, and pages 48-49. For the NE Mojave, the list is on Pages 45-48. In this manner of presentation the counties' positions are relegated to afterthought, despite whatever wisdom and knowledge they may present. They stand as a monument to a government representative being unable to sell reality to a group of biologists. The dissents largely address issues with direct county involvement, so they are not just philosophic statements on conservation biology or habitat management. For the record, Kern County submitted six (6) dissents; San Bernardino County submitted fifteen (15), Washington County sixteen (16), and Mohave County seven (7). Inyo County did not respond to specifics, but supplied a letter to me outlining general concerns, which I think, when noted below, would likely be agreed to by most of our membership.

The most egregious proposals contained the Plans, which elicited dissents, involve requests for counties to pass ordinances regulating public behavior on private property (in their homes and yards). These regard proposals to regulate trash and pet food left in yards. The statement turned in by Kern County fully addresses this issue, though it was condensed in the RAP document. The Kern statement, quoted verbatim below, agrees in substance with a briefer statement from San Bernardino.

> "Ordinances are adopted by local governments agencies and require a full public process including: compliance with the California Environmental Quality Act (CEQA), public input and hearings with a final determination by the City Council or Board of Supervisors. Even the most exclusive gated community with a well funded government or Home Owners Association has difficulty with attempting to micro-manage behavior such as dog and cat food left outside, trash in housing areas and management of trees used as perches. Kern County will not support, enact or allow enforcement of a federal action on private land for such land use restrictions. To suggest such an ordinance could be adopted and implemented on a rural community such as Boron, Randsburg, Cantil, Inyokern, or Mojave, that has a particular viewpoint on over-regulation and interference in personal behavior is misguided and inclusion of this recovery action in the recovery plan will expose it to deserved ridicule. The RA is inappropriate, infeasible and should be deleted."

Another proposal to which counties dissented involved placing tortoise-proof fencing around desert communities. There was little acceptance of practical and political arguments by biologists, and no consideration beyond the counties' representatives pitch for both a legal and economic consideration of initial cost, let alone maintenance in perpetuity. These were ignored. We urge removal of these proposals unless the action clearly states that BLM or another agency will undertake such construction on public lands and at agency expense for construction and required maintenance.

A consistent proposal was for additional land acquisition, of both inholdings and for corridors and linkages between conservation areas. Most of the counties have standing objections to further federal or state land acquisitions. The immediate concern is loss of tax base, but a secondary concern is economic development. San Bernardino County has already lost over 800,000 acres of private land since 2000 to federal acquisitions for mitigation as well direct purchase of inholdings. Many of the QuadState member counties have little private land to begin with, often no more than 2 to 3 percent of the total land in the county. They have nothing to give up. Further, despite pleadings and "education" presented, RIT panelists ignored the fact that for most counties the federal Payment in Lieu of Taxes program does not cover these additions to the federal estate. And there is no corresponding program in the states. We urge the removal of all land acquisition proposals. (Contained in the Plans, at some points, are the offer of exchanges with willing proponents, and where there is no net loss. This can perhaps be an acceptable approach.)

While the revised Recovery Plan addressed only fencing of some State Highways, the RIT process brought tortoise-proof fencing down to the local level. Actions were proposed that had no concept of costs for installation and maintenance, let alone any net benefit that might accrue based on light traffic loads. The most egregious of those proposed actions involved the Garlock Road in Kern County and the Shadow Mountain Road in San Bernardino County. Even Historic Route 66 was proposed for fencing in the Eastern Mojave without regard to maintaining historical integrity of the highway. These are all county roads and in the current economic climate, just performing routine maintenance can be an issue. Fencing is out of the question. We did raise the possibility of BLM installing such fencing where they might have funds to do so, but we believe there must be an underlying assessment of benefit based on population of tortoises to be protected, and traffic load. We request a full joint management review of these road fencing proposals, which would include county officials, before any adoption of the Recovery Action Plans.

We were concerned, and expressed concern at the meeting, that there was no process for merging or matching work group proposals between the respective areas; or for matching between the RIT areas along the Nevada-California line. We are aware of some inconsistencies on this line, as well as between Nevada-Utah and Arizona. These involve for the most part grazing, either proposals to remove or proposals for management under a tortoise-based Allotment Management Plan. These inconsistencies must be resolved. At this late date, perhaps it is a subject to highlight for the MOG to address, but it will take a meeting of the MOG representatives and not the cast of 100s that occurred at the last MOG gathering in Las Vegas. It must be a focused and thoughtful discussion.

Grazing use was a contentious topic in the Northeast Mojave, as we expected. There were arguments which could not be overcome relative to continued grazing in general, and grazing of burned areas that have become revegetated. Washington County objected to allotment closure proposals where only part of the allotment had been burned. Range conservationists, ranch owners and county representatives present on the work group could not gain acceptance from the other members of the work group that livestock grazing can be properly managed. Further, the points were made that managed use can contribute to fuel reduction, decreasing the fire cycle. The counties dissented to proposals to eliminate grazing that were made when the current use has already been reduced to include only the winter period when tortoises are inactive. Arguments and field experience regarding lack of evidence showing damage or take were to no avail.

The Proposed Recovery Action Plans contain some proposals where the Allotment Management Plans have undergone Section 7 consultation with Fish and Wildlife Service and now the Plans recommend taking actions in which such consultation or the management decisions would have to be rescinded. Ranching in the desert is an economic operation involving real people with capital investments. To even suggest that their investment, and the underlying permits, might be placed at risk is unconscionable, even if they are only "recommendations." We know that such recommendations in these plans find their way quickly into decision-making, thus we urge a collaborative review of these proposals to assure this is the proper kind of land management that can and should be applied to land areas. The counties' representatives, one of whom was a University of Arizona Extension Specialist, were simply ignored by the larger group.

Similar dissent was raised in the Chemehuevi area of the Colorado Work Group area. In this case, because of inability of the San Bernardino County representative to sit at two tables, there was not opportunity to negotiate or present evidence so the dissent had to be presented after-the-fact. The grazing removal proposal is a #1 ranked priority with little evidence that its removal will serve any benefit to tortoise recovery. There are some other aspects of long term management with a political interest in this area together with the 7IL Allotment in the Mojave National Preserve that were ignored, too, though placed in writing as a proposal. I cannot go into the details here, but I can say that "negotiation" was really never a factor in the process.

The Proposed Recovery Action Plan actually contains proposals to establish plantations on the range with containerized plants and artificial watering. There was absolutely no assessment of costs. I frankly doubt this could be done on an experimental basis, let alone on a significant operational area in the remote Pakoon area. UNLV has done some work on plots, but these were largely done close to Las Vegas with grant funding from the Southern Nevada Program, whose funding has largely disappeared during the real estate recession.

Another contentious proposal involved mining. There seems to be a strong bias in the biologic community that mining is harmful to tortoises and lessens the possibility of tortoise recovery. We strongly opposed these proposals as they were put forward, but several units continue to convey recommendations to initiate mining withdrawals. We firmly believe these proposals should be removed from the Plans. Where there are claims and plans of operations in areas, they are more generally in the upland areas away from the best habitat, and mitigation can be accomplished through site-specific proposals for management. There is no rationale for trying to manage mining as it is done in the 21st century by assessing mining as it might have occurred

a century ago in areas such as Calico and Tumco. Proponents could not be talked out of these restrictive proposals, but we urge management oversight to address the practicality of withdrawing broad areas of the desert from location. Further, and of direct concern to counties, is that withdrawal, if implemented, would undoubtedly lead to limits on the extraction of mineral materials which is undertaken under different laws. But such materials are absolutely needed for maintenance of both state highways and county roads. Some may look at materials sites that are in existence, but withdrawals and restrictions seldom get revoked, and counties must look at the long term in that they will be still required to maintain county road systems long after the current planners have left the scene. We urge a thorough review of all mining withdrawal proposals in the Plans, and removal of all proposals to withdraw, substituting language that permits management and mitigation at the Plan of Operations stage. Further all such management actions must allow for continued use of mineral materials as needed for maintenance, even when new sites are required.

Finally, I'd like to summarize direct input I received from Inyo County. Its Planning Director, Joshua Hart, participated in the NE California Work Group for the first day, so the Board reacted to his personal assessment of the process. The letter I received was from the Chairman of the Board of Supervisors. She expressed four main points:

1. Local governments, particularly in the small (population, revenue) size could be quickly burdened with costs for implementing actions, with little hope of ever recovering them. She suggested implementation be borne by federal and state sources of funds. She feared that in a low-income area its citizens might have to bear the costs of implementation and maintenance, a reality that would injure the County and its business community.

2. References throughout the Proposed [California] Plan to seeking funding from mitigation sources related to renewable energy and other sources were "alarming," and could result in discouragement of development opportunities.

3. The Proposed Plan contradicts Inyo County's General Plan and BLM mandates for multiple use of public lands. Discouraging and displacing grazing, mining, and some forms of recreation for a single purpose, without evidence of benefit, will damage the County and its constituents.

4. With 98% of the County already in public ownership and control, further reductions in the ability of citizens to support themselves will diminish the County's right to self reliance. The county adamantly opposes any further land acquisitions.

I have every reason to believe the thoughts she expressed would be concurred in by the other counties in the Mojave Desert.

Our bottom line Ren, is that we were disappointed in the outcome of the process. Your staff might interpret that to mean we were simply unable to make the sale at the conclusion of the sessions. But I think all would agree the sessions were pretty quick, and many of the proposals probably should be ground-viewed and benefit-cost scrutinized before being carried forward. And yes, it was difficult to close the sale when the others weren't buying despite the presentation of evidence to the contrary, and legal and political constraints. We believe many of

the proposals for education and increased patrol by BLM will be helpful. But the full-scale assault on existing uses and the further diminutation of private land is more than the counties can accept. This argument is made as a governmental entity, on behalf of a significant group of local governments in the Mojave Desert. As such we have tried to approach this as partners, but in the final analysis we were simply one more interest group that has some views and experience that differ from the array of agency and interest group biologists against whom we were arrayed.

I'd like to suggest a personal meeting to review the contents of this letter with you prior to the MOG meeting, whenever it is scheduled on into the spring. This will give you an opportunity to review the substance of some of the input here, assess what the agency managers may change or elect to downgrade or remove, and determine what the priorities really should be. If we do meet, may I suggest sometime during the week of April 22? I would like to include our Chairman, and perhaps our attorney Steven Quarles in the discussion.

Yours truly,

Gerald Hillier
Executive Director

cc: Buster Johnson, Chairman (Mohave County AZ Supervisor)
Robert Lovingood, Vice Chairman (San Bernardino County CA Supervisor)
Zack Scrivner, Kern County Supervisor
Matthew Kingsley, Inyo County Supervisor
Ray Castillo, Imperial County Supervisor
Butch Borasky, Nye County Commissioner
Kevin Phillips, Lincoln County Commissioner
Alan Gardner, Washington County Commissioner
Chip Hollowell, City of Ridgecrest Councilman
Steven P. Quarles, Crowell and Moring
John Tubbs II, Counsel to the Authority
Lorelei Oviatt, Kern County Planning
Joshua Hart, Inyo County Planning
Joshua Candelaria, San Bernardino County Legislative Affairs
Tom Hudson, San Bernardino County Land Use Services
Darrell Lacy, Nye County Director of Community Development
Robert Sandberg, Washington County HCP Director

BOARD OF SUPERVISORS
COUNTY OF INYO

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Assistant Clerk of the Board

March 19, 2013

Gerald Hillier, Executive Director
QuadState Local Governments Authority
P.O. Box 55820
Riverside, CA 92517

Re: Draft Recovery Action Plan for the Mojave Desert Tortoise

Dear Mr. Hillier:

On behalf of the Inyo County Board of Supervisors, thank you for all your work representing the QuadState Local Government Authority and member counties in coordination with the U.S. Fish and Wildlife Service (USFWS) and other agencies regarding planning for the Mojave Desert Tortoise. This effort has been long and extensive, and we appreciate your perseverance in navigating the complex planning environment to ensure survival of the Mojave Desert Tortoise while minimizing impacts to our culture and economy.

We are encouraged by USFWS' outreach to us and the QuadState Board in developing the Recovery Action Plan, and are optimistic that the highest ranked recovery actions promoting education and predator control will work to arrest and reverse the decline of the Mojave Desert Tortoise. We remain engaged in planning for the Tortoise and are committed to coordinating with our federal, State, and local partners in development of recovery plans for the species. We have reviewed the draft Recovery Action Plan for the Mojave Desert Tortoise, and offer the following comments for your transmittal to USFWS.

1. We are concerned that Inyo County and other local governments could be burdened by the costs of implementing the recovery actions identified in the Draft Plan. While we hope and expect that these costs will be minimal, the Plan does not indicate as such, and we fear that we may be required to implement or impose recovery actions, thereby increasing costs to our citizens and entrepreneurs. Implementation costs for the Plan should be fully borne by the federal implementing agencies, and the Plan should indicate as such and identify funding sources.
2. References to requiring funding from private projects on federal lands for the DMG Raven Management Plan are alarming and will work to discourage economic development and further work to diminish economic vitality in our rural economy. Again, the federal implementing agencies should be funding these activities.
3. Many of the proposed actions contradict our General Plan policies encouraging multiple uses of public lands for the benefit of all.[1] We remind USFWS and its sister agencies that multiple use is the central rationale for federal public land management, and that displacing grazing, mining, recreation, and other uses on federal lands for a singular purpose is contrary to federal law as well as good comprehensive planning practice.

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[1] Refer to http://inyoplanning.org/general_plan/index.htm for the Inyo County General Plan, and in particular to the Government Element.

4. As you know, more than 98 percent of Inyo County is public lands, and further reductions in the private land base diminish the County's right to self-reliance and sustainable economic development. Other QuadState member counties similarly are burdened with ever larger public land bases that constrain our ability to control our destiny. We are therefore extremely distressed by the Plan's encouragement of private land acquisitions, and vigorously oppose these actions.

Thank you again for all of your dedication to tortoise planning and working with us to represent the people living in the desert who are thereby impacted. If you have any questions, please contact the County Administrative Officer, Kevin Carunchio, at (760) 878-0292 or at kcarunchio@inyocounty.us.

Sincerely,

Matthew Kingsley
Inyo County Fifth District Supervisor

Linda Arcularius
Inyo County First District Supervisor and Chair

cc: Board of Supervisors
County Administrative Officer
County Counsel
Planning Department
California State Association of Counties
Regional Council of Rural Counties

For Clerk's Use Only:
AGENDA NUMBER

9

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

☐ Consent XX Departmental ☐ Correspondence Action ☐ Public Hearing

☐ Scheduled Time for ☐ Closed Session ☐ Informational

FROM: COUNTY COUNSEL

FOR THE BOARD MEETING OF: **June 11, 2013**

SUBJECT: APPROVAL OF AGREEMENT BETWEEN GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT AND COUNTY FOR THE PROVISION OF LEGAL SERVICES

DEPARTMENTAL RECOMMENDATION: Approve the agreement between Great Basin Unified Air Pollution Control District and the County for the County Counsel's Office to provide certain legal services to the District during the period July 1, 2013 to June 30, 2014, for the sum of $12,500; contingent upon the Board's adoption of the 2013/14 Budget, and authorize the Chairperson to execute the agreement on behalf of the County.

CAO RECOMMENDATION:

SUMMARY DISCUSSION: Under the proposed agreement, the County of Inyo, through and by its Office of County Counsel, will provide professional legal services to the Great Basin Unified Air Pollution Control District as follows:

1. Legal advice and representation relating to personnel matters of the District;
2. Legal advice and representation relating to labor law and in labor negotiations and/or mediations;
3. Legal advice and representation relating to employee grievances and discipline to include representation of the District in grievance and disciplinary hearings;
4. Legal advice and representation to the District Board in hearing grievance and disciplinary matters;
5. Legal advice and representation relating to any District matter when the County Counsel of another County comprising the District, has a conflict of interest in regard to a District matter arising within their County; and
6. Legal advice and representation relating to any other District matter as agreed upon by the District and the County.

In exchange for providing these services, the District will pay to the County a flat fee of $12,500 for the fiscal year. The Office of County Counsel has the ability to provide these professional legal services to the District. The $12,500 fee for Fiscal Year 2013-2014 has been included in the Office of County Counsel budget as anticipated revenue.

The contract was recently approved by Great Basin Unified Air Pollution Control District's Board on May 16, 2013 and received by our office on May 28, 2013.

ALTERNATIVES: The Board may decline to approve this agreement, reduce or modify the scope of legal services provided to the District, or change the fee arrangement. However, the proposed agreement has been negotiated between the County and the District as being most advantageous to both public entities, provides the District with needed legal professional services in an area in which the Office of County Counsel has expertise, and is structured on a flat fee basis to provide each entity with a certain degree of budgetary certainty for the fiscal year.

OTHER AGENCY INVOLVEMENT: Great Basin Unified Air Pollution Control District

FINANCING: Approval of this agreement will result in $12,500 revenue being received by the County. This revenue will be budgeted within the Office of County Counsel budget for fiscal year 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.)* Approved: ✓ Date 5·28·13
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: LMS Date 5/30/13

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received) Date: 6·3·13

AGREEMENT BETWEEN GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT AND COUNTY OF INYO FOR THE PROVISION OF LEGAL SERVICES

INTRODUCTION

WHEREAS, the Great Basin Unified Air Pollution Control District (hereinafter referred to as "District") has the need for the legal services of County Counsel of Inyo County (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 District, those services and work set forth in Attachment A, attached hereto and by reference incorporated herein.

Services and work provided by the Contractor at the District's request under this Agreement will be performed in a manner consistent with the requirements and standards established by applicable federal, state, and County laws, ordinances, regulations, and resolutions. Such laws, ordinances, regulations, and resolutions include, but are not limited to, those which are referred to in this Agreement.

2. TERM.

The term of this Agreement shall be from July 1, 2013, to June 30, 2014, unless sooner terminated as provided below.

3. CONSIDERATION.

A. Compensation. District shall pay to Contractor the sum total of Twelve Thousand Five Hundred Dollars and zero cents ($12,500.00) for performance of all of the services and completion of all of the work described in Attachment A.

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 under this Agreement.

C. No Additional Consideration. Except as expressly provided in this Agreement, Contractor shall not be entitled to, nor receive, from District, 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 District to Contractor for all services and work to be performed under this Agreement shall not exceed Twelve Thousand Five Hundred ($12,500.00) Dollars (hereinafter referred to as "contract limit"). District 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 District, a statement of all services and work to be performed by Contractor pursuant to this Agreement. Upon receipt of the statement by the fifth (5th) day of the month, District 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, District will not withhold any federal or state income taxes or social security from any payments made by District to Contractor under the terms and conditions of this Agreement.

(2) District 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, District has no obligation to withhold any taxes or payments from sums paid by District to Contractor under this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor. District has no responsibility or liability for payment of Contractor's taxes or assessments.

(4) The total amounts paid by District 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 District an Internal Revenue Service (IRS) Form W-9, attached hereto as Attachment B, upon executing this Agreement.

4. WORK SCHEDULE.

Contractor's obligation is to perform, in a timely manner, those services and work identified in Attachment A. 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 District to insure that all services and work requested by District under this Agreement will be performed within the time frame set forth by District.

5. REQUIRED LICENSES, CERTIFICATES, AND PERMITS.

Any licenses, certificates, or permits required by the federal, state, district, county, or municipal governments for contractor to provide the services and work described in Attachment A must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates, and permits in full force and effect. Licenses, certificates, and permits may include, but are not limited to, driver's licenses, professional licenses or certificates, and business licenses. Such licenses, certificates, and permits will be procured and maintained in force by Contractor at no expense to the District. Contractor will provide District, 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 District as to what licenses, certificates, and permits are required to perform the services identified in Attachment A, District reserves the right to make such determinations for purposes of this Agreement.

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. District 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. DISTRICT PROPERTY.

A. Personal Property of District. Any personal property such as, but not limited to, protective or safety devices, badges, identification cards, keys, etc. provided to Contractor by District pursuant to this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of District. 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 District. At the termination of the Agreement, Contractor will convey possession and title to all such properties to District.

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 District, its agents, officers and employees shall be named as additional insured or a waiver of subrogation shall be provided.

9. INSURANCE.

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

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).

2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, code 1 (any auto).

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

4. Errors and Omissions liability insurance appropriate to the Contractor's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.

B. Minimum Limits of Insurance. Contractor shall maintain limits no less than:

1. General Liability (including operations, products and completed operations as applicable): $ 1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, 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: $300,000 per accident for bodily injury and property damage.

3. Employer's Liability: $1,000,000 per accident for bodily injury or disease.

4. Errors and Omissions Liability: $1,000,000 per occurrence.

C. Deductibles and Self-insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the District. At the option of the District, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its officers, officials, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the District guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

D. Other Insurance Provisions. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The District, its officers, officials, employees and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the Contractor or liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor.

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

3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.

4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

E. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII. The District at its option may waive this requirement.

F. Verification of Coverage. Contractor shall furnish the District with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the District or on other than the District's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the District before work commences. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by the specifications at any time.

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 District. Contractor, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of District. Except as expressly provided in Attachment A, Contractor has no authority or responsibility to exercise any rights or power vested in the District. No agent, officer, or employee of the District is to be considered an employee of Contractor. It is understood by both Contractor and District 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 District only for the requirements and results specified in this Agreement, and except as expressly provided in this Agreement, shall not be subjected to District'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 District.

11. DEFENSE AND INDEMNIFICATION.

Contractor shall defend, indemnify, and hold harmless District, 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 District, 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 District, 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, District 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 District, its officers, or employees.

12. RECORDS AND AUDIT.

A. Records. Contractor shall prepare and maintain all records required by the various provisions of this Agreement, federal, state, and municipal law, ordinances, regulations, and directions. Contractor shall maintain these records for a minimum of four (4) years from the termination or completion of this Agreement. Contractor may fulfill its obligation to maintain records as required by this paragraph by substitute photographs, microphotographs, or other authentic reproduction of such records.

B. Inspections and Audits. Any authorized representative of District shall have access to any books, documents, papers, records, including, but not limited to, financial records of Contractor, which District 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, District 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, district 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. ASSIGNMENT.

This is an agreement for the services of Contractor. District 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 District. Further, Contractor shall not assign any monies due or to become due under this Agreement without the prior written consent of District.

15. DEFAULT.

If the Contractor abandons the work, or fails to proceed with the work and services requested by District in a timely manner, or fails in any way as required to conduct the work and services as required by District, District may declare the Contractor in default and terminate this Agreement upon five (5) days written notice to Contractor. Upon such termination by default, District will pay to Contractor all amounts owing to Contractor for services and work satisfactorily performed to the date of termination.

16. 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-three (23) below.

17. CONFIDENTIALITY.

Contractor agrees to comply with the various provisions of the federal, state, district 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 District.

18. 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.

19. POST AGREEMENT COVENANT.

Contractor agrees not to use any confidential, protected, or privileged information which is gained from the District 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 District, or who has been an adverse party in litigation with the District, and concerning such, Contractor by virtue of this Agreement has gained access to the District's confidential, privileged, protected, or proprietary information.

20. 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, district 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.

21. FUNDING LIMITATION.

The ability of District 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, District 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-three (23) (Amendment).

22. 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.

23. 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.

24. 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 District 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:

Theodore D. Schade, APCO
Great Basin United Air Pollution Control District
157 Short Street, Suite 6
Bishop, California 93514

Contractor:

Office of the County Counsel **Name**
County of Inyo
Post Office Box M **Street**
Independence, CA 93526 **City and State**

25. 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
GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT
AND COUNTY OF INYO THE PROVISION OF
LEGAL SERVICES

16th IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEALS THIS DAY OF MAY, 2013.

GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT

By: John Cathcart

Dated: May 16, 2013

CONTRACTOR
COUNTY OF INYO

By: _____
Print or Type Name

_____
Signature

Dated: _____

APPROVED AS TO FORM AND LEGALITY:

_____
County Counsel

ATTACHMENT A

AGREEMENT BETWEEN
GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT
AND COUNTY OF INYO FOR THE PROVISION OF
LEGAL SERVICES

TERM:

FROM: JULY 1, 2013 TO: JUNE 30, 2014

SCOPE OF WORK:

The County of Inyo, through and by its Office of County Counsel, will provide professional legal services to the Great Basin Unified Air Pollution District as follows:

1. Legal advice and representation relating to personnel matters of the District;

2. Legal advice and representation relating to labor law and in labor negotiations and or mediations;

3. Legal advice and representation relating to employee grievances and discipline to include representation of the District in grievance and discipline hearings;

4. Legal advice and representation to the District Board in hearing grievance and discipline matters;

5. Legal advice and representation relating to any District matter when the County Counsel of another County comprising the District, has a conflict of interest in regard to a District matter arising within their County; and

6. Legal advice and representation relating to any other District matter as agreed upon by the District and the County.

ATTACHMENT B

AGREEMENT BETWEEN
GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT
AND COUNTY OF INYO FOR THE PROVISION OF
LEGAL SERVICES

TERM:

FROM: JULY 1, 2013 TO: JUNE 30, 2014

FORM W-9

Request for Taxpayer
Identification Number and Certification

(On-File)

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
10

☐ Consent ☒ Departmental ☐ Correspondence Action ☐ Public Hearing

☐ Scheduled Time for ☐ Closed Session ☐ Informational

FROM: COUNTY COUNSEL and RISK MANAGEMENT

FOR THE BOARD MEETING OF: **June 11, 2012**

SUBJECT: APPROVE CONTRACT WITH JOHN D. KIRBY, A.P.C, CIVIL LITIGATION ATTORNEY

DEPARTMENTAL RECOMMENDATION:

Approve Agreement between the County of Inyo and John D. Kirby, A.P.C., for the provision of litigation services, for the term July 1, 2013 through June 30, 2014; at the rate of $180.00 per hour and with a contract limit of $200,000.00; contingent upon the Board's adoption of the 2013-14 Budget, and authorize the Chairperson to sign on behalf of the County. (4/5 vote required).

CAO RECOMMENDATION: N/A

SUMMARY DISCUSSION:

John D. Kirby, A.P.C., has provided legal services to the County since June 1994. He has represented and advised the County in pending and potential litigation before state and federal courts and administrative agencies. Mr. Kirby has demonstrated the ability to correctly analyze and effectively handle multiple complex legal cases simultaneously. He has been innovative in using available state and federal procedures to obtain very favorable results for the County. He has assumed the responsibility for a significant number of cases, set priorities for each case, managed his time efficiently, and willingly adjusted his schedule to meet unforeseeable workload requirements. His excellent oral and written communication skills and amicable personality have allowed him to gain the trust and confidence of the Board of Supervisors, Department Heads, and other county employees. Overall, Mr. Kirby has performed as a highly skilled and competent civil litigation attorney whose services contribute significantly to the County's ability to successfully represent itself and its officers and employees in a variety of routine, complex, and highly specialized litigation.

Mr. Kirby has not raised his rates from last year. Compensation will be paid at the rate of $180 per hour. Transportation expenses to and from Bishop or Independence are shared - the County pays 1/2 of the trip, calculated at 3.5 hours of attorney time and 385 miles. Travel and per diem expenses are paid at the same rate provided to County employees.

ALTERNATIVES:

1. Decline to approve the contract with John D. Kirby as recommended and direct staff to return to your Board with a request for an additional attorney employee position for the Office of County Counsel, and authorize the Office of County Counsel to begin recruiting to fill this authorized attorney position. Given the most recent experience in filling attorney positions within the County, there may be a lengthy period of time before this position can be filled. Additionally, it is highly unlikely we would be able to recruit and fill the vacancy at any of the Deputy County Counsel levels with a person having the same qualifications or experience as Mr. Kirby.

2. Decline to approve the contract Amendment with John D. Kirby as recommended and direct that the Office of County Counsel provided civil litigation services to the County and its officers and employees with

existing attorney staff. This option would result in significant delays in completing requests for legal services for all but the most critical matters; and significantly reduce this office's ability to represent and defend the County, its officers and employees in litigation, as well as to direct and manage litigation involving the County that is handled by outside counsel.

3. Direct the County Counsel to circulate another RFQ for civil litigation attorney services.

OTHER AGENCY INVOLVEMENT:

Personnel.

FINANCING:

Funding for the recommended Agreement of $200,000 with John D. Kirby is being requested by: the County's Liability Trust Account # 500903 in the amount of $175,000; and for the Office of County Counsel Budget 010700 in the amount of $25,000.

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 6-3-13
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: yes Date 6/4/13
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 6/4/13

DEPARTMENT HEAD SIGNATURE:
(Not to be signed until all approvals are received)_____ Date: 6.5.13

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

AGREEMENT BETWEEN COUNTY OF INYO
AND JOHN D. KIRBY, A.P.C.
FOR THE PROVISION OF LEGAL SERVICES
CIVIL LITIGATION ATTORNEY SERVICES

INTRODUCTION

WHEREAS, the County of Inyo (hereinafter referred to as "County") has the need for the **Legal** services of **John D. Kirby, A.P.C.** of **San Diego, 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 the County Counsel.

Services and work provided by the Contractor at the County's request under this Agreement will be performed in a manner consistent with the requirements and standards established by applicable federal, state, county, and County laws, ordinances, regulations, and resolutions. Such laws, ordinances, regulations, and resolutions include, but are not limited to, those which are referred to in this Agreement.

2. TERM.

The term of this Agreement shall be from **July 1, 2013** to **June 30, 2014** 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**.

B. Travel and per diem. County shall reimburse Contractor for travel expenses and per diem which Contractor incurs in providing services and work requested by County under this Agreement. Contractor shall request approval by the County prior to incurring any travel or per diem expenses. Requests by Contractor for approval to incur travel and per diem expenses shall be submitted to the Office of County Counsel. Travel and per diem expenses will be reimbursed in accordance with the rates set forth in the Schedule of Travel and Per Diem Payment (Attachment **C**). County reserves the right to deny reimbursement to Contractor for travel or per diem expenses which are either in excess of the amounts that may be paid under the rates set forth in Attachment **C**, or which are incurred by the Contractor without the prior approval of the County.

C. Incidental Expenses. County shall either pay vendors directly or reimburse Contractor in accordance with the Schedule of Fees (Attachment **B**) for those Incidental Expenses which are specifically identified in the Schedule of Fees and which are necessarily incurred by the Contractor in providing the

services and work requested by County under this Agreement. Reimbursement by County for such Incidental Expenses will be limited to Contractor's actual cost without regard to any administrative or overhead expenses incurred by Contractor in obtaining or utilizing such incidental services or supplies. Direct payment to vendor or reimbursement for actual costs, will not exceed the amounts set forth in the Schedule of Fees.

D. 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.

E. 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, including incidental, travel and per diem expenses, if any, shall not exceed **$200,000.00** Dollars (hereinafter referred to as "contract limit"). County expressly reserves the right to deny any payment or reimbursement requested by Contractor for services or work performed, including incidental, travel or per diem, which is in excess of the contract limit.

F. 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. All such statements shall show, in one-tenth (1/10) of an hour increments, the actual attorney time spent in performing the described work. Contractor's statement to the County will also include an itemization of any incidental expenses for reimbursement, or travel or per diem expenses which have been approved in advance by County, and incurred by Contractor during that period. The itemized statement for incidental expenses, travel expenses and per diem will include receipts for lodging, meals, and other incidental expenses in accordance with the County's accounting procedures and rules. Upon timely receipt of the statement by the fifth (5th) day of the month, County shall make payment to Contractor by the 20th of the month.

G. 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 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.

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.

6. OFFICE SPACE, SUPPLIES, EQUIPMENT, ETC.

Except as provided in the Scope of Work (Attachment **A**), 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. Except for those incidental expenses specifically identified in the Schedule of Fees (Attachment **B**), 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 items not specifically set forth in the Schedule of Fees (Attachment **B**), 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.

If required by law, 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 if coverage is required by law.

9. INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES.

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

A. 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 **$1,000,000.00** 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 Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **$500,000.00** 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 **$ n/a** per accident for bodily injury or disease.
(Not required if Contractor provides written verification it has no employees)

4. Professional Liability (Errors and Omissions) Insurance appropriates to the Contractor's profession, with limit no less than **$1,000,000.00** per occurrence or claim.

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

B. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. Additional Insured Status.

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

2. Primary Coverage.

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

3. Notice of Cancellation.

Each insurance policy required above shall state that coverage shall not be canceled, except after thirty (30) days' prior written notice (10 days for non-payment) has been given to the County.

4. Waiver of Subrogation.

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

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the County. The County may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

D. 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 County.

E. 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 Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

F. Verification of Coverage. Contractor shall furnish the County 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 County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

G. Subcontractors. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

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

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 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.

15. ASSIGNMENT.

This is an agreement for the services of Contractor. County has relied upon the skills, knowledge, experience, and training of Contractor and its employees 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 fifteen (15) 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 thirty (30) 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:

Office of County Counsel	**Department**
P.O. Box M	**Street**
Independence, CA 93526	**City and State**

CONTRACTOR:

John D. Kirby A.P.C.	**Name**
A Professional Corporation	
9747 Business Park Avenue	**Street**
San Diego, California 92131	**City and State**

26. ENTIRE AGREEMENT.

This Agreement contains the entire agreement of the parties, and no representations, inducements, promises, or agreements otherwise between the parties not embodied herein or incorporated herein by reference, shall be of any force or effect. Further, no term or provision hereof may be changed, waived, discharged, or terminated, unless the same be in writing executed by the parties hereto.

//// ////

AGREEMENT BETWEEN COUNTY OF INYO
AND JOHN D. KIRBY, A.P.C.
FOR THE PROVISION OF LEGAL SERVICES
CIVIL LITIGATION ATTORNEY SERVICES

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

COUNTY OF INYO

By:_____

Dated:_____

CONTRACTOR

JOHN D. KIRBY, A PROFESSIONAL CORP.,

By: JOHN D. KIRBY, PRESIDENT
(Type or Print Name)

_____
(Signature)

Dated: 5/31/2013

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 INSURANCE REQUIREMENTS:

_____
County Risk Manager

iC:Contracts\MiscConracts\Kirby.123

ATTACHMENT A

AGREEMENT BETWEEN COUNTY OF INYO
AND JOHN D. KIRBY, A.P.C.
FOR THE PROVISION OF LEGAL SERVICES
CIVIL LITIGATION ATTORNEY SERVICES

TERM:

FROM: July 1, 2013 TO: June 30, 2014

SCOPE OF WORK:

1. Contractor shall represent and advise the County, and such of its agents, officers and employees as the County may designate, in pending and potential litigation before state and federal courts, and county, state and federal administrative agencies. Contractor shall receive direction from the Inyo County Board of Supervisors and/or the County Counsel. Contractor shall also provide all secretarial and clerical support reasonably and customarily necessary to perform such services under this Agreement.

2. Contractor shall maintain and retain files and materials on cases and other matters upon which he is working. Once completed, Contractor may deliver the files and materials to the Office of County Counsel for storage.

3. Contractor shall file and serve required pleadings, notices, discovery documents and materials on behalf of the County its officers or employees. The Office of County Counsel will cooperate with Contractor with regard to filing and service in Inyo County.

4. Contractor may send to the Office of County Counsel, one copy of those pleadings, notices, discovery, documents and materials to be appropriately delivered to County officers and employees. The Office of County Counsel will then make necessary copies and deliver the pleadings, notices, discovery, documents and materials to the County officers and employees.

5. Contractor shall take the actions necessary to have all pleadings, notices, discovery, documents and materials, which are to be served upon the County or its officers and employees after their first general appearance, served upon both Contractor at his offices and the County Counsel at his Independence office. Contractor shall also provide to the County Counsel at his Independence office, one copy of all pleadings, notices, discovery and other documents served and or filed by Contractor on behalf of the County, its officers or employees.

6. Contractor, shall not bill for attorney's time in performing work or services which would ordinarily and customarily be performed by a legal secretary or clerical support.

7. Contractor shall not accept other employment which will interfere or cause a conflict of interest with representation of the County of Inyo and its agents, officers and employees

8. HIPAA Business Associate Provisions attached hereto are hereby incorporated in this contract as Attachment A-1.

ATTACHMENT A-1

AGREEMENT BETWEEN COUNTY OF INYO
AND JOHN D. KIRBY, A.P.C.
FOR THE PROVISION OF LEGAL SERVICES
CIVIL LITIGATION ATTORNEY SERVICES

TERM:

FROM: July 1, 2013 TO: June 30, 2014

HIPAA BUSINESS ASSOCIATE PROVISIONS

RECITALS

WHEREAS, in conjunction with the provision of services provided pursuant to this Agreement, certain Protected Health Information ("PHI") may be made available to Contractor for the purposes of carrying out its obligations under the Agreement; and,

WHEREAS, the provisions of the Health Insurance Portability and Accountability Act, Pub. L. No. 104-161 of 1996 ("HIPAA"), more specifically the regulations found at Title 45, CFR, Parts 160 and 164 (the "Privacy Rule"), as may be amended from time to time, are applicable to the protection of any disclosure of PHI pursuant to the Agreement; and,

WHEREAS, County is a Covered Entity, as defined in the Privacy Rule; and,

WHEREAS, Contractor, when a recipient of PHI from County, is a Business Associate as defined in the Privacy Rule; and,

WHEREAS, the parties agree that any disclosure or use of PHI be in compliance with the Privacy Rule or other applicable law;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

Definitions

Terms used, but not otherwise defined, in this exhibit shall have the same meaning as those terms are defined in 45 Code of Federal Regulations section 160.103 and 164.501. (All regulatory references in this exhibit are to Title 45 of the Code of Federal Regulations unless otherwise specified.)

(a) *Business Associate.* "Business Associate" shall mean Contractor.

(b) *Covered Entity.* "Covered Entity" shall mean that part of the County of Inyo designated as the hybrid entity within the County of Inyo subject to the Standards for Privacy of Individually Identifiable Health Information set forth in 45 Code of Federal Regulations Part 160 and Part 164, Subparts A and E ("County").

ATTACHMENT A-1 – Continued

AGREEMENT BETWEEN COUNTY OF INYO
AND JOHN D. KIRBY, A.P.C.
FOR THE PROVISION OF LEGAL SERVICES
CIVIL LITIGATION ATTORNEY SERVICES

TERM:

FROM: July 1, 2013 TO: June 30, 2014

HIPAA BUSINESS ASSOCIATE PROVISIONS

RECITALS

(c) *Designated Record Set.* "Designated Record Set" shall have the same meaning as the term "designated record set" in Section 164.501.

(d) *Individual.* "Individual" shall have the same meaning as the term "individual" in Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).

(e) *Privacy Rule.* "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations Part 160 and Part 164, Subparts A and E.

(f) *Protected Health Information.* "Protected Health Information" shall have the same meaning as the term "protected health information" in Section 164.501 and is limited to the information created or received by Business Associate from or on behalf of Covered Entity. (PHI)

(g) *Required By Law.* "Required by law" shall have the same meaning as the term "required by law" in Section 164.501.

(h) *Secretary.* "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.

Scope of Use and Disclosure by Contractor of County Disclosed PHI

(a) Contractor shall be permitted to use PHI disclosed to it by the County:

(1) on behalf of the County, or to provide services to the County for the purposes contained herein, if such use or disclosure would not violate the Privacy Rule if done by the County, or the minimum necessary policies and procedures of the County

(2) as necessary to perform any and all of its obligations under the Agreement.

(b) Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this exhibit or Required by Law, Contractor may:

ATTACHMENT A-1 - Continued

AGREEMENT BETWEEN COUNTY OF INYO
AND JOHN D. KIRBY, A.P.C.
FOR THE PROVISION OF LEGAL SERVICES
CIVIL LITIGATION ATTORNEY SERVICES

TERM:

FROM: July 1, 2013 TO: June 30, 2014

HIPAA BUSINESS ASSOCIATE PROVISIONS

RECITALS

(1) use the PHI in its possession for its proper management and administration and to fulfill any legal obligations.

(2) disclose the PHI in its possession to a third party for the purpose of Contractor's proper management and administration or to fulfill any legal responsibilities of Contractor. Contractor may disclose PHI as necessary for Contractor's operations only if:

(i) The disclosure is required by law; or

(ii) Contractor obtains written assurances from any person or organization to which Contractor will disclose such PHI that the person or organization will:

(a) hold such PHI in confidence and use or further disclose it only for the purpose for which Contractor disclosed it to the third party, or as required by law; and,

(b) the third party will notify Contractor of any instances of which it becomes aware in which the confidentiality of the information has been breached.

(3) aggregate the PHI and/or aggregate the PHI with that of other data for the purpose of providing County with data analyses related to the Agreement, or any other purpose, financial or otherwise, as requested by County.

(4) not disclose PHI disclosed to Contractor by County not authorized by the Agreement or this exhibit without patient authorization or de-identification of the PHI as authorized in writing by County.

(5) de-identify any and all PHI of County received by Contractor under this exhibit provided that the de-identification conforms to the requirements of the Privacy Rule and does not preclude timely payment and/or claims processing and receipt.

(c) Contractor agrees that it will neither use nor disclose PHI it receives from County, or from another business associate of County, except as permitted or required by this provision, or as required by law, or as otherwise permitted by law.

ATTACHMENT A-1 - Continued

AGREEMENT BETWEEN COUNTY OF INYO
AND JOHN D. KIRBY, A.P.C.
FOR THE PROVISION OF LEGAL SERVICES
CIVIL LITIGATION ATTORNEY SERVICES

TERM:

FROM: July 1, 2013 TO: June 30, 2014

HIPAA BUSINESS ASSOCIATE PROVISIONS

RECITALS

Obligations and Activities of Business Associate

(a) Business Associate agrees to not use or further disclose PHI other than as permitted or required by the Agreement or as required by law.

(b) Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of the PHI other than as provided for by this Agreement.

(c) Business Associate agrees to mitigate, to the extent practicable, and in coordination with County, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

(d) Business Associate agrees to report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement.

(e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

(f) Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under Section 164.524.

(g) Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to make pursuant to Section 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.

ATTACHMENT A-1 - Continued

AGREEMENT BETWEEN COUNTY OF INYO
AND JOHN D. KIRBY, A.P.C.
FOR THE PROVISION OF LEGAL SERVICES
CIVIL LITIGATION ATTORNEY SERVICES

TERM:

FROM: July 1, 2013 TO: June 30, 2014

HIPAA BUSINESS ASSOCIATE PROVISIONS

RECITALS

(h) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

(i) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with Section 164.528.

(j) Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner designated by Covered Entity, information collected in accordance with Section (i) of this exhibit, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with Section 164.528.

Obligations of Covered Entity

(a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with Section 164.520, as well as any changes to such notice.

(b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with Section 164.522.

(d) County shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by County, except as may be expressly permitted by the Privacy Rule.

(e) County will obtain any authorizations necessary for the use or disclosure of PHI, so that Contractor can perform its obligations under this Addendum and/or the Underlying Agreement.

ATTACHMENT A-1 - Continued

AGREEMENT BETWEEN COUNTY OF INYO
AND JOHN D. KIRBY, A.P.C.
FOR THE PROVISION OF LEGAL SERVICES
CIVIL LITIGATION ATTORNEY SERVICES

TERM:

FROM: July 1, 2013 TO: June 30, 2014

HIPAA BUSINESS ASSOCIATE PROVISIONS

RECITALS

Term and Termination

(a) Termination for Breach – County may terminate this Agreement, effective immediately, without cause, if County, in its sole discretion, determines that Contractor has breached a material provision of this exhibit. Alternatively, County may choose to provide Contractor with notice of the existence of an alleged material breach and afford Contractor with an opportunity to cure the alleged material breach. In the event Contractor fails to cure the breach to the satisfaction of County in a timely manner, County reserves the right to immediately terminate this Agreement.

(b) Effect of Termination – upon termination of this Agreement, for any reason, Contractor shall return or destroy all PHI received from the County, or created or received by Contractor on behalf of County, and, in the event of destruction, Contractor shall certify such destruction, in writing, to County. This provision shall apply to all PHI which is in possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the PHI.

(c) Destruction not Feasible – in the event that Contractor determines that returning or destroying the PHI is not feasible, Contractor shall provide written notification to County of the conditions which make such return or destruction not feasible. Upon determination by Contractor that return or destruction of PHI is not feasible, Contractor shall extend the protections of this exhibit to such PHI and limit further uses and disclosures of such PHI to those purposes which make the return or destruction not feasible, for so long as Contractor maintains such PHI. The rights and obligations of the Business Associate under this paragraph shall survive the termination of the Agreement.

ATTACHMENT B

AGREEMENT BETWEEN COUNTY OF INYO
AND JOHN D. KIRBY, A.P.C.
FOR THE PROVISION OF LEGAL SERVICES
CIVIL LITIGATION ATTORNEY SERVICES

TERM:

FROM: July 1, 2013 TO: June 30, 2014

SCHEDULE OF FEES:

1. COMPENSATION:

A. Except as provided in paragraph B below, County shall pay to Contractor the sum of One Hundred and Eighty Dollars and Zero cents ($ 180.00) per hour (hereinafter referred to as "hourly rate") for the work and services 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. Contractor's hourly rate includes compensation for all secretarial and clerical support reasonably and customarily necessary for Contractor to provide services under this Agreement.

B. County and Contractor will share the expense of Contractor traveling to Bishop and/or Independence from San Diego and returning. County will pay Contractor the one way expenses of such travel calculated at 3.5 hours of travel time and 365 miles.

2. INCIDENTAL EXPENSES:

Types of Expenses:	Maximum Cost:
Postage	Actual costs
Federal Express/UPS	Actual costs
Express Mail	Actual costs
Long Distance Calls	Actual costs
Photocopying (not attorney service)	Not to exceed $.10 per page
Computer Assisted Research	Actual costs
Service of Documents/Pleadings (attorney service)	Actual costs
Document Production (attorney service)	Actual costs
Filing fees	Actual costs
Jury fees	Actual costs
Court Reporter/Transcripts	Actual costs
Experts	Rate approved by County Counsel
Witness fees	Actual costs

ATTACHMENT C

AGREEMENT BETWEEN COUNTY OF INYO
AND JOHN D. KIRBY, A.P.C.
FOR THE PROVISION OF LEGAL SERVICES
CIVIL LITIGATION ATTORNEY SERVICES

TERM:

FROM: July 1, 2013 TO: June 30, 2014

SCHEDULE OF TRAVEL AND PER DIEM PAYMENT:

County shall reimburse Contractor for travel and per diem which Contractor incurs in providing legal services to the County under this Agreement, in the amounts and to the extent set forth below:

1. Except as provided in paragraphs 2, 3, and 4 below, County will reimburse Contractor for travel and per diem expenses at the same rate and to the same extent as County reimburses its permanent status merit employees for such expenses. Such expenses will be computed from Contractor's home and place of business in San Diego, California.

2. County and Contractor will share the expense of Contractor traveling to Bishop and/or Independence from San Diego and returning. County will pay Contractor the one way expenses of such travel calculated at 3.5 hours of travel time and 365 miles.

3. Contractor shall not be reimbursed for any lodging, meals, per diem or local transportation expenses while in Bishop or Independence, California.

4. Contractor's use of its own airplane for travel will be reimbursed at the same rate and to the same extent as if travel had been by private auto.

For Clerk's Use Only:
AGENDA NUMBER

11

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

☐ Consent ☒ Departmental ☐ Correspondence Action ☐ Public Hearing

☐ Scheduled Time for ☐ Closed Session ☐ Informational

FROM: Kevin D. Carunchio, County Administrator

FOR THE BOARD MEETING OF June 11, 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)

For Clerk's Use Only:
AGENDA NUMBER

12

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

☐ Consent ☐ Departmental ☐ Correspondence Action ☐ Public Hearing

☐ Scheduled Time for ☐ Closed Session ☐ Informational

FROM: County Administrator
By: Emma Bills, Purchasing Agent

FOR THE BOARD MEETING OF: June 11, 2013

SUBJECT: Increase in the Purchasing Revolving Fund

DEPARTMENTAL RECOMMENDATION: Request Board A) approve a resolution titled "A Resolution of the Board of Supervisors, County of Inyo, State of California, Rescinding All Previous Resolutions Setting Forth Amounts for the Purchasing Revolving Fund and Increasing the Amount of the Existing Revolving Fund for Purchasing Agent Use;" and B) amend the FY 2012-13 Purchasing Revolving Budget Unit 200300 by increasing revenue in Other Current Charges *(Revenue Code #4825)* by $25,000 and increasing appropriations in General Operating *(Object Code #5311)* by $25, 000. *(4/5's vote required.)*

SUMMARY DISCUSSION: - Government Code Section 29323 requires that Revolving Fund limits be established by Resolution. The current limit for the Purchasing Revolving Fund is $125,000. The last time this amount was increased was in 2007. This amount is insufficient to meet the demands of the County Departments for the purchase of office supplies. The Purchasing Revolving Fund needs to be increased in order to provide the appropriate level of service currently being required. The Government Code provides for a maximum of $250,000 for Revolving funds. The recommendation to your Board is to increase the County's Purchasing Revolving Fund to $150,000. This recommendation coincides with the Purchasing Ordinance's spending authorities and should provide sufficient funds to efficiently provide for a centralized purchasing process for the County's office supply purchases for remainder of FY 2012-13. Therefore, your Board's approval of the Resolution is recommended.

ALTERNATIVES: - Your Board could choose to not increase the amount of the Purchasing Revolving Budget. This alternative is not recommended in that without the increase it is possible that with the purchases in process, inventory in storage and department billings outstanding, the total amount can exceed the current $125,000 fund. In such a situation the fund would need to borrow to continue to conduct business.

OTHER AGENCY INVOLVEMENT: - County Counsel

FINANCING: - This action requires a budget amendment. The Purchasing Revolving Budget is a balanced account and all funds spent out of this budget are replaced through internal billings to the individual departments for the amounts spent.

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.)* Approved: ✓ Date 06-06-2013
COUNTY COUNSEL:	AGREEMENTS, PURCHASES, CONTRACTS, RESOLUTIONS AND ORDINANCES, AND CLOSED SESSION AND RELATED ITEMS *(Must be reviewed and approved by County Counsel prior to submission to the Assistant Clerk of the Board.)* Approved: _____ Date _____
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (*Must be reviewed and approved by the Auditor-Controller prior to submission to the Assistant Clerk of the Board.)* Approved: ✓ Date 6/06/13
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: 06-06-2013

RESOLUTION NO.
A RESOLUTION OF THE BOARD OF SUPERVISORS,
COUNTY OF INYO, STATE OF CALIFORNIA
RESCINDING ALL PREVIOUS RESOLUTIONS SETTING FORTH AMOUNTS FOR THE PURCHASING REVOLVING FUND AND INCREASING THE AMOUNT OF THE EXISTING REVOLVING FUND FOR PURCHASING AGENT USE

Whereas, Government Code Section 29321 is the law for the establishment of a revolving fund; and

Whereas, Inyo County established a revolving fund for the purpose of purchasing large quantities of office supplies in 1961 per law; and

Whereas, the office supplies for the County purposes have been purchased through the revolving fund since that time; and

Whereas, over the years the revolving fund has been increased in order to provide sufficient funds to purchase the required office supplies; and

Whereas, the Inyo County Board of Supervisors adopted Ordinance 1124 which updated and streamlined the County's purchasing procedures in order to provide a more cost effective and responsive purchasing process; and

Whereas, Ordinance 1124 increased the spending limits and authorities to one-half the amounts allowed by law; and

Whereas, the legally allowed limit for purchasing revolving funds is currently $250,000; and

Whereas, Inyo County's spending authority under the existing purchasing revolving fund is $125,000; and

Whereas, this amount is insufficient to cover the current volume and price of office supplies being purchased by the County; and

Whereas, Government Code Section 29321 requires adjustments to revolving accounts to be made by resolution.

Now, therefore, be it resolved, this day of June, 2013, the Inyo County Board of Supervisors, declares that all prior resolutions setting forth the amount for the Purchasing Revolving Fund are hereby rescinded; and

Be It Further Resolved, that the amount authorized for the Purchasing Revolving Fund is set at $150,000.

Passed and Adopted by the Inyo County Board of Supervisors this day of June, 2013, by the following vote of the Board of Supervisors:

AYES:
NOES:
ABSENT:
ABSTAIN:

Chairperson, Inyo County Board of Supervisors

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

by: _____
Patricia Gunsolley, Assistant

For Clerk's Use Only:
AGENDA NUMBER

13

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

☐ 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: June 11, 2013

SUBJECT: Approval of Minutes

DEPARTMENTAL RECOMMENDATION: - Request approval the minutes of the Board of Supervisors Special Meetings of A) May 21, 2013 and B) May 28, 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 (*Must be reviewed and approved by the auditor-controller prior to submission to the Assistant Clerk of the Board.)* Approved:_____ Date_____
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS *(Must be reviewed and approved by the director of personnel services prior to submission to the Assistant Clerk of the Board.)* Approved:_____ Date_____

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

For Clerk's Use Only:
AGENDA NUMBER

14

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

☐ Consent ☐ Departmental ☐ Correspondence Action ☐ Public Hearing

☒ Scheduled Time for 11:30 a.m. ☐ Closed Session ☐ Informational

FROM: County Administrator
FOR THE BOARD MEETING OF: June 11, 2013
SUBJECT: Ordinance Amending Section 2.88.040 of the Inyo County Code

DEPARTMENTAL RECOMMENDATION:

Request Board waive the first reading of an ordinance entitled "An Ordinance of the Board of Supervisors, County of Inyo, State of California, Amending Section 2.88.040 of the Inyo County Code to Provide for Increases in the Salary for Certain Elected County Officials, Excluding Members of the Board of Supervisors" which will increase the salary of the Sheriff to $10,699 per month and set June 18, 2013 at 11:30 a.m. at the Board of Supervisors Room, Independence for time and place of enactment.

SUMMARY DISCUSSION:

Based on direction from your Board on May 28, 2013, it is requested that you waive the first reading of an ordinance entitled "An Ordinance of the Board of Supervisors, County of Inyo, State of California, Amending Section 2.88.040 of the Inyo County Code to Provide for Increases in the Salary for Certain Elected Officials, Excluding Members of the Board of Supervisors," which will increase the salary of the Sheriff salary to $10,699 per month.

ALTERNATIVES:

Your Board could choose to not waive the first reading of the ordinance and direct staff in a different direction

OTHER AGENCY INVOLVEMENT:

County Counsel, Personnel

FINANCING:

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 6/6/13
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (*Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)* Approved:_____ 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 6/5/13

DEPARTMENT HEAD SIGNATURE:

ORDINANCE NUMBER _____

AN ORDINANCE OF THE BOARD OF SUPERVISORS, COUNTY OF INYO, STATE CALIFORNIA, AMENDING SECTION 2.88.040 OF THE INYO COUNTY CODE TO PROVIDE FOR INCREASES IN THE SALARY FOR CERTAIN ELECTED COUNTY OFFICIALS, EXCLUDING MEMBERS OF THE BOARD OF SUPERVISORS

The Inyo County Board of Supervisors do ordain as follows:

SECTION I: **Authority**

Government Code Section 25300 provides that the Board of Supervisors may set the compensation for elected officials by ordinance.

SECTION II: **Purpose**

The Board of Supervisors for the County of Inyo enacted section 2.88.040 of the Inyo County Code, which sets compensation to be received by elected county officials, excluding members of the Board of Supervisors. By this ordinance, the Board intends to provide for increases in the salary for certain elected officials.

SECTION III: **Section 2.88.040 Amended to provide for increases in the salary for certain elected officials, excluding the Board of Supervisor.**

Chapter 2.88, section 2.88.040 A. of the Inyo County Code is amended to read as follows:

A. Salary: Salaries for each Elected Official listed below shall be paid in accordance with the procedures used to pay all other county officers and employees, as follows:

Title	April 1, 2012 through July 17, 2013	July 18, 2013 and on
Assessor	$7,431.00	$7,431.00
Auditor/ Controller	$8,174.00	$8,174.00
Clerk/Recorder	$6,955.00	$6,955.00
Coroner	$2,000.00	$2,000.00
District Attorney	$9,807.00	$9,807.00
Public Administrator	$5,017.00	$5,017.00
Sheriff	$8,559.00	$10,699.00
Tax Collector/Treasurer	$7,431.00	$7,431.00

SECTION IV: Severability.

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Board hereby declares that it would have passed this ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this ordinance would be subsequently declared invalid or unconstitutional.

SECTION V: EFFECTIVE DATE.

This ordinance shall take effect and be in full force and effect thirty (30) days after its adoption. Before the expiration of fifteen (15) days from the adoption hereof, this ordinance shall be published as required by Government Code Section 25124. The Clerk of the Board is hereby instructed and ordered to so publish this ordinance together with the names of the Board members voting for and against same.

PASSED AND ADOPTED this _____ day of _____, 2013, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

_____
Chairperson, Inyo County Board of Supervisors

ATTEST: Kevin Carunchio
Clerk of the Board

By: _____
Patricia Gunsolley
Assistant Clerk of the Board

DCH/BOARD.ORD

For Clerk's Use Only:
AGENDA NUMBER

15

AGENDA REQUEST FORM

BOARD OF SUPERVISORS
COUNTY OF INYO

☐ Consent ☐ Departmental ☐ Correspondence Action ☒ Public Hearing

☒ Scheduled Time for ☐ Closed Session ☐ Informational

FROM: George L. Milovich, Agricultural Commissioner

FOR THE BOARD MEETING OF: June 11, 2013

SUBJECT: Public Hearings to Consider the Ordering of Services and Levy of the Assessments for Fiscal Year 2013/2014 for the "Owens Valley Mosquito Abatement Program Assessment" and the "Mosquito Control and Disease Prevention Assessment" and Adoption of a Resolution Titled "A Resolution Of The Board Of Supervisors Of The County Of Inyo Administering The Owens Valley Mosquito Abatement Program Approving The Engineer's Reports, Confirming The Assessment Diagram And Assessment And Ordering The Levy Of Assessments For Fiscal Year 2013-2014 For The Owens Valley Mosquito Abatement Program Assessment (Assessment No.1) And For The Mosquito Control And Disease Prevention Assessment (Assessment No.2).

DEPARTMENTAL RECOMMENDATION:

That Your Board hold a public hearing for the proposed continuation of the assessments for the "Owens Valley Mosquito Abatement Program Assessment" and the "Mosquito Control and Disease Prevention Assessment" in order to receive any public input on the proposed continuation of the assessments, the proposed assessment budget for Fiscal Year 2013/2014 and the services and programs, the assessments fund, and any other issues related to the assessments.

After the close of the public hearing to consider the ordering of services, and the levy of the assessments for Fiscal Year 2013/2014, it is recommended that your Board adopt a Resolution, approving the Engineer's Report, confirming the diagram and assessments for Fiscal Year 2013/2014 for the "Owens Valley Mosquito Abatement Program Assessment" and the "Mosquito Control and Disease Prevention Assessment".

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

On July 21, 1998, after conducting a ballot proceeding, this Board by its Ordinance No. 1002 authorized the levy of assessments for the financing and execution of the Owens Valley Mosquito Abatement Program projects; pursuant to the provisions of Government Code Section 25842.5, 53750, and 53753i, Health and Safety Code Sections 2270 et. seq. (repealed and replaced by Health and Safety Code Section 2000 et. seq.) and Articles XI and XIII D of the California Constitution.

On May 10, 2005, after conducting a ballot proceeding, this Board by its Resolution No. 2005-24, first authorized the levy of assessments for the "Mosquito Control and Disease Prevention Assessment" in compliance with Health and Safety Code Section 2080 abatement district law; Article XIII D of the California Constitution; Government Code Section 25842 et. seq. and Health and Safety Code Section 2000, (formerly 2200) which grants the Board of Supervisors the power to create mosquito and vector control programs in the same manner as a district.

Since FY 1998-1999, the "Owens Valley Mosquito Abatement Program Assessment has been continued annually and the "Mosquito Control and Disease Prevention Assessment" has been continued annually since FY 2005-2006. Both assessments are providing essential revenues needed to fund mosquito abatement projects and services.

SCI Consulting Group, the Engineer of Work for purposes of these proceedings, has hereby prepared Engineer's Reports for "Owens Valley Mosquito Abatement Program Assessment" and for "Mosquito Control and Disease Prevention Assessment". These Engineer's Reports include the proposed budget for the assessments for Fiscal Year 2013/2014 and the updated proposed assessments for each parcel in the Program's area within Inyo County.

Proposed assessment for Fiscal Year

The assessments can be levied annually. The assessments for "Mosquito Control and Disease Prevention Assessment" includes an annual increase equal to the change in the Los Angeles Area Consumer Price Index ("CPI"), not to exceed 3% (three percent) per year without a further vote or balloting process. The actual change in the CPI for the Los Angeles Area from December 2011 to December 2012 was 1.93%.
The unused CPI carried forward from previous fiscal years is 0.00%. Therefore, the change in the assessment rate for Fiscal Year 2013/2014 is 1.93%; the assessment rate for Fiscal Year 2013/2014 is $22.84 per single-family equivalent benefit unit with estimated total annual assessment revenues of $193,466.

The assessment rate for Fiscal Year 2013/2014 for "The Owens Valley Mosquito Abatement Program Assessment" is $20.80 per benefit unit with estimated total annual assessment revenues of $204,428.

This public hearing was noticed by publication in the Inyo Register on May 30, 2013.

It is recommended that Your Board hold a public hearing on the proposed continuation of the assessments. After due consideration of any public comments regarding the proposed continuation of the assessments and the services funded by the assessments, it is recommended that Your Board approve a Resolution to continue the assessments for Fiscal Year 2013/2014 and to direct additional actions related to the continue of the assessments.

ALTERNATIVES:

OTHER AGENCY INVOLVEMENT:

FINANCING:

At this time, there is no cost to the OVMAP budget 154101.

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 Kelle Approved: — Date 5-28-13
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: yes Date 5/24/13
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: 5-30-13

RESOLUTION NO. _____

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF INYO ADMINISTERING THE OWENS VALLEY MOSQUITO ABATEMENT PROGRAM APPROVING THE ENGINEER'S REPORTS, CONFIRMING THE ASSESSMENT DIAGRAM AND ASSESSMENT AND ORDERING THE LEVY OF ASSESSMENTS FOR FISCAL YEAR 2013-2014 FOR THE OWENS VALLEY MOSQUITO ABATEMENT PROGRAM (ASSESSMENT NO. 1) AND FOR THE MOSQUITO CONTROL AND DISEASE PREVENTION ASSESSMENT (ASSESSMENT NO. 2)

WHEREAS, the Owens Valley Mosquito Abatement Program is authorized, pursuant to the authority provided in Health and Safety Code Section 2082 and Article XIIID of the California Constitution, to levy assessments for mosquito abatement services; and

WHEREAS, such mosquito abatement services provide tangible public health benefits, reduced nuisance benefits and other special benefits to the public and properties with the areas of service; and

WHEREAS, Assessment No. 1 has been given the distinctive designation of the "Owens Valley Mosquito Abatement Program Assessment," ("Assessment No. 1"); and

WHEREAS, Assessment No. 1 was authorized by an assessment ballot proceeding conducted in 1998 and approved by 70.9% of the weighted ballots returned by property owners, and such assessments were levied by the Inyo County Board of Supervisors of the Owens Valley Mosquito Abatement Program Assessment by Ordinance No. 1002 Section 5 (part), 1998 passed on July 21, 1998, and continued every year thereafter; and

WHEREAS, Assessment No. 2 has been given the distinctive designation of the "Mosquito Control and Disease Prevention Assessment" ("Assessment No. 2"); and

WHEREAS, Assessment No. 2 was authorized by an assessment ballot proceeding conducted in 2005 and approved by 71.4% of the weighted ballots returned by property owners, and such assessments were levied by the Inyo County Board of Supervisors of the Owens Valley Mosquito Abatement Program Mosquito Control and Disease Prevention Assessment by Resolution No. 2005-24 passed on May 10, 2005 and continued every year thereafter; and

WHEREAS a notice of a public hearing was published in the Inyo County Register and at the appointed time and place of June 11, 2013 at the hour of 11:30 a.m. in the Inyo County Board of Supervisors Meeting Chambers located at 224 North Edwards Street, Independence, CA 93526, the hearing was duly and regularly held, and all persons interested and desiring to be heard were given an opportunity to be heard, and all matters and things pertaining to the levy were fully heard and considered by this Board, and all oral statements and all written protests or communications were duly heard and considered, and this Board thereby acquired jurisdiction to order the

continuation of the assessments prepared by and made a part of the Engineer's Report to pay the costs and expenses thereof.

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

SECTION 1. The above recitals are true and correct

SECTION 2. SCI Consulting Group, the Engineer of Work for purposes of these proceedings, has hereby prepared Engineer's Reports for Assessment No. 1 and for Assessment No. 2 (the "Reports") in accordance with the provisions of the Health and Safety Code section 2080 et seq. and Article XIIID of the California Constitution and has filed the Reports with the Clerk of the Board of Supervisors for submission to the Board. The Reports are hereby deemed sufficient.

SECTION 3. The public interest, health, convenience and necessity require that the assessments be continued.

SECTION 4. The Engineer's Report for Assessment No. 1 together with the diagram of the Assessment contained therein and the proposed assessment roll for Fiscal Year 2013-2014 is hereby confirmed and approved.

SECTION 5. The Engineer's Report for Assessment No. 2 together with the diagram of the Assessment contained therein and the proposed assessment roll for Fiscal Year 2013-2014 is hereby confirmed and approved.

SECTION 6. That based on the oral and documentary evidence, including the Engineer's Report for Assessment No. 1, offered and received at the public hearing, the Board expressly finds and determines that: (a) each of the several lots and parcels of land within the Program Boundaries will be specially benefited by the services to be financed by the assessment proceeds in at least the amount of the assessment apportioned against such lots and parcels of land, respectively; and (b) that there is substantial evidence to support, and the weight of the evidence preponderates in favor of, said finding and determination as to special benefit to property with the Program Boundaries from the Mosquito Abatement services to be financed with the assessment proceeds.

SECTION 7. That based on the oral and documentary evidence, including the Engineer's Report for Assessment No. 2, offered and received at the public hearing, the Board expressly finds and determines that: (a) each of the several lots and parcels of land within the Program Boundaries District will be specially benefited by the services to be financed by the assessment proceeds in at least the amount of the assessment apportioned against such lots and parcels of land, respectively; and (b) that there is substantial evidence to support, and the weight of the evidence preponderates in favor of, said finding and determination as to special benefit to property with the Program Boundaries from the mosquito control and disease prevention services to be financed with assessment proceeds.

SECTION 8. That assessment for Fiscal Year 2013-2014 for Assessment No. 1 shall be levied at the assessment rate of TWENTY DOLLARS AND EIGHTY CENTS ($20.80) per single-family equivalent benefit unit with estimated total annual assessment revenues of $204,428.

SECTION 9. That the assessments for Assessment No. 2 included an annual increase equal to the change in the Los Angeles Area Consumer Price Index ("CPI"), not to exceed 3% (three percent) per year without a further vote or balloting process. The annual CPI change for the Los Angeles Area from December 2011 to December 2012 was 1.93%, and the unused CPI carried forward from previous fiscal years is 0.00%. Therefore, the maximum authorized assessment rate for fiscal year 2013-14 is $22.84 per single family equivalent benefit unit. The proposed assessment rate for Fiscal Year 2013-2014 is $22.84 per single-family equivalent benefit unit which is the maximum authorized rate for Fiscal Year 2013-2014.

SECTION 10. That assessment for Fiscal Year 2013-2014 for Assessment No. 2 shall be continued at the assessment rate of TWENTY TWO DOLLARS AND EIGHTY FOUR CENTS ($22.84) per single-family equivalent benefit unit. The estimated total annual assessment revenue for Fiscal Year 2013-2014 is $193,466.

SECTION 11. That the mosquito abatement services to be financed with assessment proceeds described in the Engineer's Reports for Assessment No. 1 and Assessment No. 2 are hereby ordered.

SECTION 12. No later than August 10th following such adoption, the Board shall file a certified copy of the diagram and assessment and a certified copy of this Resolution with the Auditor of the County of Inyo ("County Auditor"). Upon such filing, the County Auditor shall enter on the County assessment roll opposite each lot or parcel of land the amount of assessment thereupon as shown in the assessments. The assessments shall be collected at the same time and in the same manner as County taxes are collected and all the laws providing for collection and enforcement shall apply to the collection and enforcement of the assessments. After collection by the County, the net amount of the assessments, after deduction of any compensation due the County for collection, shall be paid to the Owens Valley Mosquito Abatement Program Assessment and to the Mosquito Control and Disease Prevention Assessment.

SECTION 13. All revenues from assessments for Assessment No. 1 shall be deposited into a separate fund established under the distinctive designation of the Owens Valley Mosquito Abatement Program funds so designated shall be expended only for the special benefit of parcels within the Program's boundaries.

SECTION 14. All revenues from assessments for Assessment No. 2 shall be deposited into a separate fund established under the distinctive designation of the Owens Valley Mosquito Abatement Program Mosquito Control and Disease Prevention Assessment. Funds so designated shall be expended only for the special benefit of parcels within the Program's boundaries.

SECTION 15. The Owens Valley Mosquito Abatement Program Assessment, as it applies to any parcel, may be corrected, cancelled or a refund granted as appropriate, by order of the Inyo County Board of Supervisors. Any such corrections, cancellations or refunds shall be limited to the current fiscal year.

SECTION 16. The Mosquito Control and Disease Prevention Assessment, as it applies to any parcel, may be corrected, cancelled or a refund granted as appropriate, by order of the Inyo County Board of Supervisors. Any such corrections, cancellations or refunds shall be limited to the current fiscal year.

The foregoing Resolution was PASSED and ADOPTED by the Inyo County Board of Supervisors at a regular meeting thereof held on June 11, 2013, at Board of Supervisors' Room, Inyo County Administrative Center at 224 North Edwards Street, Independence, CA.

AYES:

NOES:

ABSTAINED:

ABSENT:

_____
Linda Arcularius, Chairperson
Inyo County Board of Supervisors

ATTEST: Kevin D. Carunchio
Clerk of the Board

BY:_____
Patricia Gunsolley, Assistant Clerk of the Board

Owens Valley Mosquito Abatement Program

County of Inyo

mosquito Control and Disease Prevention Assessment

Engineer's Report

Fiscal Year 2013-14

May 2013

Pursuant to the Government Code, Health and Safety Code and Article XIIID of the California Constitution

Engineer of Work:

SCIConsultingGroup
4745 Mangels Blvd
Fairfield, California 94534
Phone 707.430.4300
Fax 707.430.4319
www.sci-cg.com

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INTRODUCTION

The Owens Valley Mosquito Abatement Program ("OVMAP" or "Program") exists within the County of Inyo ("County") and currently provides mosquito and disease control services throughout the greater Owens Valley, including the cities and communities of Bishop, Independence and Lone Pine as well as unincorporated areas within the Owens Valley. The OVMAP has been providing its public health protection services in Inyo County for over 20 years. The OVMAP is managed by the Agricultural Commissioner and Program staff and is governed by the Inyo County Board of Supervisors.

The OVMAP's core services are summarized as follows:

1. Early detection of public health threats through comprehensive mosquito surveillance.
2. Protection of public health by reducing mosquitoes that can transmit diseases to humans.
3. Appropriate, timely response to customer requests to prevent/control mosquito-borne diseases.

ASSESSMENT FORMATION

On March 8, 2005, the Inyo County Board of Supervisors authorized the initiation of proceedings for a proposed benefit assessment to provide local funding for improved mosquito, and disease prevention services. This assessment was named the "Mosquito Control and Disease Prevention Assessment (the "Assessment" or the "Assessment District"). In March of 2005, an assessment ballot proceeding was conducted pursuant to the requirements of Article XIIID of the California Constitution ("The Taxpayer's Right to Vote on Taxes Act") and the Health and Safety Code. During this ballot proceeding, property owners within the boundaries of the Owens Valley Mosquito Abatement Program were provided with a notice and ballot for the proposed special assessment. A 45-day period was provided for balloting and a public hearing was conducted in May of 2005. At the public hearing, all ballots returned within the 45-day balloting period were tabulated.

It was determined at the public hearing that 71.4% of the weighted ballots returned were in support of the Assessment. Since the assessment ballots submitted in opposition to the proposed assessments did not exceed the assessment ballots submitted in favor of the assessments (with each ballot weighted by the proportional financial obligation of the property for which ballot was submitted), the Program gained the authority to approve the levy of the assessments for fiscal year 2005-06 and continue the assessment in future years. The authority granted by the ballot proceeding includes an annual adjustment in the maximum authorized assessment rate equal to the annual change in the Consumer Price Index for the Los Angeles Area, not to exceed 3%.

The following is an outline of the primary services and improvements that are funded by the mosquito and disease control assessment:

- Mosquito control
- Surveillance for vector-borne diseases
- Mosquito inspections
- Response to service requests
- Mosquitofish for backyard fish ponds and other appropriate habitats
- Presentations to schools and civic groups
- Identification of mosquitoes and testing for diseases
- Mosquito Surveillance and Disease Testing
- Facilities and Equipment Utilized by the OVMAP

As used within this Report and the benefit assessment, the following terms are defined:

> *"Vector" means any animal capable of transmitting the causative agent of human disease or capable of producing human discomfort or injury, including, but not limited to, mosquitoes, flies, mites, ticks, other arthropods, and small mammals and other vertebrates (Health and Safety Code Section 2002(k)).*
>
> *"Vector Control" shall mean any system of public improvements or services that is intended to provide for the surveillance, prevention, abatement, and control of vectors as defined in subdivision (k) of Section 2002 of the Health and Safety Code and a pest as defined in Section 5006 of the Food and Agricultural Code (Government Code Section 53750(m)).*

The OVMAP is controlled by Mosquito Abatement and Vector Control Program Law of the State of California. Following are excerpts from the Mosquito Abatement and Vector Control Program Law of 2002, codified in the Health and Safety Code, Section 2000, et seq. which serve to summarize the State Legislature's findings and intent with regard to mosquito abatement and other vector control services:

> 2001. (a) The Legislature finds and declares all of the following:
> (1) California's climate and topography support a wide diversity of biological organisms.
> (2) Most of these organisms are beneficial, but some are vectors of human disease pathogens or directly cause other human diseases such as hypersensitivity, envenomization, and secondary infections.
> (3) Some of these diseases, such as mosquito borne viral encephalitis, can be fatal, especially in children and older individuals.
> (4) California's connections to the wider national and international economies increase the transport of vectors and pathogens.
> (5) Invasions of the United States by vectors such as the Asian tiger mosquito and by pathogens such as the West Nile virus underscore the vulnerability of humans to uncontrolled vectors and pathogens.
> (b) The Legislature further finds and declares:
> (1) Individual protection against the vectorborne diseases is only partially effective.
> (2) Adequate protection of human health against vectorborne diseases is best achieved by organized public programs.

(3) The protection of Californians and their communities against the discomforts and economic effects of vectorborne diseases is an essential public service that is vital to public health, safety, and welfare.

(4) Since 1915, mosquito abatement and vector control Programs have protected Californians and their communities against the threats of vectorborne diseases.

(c) In enacting this chapter, it is the intent of the Legislature to create and continue a broad statutory authority for a class of special Programs with the power to conduct effective programs for the surveillance, prevention, abatement, and control of mosquitoes and other vectors.

(d) It is also the intent of the Legislature that mosquito abatement and vector control Programs cooperate with other public agencies to protect the public health, safety, and welfare. Further, the Legislature encourages local communities and local officials to adapt the powers and procedures provided by this chapter to meet the diversity of their own local circumstances and responsibilities.

Further the Health and Safety Code, Section 2082 specifically authorizes the creation of benefit assessments for vector control, as follows:

(a) A district may levy special benefit assessments consistent with the requirements of Article XIIID of the California Constitution to finance vector control projects and programs.

ASSESSMENT CONTINUATION

This Engineer's Report ("Report") was prepared by SCI Consulting Group ("SCI") to describe the vector control services to be funded by the assessment (the "Services"), to establish the estimated costs for those services, to determine the special benefits and general benefits received by property from the services and to apportion the assessments to lots and parcels within the OVMAP based on the estimated special benefit each parcel receives from the services funded by the benefit assessment.

This report defines the benefit assessment (the "Assessment") on all specially benefiting properties within the Program boundaries (the "Assessment District"). The Assessment for fiscal year 2013-14, as described in this Engineer's Report, would provide continued funding for mosquito and disease control services in certain areas of Inyo County, as well as related costs for equipment, capital improvements and services and facilities necessary and incidental to mosquito and disease control programs.

The Assessment District is narrowly drawn to include only properties that may request and/or receive direct and more frequent service, that are located within the scope of the vector surveillance area, that are located within flying or traveling distance of potential vector sources monitored by the Program, and that will benefit from a reduction in the amount of vectors reaching and impacting the property as a result of the enhanced vector surveillance and control. The Assessment Diagram included in this report shows the boundaries of the Assessment District.

PROPOSITION 218

This assessment was formed consistent with Proposition 218, The Right to Vote on Taxes Act, which was approved by the voters of California on November 6, 1996, and is now

Article XIIIC and XIIID of the California Constitution. Proposition 218 provides for benefit assessments to be levied to fund the cost of providing services, improvements, as well as maintenance and operation expenses to a public improvement which benefits the assessed property.

Proposition 218 describes a number of important requirements, including a property-owner balloting, for the formation and continuation of assessments, and these requirements are satisfied by the process used to establish this assessment. When Proposition 218 was initially approved in 1996, it allowed for certain types of assessments to be "grandfathered" in, and these were exempted from the property–owner balloting requirement.

> *Beginning July 1, 1997, all existing, new, or increased assessments shall comply with this article. Notwithstanding the foregoing, the following assessments existing on the effective date of this article shall be exempt from the procedures and approval process set forth in Section 4:*
> *(a) Any assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems or vector control.*

Vector control was specifically "grandfathered in," underscoring the fact that the drafters of Proposition 218 and the voters who approved it were satisfied that funding for vector control is an appropriate use of benefit assessments, and therefore confers special benefit to property.

SILICON VALLEY TAXPAYERS ASSOCIATION, INC. V. SANTA CLARA COUNTY OPEN SPACE AUTHORITY

In July of 2008, the California Supreme Court issued its ruling on the Silicon Valley Taxpayers Association, Inc. v. Santa Clara County Open Space Authority ("SVTA vs. SCCOSA"). This ruling is the most significant legal document in further legally clarifying Proposition 218. Several of the most important elements of the ruling included further emphasis that:

- Benefit assessments are for special benefit to property, not general benefits[1]
- The services and /or improvements funded by assessments must be clearly defined
- Special benefits are directly received by and provide a direct advantage to property in the assessment district

This Engineer's Report is consistent with the SVTA vs. SCCOSA decision and with the requirements of Article XIIIC and XIIID of the California Constitution because the Services

[1] Article XIII D, § 2, subdivision (d) of the California Constitution states defines "district" as "an area determined by an agency to contain all parcels which will receive a special benefit from the proposed public improvement or property-related service."

to be funded are clearly defined; the Services are available to all benefiting property in the Assessment District, the benefiting property in the Assessment District will directly and tangibly benefit from reduced mosquito and vector populations, reduced risk of the presence of diseases, increased safety of property and other special benefits; and such special benefits provide a direct advantage to property in the Assessment District that is not enjoyed by the public at large or other property. There have been a number of clarifications made to the analysis, findings and supporting text in this Report to ensure that this consistency is well communicated.

DAHMS V. DOWNTOWN POMONA PROPERTY

On June 8, 2009, the 4th Court of Appeal amended its original opinion upholding a benefit assessment for property in the downtown area of the City of Pomona. On July 22, 2009, the California Supreme Court denied review. On this date, Dahms became good law and binding precedent for assessments. In Dahms the Court upheld an assessment that was 100% special benefit (i.e. 0% general benefit) on the rationale that the services and improvements funded by the assessments were directly provided to property in the assessment district. The Court also upheld discounts and exemptions from the assessment for certain properties.

BONANDER V. TOWN OF TIBURON

In the December 31, 2009, the 1st District Court of Appeal overturned a benefit assessment approved by property owners to pay for placing overhead utility lines underground in an area of the Town of Tiburon. The Court invalidated the assessments on the grounds that the assessments had been apportioned to assessed property based on in part on relative costs within sub-areas of the assessment district instead of proportional special benefits.

BEUTZ V. COUNTY OF RIVERSIDE

On May 26, 2010 the 4th District Court of Appeals issued a decision on the Steven Beutz v. County of Riverside ("Beutz") appeal. This decision overturned an assessment for park maintenance in Wildomar, California, primarily because the general benefits associated with improvements and services was not explicitly calculated, quantified and separated from the special benefits.

GOLDEN HILL NEIGHBORHOOD ASSOCIATION V. CITY OF SAN DIEGO

On September 22, 2011, the San Diego Court of Appeal issued a decision on the Golden Hill Neighborhood Association v. City of San Diego appeal. This decision overturned an assessment for street and landscaping maintenance in the Greater Golden Hill neighborhood of San Diego, California. The court described two primary reasons for its decision. First, like in Beutz, the court found the general benefits associated with services were not explicitly calculated, quantified and separated from the special benefits. Second, the court found that the City had failed to record the basis for the assessment on its own parcels. Finally, the Assessments are consistent with *Buetz* and *Greater Golden Hill* because the general benefits have been explicitly calculated and quantified and excluded from the Assessments.

GENERAL DESCRIPTION OF THE PROGRAM AND SERVICES

ABOUT THE MOSQUITO CONTROL PROGRAM

The Owens Valley Mosquito Abatement Program (OVMAP) operates within the County of Inyo Department of Agriculture and controls and monitors disease-carrying mosquitoes. The OVMAP protects the usefulness, desirability and livability of property and the inhabitants of property within jurisdictional area through the abatement of invertebrate vectors. In addition, the OVMAP regularly tests for diseases carried by mosquitoes and educates the property owners and the occupants of property in the Program's coverage area about how to protect themselves from diseases transmitted by mosquitoes.

There are currently approximately 3 fulltime employees including a Manager, two Field Technicians. Seasonal employees are hired as needed. In addition to their scheduled duties, Field Technicians can respond to over 300 mosquito service requests from the public each year. These requests are handled by office staff or field technicians at the time of initial contact.

DESCRIPTION OF VECTOR CONTROL PROGRAM

The Assessment provides the additional funding to operate the program and expand the services provided in the Assessment District to an optimum level necessary to protect the usefulness, utility, desirability and livability of property within its jurisdictional area.

In addition to being nuisances by disrupting human activities and the use and enjoyment of public and private areas, certain insects and animals may transmit a number of diseases. The diseases of most concern are: Western Equine Encephalitis (WEE), St. Louis Encephalitis (SLE), West Nile Virus (WNV), and Malaria, which are all transmitted by mosquitoes.

The spread of these diseases is minimized through ongoing mosquito surveillance activities, source reduction, source treatment, abatement, and educational outreach. These efforts also minimize the nuisance impact mosquitoes can have on residents. To fulfill this purpose, the OVMAP may take any and all necessary steps to control, monitor and perform other related mosquito control services.

The assessment provides funding for the continuation and enhancement of the projects and programs for surveillance, prevention, abatement, and control of mosquitoes on property within the Owens Valley. Such mosquito abatement and vector control projects and programs include, but are not limited to, source reduction, larvicide applications, disease monitoring, public education, reporting, accountability, research and interagency cooperative activities, as well as capital costs, maintenance, and operation expenses (collectively "Services"). The cost of these Services also includes capital costs comprised of equipment, capital improvements and facilities necessary and incidental to the mosquito

control program. It should be noted that additional funding for Services related to the Owens Valley Dry Lake and the Owens River project are provided by other sources.

SUMMARY OF SERVICES

The Services are further defined as follows:

- Response to mosquito problems on property in the Assessment District.
- Services and methods to control mosquito breeding in the Assessment District.
- Control of mosquito larvae in source breeding and hatching locations such as catch basins, industrial drains, agricultural sources, ditches, drain lines, vaults, wastewater treatment plants, under buildings, residences, horse troughs, freshwater marshes, creeks, and other sources on property in the Assessment District.
- Surveillance and data analysis of adult mosquito populations using carbon dioxide baited traps, and Reiter Gravid traps to assess public health risks and allocate control efforts on property in the Assessment District.
- Monitoring for diseases carried and transmitted by mosquitoes and other arthropods, such as St Louis encephalitis, Western equine encephalitis and West Nile virus and other surveillance methods on property within the Assessment District.
- Testing of new mosquito control materials and investigation of their efficacy in the Assessment District.
- Education of residents on property within the Assessment District about the risks of diseases carried by mosquitoes and how to better protect themselves and their pets.
- Monitoring of new and emerging vectors such as the Asian Tiger Mosquito and new and emerging pathogens such as West Nile Virus.
- Education programs on mosquitoes and disease abatement and other outreach programs to educate property owners and the occupants of property within the Assessment District about mosquitoes, vectors and the diseases they can transmit.
- Distribution of printed material and brochures that describe what residents, employees and property owners in the Assessment District can do to keep their homes and property free of mosquitoes and other vectors.

The OVMAP protects the public from mosquito-borne disease and mosquito nuisance while protecting the environment, through a coordinated set of activities collectively known as the Integrated Vector Management Program (IVMP). For all vector species, public education is the primary control strategy. Next, the OVMAP determines the abundance of mosquitoes and the risk of mosquito-borne disease or discomfort through evaluation of public service requests and field and laboratory surveillance activities. If the populations exceed or are anticipated to exceed predetermined criteria, OVMAP staff will attempt to employ the most efficient, effective, and environmentally sensitive means of source control. Where feasible, physical control activities such as water management are instituted to reduce mosquito production. When these approaches are not effective or are

otherwise inappropriate, biological control using natural materials and environmentally sensitive larvicides are used in the specific mosquito breeding location or pest-harboring areas.

MOSQUITO AND MOSQUITO-BORNE DISEASES IN INYO COUNTY

The OVMAP undertakes activities through its Integrated Vector Management Program to control the following vectors of disease and/ or discomfort within the OVMAP[2]:

Mosquitoes - Certain species of mosquitoes found in Inyo County can transmit Malaria, St. Louis Encephalitis, Western Equine Encephalomyelitis, West Nile Virus, and potentially other encephalitis viruses. While not all species of mosquitoes transmit disease, all species can cause human discomfort when the female mosquito bites to obtain blood. Reactions range from irritation in the area of the bite to severe allergic reactions or secondary infections resulting from scratching the irritated area. Additionally, an abundance of mosquitoes can cause economic losses, and loss of use or enjoyment of recreational, agricultural, or industrial areas.

Of the world's three thousand mosquito species, more than fifty live in California, and twenty-four have been identified in Inyo County. Continuous surveillance and special control efforts are aimed the most common species in the county. The primary species in the County are summarized as follows:

- Culiseta incidens
- Culiseta inornata

- Culex tarsalis
- Culex erythrothorax

- Aedes dorsalis
- Aedes melanimon
- Aedes nigromaculis
- Aedes increpitus
- Aedes sierrensis

- Anopheles franciscanus
- Anopheles freeborni

Most of the vectors mentioned above are extremely mobile and cause the greatest hazard or discomfort away from their breeding site. Each of these potential vectors has a unique life cycle, and most of them occupy different habitats. In order to effectively control these

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[2] The improved mosquito and vector control and disease prevention services would materially increase the usefulness, utility, livability and desirability of properties in the Assessment District.

vectors, an integrated vector management program must be employed. OVMAP policy is to identify those species that are currently vectors, to recommend techniques for their prevention and control, and to anticipate and minimize any new interactions between vectors and humans.

INTEGRATED PEST MANAGEMENT

As noted, the Program's Services address several types of vectors and share general principles and policies. These include the identification of vector problems; responsive actions to control existing populations of vectors, prevention of new sources of vectors from developing, and the management of habitat in order to minimize vector production; education of land-owners and others on measures to minimize vector production or interaction with vectors; and provision and administration of funding and institutional support necessary to accomplish these goals.

In order to accomplish effective and environmentally sound vector management, the manipulation and control of vectors must be based on careful surveillance of their abundance, habitat (potential abundance), pathogen load, and/or potential contact with people; the establishment of treatment criteria (thresholds); and appropriate selection from a wide range of control methods. This dynamic combination of surveillance, treatment criteria, and use of multiple control activities in a coordinated program is generally known as Integrated Pest Management (IPM) (Glass 1975, Davis et al 1979, Borror et al 1981, Durso 1996, Robinson 1996).

The OVMAP's Vector Management Program, like any other IPM program, by definition involves procedures for minimizing potential environmental impacts. The Program employs IPM principles by first determining the species and abundance of vectors through evaluation of public service requests and field surveys of immature and adult pest populations; and then, if the populations exceed predetermined criteria, using the most efficient, effective, and environmentally sensitive means of control. For all vector species, public education is an important control strategy, and for some vectors (rodents, ticks) it is the Program's primary control method. In some situations, water management or other physical control activities (historically known as "source reduction" or "permanent control") can be instituted to reduce vector-breeding sites. The Program also uses biological control such as the planting of mosquitofish (in ornamental ponds, unused swimming pools and other standing water bodies). When these approaches are not effective or are otherwise inappropriate, natural materials that have been found to be environmentally safe are used to treat specific pest-producing or pest-harboring areas.

The following is a summary of the OVMAP's efforts to apply IPM to the vectors and issues outlined above.

MOSQUITOES

PERMANENT WATER MOSQUITOES

Risk assessment: historically, Culex tarsalis and Culex erythrothorax have been very abundant in the Owens Valley. The great vector potential of these species documented in other parts of the state suggests that they are principal mosquito threats. The threat of Anopheles as vectors is reduced by the absence of resident malaria pathogens in the area. Culiseta, particularly Culiseta Inornata, are very widespread in the county, occurring in many kinds of habitats during most of the year. However, tests of their ability to transmit viral pathogens show them to be of little significance as vectors.

Surveillance: Surveillance of these mosquitoes is accomplished by a combination of methods. First, individual residents and property owners call the Program with complaints about bites or potential larval sites. Second, technicians and surveillance staff actively examine potential sites by sampling water, collecting larvae, and identifying the larvae to species. Finally, various traps (light traps, carbon dioxide baited traps) are used to identify species and general breeding locations.

During the warm months, additional temporary staff is hired to help inspect and treat catch basins throughout the County, particularly in the urbanized areas. Catch basins can produce *Culex Tarsalis* in great numbers at locations close to residences and businesses.

Viruses transmitted by permanent water mosquitoes are surveyed by testing the mosquito vectors, the avian reservoirs, and humans. Other viral tests of mosquitoes, birds, or mammals are performed by the California Department of Health Services. The Program has participated in the state-wide dead bird surveillance program for West Nile virus, responding to reports of dead birds from the public. These results are mapped using a Geographic Information System. Humans are tested by various laboratories, but the Program actively seeks data.

Control: The Program currently uses four main materials to kill permanent water larvae and mosquitoes. The toxin of the natural bacteria *Bacillus thuringiensis israelensis* (Bti) can be applied as either a liquid or a granule. This toxin must be eaten by larvae, restricting its use to the first through third instars. BTI has the tremendous advantage of specificity, only affecting mosquitoes and related groups of flies. The spores of *Bacillus sphaericus* (Bs) are also available for liquid spray or granular application. This product has the advantage over BTI of sometimes reproducing in the water, extending the life of its effectiveness. Bs is only effective against *Culex* and works well in highly polluted water. Methoprene is an analogue of a natural insect hormone that prevents successful development of larvae. It is available as a short-lived liquid and longer-acting granules and briquets. Finally, the Program uses a short life-cycle oil combined with surfactants (Golden Bear and Agnique MMS) in situations where the materials above will not work. Golden Bear and Agnique MMS the only materials available that is effective against pupae.

The Program uses the mosquito fish, *Gambusia affinis*, for biological control. These work particularly well during warm months in decorative ponds and swimming pools, but they are also used in surface water that does not connect with the watershed. The Program is prohibited from introducing these fish into watersheds, though many of the creeks are already populated by mosquito fish. Mosquito fish can be used in combination with BTI, Bs, and methoprene in a process sometimes referred to as Integrated Biological Control.

Monitoring: For the most part, monitoring is the continuation of surveillance activities. Technicians specifically check treatment sites to be sure that applications were successful. The surveillance section operates carbon-dioxide baited traps.

Floodwater Mosquitoes

Risk assessment: The species remains the main nuisance threat in the area. Owens River oxbows can fill with water when river levels rise. Untreated water in the oxbows will produce huge numbers (up to 3 billion per acre) of floodwater mosquitoes that will migrate to lights at night. Lights at night are usually where people live, so these huge populations can severely impact communities adjacent to the Owens River. River oxbows can flood and produce mosquitoes anytime river levels rise above 450 cubic feet per minute during warm weather.

Surveillance: The Program has an annual program of quantitative surveillance of *Aedes melanimon* that consists of counted dips from habitats and counts of larvae by instar (the lifecycle stage between molts). The location and intensity of surveillance is guided by observation of rainfall and irrigation schedules, the sources of water for this species. This style of surveillance is necessary to time treatments of large areas. Surveillance for this species is one of the principal activities of technicians from March through October. *Aedes melanimon* requires alert attention to Irrigation schedules in the summer followed by rapid inspection of sites. At summer temperatures, this species can complete development in a week. There is a risk of allowing emergence of this species between inspection visits to remote sites.

Monitoring: *Aedes melanimon* are aggressive day- and night-time biters. As a result, public complaints are an accurate assessment of the success or failure of treatments. Carbon-dioxide baited traps are also an effective means of monitoring the adults of these species.

DISEASE SURVEILLANCE

In addition to the nuisance of disrupting human activities and causing our environment to be uninhabitable, certain insects and animals may transmit a number of diseases. The diseases of most concern in Inyo County are WNV, St. Louis Encephalitis (SLE) and Western Equine Encephalomyelitis (WEE) transmitted by mosquitoes.

The Program has found mosquito and other potential vector sources scattered throughout the Owens Valley Area. All properties within the Program are within mosquito-flying range of one or more mosquito sources, and/or the normal travel range of one or more other

vectors. Furthermore, the Program has long suffered from mosquitoes and other vectors and includes a large number of sources.

Mosquito populations are surveyed using a variety of field methods and traps. Surveillance is conducted in a manner based upon an equal spread of resources throughout the Program boundaries, focusing on areas of likely sources. Treatment strategies are based upon the results of the surveillance program, and are specifically designed for individual area. Small volume mosquito "dippers" and direct observation are used to evaluate larval populations, and service requests from the public, field landing counts, and carbon dioxide baited traps are used to evaluate adult populations. The surveillance traps are located and spread throughout the Program in a balanced approach such that the traps measure mosquito levels throughout the Program.

Mosquito-borne diseases are surveyed using adult mosquitoes and potentially wild birds. The OVMAP is in compliance with the Animal Welfare Act (Reg. No.: 93-R-0457) as administered by the United States Department of Agriculture (USDA) for the well-being and safety of laboratory animals.

Adult mosquitoes are collected and tested for SLE, WNV and WEE virus infection. Collection is made with traps baited with carbon dioxide from compressed cylinders.

Surveillance will also be conducted to determine vector habitat (e.g., standing water) and the effectiveness of control operations. Inspections will be conducted using techniques with insignificant impacts on the environment. Staff routinely uses pre-existing accesses such as roadways, open areas, walkways, and trails. Vegetation management (i.e., pruning trees, clearing brush, and herbicide application) is conducted where overgrowth impedes safe access. All of these actions only result in a temporary/localized physical change to the environment with regeneration/regrowth occurring within a span of six to nine months.

In order to access various sites throughout the OVMAP for surveillance and for control, OVMAP staff utilizes specialized equipment such as light trucks and all-terrain vehicles. OVMAP policies on use of this equipment are designed to avoid environmental impact.

The OVMAP currently collects and tests dead birds for the presence of WNV, SLE and WEE virus infection.

EDUCATION

The primary goal of the OVMAP's activities is to prevent mosquitoes from reaching public nuisance or disease thresholds by managing their habitat while protecting habitat values for their predators and other beneficial organisms. Mosquito prevention is accomplished through public education, including site-specific recommendations on water and land use, and by physical control (discussed in a later section).

The OVMAP's education program teaches the people within the Program how to recognize, prevent, and suppress vector breeding and harborage on their property. This part of the OVMAP's Services is accomplished through the distribution of brochures, fact sheets, and newsletters, participation in local fairs and events, presentations to community organizations, contact with Technicians in response to service requests, and public service announcements and news releases.

CONTROL OF MOSQUITOES

When a mosquito source produces mosquitoes above OVMAP treatment thresholds, the Mosquito Control Technician will generally work with the landowner or responsible agency to reduce the habitat value of the site for mosquitoes ("physical control"). If this is ineffective, the Technician will determine the best method of further treatment including biological control and/ or chemical control. The Program's objective is to provide the properties a "Zone of Benefit" level of consistent mosquito and vector control such that all properties would benefit from equivalent reduced levels of mosquitoes and other vectors. Surveillance and monitoring are provided on a Program-wide basis. The Program, though, cannot predict where control measures will be applied because the type and location of control depends on the surveillance and monitoring results. However, the control thresholds and objectives are comparable throughout the Zone of Benefit.

- **Physical Control**

The OVMAP directs the property owner to manage mosquito habitat areas ("breeding sources") within the Assessment District to reduce mosquito production. This may include removal of containers and debris, plant mosquito fish in standing water from unmaintained swimming pools and spas, direct property owners for the removal of vegetation or sediment, interrupting water flow, rotating stored water, pumping and/or filling sources, improving drainage and water circulation systems, breaching or repairing levees, and installing, improving, or removing culverts, and other water control structures in wetlands.

- **Biological Control**

The mosquitofish, Gambusia affinis, is the OVMAP's primary biocontrol agent used against mosquitoes. Mosquitofish are not native to California, but have been widely established in the state since the early 1920's, and now inhabit most natural and constructed water bodies. The OVMAP rears mosquitofish in large tanks and periodically uses nets to collect mosquitofish from natural water bodies located in the County. OVMAP technicians place mosquitofish only in man-made settings within the Assessment District where either previous surveillance has demonstrated a consistently high production of mosquitoes, or where current surveillance indicates that mosquito populations will likely exceed chemical control thresholds without prompt action. Mosquitofish are also made available to the people to control mosquito production only in artificial containers such as ornamental fishponds, water plant barrels, horse troughs, and abandoned swimming pools within the Assessment District.

- **Material Control**

Since many mosquito-breeding sources cannot be adequately controlled with physical control measures or mosquitofish, the OVMAP also uses natural biological materials and/or insecticides found to be harmless to the environment and approved by the Department of Agriculture and other environmental agencies to control mosquito production where observed mosquito production exceeds OVMAP thresholds. When field inspections indicate the presence of mosquito populations which meet OVMAP criteria for material control (including presence of disease, abundance, density, species composition, proximity to human settlements, water temperature, presence of predators, and others), OVMAP staff applies these materials to the site in strict accordance with the label instructions.

- **West Nile Virus Strategic Response Plan**

Inyo County's West Nile Virus Strategic Response Plan is comprised of the following five elements: Public Education, Surveillance, Mosquito Control, Response, and Remediation.

Education

The goal of this step is to educate and inform Inyo County residents about WNV specifically, and mosquito control generally. The methods used to achieve this goal include outreach materials in both English in Spanish, available through the web and other media; the implementation of an education campaign aimed at prevention and education rather than reaction and alarm; proactive press releases and media contact; and the establishment of the County of Inyo as the local resource regarding West Nile Virus.

Surveillance

In order to efficiently and accurately identify and monitor the onset, spread and risk of mosquito-borne diseases (including WNV) in the County of Inyo, technicians regularly trap and test mosquitoes in over 12 locations each week., as well as monitor over 200 known mosquito-breeding locations throughout the County. This monitoring may involve site visits or be in response to citizen inquiries or complaints. Breeding activity is verified by visual observation, trapping and/or larval collection from water sources using dipping equipment.

Mosquito Control

To effectively break the chain of events that lead to the spread of WNV, the most effective measures have been directed at the reduction of mosquitoes. As outlined in a previous section, the County employs an Integrated Pest Management (IPM) approach that uses physical, biological and chemical control measures.

Response

The WNV Strategic Response Plan is based on conditions established by the California Department of Health Services (CDHS) California Mosquito-borne Virus Response Plan and the Centers for Disease Control (CDC) that exist at three response levels identified as normal season, emergency planning, and epidemics of WNV.

Remediation

In order to achieve the county's goal of reducing or eliminating mosquito breeding locations countywide by attaining compliance with existing regulatory requirements, OVMAP will seek voluntary compliance in all cases. In the event that voluntary compliance cannot be attained, the OVMAP will work with property owners, public agencies and municipalities to ensure appropriate remediation to protect public health.

OVMAP Annual Report: 2012

The Owens River did not overfill its banks and flood the oxbows because of the light Sierra-Nevada snowpack. Because the river oxbows were not flooded, it was a light year for mosquitoes. Three full-time staff and three seasonal staff protected the Owens Valley from mosquito-borne disease carrying and nuisance mosquitoes.

- 904 mosquito larvicide and 62 adult mosquito control applications were performed this year. The National Pollution Discharge Elimination System (NPDES) permit was fulfilled with our program's participation with the Mosquito and Vector Control Association of California NPDES coalition. Careful tracking and testing of all our mosquito control products was conducted.
- Mosquito Control Technician continuing education requirements were completed this year by staff's attendance at three events during this year. Some on-line webinars were recorded to help staff reach the requirements to maintain their certification.
- All-terrain vehicles had preventative maintenance performed and recalibrated to insure proper distribution of mosquito control products. Work trucks were outfitted with locking cross boxes to keep mosquito control products secure.
- Three new tablet computers were purchased and are being used by staff to track mosquito control applications; log amounts of products used; monitor water levels; provide for faster communication between staff; track adult mosquito populations and to survey for new mosquito breeding locations.
- Owens Lake in the southern end of the district was serviced frequently in accordance with the mosquito control contract with Los Angeles Department of Water and Power (LADWP). New equipment was purchased to aid in this effort. A side by side All-terrain vehicle equipped with a gas powered larvicide / adulticide application machine helped to control difficult to access areas and provided relief to residents that was not available in previous seasons.
- Lower Owens River Project (LORP) was monitored for mosquito issues and mosquito control applications were made. This is a joint contract project with costs shared equally between the County of Inyo and the LADWP. This project begins

mid-valley near Aberdeen and continues past Independence and Lone Pine to terminate at Owens Lake. Man-made seasonal water flows help increase habitat for birds and other wildlife but provide a challenge to control mosquitoes.

- Other mosquito control contracting venues, similar to Owens Lake and LORP, are being pursued and will require our certified staff to lean on their expertise and communication skills to complete.

ASSESSMENT

WHEREAS, the Board of Supervisors contracted with the undersigned Engineer of Work to prepare and file a report presenting an estimate of costs of Services, a diagram for a benefit assessment Program, an assessment of the estimated costs of Services, and the special and general benefit conferred thereby upon all assessable parcels within Owen Valley Mosquito Abatement Program – Mosquito and Disease Control Assessment;

NOW, THEREFORE, the undersigned, by virtue of the power vested in me under Article XIIID of the California Constitution, the Government Code and the Health and Safety Code and the order of the Board of Supervisors of Inyo County, hereby make the following determination of an assessment to cover the portion of the estimated cost of the Services, and the costs and expenses incidental thereto to be paid by the Mosquito Control and Disease Prevention Assessment.

The amount to be paid for the services and improvements and the expenses incidental thereto, to be paid by the Owens Valley Mosquito Abatement Program for the fiscal year 2013-14 is generally as follows:

Figure 1
SUMMARY COST ESTIMATE
FISCAL YEAR 2013-14 BUDGET

Mosquito Control Services	$	331,763
Fixed Asset & Capital Equipment		198,986
Incidentals & Reserves		11,000
Total Budget		541,749
Less:		
District Contribution & Current Rev.		(348,283)
Net Amount To Assessments	$	193,466

An Assessment Diagram is hereto attached and made a part hereof showing the exterior boundaries of the Assessment Program. The distinctive number of each parcel or lot of land in the Assessment Program is its Assessor Parcel Number appearing on the Assessment Roll.

I do hereby determine and apportion the net amount of the cost and expenses of the Services, including the costs and expenses incidental thereto, upon the parcels and lots of land within the Mosquito Control and

Disease Prevention Assessment, in accordance with the special benefits to be received by each parcel or lot, from the Services, and more particularly set forth in the Cost Estimate hereto attached and by reference made a part hereof.

The assessment determination is made upon the parcels or lots of land within the Assessment District in proportion to the special benefits to be received by the parcels or lots of land, from the Services.

The assessment is subject to an annual adjustment tied to the Consumer Price Index for the Los Angeles Area as of December of each succeeding year (the "CPI"), with a maximum annual adjustment not to exceed 3%. The assessment rate per single family equivalent benefit unit for the Mosquito Abatement Program Assessment may increase in future years by an amount equal to the annual change in the CPI, not to exceed 3% per year. In the event that the annual change in the CPI exceeds 3%, any percentage change in excess of 3% can be cumulatively reserved and can be added to the annual change in the CPI for years in which the CPI change is less than 3%.

The change in the CPI from December 2011 to December 2012 was 1.93% and the Unused CPI carried forward from the previous fiscal year is 0.00%. Therefore, the maximum authorized assessment rate for fiscal year 2013-14 can be increased by 1.93% which equates to $22.84 per single family equivalent benefit unit. The estimate of cost and budget in this Engineer's Report proposes assessments for fiscal year 2013-14 at the rate of $22.84 for Zone A and $5.71 for Zone B, which is the maximum authorized assessment rate.

The assessment may be continued annually and may be adjusted by up to the maximum annual CPI adjustment without any additional assessment ballot proceeding. In the event that in future years the assessments are continued at a rate less than the maximum authorized assessment rate, the assessment rate in a subsequent year may be increased up to the maximum authorized assessment rate without any additional assessment ballot proceeding.

If property owners, in an assessment ballot proceeding, approve the initial assessment including the CPI adjustment schedule, the assessment may be levied annually and may be adjusted by up to the maximum annual CPI adjustment without any additional assessment ballot proceeding.

Each parcel or lot of land is described in the Assessment Roll by reference to its parcel number as shown on the Assessor's Maps of the County of Inyo for the fiscal year 2013-14. For a more particular description of the property, reference is hereby made to the deeds and maps on file and of record in the office of the County Assessor of the County of Inyo

I hereby place opposite the Assessor Parcel Number for each parcel or lot within the Assessment Roll, the amount of the assessment for the fiscal year 2013-14 for each parcel or lot of land within the Mosquito Control and Disease Prevention Assessment District.

Dated: May_____, 2013

Engineer of Work

By _____

John W. Bliss, License No. C052091

ESTIMATE OF COST

FIGURE 2
OWENS VALLEY MOSQUITO ABATEMENT PROGRAM
Mosquito Control and Disease Prevention Assessment
Estimate of Cost
Fiscal Year 2013-14

OWENS VALLEY MOSQUITO ABATEMENT PROGRAM
Mosquito Control and Disease Prevention Assessment
Estimate of Cost
Fiscal Year 2013-14

		Total Budget
Mosquito Control Services and Related Expenditures:		
Mosquito Control Operations	$	331,763
Materials, Supplies, Equipment and Administration		151,686
Emergency Services/Contingency Funds		-
Facilities, Capital Equipment and Fixed Assets		47,300
Total Services and Operation		**530,749**
Less:		
Contribution from Other Sources		(348,283)
Net Cost of Mosquito Control, Fixed Asset Equipment, Operation		**182,466**
Incidental Costs:		
County Collection, Levy Administration, and Other Incidentals		11,000
Contribution to Reserves and Emergency/Contingency Funds		-
Total Mosquito Control Services and Incidentals	**$**	**193,466**
(Net Amount to be Assessed)		

Budget Allocation to Property:

Zone of Benefit	Total SFE Units	Assessment per SFE	Total Assessment
Zone A	8,295	$22.84	$ 189,458
Zone B	702	$ 5.71	$ 4,008
			$ 193,466

Notes:

1. As determined in the following section, at least 5% of the cost of the Services must be funded from sources other than the assessments to cover any general benefits from the Services. Therefore, out of the total cost of Services of $541,749 the District must contribute at least $ 27,087 from sources other than the assessments. The District will contribute over $ 348,280 , which is well over the estimated general benefits.

2. Incidental Costs includes allowance for uncollectible assessments from assessments on public agency parcels, County collection charges, and assessment administration costs.

3. SFE Units means Single Family Equivalent benefit units. See method of assessment in the following Section for further definition.

4. The assessment rate per SFE is the total amount of assessment per Single Family Equivalent benefit unit.

5. The proceeds from the assessments will be deposited into a special fund for the Assessment. Funds raised by the assessment shall be used only for the purposes stated within this Report. Any balance remaining at the end of the fiscal year, June 30, must be carried over to the next fiscal year. The assessment amounts are rounded down to the even penny for purposes of complying with the collection requirements from the County Auditor. Therefore, the total assessment amount for all parcels subject to the assessments may vary slightly from the net amount to be assessed.

METHOD OF ASSESSMENT

This section of the Report describes the benefits to be derived from the Services provided by the OVMAP for property in the Assessment District, and the methodology used to apportion the total assessment to properties within the Mosquito Abatement Program Assessment District.

The Mosquito Abatement Assessment area consists of all Assessor Parcels as defined by the approved boundaries of the Assessment District.

The method used for apportioning the assessment is based upon the proportional special benefits to be derived by the properties in the Assessment District over and above general benefits conferred on real property in the Assessment District. Special benefit is calculated for each parcel in the Assessment District using the following process:

1. Identification of total benefit to the properties derived from the Services
2. Calculation of the proportion of these benefits that are special vs. general
3. Determination of the relative special benefit within different areas within the Assessment District
4. Determination of the relative special benefit per property type and property characteristic
5. Calculation of the specific assessment for each individual parcel based upon special vs. general benefit; location, property type and property characteristics

DISCUSSION OF BENEFIT

In summary, the assessments can only be levied based on the special benefit to property. This special benefit is received by property over and above any general benefits from the additional Services. With reference to the engineering requirements for property related assessments, under Proposition 218 an engineer must determine and prepare a report evaluating the amount of special and general benefit received by property within the County as a result of the improvements or services provided by a local agency. That special benefit is to be determined in relation to the total cost to that local entity of providing the service and/or improvements.

Proposition 218 as described in Article XIIID of the California Constitution has confirmed that assessments must be based on the special benefit to property:

> *"No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel."*

The below benefit factors, when applied to property in the Assessment District, confer special benefits to property and ultimately improve the safety, utility, functionality and usability of property in the Assessment District. These are special benefits to property in the Assessment District in much the same way that storm drainage, sewer service, water service, lighting, sidewalks and paved streets enhance the safety, utility and functionality of each parcel of property served by these improvements, providing them with more utility of use and making them safer and more usable for occupants.

It should also be noted that Proposition 218 included a requirement that existing assessments in effect upon its effective date were required to be confirmed by either a majority vote of registered voters in the Assessment District, or by weighted majority property owner approval using the new ballot proceeding requirements. However, certain assessments were excluded from these voter approval requirements. Of note is that in California Constitution Article XIIID Section 5(a) this special exemption was granted to assessments for sidewalks, streets, sewers, water, flood control, drainage systems and vector control. The Howard Jarvis Taxpayers Association explained this exemption in their Statement of Drafter's Intent:

"This is the "traditional purposes" exception. These existing assessments do not need property owner approval to continue. However, future assessments for these traditional purposes are covered."[3]

Therefore, the drafters of Proposition 218 acknowledged that vector control assessments were a "traditional" and therefore acknowledged and accepted use.

Since all assessments, existing before or after Proposition 218 must be based on special benefit to property, the drafters of Proposition 218 inherently found that vector control services confer special benefit on property. Moreover, the statement of drafter's intent also acknowledges that any new or increased vector control assessments after the effective date of Proposition 218 would need to comply with the voter approval requirements it established. This is as an acknowledgement that additional assessments for such "traditional" purposes would be established after Proposition 218 was in effect. Therefore, the drafters of Proposition 218 clearly recognized vector assessments as a "traditional" use of assessments, acknowledged that new vector assessments may be formed after Proposition 218 and inherently were satisfied that vector control services confer special benefit to properties.

The Legislature also made a specific determination after Proposition 218 was enacted that vector control services constitute a proper subject for special assessment. Health and Safety Code section 2082, which was signed into law in 2002, provides that a district may levy special assessments consistent with the requirements of Article XIIID of the California

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[3] Howard Jarvis Taxpayers Association, "Statement of Drafter's Intent", January 1997.

Constitution to finance vector control projects and programs. The intent of the Legislature to allow and authorize benefit assessments for vector control services after Proposition 218 is shown in the Assembly and Senate analysis the Mosquito Abatement and Vector Control District Law where it states that the law:

> *Allows special benefit assessments to finance vector control projects and programs, consistent with Proposition 218.* [4]

Therefore the State Legislature unanimously found that vector control services are a valuable and important public service that can be funded by benefit assessments. To be funded by assessments, vector control services must confer special benefit to property.

In the 2009 Dahms case, the court upheld an assessment that was 100% special benefit on the rationale that the services funded by the assessments were directly provided to property in the assessment district. Similar to the assessments in Pomona that were validated by Dahms, the Assessments described in this Engineer's Report fund mosquito, vector and disease control services directly provided to property in the assessment area. Moreover, as noted in this Report, the Services directly reduce mosquito and vector populations on all property in the assessment area. Therefore, Dahms establishes a basis for minimal or zero general benefits from the Assessments. However, in this report, the general benefit is more conservatively estimated and described, and then budgeted so that it is funded by sources other than the assessment.

MOSQUITO AND VECTOR CONTROL IS A SPECIAL BENEFIT TO PROPERTIES

As described below, this Engineer's Report concludes that mosquito and vector control is a special benefit that provides direct advantages to property in the Assessment District. For example, if approved, the assessment would provide reduced levels of mosquitoes and other vectors on property throughout the Assessment District. Moreover, the assessment will reduce the risk of the presence of diseases on property throughout the Assessment District, which is another direct advantage received by property in the Assessment District. Moreover, the assessment will fund Services that improve the use of property and reduce the nuisance and harm created by vectors on property throughout the Assessment District. These are tangible and direct special benefits that will be received by property throughout the specific area covered by the Assessment.

The following section, Benefit Factors, describes how and why vector control services directly and specially benefit properties in the Assessment District. These benefits are particular and distinct from its effect on property in general or the public at large.

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[4] Senate Bill 1588, Mosquito Abatement and Vector Control District Law, Legislative bill analysis

BENEFIT FACTORS

In order to allocate the assessments, the Engineer identified the types of special benefit arising from the aforementioned mosquito and vector control services and that would be provided to property within the Assessment District. These types of special benefit are as follows:

- **Reduced mosquito and vector populations on property and as a result, enhanced desirability, utility, usability and functionality of property in the Assessment District.**

The assessments will provide enhanced services for the control and abatement of nuisance and disease-carrying mosquitoes. These Services will materially reduce the number of vectors on properties throughout the Assessment District. The lower mosquito and vector populations on property in the Assessment District is a direct advantage to property that will serve to increase the desirability and "usability" of property. Clearly, properties are more desirable and usable in areas with lower mosquito populations and with a reduced risk of vector-borne disease. This is a special benefit to residential, commercial, agricultural, industrial and other types of properties because all such properties will directly benefit from reduced mosquito and vector populations and properties with lower vector populations are more usable, functional and desirable.

Excessive mosquitoes and other vectors in the area can materially diminish the utility and usability of property. For example, prior to the commencement of mosquito control and abatement services, properties in many areas in the State were considered to be nearly uninhabitable during the times of year when the mosquito populations were high.[5] The prevention or reduction of such diminished utility and usability of property caused by mosquitoes is a clear and direct advantage and special benefit to property in the Assessment District.

The State Legislature made the following finding on this issue:

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[5] Prior to the commencement of modern mosquito control services, areas in the State of California such as the San Mateo Peninsula, Napa County, Lake County and areas in Marin and Sonoma Counties had such high mosquito populations or other vector populations that they were considered to be nearly unlivable during certain times of the year and were largely used for part-time vacation cottages that were occupied primarily during the months when the natural vector populations were lower.

> *"Excess numbers of mosquitoes and other vectors spread diseases of humans, livestock, and wildlife, reduce enjoyment of outdoor living spaces, both public and private, reduce property values, hinder outdoor work, reduce livestock productivity; and mosquitoes and other vectors can disperse or be transported long distances from their sources and are, therefore, a health risk and a public nuisance; and professional mosquito and vector control based on scientific research has made great advances in reducing mosquito and vector populations and the diseases they transmit."* [6]

Mosquitoes and other vectors emerge from sources throughout the Assessment District, and with an average flight range of two miles, mosquitoes from known sources can reach all properties in the Assessment District. These sources include standing water in rural areas, such as marshes, pools, wetlands, ponds, drainage ditches, drainage systems, tree holes and other removable sources such as old tires and containers. The sources of mosquitoes also include numerous locations throughout the urban areas in the Assessment District. These sources include underground drainage systems, containers, unattended swimming pools, leaks in water pipes, tree holes, flower cups in cemeteries, over-watered landscaping and lawns and many other sources. By controlling mosquitoes at known and new sources, the Services will materially reduce mosquito populations on specially benefiting property in the Assessment District.

A recently increasing source of mosquitoes is unattended swimming pools:

> *"Anthropogenic landscape change historically has facilitated outbreaks of pathogens amplified by peridomestic vectors such as Cx. pipiens complex mosquitoes and associated commensals such as house sparrows. The recent widespread downturn in the housing market and increase in adjustable rate mortgages have combined to force a dramatic increase in home foreclosures and abandoned homes and produced urban landscapes dotted with an expanded number of new mosquito habitats. These new larval habitats may have contributed to the unexpected early season increase in WNV cases in Bakersfield during 2007 and subsequently have enabled invasion of urban areas by the highly competent rural vector Cx. tarsalis. These factors can increase the spectrum of competent avian hosts, the efficiency of enzootic amplification, and the risk for urban epidemics."* [7]

- **Increased safety of property in the Assessment District.**

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[6] Assembly Concurrent Resolution 52, chaptered April 1, 2003

[7] Riesen William K. (2008). Delinquent Mortgages, Neglected Swimming Pools, and West Nile Virus, California. Emerging Infectious Diseases. Vol. 14(11).

The Assessments result in improved year-round proactive Services to control and abate mosquitoes and other vectors that otherwise would occupy properties throughout the Assessment District. Mosquitoes and other vectors are transmitters of diseases, so the reduction of mosquito and vector populations makes property safer for use and enjoyment. In absence of the assessments, these Services would not be provided, so the Services funded by the assessments make properties in the Assessment District safer, which is a distinct special benefit to property in the Assessment District.[8] This is not a general benefit to property in the Assessment District or the public at large because the Services are tangible mosquito control and disease prevention services that will be provided directly to the properties in the Assessment District and the Services are over and above what otherwise would be provided by the District or any other agency.

This finding was confirmed in 2003 by the State Legislature:

> "Mosquitoes and other vectors, including but not limited to ticks, Africanized Honey Bees, rats, fleas, and flies, continue to be a source of human suffering, illness, death and a public nuisance in California and around the world. Adequately funded mosquito and vector control, monitoring and public awareness programs are the best way to prevent outbreaks of West Nile Virus and other diseases borne by mosquitoes and other vectors." [i]

Also, the Legislature, in Health and Safety Code Section 2001, finds that:

> "the protection of Californians and their communities against the discomforts and economic effects of vector borne diseases is an essential public service that is vital to public health, safety, and welfare."

- **Reductions in the risk of new diseases and infections on property in the Assessment District.**

Mosquitoes have proven to be a major contributor to the spread of new diseases such as West Nile Virus, among others. A highly mobile population combined with migratory bird patterns can introduce new mosquito-borne diseases into previously unexposed areas.

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[8] By reducing the risk of disease and increasing the safety of property, the proposed Services will materially increase the usefulness and desirability of certain properties in the Assessment District.

> *"Vector-borne diseases (including a number that are mosquito-borne) are a major public health problem internationally. In the United States, dengue and malaria are frequently brought back from tropical and subtropical countries by travelers or migrant laborers, and autochthonous transmission of malaria and dengue occasionally occurs. In 1998, 90 confirmed cases of dengue and 1,611 cases of malaria were reported in the USA and dengue transmission has occurred in Texas."*[9]

> *"During 2004, 40 states and the District of Columbia (DC) have reported 2,313 cases of human WNV illness to CDC through ArboNET. Of these, 737 (32%) cases were reported in California, 390 (17%) in Arizona, and 276 (12%) in Colorado. A total of 1,339 (59%) of the 2,282 cases for which such data were available occurred in males; the median age of patients was 52 years (range: 1 month--99 years). Date of illness onset ranged from April 23 to November 4; a total of 79 cases were fatal."* [10] *(According to the Centers for Disease Control and Prevention on January 19, 2004, a total of 2,470 human cases and 88 human fatalities from WNV have been confirmed).*

A study of the effect of aerial spraying conducted by the Sacramento-Yolo Mosquito and Vector Control District (SYMVCD) to control a West Nile Virus disease outbreak found that the SYMVCD's mosquito control efforts materially decreased the risk of new diseases in the treated areas:

> *After spraying, infection rates decreased from 8.2 (95% CI 3.1–18.0) to 4.3 (95% CI 0.3–20.3) per 1,000 females in the spray area and increased from 2.0 (95% CI 0.1–9.7) to 8.7 (95% CI 3.3–18.9) per 1,000 females in the untreated area. Furthermore, no additional positive pools were detected in the northern treatment area during the remainder of the year, whereas positive pools were detected in the untreated area until the end of September (D.-E.A Elnaiem, unpub. data). These independent lines of evidence corroborate our conclusion that actions taken by SYMVCD were effective in disrupting the WNV transmission cycle and reducing human illness and potential deaths associated with WNV.* [11]

The Services funded by the assessments will help prevent on a year-round basis the presence of vector-borne diseases on property in the Assessment District. This is another

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[9] Rose, Robert. (2001). Pesticides and Public Health: Integrated Methods of Mosquito Management. Emerging Infectious Diseases. Vol. 7(1); 17-23.

[10] Center for Disease Control. (2004). West Nile Virus Activity --- United States, November 9--16, 2004. Morbidity and Mortality Weekly Report. 53(45); 1071-1072.

[11] Carney, Ryan. (2008), Efficiency of Aerial Spraying of Mosquito Adulticide in Reducing the Incidence of West Nile Virus, California, 2005. Emerging Infectious Diseases, Vol 14(5)

tangible and direct special benefit to property in the Assessment District that would not be received in absence of the assessments.

- **Protection of economic activity on property in the Assessment District.**

As recently demonstrated by the SARS outbreak in China and outbreaks of Avian Flu, outbreaks of pathogens can materially and negatively impact economic activity in the affected area. Such outbreaks and other public health threats can have a drastic negative effect on tourism, business and residential activities in the affected area. The assessments will help to prevent the likelihood of such outbreaks in the District.

Mosquitoes hinder, annoy and harm residents, guests, visitors, farm workers, and employees. A vector-borne disease outbreak and other related public health threats would have a drastic negative effect on agricultural, business and residential activities in the Assessment District.

The economic impact of diseases is well documented. According to a study prepared for the Centers for Disease Control and Prevention, economic losses due to the transmission of West Nile Virus in Louisiana was estimated to cost over $20 million over approximately one year:

> *The estimated cost of the Louisiana epidemic was $20.1 million from June 2002 to February 2003, including a $10.9 million cost of illness ($4.4 million medical and $6.5 million nonmedical costs) and a $9.2 million cost of public health response. These data indicate a substantial short-term cost of the WNV disease epidemic in Louisiana.* [12]

Moreover, a study conducted in 1996-97 of La Crosse Encephalitis (LACE), a human illness caused by a mosquito-transmitted virus, found a lifetime cost per human case at $48,000 to $3,000,000 and found that the disease significantly impacted lifespans of those who were infected. Following is a quote from the study which references the importance and value of active vector control services of the type that would be funded by the assessments:

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[12] Zohrabian A, Meltzer MI, Ratard R, Billah K, Molinari NA, Roy K, et al. West Nile Virus economic impact, Louisiana, 2002. Emerging Infectious Disease, 2004 Oct. Available from http://www.cdc.gov/ncidod/EID/vol10no10/03-0925.htm

> *The socioeconomic burden resulting from LACE is substantial, which highlights the importance of the illness in western North Carolina, as well as the need for active surveillance, reporting, and prevention programs for the infection.* [13]

The Services to be funded by the assessments will help prevent the likelihood of such outbreaks on property in the Assessment District and will reduce the harm to economic activity on property caused by existing mosquito populations. This is another direct advantage received by property in the Assessment District that would not be received in absence of the assessments.

- **Protection of Assessment District's agriculture, tourism, and business industries.**

The agriculture, tourism and business industries will benefit from reduced levels of harmful or nuisance mosquitoes and other vectors. Conversely, any outbreaks of emerging vector-borne pathogens such as West Nile Virus could also materially negatively affect these industries. Diseases transmitted by mosquitoes and other vectors can adversely impact business and recreational functions.

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[13] Utz, J. Todd, Apperson, Charles S., Maccormack, J. Newton, Salyers, Martha, Dietz, E. Jacquelin, Mcpherson, J. Todd, Economic And Social Impacts Of La Crosse Encephalitis In Western North Carolina, Am J Trop Med Hyg 2003 69: 509-518

A study prepared for the United States Department of Agriculture in 2003 found that over 1,400 horses died from West Nile Virus in Colorado and Nebraska and that these fatal disease cases created over $1.2 million in costs and lost revenues. In addition, horse owners in these two states spent over $2.75 million to vaccinate their horses for this disease. The study states that "Clearly, WNV has had a marked impact on the Colorado and Nebraska equine industry." [14]

Pesticides for mosquito control impart economic benefits to agriculture in general. Anecdotal reports from farmers and ranchers indicate that cattle, if left unprotected, can be exsanguinated by mosquitoes, especially in Florida and other southeast coastal areas. Dairy cattle produce less milk when bitten frequently by mosquitoes [15]

The assessments will serve to protect the businesses and industries and the employees and residents that benefit from these businesses and industries. This is a direct advantage and special benefit to property in the Assessment District.

- **Reduced risk of nuisance and liability on property in the Assessment District**

In addition to health related factors, uncontrolled mosquito and vector populations create a nuisance for the occupants of property in the Assessment District. Properties in the Assessment District, therefore, will benefit from the reduced nuisance factor that will be created by the Services. Agricultural and rangeland properties also benefit from the reduced nuisance factor and harm to livestock and employees from lower mosquito and vector populations.

Agricultural, range, golf course, cemetery, open space and other such lands in the Assessment District contain large areas of mosquito and vector habitat and are therefore a significant source of mosquito and vector populations. In addition, residential and business properties in the Assessment District can also contain significant sources.[16] It is conceivable that sources of mosquitoes could be held liable for the transmission of diseases or other harm. For example, in August 2004, the City of Los Angeles approved

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[14] S. Geiser, A. Seitzinger, P. Salazar, J. Traub-Dargatz, P. Morley, M. Salman, D. Wilmot, D. Steffen, W. Cunningham, Economic Impact of West Nile Virus on the Colorado and Nebraska Equine Industries: 2002, April 2003, Available from http://www.aphis.usda.gov/vs/ceah/cnahs/nahms/equine/wnv2002_CO_NB.pdf

[15] Jennings, Allen. (2001). USDA Letter to EPA on Fenthion IRED. United States Department of Agriculture, Office of Pest Management Policy. March 8, 2001.

[16] Sources of mosquitoes on residential, business, agricultural, range and other types of properties include removable sources such as containers that hold standing water.

new fines of up to $1,000 per day for property owners who don't remove standing water sources of mosquitoes on their property.

The Services will serve to protect the businesses and industries in the Assessment District. This is a direct advantage and a special benefit to property in the Assessment District.

- **Improved marketability of property.**

As described previously, the Services will specially benefit properties in the Assessment District by making them more useable, livable and functional. The Services also make properties in the Assessment District more desirable, and more desirable properties also benefit from improved marketability. This is another tangible and direct special benefit to property which will not be enjoyed in absence of the Services.[17]

BENEFIT FINDING

In summary, the special benefits described in this Report and the expansion of Services in the Assessment District directly benefit and protect the real properties in the Assessment District in excess of the assessments for these properties. Therefore, the assessment engineer finds that the cumulative special benefits to property from the Services are reasonably equal to or greater than the proposed annual assessment amount per benefit unit.

GENERAL VS. SPECIAL BENEFIT

Article XIIIC of the California Constitution requires any local agency proposing to increase or impose a benefit assessment to "separate the general benefits from the special benefits conferred on a parcel." The rationale for separating special and general benefits is to ensure that property owners subject to the benefit assessment are not paying for general benefits. The assessment can fund the special benefits to property in the Assessment District but cannot fund any general benefits. Accordingly, a separate estimate of the special and general benefit is given in this section.

In other words:

Total Benefit	=	**Total General Benefit**	+	**Total Special Benefit**

[17] If one were to compare two hypothetical properties with similar characteristics, the property with lower mosquito infestation and reduced risk of vector-borne disease will clearly be more desirable, marketable and usable.

There is no widely-accepted or statutory formula for general benefit from vector control services. General benefits are benefits from improvements or services that are not special in nature, are not "particular and distinct" and are not "over and above" benefits received by other properties. General benefits are conferred to properties located "in the district,[18]" but outside the narrowly-drawn Assessment District and to "the public at large." SVTA vs. SCCOSA provides some clarification by indicating that general benefits provide "an indirect, derivative advantage" and are not necessarily proximate to the improvements and services funded by the assessments.

A formula to estimate the general benefit is listed below:

General Benefit =
Benefit to Real Property Outside the Assessment District
+ Benefit to Real Property Inside the Assessment District that is Indirect and Derivative
+ Benefit to the Public at Large

Special benefit, on the other hand, is defined in the state constitution as "a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large." The SVTA v. SCCOSA decision indicates that a special benefit is conferred to a property if it "receives a direct advantage from the improvement (e.g., proximity to a park)." In this assessment, the overwhelming proportion of the benefits conferred to property is special, since the advantages from the mosquito, vector

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[18] SVTA vs. SCCOSA explains as follows:

> OSA observes that Proposition 218's definition of "special benefit" presents a paradox when considered with its definition of "district." Section 2, subdivision (i) defines a "special benefit" as "a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large." (Art. XIII D, § 2, subd. (i), italics added.) Section 2, subdivision (d) defines "district" as "an area determined by an agency to contains all parcels which will receive a special benefit from a proposed public improvement or property-related service." (Art. XIII D, § 2, subd. (d), italics added.) In a well-drawn district — limited to only parcels receiving special benefits from the improvement — every parcel within that district receives a shared special benefit. Under section 2, subdivision (i), these benefits can be construed as being general benefits since they are not "particular and distinct" and are not "over and above" the benefits received by other properties "located in the district."
>
> We do not believe that the voters intended to invalidate an assessment district that is narrowly drawn to include only properties directly benefiting from an improvement. Indeed, the ballot materials reflect otherwise. Thus, if an assessment district is narrowly drawn, the fact that a benefit is conferred throughout the district does not make it general rather than special.

and disease control/protection funded by the Assessments are directly received by the properties in the Assessment District and are only minimally received by property outside the Assessment District or the public at large.

Proposition 218 twice uses the phrase "over and above" general benefits in describing special benefit. (Art. XIIID, sections 2(i) & 4(f).) There currently is minimal mosquito and vector related services being provided to the Assessment District area that are not funded by benefit assessments. These minimal services form the baseline level of services in the Assessment District. Arguably, all of the Services to be funded by the assessment therefore would be a special benefit because the additional Services would particularly and distinctly benefit and protect the Assessment District over and above the previous baseline benefits and service.

Nevertheless, arguably some of the Services would benefit the public at large and properties outside the Assessment District. In this report, the general benefit is conservatively estimated and described, and then budgeted so that it is funded by sources other than the assessment.

CALCULATING GENERAL BENEFIT

Without this assessment the Program would lack the funds to provide the additional and improved Services to property in the Assessment District. Consistent with footnote 8 of SVTA v. SCCOSA, and for the reasons described above, the Program has determined that all parcels in the Assessment District receive a shared direct advantage and special benefit from the Services. The Services directly and particularly serve and benefit each parcel, and are not a mere indirect, derivative advantage. As explained above, Proposition 218 relies on the concept of "over and above" in distinguishing special benefits from general benefits. As applied to an assessment this concept means that all vector control services, which provide direct advantage to property in the Assessment District, are over and above the baseline and therefore are special.

Nevertheless, the Services may provide a degree of general benefit, in addition to the predominant special benefit. This section provides a conservative measure of the general benefits from the Assessments.

BENEFIT TO PROPERTY OUTSIDE THE PROGRAM

Properties within the Assessment District receive almost all of the special benefits from the Services because the Services funded by the Assessments will be provided directly to protect property within the Assessment District from mosquitoes and vector-borne diseases. However, properties adjacent to, but just outside of, the boundaries may receive some benefit from the Services in the form of reduced mosquito populations on property outside the Assessment District. Since this benefit, is conferred to properties outside the district boundaries, it contributes to the overall general benefit calculation and will not be funded by the assessment.

A measure of this general benefit is the proportion of Services that would affect properties outside of the Assessment District. Each year, the Program will provide some of its Services in areas near the boundaries of the Assessment District. By abating mosquito populations near the borders of the Assessment District, the Services could provide benefits in the form of reduced mosquito populations and reduced risk of disease transmission to properties outside the Assessment District. If mosquitoes were not controlled inside the Assessment District, more of them would fly from the Assessment District. Therefore control of mosquitoes within the Assessment District provides some benefit to properties outside the Assessment District but within the normal travel range of vectors in the form of reduced mosquito populations and reduced vector-borne disease transmission. Since mosquitoes are the predominant vector that would be controlled and mosquitoes most easily travel from their source location to properties in the area, typical mosquito destination ranges will be used to measure the extent that the Services will create reduced vector populations on property outside the Assessment District. This is a measure of the general benefits to property outside the Assessment District because this is a benefit from the Services that is not specially conferred upon property in the Assessment District.

The mosquito potential outside the Assessment District is based on studies of mosquito dispersion concentrations. Mosquitoes can travel up to two miles, on average, so this destination range is used. Based on studies of mosquito destinations, relative to parcels in the Assessment District average concentration of mosquitoes from the Assessment District on properties within two miles of the Assessment District is calculated to be 6%.[19] This relative vector population reduction factor within the destination range is combined with the number of parcels outside the Assessment District and within the destination range to measure this general benefit and is calculated as follows:

CRITERIA:

Mosquitoes may fly up to 2 miles from their breeding source.
519 parcels within 2 miles of, but outside of the Program, may receive some mosquito and disease protection benefit
6% portion of relative benefit that is received
10,994 Parcels in the District

Calculations
Total Benefit = 519 parcels * 6% = 31 parcels equivalents
Percentage of overall parcel equivalents = 31 / 10,994 = **0.28 %**

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[19] Tietze, Noor S., Stephenson, Mike F., Sidhom, Nader T. and Binding, Paul L., "Mark-Recapture of *Culex Erythrothorax* in Santa Cruz County, California", Journal of the American Mosquito Control Association, 19(2):134-138, 2003.

Therefore, for the overall benefits provided by the Services to the Assessment District, it is determined that 0.28% of the benefits would be received by the parcels within two miles of the Assessment District boundaries. Recognizing that this calculation is an approximation, this benefit will be rounded up to 1.0%.

BENEFIT TO PROPERTY *INSIDE* THE DISTRICT THAT IS *INDIRECT AND DERIVATIVE*

The "indirect and derivative" benefit to property within the Assessment District is particularly difficult to calculate. As explained above, all benefit within the Assessment District is special because the mosquito and disease control services in the Assessment District would provide direct service and protection that is clearly "over and above" and "particular and distinct" when compared with the level of such protection under current conditions. Further the properties are within the Assessment District boundaries and this Engineer's Report demonstrates the direct benefits received by individual properties from mosquito and disease control services.

In determining the Assessment District area, the Program has been careful to limit it to an area of parcels that will directly receive the Services. All parcels will directly benefit from the surveillance, monitoring and treatment that will be provided on an equivalent basis throughout the Assessment District in order to maintain the same improved level of protection against mosquitoes and other vectors and reduced mosquito and vector populations throughout the area. The surveillance and monitoring sites would be spread on a balanced basis throughout the area. Mosquito and vector control and treatment would be provided as needed throughout the area based on the surveillance and monitoring results. The shared special benefit - reduced mosquito levels and reduced presence of vector-borne diseases - would be received on an equivalent basis by all parcels in the Assessment District. Furthermore, all parcels in the Assessment District would directly benefit from the ability to request service from the Program and to have a Program field technician promptly respond directly to the parcel and address the owner's or resident's service need. The SVTA vs. SCCOSA decision indicates that the fact that a benefit is conferred throughout the Assessment District area does not make the benefit general rather than special, so long as the Assessment district is narrowly drawn and limited to the parcels directly receiving shared special benefits from the service. The Program therefore concludes that, other than the small general benefit to properties outside the Assessment District (discussed above) and to the public at large (discussed below), all of the benefits of the Services to the parcels within the Assessment District are special benefits and it is not possible or appropriate to separate any general benefits from the benefits conferred on parcels in the Assessment District.

Benefit To The Public At Large

With the type and scope of Services to be provided to the Assessment District, it is very difficult to calculate and quantify the scope of the general benefit conferred on the public at large. Because the Services directly serve and benefit all of the property in the Assessment District, any general benefit conferred on the public at large would be small. Nevertheless, there would be some indirect general benefit to the public at large.

The public at large uses the public highways, streets and sidewalks, and when traveling in and through the Assessment District they will benefit from the Services. A fair and appropriate measure of the general benefit to the public at large therefore is the amount of highway, street and sidewalk area within the Assessment District relative to the overall land area. An analysis of maps of the Assessment District shows that approximately 1.3% of the land area in the Assessment District is covered by highways, streets and sidewalks. This 1.3% therefore is a fair and appropriate measure of the general benefit to the public at large within the Assessment District

Summary of General Benefits

Using a sum of the measures of general benefit for the public at large and land outside the Assessment District, we find that approximately 2.3% of the benefits conferred by the Mosquito and Disease Control Assessment may be general in nature and should be funded by sources other than the Assessment.

General Benefit =

1.0 % (Outside the district)
+ 0.0 % (Inside the district - indirect and derivative)
+ 1.3 % (Public at Large)

=2.3 % (Total General Benefit)

Although this analysis supports the findings that 2.3% of the assessment may provide general benefit only, this number is increased by the Assessment Engineer to 5% to conservatively ensure that no assessment revenue is used to support general benefit. This additional amount allocated to general benefit also covers general benefit to parcels in the Assessment District if it is later determined that there is some general benefit conferred on those parcels.

The Mosquito Abatement Program Assessment total budget for mosquito and vector abatement, disease control, capital improvement and incidental costs is $651,788. Of this total budget amount, the OVMAP will contribute approximately 17% ($109,836) of the total budget from sources other than the Mosquito Control and Disease Prevention

Assessment. This contribution offsets any general benefits from the Mosquito Control and Disease Prevention Assessment Services.

METHOD OF ASSESSMENT

As previously discussed, the Assessments fund enhanced, comprehensive, year-round mosquito control, and disease surveillance and control Services that will reduce mosquito and vector populations on property and will clearly confer special benefits to properties in the Assessment District. These benefits can also partially be measured by the occupants on property in the Assessment District because such parcel population density is a measure of the relative benefit a parcel receives from the Services. Therefore, the apportionment of benefit is partially based the population density of parcels. It should be noted that many other types of "traditional" assessments also use parcel population densities to apportion the assessments. For example, the assessments for sewer systems, roads and water systems are typically allocated based on the population density of the parcels assessed.

In the process of determining the appropriate method of assessment, the Engineer considered various alternatives. For example, a fixed assessment amount per parcel for all residential improved property was considered but was determined to be inappropriate because agricultural lands, commercial property and other property also receive benefits from the assessments. Likewise, an assessment exclusively for agricultural land was considered but deemed inappropriate because other types of property, such as residential and commercial, also receive the special benefit factors described previously. An assessment primarily for the properties with sources of mosquitoes was considered but deemed inappropriate because these properties often have limited economic value and because mosquitoes typically fly from their source breeding locations to places occupied by people and animals. Furthermore, even urban residential properties can and do generate their own, often significant, populations of mosquito and vector organisms.

A fixed or flat assessment was deemed to be inappropriate because larger residential, commercial and industrial properties receive a higher degree of benefit than other similarly used properties that are significantly smaller. (For two properties used for commercial purposes, there is clearly a higher benefit provided to a property that covers several acres in comparison to a smaller commercial property that is on a 0.25 acre site. The larger property generally has a larger coverage area and higher usage by employees, customers, tourists and guests that would benefit from reduced mosquito and vector populations, as well as the reduced threat from diseases carried by mosquitoes and other vectors. This benefit ultimately flows to the property.) Larger commercial, industrial and apartment parcels, therefore, receive an increased benefit from the assessments.

Therefore, the Engineer determined that the appropriate method of assessment apportionment should be based on the type and use of property, its relative population and usage potential, its location and its destination potential for mosquitoes. This method is further described below.

ZONES OF BENEFIT

The OVMAP's mosquito and disease control programs, projects and services that will be funded by the Mosquito and Disease Control Assessment are concentrated on the areas encompassing the Owens Valley Floor. The remaining areas within the Program boundaries receive relatively less mosquito abatement services, and, therefore relatively lesser benefits from the Mosquito Abatement Program. The areas of lesser benefit are defined to include all parcels within Program boundaries that are within the Inyo National Forest, west of the Owens Valley Floor and those parcels generally along the eastern side of Owens Lake. These areas are hereinafter referred to as Zone of Benefit B or Zone B and are depicted on the Assessment Diagram included with this Report. All other parcels within the Program boundaries are within Zone A, which is generally considered to be the areas of the Owens Valley Floor.

Parcels in Zone B receive relatively less mosquito abatement services on a per parcel and land area basis than parcels in the greater Owens Valley Floor area. Approximately 9% of the total parcels within the Program are in Zone B and this area receives approximately 5% of the services. (5% of services / 9% of parcels = 56% of the relative services per parcel.) Therefore, on a per parcel basis, parcels in Zone B receive approximately one half the relative services as those in Zone A. Alternatively, Zone B encompasses approximately 50% of the total area within Program boundaries. By this measure, Zone B receives approximately 10% of the relative services per acre in comparison to areas in Zone A. (5% of services / 50% of acreage = 10% of relative services per acre.) Using these measures, the relative level of service, which is a measure of relative benefit, is generally 50% on a parcel basis and 10% on an acreage basis. An average of these measures results in a 25% relative level of benefit in relation to Zone A.[ii] Therefore, it is deemed that the benefits to property in Zone B are 25% of the benefits to similar property in Zone A.

The SVTA vs. SCCOSA decision indicates:

In a well-drawn district — limited to only parcels receiving special benefits from the improvement — every parcel within that district receives a shared special benefit. Under section 2, subdivision (i), these benefits can be construed as being general benefits since they are not "particular and distinct" and are not "over and above" the benefits received by other properties "located in the district."

We do not believe that the voters intended to invalidate an assessment district that is narrowly drawn to include only properties directly benefitting from an improvement. Indeed, the ballot materials reflect otherwise. Thus, if an assessment district is narrowly drawn, the fact that a benefit is conferred throughout the district does not make it general rather than special. In that circumstance, the characterization of a benefit may depend on whether the parcel receives a direct advantage from the improvement (e.g., proximity to park) or

receives an indirect, derivative advantage resulting from the overall public benefits of the improvement (e.g., general enhancement of the district's property values).

In the assessment, the advantage that each parcel receives from the Services is direct, and the boundaries for each Zone of Benefit are narrowly drawn so each Zone includes parcels that receive the similar levels of benefit from the Services. Therefore, the even spread of assessment for similar properties in each of the narrowly drawn Zones of Benefit within the District is indeed consistent with the OSA decision.

ASSESSMENT APPORTIONMENT

The special benefits derived from the Assessment are conferred on property and are not based on a specific property owner's occupancy of property or the property owner's demographic status, such as age or number of dependents. However, it is ultimately people who do or could use the property and who enjoy the special benefits described above. Therefore, the opportunity to use and enjoy the region within the Assessment District without the excessive nuisance, diminished "livability" or the potential health hazards brought by mosquitoes, vectors, and the diseases they carry is a special benefit to properties in the County. This benefit is related to the number of people who potentially live on, work at, visit or otherwise use the property, because people ultimately determine the value of the benefits by choosing to live, work and/or recreate in the area, and by choosing to purchase property in the area.[iii]

In order to apportion the cost of the Services to property, each property in the Assessment District is assigned a relative special benefit factor. This process involves determining the relative benefit received by each property in relation to a single family home, or, in other words, on the basis of Single Family Equivalents (SFE). This SFE methodology is commonly used to distribute assessments in proportion to estimated special benefit and is generally recognized as providing the basis for a fair and appropriate distribution of assessments. For the purposes of this Engineer's Report, all properties are designated a SFE value, which is each property's relative benefit in relation to a single family home on an average sized residential parcel. The "benchmark" property is the single family detached dwelling which is one Single Family Equivalent or one SFE.

The calculation of the special benefit apportionment and relative benefit to properties in the Assessment District from the Services is summarized in the following equation:

Special Benefit (per property) = $\Sigma \int$ (Special Benefits) *
$\Sigma \int$ (Property Specific attributes such as use, property type, size, as well as vector-specific attributes such as destination potential and population potential)

RESIDENTIAL PROPERTIES

Certain residential properties in the Assessment District that contain a single residential dwelling unit and are on a lot of less than or equal to one acre are assigned one Single Family Equivalent or 1.0 SFE. Traditional houses, zero-lot line houses, and townhomes are included in this category of single family residential property.

Single family residential properties in excess of one acre receive additional benefit relative to a single family home up to one acre, because the larger parcels provide more area for mosquito sources and OVMAP vector services. Therefore, such larger parcels receive additional benefits relative to a single family home on less than one acre and are assigned 1.0 SFE for the residential unit and an additional rate equal to the agricultural rate described below of 0.002 SFE per one-quarter acre of land area in excess of one acre. Mobile home parcels on a separate parcel and in excess of one acre also receive this additional acreage rate.

Other types of properties with residential units, such as agricultural properties, are assigned the residential SFE rates for the dwelling units on the property and are assigned additional SFE benefit units for the agricultural-use land area on the property.

Properties with more than one residential unit are designated as multi-family residential properties. These properties, along with condominiums, benefit from the services and improvements in proportion to the number of dwelling units that occupy each property, the average number of people who reside in each property, and the average size of each property in relation to a single family home in Inyo County. This Report analyzed Inyo County population density factors from the 2000 US Census as well as average dwelling unit size for each property type. After determining the Population Density Factor and Square Footage Factor for each property type, an SFE rate is generated for each residential property structure, as indicated in Figure 3 below.

The SFE factor of 0.48 per dwelling unit for multifamily residential properties applies to such properties with two to four units (duplex, triplex, fourplex). The SFE factor for multifamily properties with five to twenty units is 0.36 per unit. Properties in excess of 20 units typically offer on-site management, monitoring and other control services that tend to offset some of the benefits provided by the Program. Therefore the benefit for properties in excess of 5 units is determined to be 0.36 SFE per unit for the first 20 units and 0.10 SFE per each additional unit in excess of 20 dwelling units.

FIGURE 3
INYO COUNTY RESIDENTIAL ASSESSMENT FACTORS

	Total Population	Occupied Households	Persons per Household	Pop. Density Equivalent	SqFt Factor	Proposed Rate
Single Family Residential	11,326	4,670	2.43	1.00	1.00	**1.00**
Condominium	363	176	2.06	0.85	0.70	**0.60**
Duplex, Triplex, Fourplex	786	330	2.38	0.98	0.49	**0.48**
Multi-Family Residential, 5+ Units	752	400	1.88	0.78	0.47	**0.36**
Mobile Home on Separate Lot	4,516	2,079	2.17	0.90	0.45	**0.40**

Source: 2000 Census, Inyo County and property dwelling size information from the Inyo County Assessor data and other sources.

COMMERCIAL/INDUSTRIAL PROPERTIES

Commercial and industrial properties receive similar benefits from the Services as single family homes because employees and customers of such properties benefit similarly to residents from reduced mosquito and disease risk. However, commercial and industrial properties are generally open and operated for more limited times, relative to residential properties. Therefore, the relative hours of operation can be used as a relative measure of benefits, since residents and employees also provide a measure of the relative benefit to property. Since commercial and industrial properties are typically open and occupied by employees approximately one-half the time of residential properties, it is reasonable to assume that commercial land uses receive one-half of the special benefit on a land area basis relative to single family residential property.

The average size of a single family home with 1.0 SFE factor in Inyo County is 0.25 acres. Therefore, a commercial property with 0.25 acres receives one-half the relative benefit, or a 0.50 SFE factor.

The SFE values for various commercial and industrial land uses are further defined by using average employee densities because the special benefit factors described previously are also related to the average number of people who work at commercial/industrial properties.

To determine employee density factors, this Report utilizes the findings from the San Diego County Association of Governments Traffic Generators Study (the "SANDAG Study") because these findings were approved by the State Legislature which determined the SANDAG Study to be a good representation of the average number of employees per acre of land area for commercial and industrial properties. As determined by the SANDAG Study, the average number of employees per acre for commercial and industrial property is 24. As presented in Figure 4, the SFE factors for other types of businesses are

determined relative to their typical employee density in relation to the average of 24 employees per acre of commercial property.

Commercial and industrial properties in excess of 5 acres generally involve uses that are more land intensive relative to building areas and number of employees (lower coverage ratios). As a result, the benefit factors for commercial and industrial property land area in excess of 5 acres is determined to be the SFE rate per quarter acre for the first 5 acres and the relevant SFE rate per each additional acre over 5 acres. Institutional properties that are used for residential, commercial or industrial purposes are also assessed at the appropriate residential, commercial or industrial rate. Figure 4 lists the benefit assessment factors for business properties.

AGRICULTURAL, RANGELAND, GOLF AND CEMETERY PROPERTIES

Utilizing research and agricultural employment reports from UC Davis and the California Employment Development Department and other sources, this Report calculated an average usage density of 0.05 people per acre for agriculture property, 3.0 for golf courses, 0.01 for rangelands and timber and 1.2 for cemeteries. Since these properties typically are a source of mosquitoes and/or are typically closest to other sources of mosquitoes and other vectors, it is reasonable to determine that the benefit to these properties is twice the usage density ratio of commercial properties. The SFE factors per 0.25 acres of land area are shown in the following Figure 4.

FIGURE 4

Commercial/Industrial Benefit Assessment Factors

Type of Commercial/Industrial Land Use	Average Employees Per Acre [1]	SFE Units per Fraction Acre [2]	SFE Units per Acre After 5
Commercial	24	0.500	0.500
Office	68	1.420	1.420
Shopping Center	24	0.500	0.500
Industrial	24	0.500	0.500
Self Storage or Parking Lot	1	0.021	
Golf Course	3.00	0.13	
Cemetery	1.20	0.05	
Agriculture	0.05	0.002	
Rangelands/Timber	0.010	0.00042	

1.Source: San Diego Association of Governments Traffic Generators Study, University of California, Davis and other sources.

2. The SFE factors for commercial and industrial parcels indicated above are applied to each quarter acre of land area or portion thereof. (Therefore, the minimum assessment for any assessable parcel in these categories is the SFE Units listed herein.)

VACANT PROPERTIES

The benefit to vacant properties is determined to be proportional to the corresponding benefits for similar type developed properties. However, vacant properties are assessed at a lower rate due to the lack of active benefits, as measured by use by residents, employees, customers and guests. A measure of the benefits accruing to the underlying land is the average value of land in relation to improvements for developed property. An analysis of the assessed valuation data from the County of Inyo found that 50% of the assessed value of improved properties is classified as land value. Since vacant properties have very low to zero population/use densities until they are developed, a 50% benefit discount is applied to the valuation factor of 0.50 to account for the current low use density and potential for harm or nuisance to the property owner or his residents, employees, customers and guests. The combination of these measures results in a 0.25 factor. It is reasonable to assume, therefore, that approximately 25% of the benefits are related to the underlying land and 75% are related to the day-to-day use of the property. Using this ratio, the SFE factor for vacant parcels is 0.25 per parcel.

OTHER PROPERTIES

Article XIIID stipulates that publicly owned properties must be assessed unless those properties are reasonably determined to receive no special benefit from the assessment.

All properties that are specially benefited are assessed. Publicly owned property that is used for purposes similar to private residential, commercial, industrial or institutional uses is benefited and assessed at the same rate as such privately owned property. Other public properties such as watershed parcels, parks, open space parcels are determined to, on average, receive similar benefits as a single family home. Therefore such parcels are assessed an SFE benefit factor of 1. Miscellaneous, small and other parcels such as roads, right-of-way parcels, and common areas typically do not generate significant numbers of employees, residents, customers or guests and have limited economic value. These miscellaneous parcels receive minimal benefit from the Services and are assessed an SFE benefit factor of 0.

Church parcels, institutional properties, and property used for educational purposes typically generate employees on a less consistent basis than other non-residential parcels. Therefore, these parcels are determined to, on average, receive similar benefits as a single family home. Therefore such parcels are assessed an SFE benefit factor of 1.

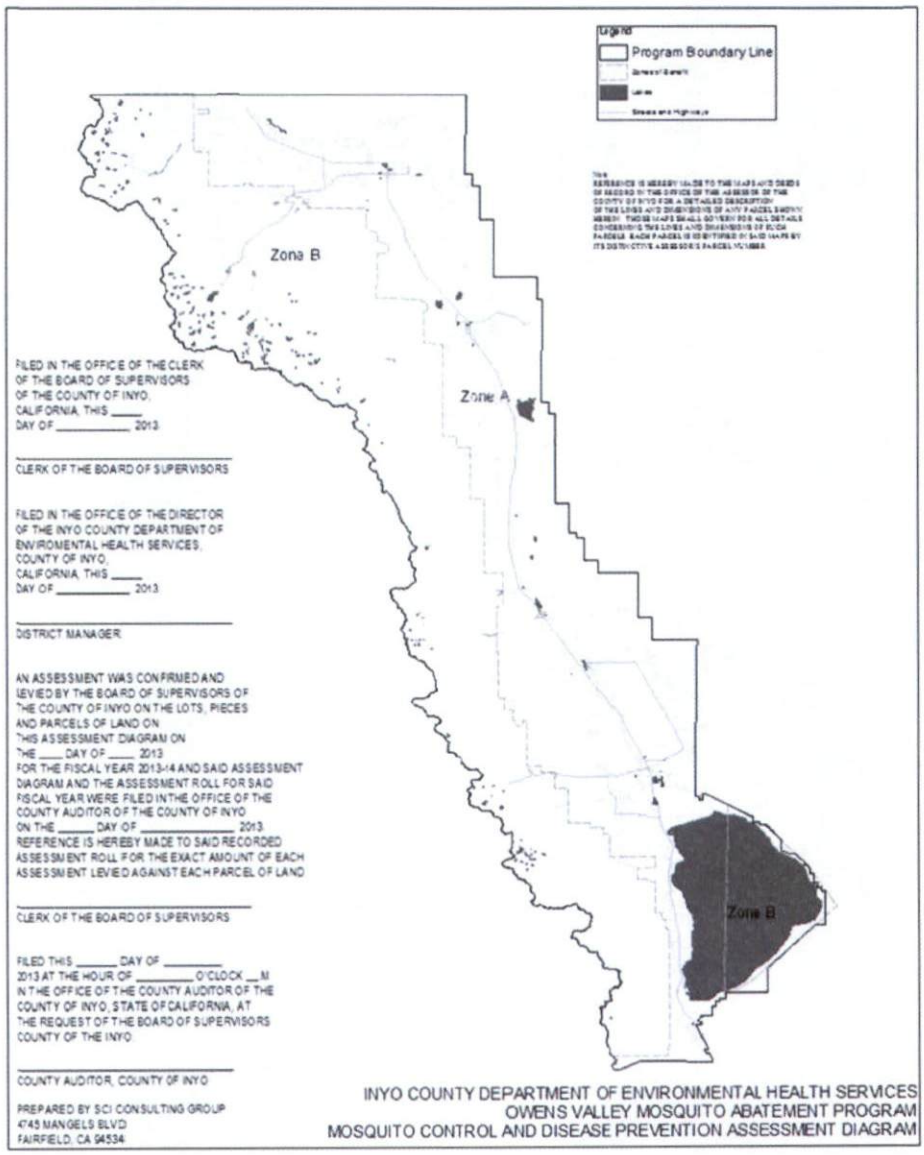
APPEALS AND INTERPRETATION

Any property owner, who feels that the assessment levied on the subject property is in error as a result of incorrect information being used to apply the foregoing method of assessment, may file a written appeal with the Commissioner of the Inyo County Agriculture Department or his or her designee. Any such appeal is limited to correction of an assessment during the then current Fiscal Year or, if before July 1, the upcoming fiscal year. Upon the filing of any such appeal, the Commissioner or his or her designee will

promptly review the appeal and any information provided by the property owner. If the Commissioner or his or her designee finds that the assessment should be modified, the appropriate changes shall be made to the assessment roll. If any such changes are approved after the assessment roll has been filed with the County of Inyo for collection, the Commissioner or his or her designee is authorized to refund to the property owner the amount of any approved reduction. Any dispute over the decision of the Commissioner or his or her designee shall be referred to the Board of Supervisors of the County of Inyo and the decision of the Board of Supervisors of the County of Inyo shall be final.

ASSESSMENT DIAGRAM

The boundaries of the Owens Valley Mosquito Abatement Program area are displayed on the following Assessment Diagram.



APPENDICES

ASSESSMENT ROLL, FY 2013-14

Reference is hereby made to the Assessment Roll in and for the assessment proceedings on file in the office of the Program Manager of the Program, as the Assessment Roll is too voluminous to be bound with this Engineer's Report.

END NOTES

i . Assembly Concurrent Resolution 52, chaptered April 1, 2003

ii . In addition to benefits based on the level of service, parcels in Zone B receive benefits from a mosquito reduced environment in the town/shopping areas of the Program, which are mainly located in Zone A.

iii . It should be noted that the benefits conferred upon property are related to the average number of people who could potentially live on, work at or otherwise could use a property, not how the property is currently used by the present owner.

OWENS VALLEY MOSQUITO ABATEMENT PROGRAM

COUNTY OF INYO

OWENS VALLEY MOSQUITO ABATEMENT PROGRAM ASSESSMENT

ENGINEER'S REPORT

FISCAL YEAR 2013-14

MAY 2013

PURSUANT TO THE GOVERNMENT CODE, HEALTH AND SAFETY CODE AND ARTICLE XIIID OF THE CALIFORNIA CONSTITUTION

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INTRODUCTION

The Owens Valley Mosquito Abatement Program ("OVMAP" or "Program") was formed in 1985 within the County of Inyo ("County") and currently provides mosquito and disease control services throughout the greater Owens Valley, including the cities and communities of Bishop, Independence and Lone Pine as well as unincorporated areas within the Owens Valley. The OVMAP has been providing its public health protection services in Inyo County for over 20 years. The OVMAP is managed by the Agricultural Commissioner and Program staff and is governed by the Inyo County Board of Supervisors.

The OVMAP's core services are summarized as follows:

1. Early detection of public health threats through comprehensive vector surveillance.
2. Protection of public health by reducing mosquitoes that can transmit diseases to humans.
3. Appropriate, timely response to customer requests to prevent/control mosquito-borne diseases.

ASSESSMENT FORMATION

In June of 1998, an assessment ballot proceeding for improved mosquito, vector and disease control services was conducted pursuant to the requirements of Article XIIID of the California Constitution ("The Taxpayer's Right to Vote on Taxes Act") and the Health and Safety Code. During this ballot proceeding, property owners within the boundaries of the Owens Valley Mosquito Abatement Program were provided with a notice and ballot for the proposed special assessment. A 45-day period was provided for balloting and a public hearing was conducted in July of 1998. At the public hearing, all ballots returned within the 45-day balloting period were tabulated.

It was determined at the public hearing that 70.9% of the weighted ballots returned were in support of the Assessment. Since the assessment ballots submitted in opposition to the proposed assessments did not exceed the assessment ballots submitted in favor of the assessments (with each ballot weighted by the proportional financial obligation of the property for which ballot was submitted), the Program gained the authority to approve the levy of the assessments for fiscal year 1998-99 and to continue the assessment in future years.

The following is an outline of the primary Services that are funded by the Owens Valley Mosquito Abatement Program Assessment:

- Mosquito control
- Surveillance for vector-borne diseases
- Mosquito inspections
- Response to service requests
- Mosquitofish for backyard fish ponds and other appropriate habitats
- Presentations to schools and civic groups
- Identification of mosquitoes and testing for diseases

- Mosquito Surveillance and Disease Testing
- Facilities and Equipment Utilized by the OVMAP

As used within this Report and the benefit assessment, the following terms are defined:

> *"Vector" means any animal capable of transmitting the causative agent of human disease or capable of producing human discomfort or injury, including, but not limited to, mosquitoes, flies, mites, ticks, other arthropods, and small mammals and other vertebrates (Health and Safety Code Section 2002(k)).*
>
> *"Vector Control" shall mean any system of public improvements or services that is intended to provide for the surveillance, prevention, abatement, and control of vectors as defined in subdivision (k) of Section 2002 of the Health and Safety Code and a pest as defined in Section 5006 of the Food and Agricultural Code (Government Code Section 53750(m)).*

The OVMAP is controlled by Mosquito Abatement and Vector Control Program Law of the State of California. Following are excerpts from the Mosquito Abatement and Vector Control Program Law of 2002, codified in the Health and Safety Code, Section 2000, et seq. which serve to summarize the State Legislature's findings and intent with regard to mosquito abatement and other vector control services:

2001. (a) The Legislature finds and declares all of the following:

(1) California's climate and topography support a wide diversity of biological organisms.

(2) Most of these organisms are beneficial, but some are vectors of human disease pathogens or directly cause other human diseases such as hypersensitivity, envenomization, and secondary infections.

(3) Some of these diseases, such as mosquito borne viral encephalitis, can be fatal, especially in children and older individuals.

(4) California's connections to the wider national and international economies increase the transport of vectors and pathogens.

(5) Invasions of the United States by vectors such as the Asian tiger mosquito and by pathogens such as the West Nile virus underscore the vulnerability of humans to uncontrolled vectors and pathogens.

(b) The Legislature further finds and declares:

(1) Individual protection against the vectorborne diseases is only partially effective.

(2) Adequate protection of human health against vectorborne diseases is best achieved by organized public programs.

(3) The protection of Californians and their communities against the discomforts and economic effects of vectorborne diseases is an essential public service that is vital to public health, safety, and welfare.

(4) Since 1915, mosquito abatement and vector control Programs have protected Californians and their communities against the threats of vectorborne diseases.

(c) In enacting this chapter, it is the intent of the Legislature to create and continue a broad statutory authority for a class of special Programs with the power to conduct effective programs for the surveillance, prevention, abatement, and control of mosquitoes and other vectors.

(d) It is also the intent of the Legislature that mosquito abatement and vector control Programs cooperate with other public agencies to protect the public health, safety, and welfare. Further, the Legislature encourages local communities and local officials to adapt the powers and procedures provided by this chapter to meet the diversity of their own local circumstances and responsibilities.

Further the Health and Safety Code, Section 2082 specifically authorizes the creation of benefit assessments for vector control, as follows:

> *(a) A district may levy special benefit assessments consistent with the requirements of Article XIIID of the California Constitution to finance vector control projects and programs.*

ASSESSMENT CONTINUATION

This Engineer's Report ("Report") was prepared by SCI Consulting Group ("SCI") to describe the vector control services to be funded by the assessment (the "Services"), to establish the estimated costs for those services, to determine the special benefits and general benefits received by property from the services and to apportion the assessments to lots and parcels within the OVMAP based on the estimated special benefit each parcel receives from the services funded by the benefit assessment.

This report defines the benefit assessment (the "Assessment") on all specially benefiting properties within the Program boundaries (the "Assessment District"). The Assessment for fiscal year 2013-14, as described in this Engineer's Report, would provide continued funding for mosquito and disease control services in certain areas of Inyo County, as well as related costs for equipment, capital improvements and services and facilities necessary and incidental to mosquito and disease control programs.

The Assessment District is narrowly drawn to include only properties that may request and/or receive direct and more frequent service, that are located within the scope of the vector surveillance area, that are located within flying or traveling distance of potential vector sources monitored by the Program, and that will benefit from a reduction in the amount of vectors reaching and impacting the property as a result of the enhanced vector surveillance and control. The Assessment Diagram included in this report shows the boundaries of the Assessment District.

PROPOSITION 218

This assessment was formed consistent with Proposition 218, The Right to Vote on Taxes Act, which was approved by the voters of California on November 6, 1996, and is now Article XIIIC and XIIID of the California Constitution. Proposition 218 provides for benefit assessments to be levied to fund the cost of providing services, improvements, as well as maintenance and operation expenses to a public improvement which benefits the assessed property.

Proposition 218 describes a number of important requirements, including a property-owner balloting, for the formation and continuation of assessments, and these requirements are satisfied by the process used to establish this assessment. When Proposition 218 was initially approved in 1996, it allowed for certain types of assessments to be "grandfathered" in, and these were exempted from the property–owner balloting requirement.

Beginning July 1, 1997, all existing, new, or increased assessments shall comply with this article. Notwithstanding the foregoing, the following assessments existing on the effective date of this article shall be exempt from the procedures and approval process set forth in Section 4:
(a) Any assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems or vector control.

Vector control was specifically "grandfathered in," underscoring the fact that the drafters of Proposition 218 and the voters who approved it were satisfied that funding for vector control is an appropriate use of benefit assessments, and therefore confers special benefit to property.

Silicon Valley Taxpayers Association, Inc. v. Santa Clara County Open Space Authority

In July of 2008, the California Supreme Court issued its ruling on the Silicon Valley Taxpayers Association, Inc. v. Santa Clara County Open Space Authority ("SVTA vs. SCCOSA"). This ruling is the most significant legal document in further legally clarifying Proposition 218. Several of the most important elements of the ruling included further emphasis that:

- Benefit assessments are for special benefit to property, not general benefits[1]
- The services and /or improvements funded by assessments must be clearly defined
- Special benefits are directly received by and provide a direct advantage to property in the assessment district

Dahms v. Downtown Pomona Property

On June 8, 2009, the 4th Court of Appeal amended its original opinion upholding a benefit assessment for property in the downtown area of the City of Pomona. On July 22, 2009, the California Supreme Court denied review. On this date, Dahms became good law and binding precedent for assessments. In Dahms the Court upheld an assessment that was 100% special benefit (i.e. 0% general benefit) on the rationale that the services and improvements funded by the assessments were directly provided to property in the

[1] Article XIII D, § 2, subdivision (d) of the California Constitution states defines "district" as "an area determined by an agency to contain all parcels which will receive a special benefit from the proposed public improvement or property-related service."

assessment district. The Court also upheld discounts and exemptions from the assessment for certain properties.

BONANDER V. TOWN OF TIBURON

In the December 31, 2009, the 1st District Court of Appeal overturned a benefit assessment approved by property owners to pay for placing overhead utility lines underground in an area of the Town of Tiburon. The Court invalidated the assessments on the grounds that the assessments had been apportioned to assessed property based on in part on relative costs within sub-areas of the assessment district instead of proportional special benefits.

BEUTZ V. COUNTY OF RIVERSIDE

On May 26, 2010 the 4th District Court of Appeals issued a decision on the Steven Beutz v. County of Riverside ("Beutz") appeal. This decision overturned an assessment for park maintenance in Wildomar, California, primarily because the general benefits associated with improvements and services was not explicitly calculated, quantified and separated from the special benefits.

GOLDEN HILL NEIGHBORHOOD ASSOCIATION V. CITY OF SAN DIEGO

On September 22, 2011, the San Diego Court of Appeal issued a decision on the Golden Hill Neighborhood Association v. City of San Diego appeal. This decision overturned an assessment for street and landscaping maintenance in the Greater Golden Hill neighborhood of San Diego, California. The court described two primary reasons for its decision. First, like in Beutz, the court found the general benefits associated with services were not explicitly calculated, quantified and separated from the special benefits. Second, the court found that the City had failed to record the basis for the assessment on its own parcels.

This Engineer's Report is consistent with the SVTA vs. SCCOSA decision and with the requirements of Article XIIIC and XIIID of the California Constitution because the Services to be funded are clearly defined; the Services are available to all benefiting property in the Assessment District, the benefiting property in the Assessment District will directly and tangibly benefit from reduced mosquito and vector populations, reduced risk of the presence of diseases, increased safety of property and other special benefits; and such special benefits provide a direct advantage to property in the Assessment District that is not enjoyed by the public at large or other property. Finally, the Assessments are consistent with *Buetz* and *Greater Golden Hill* because the general benefits have been explicitly calculated and quantified and excluded from the Assessments. There have been a number of clarifications made to the analysis, findings and supporting text in this Report to ensure that this consistency is well communicated.

THE SERVICES

The Owens Valley Mosquito Abatement Program, a division of the Inyo County Agricultural Department, provides mosquito abatement services to properties within the boundaries of the Mosquito Abatement Program.

The mosquito abatement/vector control services and environmental improvements undertaken by the Program and financed by the levy of the annual assessment provide special benefit to Assessor Parcels within the Program as defined in the Method of Assessment herein. Such mosquito abatement and vector control projects and programs include, but are not limited to, source reduction, larvicide applications, disease monitoring, public education, reporting, accountability, research and interagency cooperative activities, as well as capital costs, maintenance, and operation expenses. The cost of these services also includes capital costs comprised of equipment, capital improvements and facilities necessary and incidental to the vector control program. (collectively "Services")

ASSESSMENT

WHEREAS, the Board of Supervisors, and in accordance with the requirements of Proposition 218, the County of Inyo contracted with the undersigned Engineer of Work to prepare and file an annual Engineer's Report presenting an estimate of costs, a diagram for the assessment program, an assessment of the estimated costs of the Services, and the special and general benefit conferred thereby, upon all assessable parcels within the assessment program;

NOW, THEREFORE, the undersigned, by virtue of the power vested in me under the Act and the order of the Board of Supervisors of the County of Inyo, hereby makes the following determination of an assessment to cover the portion of the estimated cost of the Services, and the costs and expenses incidental thereto to be paid by the assessment program.

The amount to be paid for the Services and the expenses incidental thereto, to be paid by the Owens Valley Mosquito Abatement Program for the fiscal year 2013-14 is generally as follows:

FIGURE 1

SUMMARY COST ESTIMATE

Fiscal Year 2013-14

Mosquito Control Services	$	483,449
Fixed Asset & Capital Equipment		47,300
Incidentals & Reserves		11,000
Total Budget		541,749
Less:		
District Contribution & Current Rev.		(337,321)
Net Amount To Assessments	$	204,428

An Assessment Diagram is hereto attached and made a part hereof showing the exterior boundaries of the Owens Valley Mosquito Abatement Program. The distinctive number of each parcel or lot of land in Assessment District is its Assessor Parcel Number appearing on the Assessment Roll.

And I do hereby determine and apportion the net amount of the cost and expenses of the Services, including the costs and expenses incidental thereto, upon the parcels and lots of land within the Owens Valley Mosquito Abatement Program, in accordance with the special benefits to be received by

each parcel or lot, from the Services, and more particularly set forth in the Cost Estimate hereto attached and by reference made a part hereof.

The assessment determination is made upon the parcels or lots of land within the Owens Valley Mosquito Abatement Program in proportion to the special benefits to be received by the parcels or lots of land, from the Services.

Each parcel or lot of land is described in the Assessment Roll by reference to its parcel number as shown on the Assessor's Maps of the County of Inyo for the fiscal year 2013-14. For a more particular description of the property, reference is hereby made to the deeds and maps on file and of record in the office of the County Recorder of the County.

I hereby place opposite the Assessor Parcel Number for each parcel or lot within the Assessment Roll, the amount of the assessment for the fiscal year 2013-14 for each parcel or lot of land within the Owens Valley Mosquito Abatement Program.

Dated: May _____, 2013

Engineer of Work

By _____
John W. Bliss, License No. C052091

ESTIMATE OF COST

FIGURE 2

COST ESTIMATE

OWENS VALLEY MOSQUITO ABATEMENT PROGRAM
Owens Valley Mosquito Abatement Program Assessment
Estimate of Cost
Fiscal Year 2013-14

		Total Budget
Mosquito Control Services and Related Expenditures:		
Mosquito Control Operations	$	331,763
Materials, Supplies, Equipment and Administration		151,686
Emergency Services/Contingency Funds		-
Facilities, Capital Equipment and Fixed Assets		47,300
Total Services and Operation		**530,749**
Less:		
Contribution from Other Sources		(337,321)
Net Cost of Mosquito Control, Fixed Asset Equipment, Operation		**193,428**
Incidental Costs:		
County Collection, Levy Administration, and Other Incidentals		11,000
Contribution to Reserves and Emergency/Contingency Funds		-
Total Mosquito Control Services and Incidentals	**$**	**204,428**
(Net Amount to be Assessed)		

Budget Allocation to Property:

Zone of Benefit	Total SFE Units		Assessment per SFE		Total Assessment
Zone A	9,627	$	20.80	$	200,242
Zone B	805	$	5.20	$	4,186
				$	204,428

Notes:

1. As determined in the following section, at least 5% of the cost of the Services must be funded from sources other than the assessments to cover any general benefits from the Services. Therefore, out of the total cost of Services of $541,749 the District must

contribute at least $ 27,087 from sources other than the assessments. The District will contribute over $ 337,000 , which is well over the estimated general benefits.

2. Incidental Costs includes allowance for uncollectible assessments from assessments on public agency parcels, County collection charges, and assessment administration costs.

3. SFE Units means Single Family Equivalent benefit units. See method of assessment in the following Section for further definition.

4. The assessment rate per SFE is the total amount of assessment per Single Family Equivalent benefit unit.

5. The proceeds from the assessments will be deposited into a special fund for the Assessment. Funds raised by the assessment shall be used only for the purposes stated within this Report. Any balance remaining at the end of the fiscal year, June 30, must be carried over to the next fiscal year. The assessment amounts are rounded down to the even penny for purposes of complying with the collection requirements from the County Auditor. Therefore, the total assessment amount for all parcels subject to the assessments may vary slightly from the net amount to be assessed.

METHOD OF ASSESSMENT

This section of the Engineer's Report describes the benefits to be derived from the mosquito control services provided by the Program for property in the Assessment District, and the methodology used to apportion the total assessment to properties within the Owens Valley Mosquito Abatement Program.

The Owens Valley Mosquito Abatement Program consists of all Assessor Parcels within the boundaries of the Mosquito Abatement Program as defined by the approved boundaries of the Assessment District.

The method used for apportioning the assessment is based upon the proportional special benefits to be derived by the properties in the Owens Valley Mosquito Abatement Program over and above general benefits conferred on real property in the Assessment District. Special benefit is calculated for each parcel in the Assessment District using the following process:

1. Identification of total benefit to the properties derived from the Services
2. Calculation of the proportion of these benefits that are special vs. general
3. Determination of the relative special benefit within different areas within the Assessment District
4. Determination of the relative special benefit per property type and property characteristic
5. Calculation of the specific assessment for each individual parcel based upon special vs. general benefit; location, property type and property characteristics

DISCUSSION OF BENEFIT

In summary, the assessments can only be levied based on the special benefit to property. This special benefit is received by property over and above any general benefits from the additional Services. With reference to the engineering requirements for property related assessments under Proposition 218, an engineer must determine and prepare a report concerning the amount of special and general benefit received by property within the assessment district or program as a result of the property related service or improvements provided by a local agency. That special benefit is to be determined in relation to the total cost to that local entity of providing the service and/or improvements.

Proposition 218 as described in Article XIIID of the California Constitution, has confirmed that assessments must be based on the special benefit to property:

> *"No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel."*

The below benefit factors, when applied to property in the Assessment District, confer special benefits to property and ultimately improve the safety, utility, functionality and usability of property in the Assessment District. These are special benefits to property in the Assessment District in much the same way that storm drainage, sewer service, water service, lighting, sidewalks and paved streets enhance the safety, utility and functionality of each parcel of property served by these improvements, providing them with more utility of use and making them safer and more usable for occupants.

It should also be noted that Proposition 218 included a requirement that existing assessments in effect upon its effective date were required to be confirmed by either a majority vote of registered voters in the Assessment District, or by weighted majority property owner approval using the new ballot proceeding requirements. However, certain assessments were excluded from these voter approval requirements. Of note is that in California Constitution Article XIIID Section 5(a) this special exemption was granted to assessments for sidewalks, streets, sewers, water, flood control, drainage systems and vector control. The Howard Jarvis Taxpayers Association explained this exemption in their Statement of Drafter's Intent:

> *"This is the "traditional purposes" exception. These existing assessments do not need property owner approval to continue. However, future assessments for these traditional purposes are covered."*[2]

Therefore, the drafters of Proposition 218 acknowledged that vector control assessments were a "traditional" and therefore acknowledged and accepted use.

Since all assessments, existing before or after Proposition 218 must be based on special benefit to property, the drafters of Proposition 218 inherently found that vector control services confer special benefit on property. Moreover, the statement of drafter's intent also acknowledges that any new or increased vector control assessments after the effective date of Proposition 218 would need to comply with the voter approval requirements it established. This is as an acknowledgement that additional assessments for such "traditional" purposes would be established after Proposition 218 was in effect. Therefore, the drafters of Proposition 218 clearly recognized vector assessments as a "traditional" use of assessments, acknowledged that new vector assessments may be formed after Proposition 218 and inherently were satisfied that vector control services confer special benefit to properties.

The Legislature also made a specific determination after Proposition 218 was enacted that vector control services constitute a proper subject for special assessment. Health and Safety Code section 2082, which was signed into law in 2002, provides that a district may levy special assessments consistent with the requirements of Article XIIID of the California Constitution to finance vector control projects and programs. The intent of the Legislature to allow and authorize benefit assessments for vector control services after Proposition

[2] Howard Jarvis Taxpayers Association, "Statement of Drafter's Intent", January 1997.

218 is shown in the Assembly and Senate analysis the Mosquito Abatement and Vector Control District Law where it states that the law:

> *Allows special benefit assessments to finance vector control projects and programs, consistent with Proposition 218.* [3]

Therefore the State Legislature unanimously found that vector control services are a valuable and important public service that can be funded by benefit assessments. To be funded by assessments, vector control services must confer special benefit to property.

In the 2009 Dahms case, the court upheld an assessment that was 100% special benefit on the rationale that the services funded by the assessments were directly provided to property in the assessment district. Similar to the assessments in Pomona that were validated by Dahms, the Assessments described in this Engineer's Report fund mosquito and disease control services directly provided to property in the assessment area. Moreover, as noted in this Report, the Services directly reduce mosquito and vector populations on all property in the assessment area. Therefore, Dahms establishes a basis for minimal or zero general benefits from the Assessments. However, in this report, the general benefit is more conservatively estimated and described, and then budgeted so that it is funded by sources other than the assessment.

MOSQUITO AND VECTOR CONTROL IS A SPECIAL BENEFIT TO PROPERTIES

As described below, this Engineer's Report concludes that mosquito and vector control is a special benefit that provides direct advantages to property in the Assessment District. For example, if approved, the assessment would provide reduced levels of mosquitoes and other vectors on property throughout the Assessment District. Moreover, the assessment will reduce the risk of the presence of diseases on property throughout the Assessment District, which is another direct advantage received by property in the Assessment District. Moreover, the assessment will fund Services that improve the use of property and reduce the nuisance and harm created by vectors on property throughout the Assessment District. These are tangible and direct special benefits that will be received by property throughout the specific area covered by the Assessment.

The following section, Benefit Factors, describes how and why vector control services directly and specially benefit properties in the Assessment District. These benefits are particular and distinct from its effect on property in general or the public at large.

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[3] Senate Bill 1588, Mosquito Abatement and Vector Control District Law, Legislative bill analysis

BENEFIT FACTORS

In order to allocate the assessments, the Engineer identified the types of special benefit arising from the aforementioned mosquito control services and that would be provided to property within the Program. These types of special benefit are as follows:

- **Reduced mosquito and vector populations on property and as a result, enhanced desirability, utility, usability and functionality of property in the Assessment District.**

The assessments will provide enhanced services for the control and abatement of nuisance and disease-carrying mosquitoes. These Services will materially reduce the number of vectors on properties throughout the Assessment District. The lower mosquito and vector populations on property in the Assessment District is a direct advantage to property that will serve to increase the desirability and "usability" of property. Clearly, properties are more desirable and usable in areas with lower mosquito populations and with a reduced risk of vector-borne disease. This is a special benefit to residential, commercial, agricultural, industrial and other types of properties because all such properties will directly benefit from reduced mosquito and vector populations and properties with lower vector populations are more usable, functional and desirable.

Excessive mosquitoes and other vectors in the area can materially diminish the utility and usability of property. For example, prior to the commencement of mosquito control and abatement services, properties in many areas in the State were considered to be nearly uninhabitable during the times of year when the mosquito populations were high.[4] The prevention or reduction of such diminished utility and usability of property caused by mosquitoes is a clear and direct advantage and special benefit to property in the Assessment District.

The State Legislature made the following finding on this issue:

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[4] Prior to the commencement of modern mosquito control services, areas in the State of California such as the San Mateo Peninsula, Napa County, Lake County and areas in Marin and Sonoma Counties had such high mosquito populations or other vector populations that they were considered to be nearly unlivable during certain times of the year and were largely used for part-time vacation cottages that were occupied primarily during the months when the natural vector populations were lower.

> *"Excess numbers of mosquitoes and other vectors spread diseases of humans, livestock, and wildlife, reduce enjoyment of outdoor living spaces, both public and private, reduce property values, hinder outdoor work, reduce livestock productivity; and mosquitoes and other vectors can disperse or be transported long distances from their sources and are, therefore, a health risk and a public nuisance; and professional mosquito and vector control based on scientific research has made great advances in reducing mosquito and vector populations and the diseases they transmit."* [5]

Mosquitoes and other vectors emerge from sources throughout the Assessment District, and with an average flight range of two miles, mosquitoes from known sources can reach all properties in the Assessment District. These sources include standing water in rural areas, such as marshes, pools, wetlands, ponds, drainage ditches, drainage systems, tree holes and other removable sources such as old tires and containers. The sources of mosquitoes also include numerous locations throughout the urban areas in the Assessment District. These sources include underground drainage systems, containers, unattended swimming pools, leaks in water pipes, tree holes, flower cups in cemeteries, over-watered landscaping and lawns and many other sources. By controlling mosquitoes at known and new sources, the Services will materially reduce mosquito populations on specially benefiting property in the Assessment District.

A recently increasing source of mosquitoes is unattended swimming pools:

> *"Anthropogenic landscape change historically has facilitated outbreaks of pathogens amplified by peridomestic vectors such as Cx. pipiens complex mosquitoes and associated commensals such as house sparrows. The recent widespread downturn in the housing market and increase in adjustable rate mortgages have combined to force a dramatic increase in home foreclosures and abandoned homes and produced urban landscapes dotted with an expanded number of new mosquito habitats. These new larval habitats may have contributed to the unexpected early season increase in WNV cases in Bakersfield during 2007 and subsequently have enabled invasion of urban areas by the highly competent rural vector Cx. tarsalis. These factors can increase the spectrum of competent avian hosts, the efficiency of enzootic amplification, and the risk for urban epidemics."* [6]

- **Increased safety of property in the Assessment District.**

The Assessments result in improved year-round proactive Services to control and abate mosquitoes and other vectors that otherwise would occupy properties throughout the Assessment District. Mosquitoes and other vectors are transmitters of diseases, so the

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[5] Assembly Concurrent Resolution 52, chaptered April 1, 2003

[6] Riesen William K. (2008). Delinquent Mortgages, Neglected Swimming Pools, and West Nile Virus, California. Emerging Infectious Diseases. Vol. 14(11).

reduction of mosquito and vector populations makes property safer for use and enjoyment. In absence of the assessments, these Services would not be provided, so the Services funded by the assessments make properties in the Assessment District safer, which is a distinct special benefit to property in the Assessment District.[7] This is not a general benefit to property in the Assessment District or the public at large because the Services are tangible mosquito control and disease prevention services that will be provided directly to the properties in the Assessment District and the Services are over and above what otherwise would be provided by the District or any other agency.

This finding was confirmed in 2003 by the State Legislature:

> "Mosquitoes and other vectors, including but not limited to ticks, Africanized Honey Bees, rats, fleas, and flies, continue to be a source of human suffering, illness, death and a public nuisance in California and around the world. Adequately funded mosquito and vector control, monitoring and public awareness programs are the best way to prevent outbreaks of West Nile Virus and other diseases borne by mosquitoes and other vectors." [1]

Also, the Legislature, in Health and Safety Code Section 2001, finds that:

> "the protection of Californians and their communities against the discomforts and economic effects of vector borne diseases is an essential public service that is vital to public health, safety, and welfare."

- **Reductions in the risk of new diseases and infections on property in the Assessment District.**

Mosquitoes have proven to be a major contributor to the spread of new diseases such as West Nile Virus, among others. A highly mobile population combined with migratory bird patterns can introduce new mosquito-borne diseases into previously unexposed areas.

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[7] By reducing the risk of disease and increasing the safety of property, the proposed Services will materially increase the usefulness and desirability of certain properties in the Assessment District.

"Vector-borne diseases (including a number that are mosquito-borne) are a major public health problem internationally. In the United States, dengue and malaria are frequently brought back from tropical and subtropical countries by travelers or migrant laborers, and autochthonous transmission of malaria and dengue occasionally occurs. In 1998, 90 confirmed cases of dengue and 1,611 cases of malaria were reported in the USA and dengue transmission has occurred in Texas."[8]

"During 2004, 40 states and the District of Columbia (DC) have reported 2,313 cases of human WNV illness to CDC through ArboNET. Of these, 737 (32%) cases were reported in California, 390 (17%) in Arizona, and 276 (12%) in Colorado. A total of 1,339 (59%) of the 2,282 cases for which such data were available occurred in males; the median age of patients was 52 years (range: 1 month--99 years). Date of illness onset ranged from April 23 to November 4; a total of 79 cases were fatal." [9] *(According to the Centers for Disease Control and Prevention on January 19, 2004, a total of 2,470 human cases and 88 human fatalities from WNV have been confirmed).*

A study of the effect of aerial spraying conducted by the Sacramento-Yolo Mosquito and Vector Control District (SYMVCD) to control a West Nile Virus disease outbreak found that the SYMVCD's mosquito control efforts materially decreased the risk of new diseases in the treated areas:

After spraying, infection rates decreased from 8.2 (95% CI 3.1–18.0) to 4.3 (95% CI 0.3–20.3) per 1,000 females in the spray area and increased from 2.0 (95% CI 0.1–9.7) to 8.7 (95% CI 3.3–18.9) per 1,000 females in the untreated area. Furthermore, no additional positive pools were detected in the northern treatment area during the remainder of the year, whereas positive pools were detected in the untreated area until the end of September (D.-E.A Elnaiem, unpub. data). These independent lines of evidence corroborate our conclusion that actions taken by SYMVCD were effective in disrupting the WNV transmission cycle and reducing human illness and potential deaths associated with WNV. [10]

The Services funded by the assessments will help prevent on a year-round basis the presence of vector-borne diseases on property in the Assessment District. This is another tangible and direct special benefit to property in the Assessment District that would not be received in absence of the assessments.

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[8] Rose, Robert. (2001). Pesticides and Public Health: Integrated Methods of Mosquito Management. Emerging Infectious Diseases. Vol. 7(1); 17-23.

[9] Center for Disease Control. (2004). West Nile Virus Activity --- United States, November 9--16, 2004. Morbidity and Mortality Weekly Report. 53(45); 1071-1072.

[10] Carney, Ryan. (2008), Efficiency of Aerial Spraying of Mosquito Adulticide in Reducing the Incidence of West Nile Virus, California, 2005. Emerging Infectious Diseases, Vol 14(5)

- **Protection of economic activity on property in the Assessment District.**

As recently demonstrated by the SARS outbreak in China and outbreaks of Avian Flu, outbreaks of pathogens can materially and negatively impact economic activity in the affected area. Such outbreaks and other public health threats can have a drastic negative effect on tourism, business and residential activities in the affected area. The assessments will help to prevent the likelihood of such outbreaks in the District.

Mosquitoes hinder, annoy and harm residents, guests, visitors, farm workers, and employees. A vector-borne disease outbreak and other related public health threats would have a drastic negative effect on agricultural, business and residential activities in the Assessment District.

The economic impact of diseases is well documented. According to a study prepared for the Centers for Disease Control and Prevention, economic losses due to the transmission of West Nile Virus in Louisiana was estimated to cost over $20 million over approximately one year:

> *The estimated cost of the Louisiana epidemic was $20.1 million from June 2002 to February 2003, including a $10.9 million cost of illness ($4.4 million medical and $6.5 million nonmedical costs) and a $9.2 million cost of public health response. These data indicate a substantial short-term cost of the WNV disease epidemic in Louisiana. 11*

Moreover, a study conducted in 1996-97 of La Crosse Encephalitis (LACE), a human illness caused by a mosquito-transmitted virus, found a lifetime cost per human case at $48,000 to $3,000,000 and found that the disease significantly impacted lifespans of those who were infected. Following is a quote from the study which references the importance and value of active vector control services of the type that would be funded by the assessments:

> *The socioeconomic burden resulting from LACE is substantial, which highlights the importance of the illness in western North Carolina, as well as the need for active surveillance, reporting, and prevention programs for the infection.* [12]

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[11] Zohrabian A, Meltzer MI, Ratard R, Billah K, Molinari NA, Roy K, et al. West Nile Virus economic impact, Louisiana, 2002. Emerging Infectious Disease, 2004 Oct. Available from http://www.cdc.gov/ncidod/EID/vol10no10/03-0925.htm

[12] Utz, J. Todd, Apperson, Charles S., Maccormack, J. Newton, Salyers, Martha, Dietz, E. Jacquelin, Mcpherson, J. Todd, Economic And Social Impacts Of La Crosse Encephalitis In Western North Carolina, Am J Trop Med Hyg 2003 69: 509-518

The Services to be funded by the assessments will help prevent the likelihood of such outbreaks on property in the Assessment District and will reduce the harm to economic activity on property caused by existing mosquito populations. This is another direct advantage received by property in the Assessment District that would not be received in absence of the assessments.

- **Protection of Assessment District's agriculture, tourism, and business industries.**

The agriculture, tourism and business industries will benefit from reduced levels of harmful or nuisance mosquitoes and other vectors. Conversely, any outbreaks of emerging vector-borne pathogens such as West Nile Virus could also materially negatively affect these industries. Diseases transmitted by mosquitoes and other vectors can adversely impact business and recreational functions.

> *A study prepared for the United States Department of Agriculture in 2003 found that over 1,400 horses died from West Nile Virus in Colorado and Nebraska and that these fatal disease cases created over $1.2 million in costs and lost revenues. In addition, horse owners in these two states spent over $2.75 million to vaccinate their horses for this disease. The study states that "Clearly, WNV has had a marked impact on the Colorado and Nebraska equine industry."* [13]

> *Pesticides for mosquito control impart economic benefits to agriculture in general. Anecdotal reports from farmers and ranchers indicate that cattle, if left unprotected, can be exsanguinated by mosquitoes, especially in Florida and other southeast coastal areas. Dairy cattle produce less milk when bitten frequently by mosquitoes* [14]

The assessments will serve to protect the businesses and industries and the employees and residents that benefit from these businesses and industries. This is a direct advantage and special benefit to property in the Assessment District.

- **Reduced risk of nuisance and liability on property in the Assessment District**

In addition to health related factors, uncontrolled mosquito and vector populations create a nuisance for the occupants of property in the Assessment District. Properties in the

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[13] S. Geiser, A. Seitzinger, P. Salazar, J. Traub-Dargatz, P. Morley, M. Salman, D. Wilmot, D. Steffen, W. Cunningham, Economic Impact of West Nile Virus on the Colorado and Nebraska Equine Industries: 2002, April 2003, Available from http://www.aphis.usda.gov/vs/ceah/cnahs/nahms/equine/wnv2002_CO_NB.pdf

[14] Jennings, Allen. (2001). USDA Letter to EPA on Fenthion IRED. United States Department of Agriculture, Office of Pest Management Policy. March 8, 2001.

Assessment District, therefore, will benefit from the reduced nuisance factor that will be created by the Services. Agricultural and rangeland properties also benefit from the reduced nuisance factor and harm to livestock and employees from lower mosquito and vector populations.

Agricultural, range, golf course, cemetery, open space and other such lands in the Assessment District contain large areas of mosquito and vector habitat and are therefore a significant source of mosquito and vector populations. In addition, residential and business properties in the Assessment District can also contain significant sources.[15] It is conceivable that sources of mosquitoes could be held liable for the transmission of diseases or other harm. For example, in August 2004, the City of Los Angeles approved new fines of up to $1,000 per day for property owners who don't remove standing water sources of mosquitoes on their property.
The Services will serve to protect the businesses and industries in the Assessment District. This is a direct advantage and a special benefit to property in the Assessment District.

- **Improved marketability of property.**

As described previously, the Services will specially benefit properties in the Assessment District by making them more useable, livable and functional. The Services also make properties in the Assessment District more desirable, and more desirable properties also benefit from improved marketability. This is another tangible and direct special benefit to property which will not be enjoyed in absence of the Services.[16]

BENEFIT FINDING

In summary, the special benefits described in this Report and the expansion of Services in the Assessment District directly benefit and protect the real properties in the Assessment District in excess of the assessments for these properties. Therefore, the assessment engineer finds that the cumulative special benefits to property from the Services are reasonably equal to or greater than the proposed annual assessment amount per benefit unit.

GENERAL VERSUS SPECIAL BENEFIT

Article XIIIC of the California Constitution requires any local agency proposing to increase or impose a benefit assessment to "separate the general benefits from the special benefits conferred on a parcel." The rationale for separating special and general benefits is to ensure that property owners subject to the benefit assessment are not paying for general benefits. The assessment can fund the special benefits to property in the Assessment

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[15] Sources of mosquitoes on residential, business, agricultural, range and other types of properties include removable sources such as containers that hold standing water.
[16] If one were to compare two hypothetical properties with similar characteristics, the property with lower mosquito infestation and reduced risk of vector-borne disease will clearly be more desirable, marketable and usable.

District but cannot fund any general benefits. Accordingly, a separate estimate of the special and general benefit is given in this section.

In other words:

Total Benefit	=	Total General Benefit	+	Total Special Benefit

There is no widely-accepted or statutory formula for general benefit from vector control services. General benefits are benefits from improvements or services that are not special in nature, are not "particular and distinct" and are not "over and above" benefits received by other properties. General benefits are conferred to properties located "in the district,[17]" but outside the narrowly-drawn Assessment District and to "the public at large." SVTA vs. SCCOSA provides some clarification by indicating that general benefits provide "an indirect, derivative advantage" and are not necessarily proximate to the improvements and services funded by the assessments.

A formula to estimate the general benefit is listed below:

General Benefit =
Benefit to Real Property Outside the Assessment District +
Benefit to Real Property Inside the Assessment District that is Indirect and Derivative +

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[17] SVTA vs. SCCOSA explains as follows:

> OSA observes that Proposition 218's definition of "special benefit" presents a paradox when considered with its definition of "district." Section 2, subdivision (i) defines a "special benefit" as "a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large." (Art. XIII D, § 2, subd. (i), italics added.) Section 2, subdivision (d) defines "district" as "an area determined by an agency to contains all parcels which will receive a special benefit from a proposed public improvement or property-related service." (Art. XIII D, § 2, subd. (d), italics added.) In a well-drawn district — limited to only parcels receiving special benefits from the improvement — every parcel within that district receives a shared special benefit. Under section 2, subdivision (i), these benefits can be construed as being general benefits since they are not "particular and distinct" and are not "over and above" the benefits received by other properties "located in the district."
>
> We do not believe that the voters intended to invalidate an assessment district that is narrowly drawn to include only properties directly benefiting from an improvement. Indeed, the ballot materials reflect otherwise. Thus, if an assessment district is narrowly drawn, the fact that a benefit is conferred throughout the district does not make it general rather than special.

Benefit to the Public at Large

Special benefit, on the other hand, is defined in the state constitution as "a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large." The SVTA v. SCCOSA decision indicates that a special benefit is conferred to a property if it "receives a direct advantage from the improvement (e.g., proximity to a park)." In this assessment, the overwhelming proportion of the benefits conferred to property is special, since the advantages from the mosquito, vector and disease control/protection funded by the Assessments are directly received by the properties in the Assessment District and are only minimally received by property outside the Assessment District or the public at large.

Proposition 218 twice uses the phrase "over and above" general benefits in describing special benefit. (Art. XIIID, sections 2(i) & 4(f).) There currently are minimal mosquito and vector related services being provided to the Assessment District area that are not being funded by a benefit assessment. These minimal services form the baseline level of services in the Assessment District. Arguably, all of the Services to be funded by the assessment therefore would be a special benefit because the additional Services would particularly and distinctly benefit and protect the Assessment District over and above the previous baseline benefits and service.

Nevertheless, arguably some of the Services would benefit the public at large and properties outside the Assessment District. In this report, the general benefit is conservatively estimated and described, and then budgeted so that it is funded by sources other than the assessment.

CALCULATING GENERAL BENEFIT

Without this assessment the Program would lack the funds to provide the additional and improved Services to property in the Assessment District. Consistent with footnote 8 of SVTA v. SCCOSA, and for the reasons described above, the Program has determined that all parcels in the Assessment District receive a shared direct advantage and special benefit from the Services. The Services directly and particularly serve and benefit each parcel, and are not a mere indirect, derivative advantage. As explained above, Proposition 218 relies on the concept of "over and above" in distinguishing special benefits from general benefits. As applied to an assessment this concept means that all vector control services, which provide direct advantage to property in the Assessment District, are over and above the baseline and therefore are special.

Nevertheless, the Services may provide a degree of general benefit, in addition to the predominant special benefit. This section provides a conservative measure of the general benefits from the Assessments.

BENEFIT TO PROPERTY OUTSIDE THE PROGRAM

Properties within the Assessment District receive almost all of the special benefits from the Services because the Services funded by the Assessments will be provided directly to protect property within the Assessment District from mosquitoes and vector-borne diseases. However, properties adjacent to, but just outside of, the boundaries may receive some benefit from the Services in the form of reduced mosquito populations on property outside the Assessment District. Since this benefit, is conferred to properties outside the district boundaries, it contributes to the overall general benefit calculation and will not be funded by the assessment.

A measure of this general benefit is the proportion of Services that would affect properties outside of the Assessment District. Each year, the Program will provide some of its Services in areas near the boundaries of the Assessment District. By abating mosquito populations near the borders of the Assessment District, the Services could provide benefits in the form of reduced mosquito populations and reduced risk of disease transmission to properties outside the Assessment District. If mosquitoes were not controlled inside the Assessment District, more of them would fly from the Assessment District. Therefore control of mosquitoes within the Assessment District provides some benefit to properties outside the Assessment District but within the normal travel range of vectors in the form of reduced mosquito populations and reduced vector-borne disease transmission. Since mosquitoes are the predominant vector that would be controlled and mosquitoes most easily travel from their source location to properties in the area, typical mosquito destination ranges will be used to measure the extent that the Services will create reduced vector populations on property outside the Assessment District. This is a measure of the general benefits to property outside the Assessment District because this is a benefit from the Services that is not specially conferred upon property in the Assessment District.

The mosquito potential outside the Assessment District is based on studies of mosquito dispersion concentrations. Mosquitoes can travel up to two miles, on average, so this destination range is used. Based on studies of mosquito destinations, relative to parcels in the Assessment District average concentration of mosquitoes from the Assessment District on properties within two miles of the Assessment District is calculated to be 6%.[18] This relative vector population reduction factor within the destination range is combined with the number of parcels outside the Assessment District and within the destination range to measure this general benefit and is calculated as follows:

CRITERIA:

Mosquitoes may fly up to 2 miles from their breeding source.

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[18] Tietze, Noor S., Stephenson, Mike F., Sidhom, Nader T. and Binding, Paul L., "Mark-Recapture of *Culex Erythrothorax* in Santa Cruz County, California", Journal of the American Mosquito Control Association, 19(2):134-138, 2003.

519 parcels within 2 miles of, but outside of the Program, may receive some mosquito and disease protection benefit
6% portion of relative benefit that is received
10,994 Parcels in the District

Calculations
Total Benefit = 519 parcels * 6% = 31 parcels equivalents
Percentage of overall parcel equivalents = 31 / 10,994 = **0.28 %**

Therefore, for the overall benefits provided by the Services to the Assessment District, it is determined that 0.28% of the benefits would be received by the parcels within two miles of the Assessment District boundaries. Recognizing that this calculation is an approximation, this benefit will be rounded up to 1.0%.

BENEFIT TO PROPERTY *INSIDE* THE DISTRICT THAT IS *INDIRECT AND DERIVATIVE*

The "indirect and derivative" benefit to property within the Assessment District is particularly difficult to calculate. As explained above, all benefit within the Assessment District is special because the mosquito and disease control services in the Assessment District would provide direct service and protection that is clearly "over and above" and "particular and distinct" when compared with the level of such protection under current conditions. Further the properties are within the Assessment District boundaries and this Engineer's Report demonstrates the direct benefits received by individual properties from mosquito and disease control services.

In determining the Assessment District area, the Program has been careful to limit it to an area of parcels that will directly receive the Services. All parcels will directly benefit from the surveillance, monitoring and treatment that will be provided on an equivalent basis throughout the Assessment District in order to maintain the same improved level of protection against mosquitoes and other vectors and reduced mosquito and vector populations throughout the area. The surveillance and monitoring sites would be spread on a balanced basis throughout the area. Mosquito and vector control and treatment would be provided as needed throughout the area based on the surveillance and monitoring results. The shared special benefit - reduced mosquito levels and reduced presence of vector-borne diseases - would be received on an equivalent basis by all parcels in the Assessment District. Furthermore, all parcels in the Assessment District would directly benefit from the ability to request service from the Program and to have a Program field technician promptly respond directly to the parcel and address the owner's or resident's service need. The SVTA vs. SCCOSA decision indicates that the fact that a benefit is conferred throughout the Assessment District area does not make the benefit general rather than special, so long as the Assessment district is narrowly drawn and limited to the parcels directly receiving shared special benefits from the service. The Program therefore concludes that, other than the small general benefit to properties outside the Assessment District (discussed above) and to the public at large (discussed below), all of the benefits of the Services to the parcels within the Assessment District are

special benefits and it is not possible or appropriate to separate any general benefits from the benefits conferred on parcels in the Assessment District.

Benefit To The Public At Large

With the type and scope of Services to be provided to the Assessment District, it is very difficult to calculate and quantify the scope of the general benefit conferred on the public at large. Because the Services directly serve and benefit all of the property in the Assessment District, any general benefit conferred on the public at large would be small. Nevertheless, there would be some indirect general benefit to the public at large.

The public at large uses the public highways, streets and sidewalks, and when traveling in and through the Assessment District they will benefit from the Services. A fair and appropriate measure of the general benefit to the public at large therefore is the amount of highway, street and sidewalk area within the Assessment District relative to the overall land area. An analysis of maps of the Assessment District shows that approximately 1.3% of the land area in the Assessment District is covered by highways, streets and sidewalks. This 1.3% therefore is a fair and appropriate measure of the general benefit to the public at large within the Assessment District

Summary of General Benefits

Using a sum of the measures of general benefit for the public at large and land outside the Assessment District, we find that approximately 2.3% of the benefits conferred by the Owens Valley Mosquito Abatement Program Assessment may be general in nature and should be funded by sources other than the Assessment.

General Benefit =

1.0 % (Outside the district)
+ 0.0 % (Inside the district - indirect and derivative)
+ 1.3 % (Public at Large)

=2.3 % (Total General Benefit)

Although this analysis supports the findings that 2.3% of the assessment may provide general benefit only, this number is increased by the Assessment Engineer to 5% to conservatively ensure that no assessment revenue is used to support general benefit. This additional amount allocated to general benefit also covers general benefit to parcels in the Assessment District if it is later determined that there is some general benefit conferred on those parcels.

The Mosquito Abatement Program Assessment total budget for mosquito and vector abatement, disease control, capital improvement and incidental costs is $ 651,788. Of this total budget amount, the OVMAP will contribute approximately 82% ($536,653) of the total budget from sources other than the Mosquito Control and Disease Prevention

Assessment. This contribution offsets any general benefits from the Mosquito Control and Disease Prevention Assessment Services.

METHOD OF ASSESSMENT

As previously discussed, the Assessments fund enhanced, comprehensive, year-round mosquito control, and disease surveillance and control Services that will reduce mosquito and vector populations on property and will clearly confer special benefits to properties in the Assessment District. These benefits can also partially be measured by the occupants on property in the Assessment District because such parcel population density is a measure of the relative benefit a parcel receives from the Services. Therefore, the apportionment of benefit is partially based the population density of parcels. It should be noted that many other types of "traditional" assessments also use parcel population densities to apportion the assessments. For example, the assessments for sewer systems, roads and water systems are typically allocated based on the population density of the parcels assessed.

In the process of determining the appropriate method of assessment, the Engineer considered various alternatives. For example, a fixed assessment amount per parcel for all residential improved property was considered but was determined to be inappropriate because agricultural lands, commercial property and other property also receive benefits from the assessments. Likewise an assessment exclusively for agricultural land was considered because the source of mosquitoes is generally located on such property. However, other types of property, such as residential and commercial, also derive the special benefit factors listed above from reduced mosquito populations that would otherwise fly to the property and/or to the inhabited community areas.

Moreover, a fixed or flat assessment was deemed to be inappropriate because larger properties receive a higher degree of benefit than other similarly used properties that are significantly smaller. (For two properties used for commercial purposes, there is clearly a higher benefit provided to a property that covers several acres in comparison to a smaller commercial property that is on a 0.25 acre site because the larger property generally has a larger coverage area and higher usage by employees, customers and guests that would benefit from reduced mosquito populations. This benefit ultimately flows to the property.) Larger parcels, therefore, receive an increased benefit from the assessments.

Therefore, the Engineer determined that the appropriate method of assessment apportionment should be based on the type and use of property, its relative population and usage potential, its location and its destination potential for mosquitoes. This method is further described below.

ZONES OF BENEFIT

The Owens Valley Mosquito Abatement Program's mosquito control services are concentrated on the areas encompassing the Owens Valley Floor. The remaining areas within the Program boundaries receive relatively less mosquito abatement services, and, therefore relatively lesser benefits from the Mosquito Abatement Program. The areas of

lesser benefit are defined to include all parcels within Program boundaries that are within the Inyo National Forest, west of the Owens Valley Floor and those parcels generally along the eastern side of Owens Lake. These areas are hereinafter referred to as Zone of Benefit B or Zone B and are depicted on the Assessment Diagram included with this Report. All other parcels within the Program boundaries are within Zone A, which is generally considered to be the areas of the Owens Valley Floor.

Parcels in Zone B receive relatively less mosquito abatement services on a per parcel and land area basis than parcels in the greater Owens Valley Floor area. Approximately 9% of the total parcels within the Program are in Zone B and this area receives approximately 5% of the services. (5% of services / 9% of parcels = 56% of the relative services per parcel.) Therefore, on a per parcel basis, parcels in Zone B receive approximately one half the relative services as those in Zone A. Alternatively, Zone B encompasses approximately 50% of the total area within Program boundaries. By this measure, Zone B receives approximately 10% of the relative services per acre in comparison to areas in Zone A. (5% of services / 50% of acreage = 10% of relative services per acre.) Using these measures, the relative level of service, which is a measure of relative benefit, is generally 50% on a parcel basis and 10% on an acreage basis. An average of these measures results in a 25% relative level of benefit in relation to Zone A. Therefore, it is deemed that the benefits to property in Zone B are 25% of the benefits to similar property in Zone A.

The SVTA vs. SCCOSA decision indicates:

In a well-drawn district — limited to only parcels receiving special benefits from the improvement — every parcel within that district receives a shared special benefit. Under section 2, subdivision (i), these benefits can be construed as being general benefits since they are not "particular and distinct" and are not "over and above" the benefits received by other properties "located in the district."

We do not believe that the voters intended to invalidate an assessment district that is narrowly drawn to include only properties directly benefitting from an improvement. Indeed, the ballot materials reflect otherwise. Thus, if an assessment district is narrowly drawn, the fact that a benefit is conferred throughout the district does not make it general rather than special. In that circumstance, the characterization of a benefit may depend on whether the parcel receives a direct advantage from the improvement (e.g., proximity to park) or receives an indirect, derivative advantage resulting from the overall public benefits of the improvement (e.g., general enhancement of the district's property values).

In the assessment, the advantage that each parcel receives from the Services is direct, and the boundaries for each Zone of Benefit are narrowly drawn so each Zone includes parcels that receive the similar levels of benefit from the Services. Therefore, the even spread of assessment for similar properties in each of the narrowly drawn Zones of Benefit within the District is indeed consistent with the OSA decision.

ASSESSMENT APPORTIONMENT

Certain residential properties in the Assessment District that contain a single residential dwelling unit and are on a lot of less than or equal to one acre are assigned 1.0 SFE. Traditional houses, zero-lot line houses, and townhomes are included in this category of single family residential property.

As stated previously, the special benefits derived from the Mosquito Abatement Program are conferred on property and are not based on a specific property owner's occupancy of property or the property owner's demographic status such as age or number of dependents. However, it is ultimately people who do or could use the property who enjoy the benefits described above. Therefore, the opportunity to use and enjoy the area within the Program without the excessive bother or potential health hazards brought by mosquitoes is a special benefit to properties in the Program. This benefit is related to the number of people who potentially live on, work at or otherwise use the property. In other words, the benefits conferred upon property are related to the average number of people who could potentially live on, work at or otherwise could use a property, not how the property is currently used by the present owner.

Properties with more than one residential unit are designated as multi-family residential properties. These properties benefit from the Services in proportion to the number of dwelling units that occupy each property and the average number of people who reside in multi-family residential units versus the average number of people who reside in a single family home. These demographic factors for the County of Inyo are depicted below. Using the average population density as basis for determining relative special benefit, Figure 3 lists the SFE factors for multi-family units and mobile home parcels. These benefit factors are deemed to be appropriate on a per unit basis for properties with up to eight residential units.

Properties with higher numbers of units generally receive higher benefits but at a lower relative additional benefit per unit because housing density and population density generally increases for larger parcels; therefore, the benefits from the Program are conferred over a smaller area for the average parcel population density in relation to the average area for a similar population density on other parcels in the Program. In other words, parcels with residential units in excess of eight generally have significantly higher concentrations of residents per acre than the average single family residential parcel. As a result, larger residential properties generally cover a much smaller area in comparison to single family residential properties with a similar population density. Since benefits are conferred over a smaller area, the benefit per additional unit is reduced. (The average population density per acre for larger multifamily residential property is over 3 times the average population density per acre for single family residential property. Therefore, the Engineer has deemed that the additional benefit for residential properties in excess of eight units is approximately 1/3 of the per unit rate based on population density exclusively. As a result, the benefit for multifamily residential and mobile home properties in excess of 8 units is determined to be 0.25 SFE per additional unit of any property type. This benefit apportionment methodology is summarized in Figure 3.

FIGURE 3

RESIDENTIAL ASSESSMENT FACTORS

	Total Population	Occupied Households	Persons per Household	SFE Factor 1st 8 Units	SFE Factor Addl. Units
Single Family Residential	10,897	4,237	2.57	1.00	N/A
Multi-Family Residential	1,435	737	1.95	0.76	0.25
Mobile Home	5,053	2,390	2.11	0.82	0.25

Source: 1990 Census, Inyo County

* The SFE factor for multi-family and mobile home parcels is based on the ratio of average persons per household for the property type versus the average persons per household for a single family residential home. These SFE factors are applied to the first 8 residential units on a property. Additional residential units over 8 units of a specific type are benefited at the rate of 0.25 SFE per additional unit.

COMMERCIAL/INDUSTRIAL PROPERTIES

SFE values for commercial and industrial land uses are based on the equivalence of special benefit between single family residential property and the average commercial/industrial property. The average size of a parcel for a single family home in the Program areas is approximately 0.25 acres. Such residential property has an SFE value of 1.0. The average of size of a property with a single commercial business is 0.50 acres. Using the equivalence of benefit between the average single family residential property and commercial property, improved commercial and industrial parcels of 1/2 acre would also receive an SFE benefit factor of 1.0. Therefore, commercial and industrial parcels of less than one acre in size are assigned 0.50 SFE per quarter acre or portion thereof. Commercial and industrial parcels in excess of 1 acre generally involve uses that require more land area relative to the building area or improvements on the property. As a result, the benefit per additional acre is lower. For such properties, the first acre is assigned 2.0 SFE and land area in excess of 1 acre is assigned 1 SFE benefit unit per additional acre or portion of an acre thereof.

AGRICULTURAL AND OTHER LAND PROPERTIES

The benefits to be received from the mosquito control services include active benefits which are related to the use and enjoyment of the property and passive benefits which are related to the underlying land. An example of a passive benefit is enhancement of property value that will accrue to the land from reduced mosquito populations in the area. Examples of an active benefit factors are enhanced environment for residents, employees and guests, reduced nuisance value to livestock and reduced health risk to employees, residents, guests and livestock. Properties used for agriculture, mining, utility services, recreational purposes and other such land uses generally have a lower employee and

resident density than residential and commercial properties. These parcels, therefore, receive lower benefits on a land area basis than residential or commercial property.

It was estimated that 1/5 of the benefits accrue to land and the remainder accrue to the improved use of the property. Since most residential properties are one acre or less in size, the benefit factor for agricultural and other land use-type properties is deemed to be 0.20 SFE per acre of land area. Moreover, agricultural and other land properties of large size typically do not have a population density from employees and guests that increases in correlation to property size. Therefore, the benefits to such properties are deemed to reach a maximum benefit of 2.0 SFE. Included in this category are recreational properties that are generally accessible to the public and are regularly used by customers and guests.

Residential parcels in excess of 1 acre are assessed at the land rate of 0.20 SFE per acre of land area for additional land area over 1 acre with a maximum SFE benefit factor for additional land of 2.0 SFE. Any residential dwelling units on such land use-type properties are assessed at the residential rates specified previously.

Other Properties

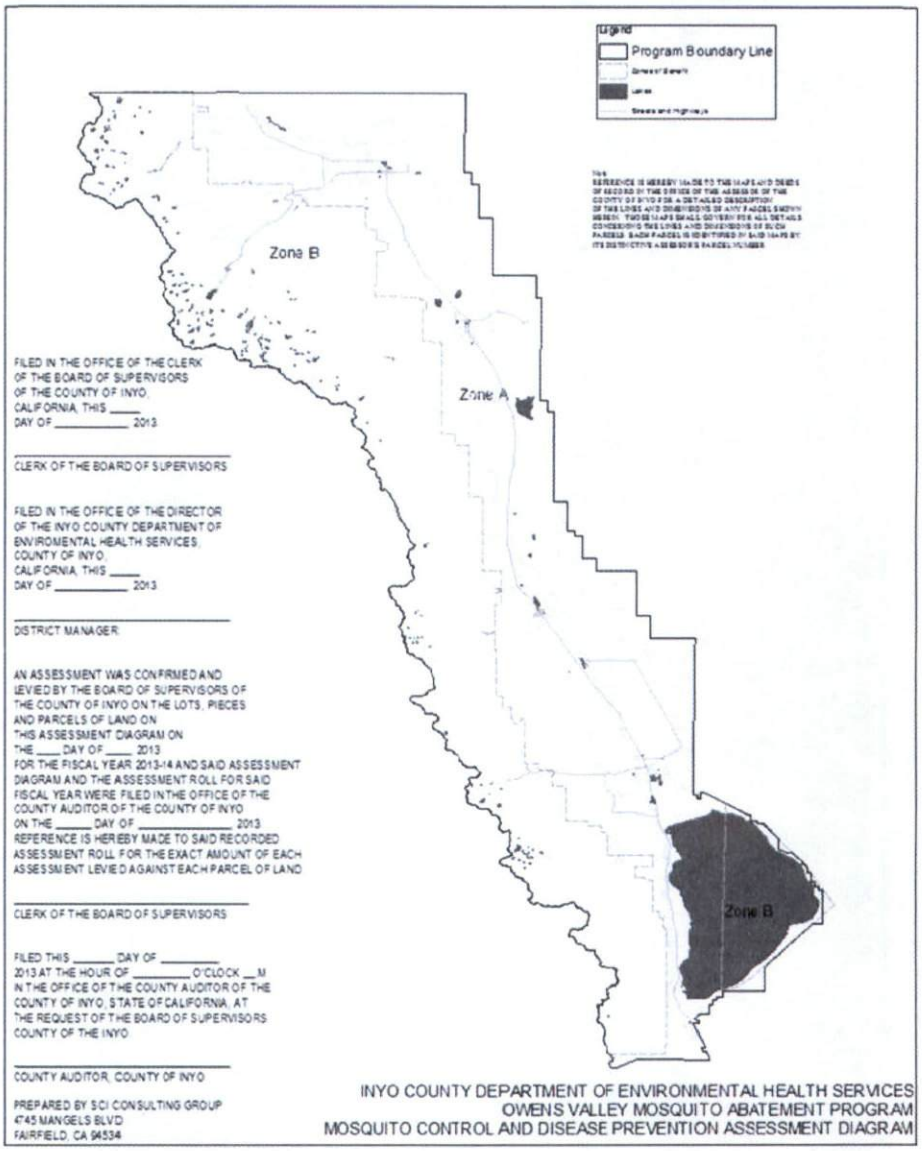
All properties that are specially benefited are assessed. Public right-of-way parcels, well, reservoir or other water rights parcels, limited access open space parcels, watershed parcels and common area parcels typically do not generate employees, residents, customers or guests. Moreover, many of these parcels have limited economic value and, therefore, do not benefit from specific enhancement of property value. Such parcels are, therefore, not specially benefited and are not assessed.

Appeals and Interpretation

Any property owner who feels that the assessment levied on the subject property is in error as a result of incorrect information being used to apply the foregoing method of assessment, may file a written appeal with the Commissioner of the Inyo County Agriculture Department or his or her designee. Any such appeal is limited to correction of an assessment during the then current or, if before July 1, the upcoming fiscal year. Upon the filing of any such appeal, the Commissioner or his or her designee will promptly review the appeal and any information provided by the property owner. If the Commissioner or his or her designee finds that the assessment should be modified, the appropriate changes shall be made to the assessment roll. If any such changes are approved after the assessment roll has been filed with the County of Inyo for collection, the Commissioner or his or her designee is authorized to refund to the property owner the amount of any approved reduction. Any dispute over the decision of the Commissioner or his or her designee shall be referred to the Board of Supervisors of the County of Inyo and the decision of the Board of Supervisors of the County of Inyo shall be final.

ASSESSMENT DIAGRAM

The Owens Valley Mosquito Abatement Program includes all properties within the boundaries of the Mosquito Abatement Program. The boundaries of the Owens Valley Mosquito Abatement Program and the zones of benefit are displayed on the following Assessment Diagram.



ASSESSMENT ROLL, FISCAL YEAR 2013-14

Reference is hereby made to the Assessment Roll in and for the assessment proceedings on file in the office of the Program Manager of the Program, as the Assessment Roll is too voluminous to be bound with this Engineer's Report.