

Agenda

County of Inyo Board of Supervisors

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

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

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

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

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

April 8, 2014

8:30 a.m. 1. PUBLIC COMMENT

CLOSED SESSION

2. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION [Pursuant to Government Code §54956.9(c)].** – Meet with legal counsel for discussion and advice regarding Potential Litigation (three cases).
3. **CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code § 54957.6].** - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: Deputy Sheriff's Association (DSA) - Negotiators: Labor Relations Administrator, Sue Dishion, Information Services Director, Brandon Shults, and Planning Director Josh Hart.
4. **CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code § 54957.6].** Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: Elected Officials Assistant Association (EOAA) - Negotiators: Information Services Director Brandon Shults, and Labor Relations Administrator Sue Dishion.
5. **CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code § 54957.6].** - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: Inyo County Correctional Officers Association (ICCOA) - Negotiators: Information Services Director Brandon Shults, and Labor Relations Administrator Sue Dishion.
6. **CONFERENCE WITH LABOR NEGOTIATOR [Pursuant to Government Code § 54957.6].** - Instructions to Negotiators re: wages, salaries and benefits - Employee Organization: Inyo County Correctional Officers Association (ICPPOA) - Negotiators: Information Services Director Brandon Shults, and Labor Relations Administrator Sue Dishion.
7. **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.
8. **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.

OPEN SESSION

10:00 a.m. PLEDGE OF ALLEGIANCE

9. **REPORT ON CLOSED SESSION AS REQUIRED BY LAW.**
10. **PUBLIC COMMENT**
11. **COUNTY DEPARTMENT REPORTS** (*Reports limited to two minutes*)

CONSENT AGENDA (Approval recommended by the County Administrator)

COUNTY ADMINISTRATOR

12. **Advertising County Resources** - Request approval of a \$3,500 final payment to the Lone Pine Chamber of Commerce for the Early Opener Trout Derby, a 2013-14 Community Project Sponsorship Grant project.

HEALTH AND HUMAN SERVICES

13. **Eastern Sierra Area Agency on Aging** – Request approval of Amendment No. 1 to the Contract No. A9-1314-16, between the County of Inyo and the California Department of Aging, increasing the overall allocation by \$102,532 for a total amount of \$539,649; and authorize the Chairperson to sign.
14. **Eastern Sierra Area Agency on Aging** – Request approval of the Annual 2014-2015 Area Plan Update for Services for Planning and Services Area 16 (Inyo and Mono counties) and authorize the Chairperson to sign the transmittal letter.
15. **Health Services** – Request approval of the Agreement between the County of Inyo and the California Department of Health Care Services for school based Medi-Cal administrative activities for the period of July 1, 2014 through June 30, 2017 in the amount of \$39,425, contingent upon the Board's adoption of future budgets; and authorize the Director of Health and Human Services to sign.

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

16. **BOARD OF SUPERVISORS – Supervisor Matt Kingsley** – Request Board appoint Mr. John “Jim” Gentry as the Fifth District Planning Commissioner, to complete an unexpired four-year term ending January 4, 2017. (*Notice of Vacancy resulted in one request for appointment being received from Mr. Gentry.*)
17. **PROBATION** - Request Board A) declare Allvest Information Services, Inc., dba Assessments.com as a sole source provider of consulting training and software programming services; and B) ratify and approve a contract between the County of Inyo and Assessments.com for consulting, training and software programming services in an amount not to exceed \$20,900 for the period of January 1, 2014 through June 30, 2014; and authorize the Chairperson to sign.
18. **SHERIFF** – Request approval of the Memorandum of Understanding between the Inyo County Sheriff's Department and the Olancha/Cartago Volunteer Fire Department for Limited Advanced Life Support and Advanced Life Support; and authorize the Sheriff to sign.
19. **PUBLIC WORKS** – Request approval of Amendment No. 1 to the Lease between the County of Inyo and Denver Gardens LLC for the property located at 912, 914, 916 and 918 North Main Street, in Bishop, to extend the existing lease for a period of five years, maintaining all current provisions and conditions while reducing the annual lease fee by a total of \$104,793 over the five year period and the annual accelerator from 5% to 3% annually; and authorize the Chairperson to sign, contingent upon the appropriate signatures being obtained.
20. **PLANNING** – Request Board review and approve the draft correspondence to Senator Pavley regarding SB 1270 concerning surface mining operations; and authorize the Chairperson to sign.
21. **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.

22. **COUNTY ADMINISTRATOR – Emergency Services** - Request Board discuss and consider staff's recommendation regarding continuation of the local emergency, The Gully Washer Emergency, that resulted in flooding in the central, south and southeastern portion of Inyo County during the month of July, 2013.
23. **COUNTY ADMINISTRATOR – Emergency Services** - Request Board discuss and consider staff's recommendation regarding continuation of the local emergency, The Canyon Crusher Emergency, that resulted in flooding in the portions of Inyo County during the month of August, 2013.
24. **COUNTY ADMINISTRATOR – Emergency Services** – Request Board discuss and consider staff's recommendation regarding continuation of the local emergency, known as the “Land of EVEN Less Water Emergency” that was proclaimed as a result of extreme drought conditions that exist in the County.

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

- 11:00 a.m. 25. **COUNTY ADMINISTRATOR – Integrated Waste Management** – Request Board A) receive a presentation from staff regarding solid waste equipment needs to maintain CARB compliance; and B) provide direction if any.
26. **COUNTY ADMINISTRATOR – Integrated Waste Management** – Request Board A) receive a presentation from staff regarding Illegal Dumping Prevention and B) provide direction if any.
- 1:30 p.m. 27. **PLANNING** – Request Board A) conduct a workshop with staff to receive a presentation regarding Inyo County Code Title 21 and the current procedure for the processing of existing applications for renewable energy projects; and B) provide direction if any.

CORRESPONDENCE - ACTION

28. **INYO COUNTY SUPERINTENDENT OF SCHOOLS** – Request Board consolidate the Inyo County Board of Education Election for Trustees with the Statewide Primary Election on June 3, 2014.

BOARD MEMBERS AND STAFF REPORTS

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

29. **PUBLIC COMMENT**

CORRESPONDENCE - INFORMATIONAL

30. **AUDITOR-CONTROLLER** – Notice that in accordance with Section 26905 and 26921 of the Government Code and your orders of February 5, 1950 and January 3, 1956, an actual count of money in the hands of the Treasurer was made on March 31, 2014 and that the count showed the funds to be in balance, pending written verification of inactive accounts.
31. **PUBLIC WORKS** – Agenda for the April 23, 2014 Southern Inyo Airport Advisory Committee Meeting.
32. **BIG PINE PAIUTE TRIBE OF THE OWENS VALLEY** – Invitation to consult on the Draft Renewable Energy General Plan Amendment.
33. **INYO NATIONAL FOREST** – Notification of comments on the Sierra Bighorn Sheep Habitat Protection Project.



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
 12

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

FROM: Jon Klusmire, Museum Services Administrator

FOR THE BOARD MEETING OF: April 8, 2014

SUBJECT: Final County of Inyo Community Project Sponsorship Grant Presentation and Payment to the Lone Pine Chamber of Commerce for successfully completing a 2013-14 CPSP project, the Early Opener Trout Derby.

DEPARTMENTAL RECOMMENDATION: Request your Board approve final payment to the Lone Pine Chamber of Commerce for \$3,250 for the Early Opener Trout Derby, a 2013-14 Community Project Sponsorship Grant project funded from the 2013-2014 Advertising County Resources budget, 011400.

SUMMARY DISCUSSION: The Lone Pine Chamber of Commerce was awarded a FY 2013-14 County of Inyo Community Project Sponsorship Grant in the amount of \$6,500 in August of 2013 to help sponsor the annual Early Opener Trout Derby, held March 1, 2014. The Derby is the first of the fishing season and generates good publicity and media coverage. Organizers said 175 anglers registered for the Derby, and more than 200 fish were caught at the event, which is held at Diaz Lake. Organizers said the drop in attendance this year "is directly related to the rumor that it was going to rain." It turned out to be a perfect day for fishing. For the second year, "we gave a prize to every kid who caught a fish," said the organizers, as part of the Derby's effort "to get the kids hooked on fishing" which should translate to more families coming to Inyo County to fish.

After contracts were finalized, half the grant funds (\$3,250) were disbursed to the Lone Pine Chamber of Commerce. The event organizers have provided staff with sufficient documentation of acceptable expenses for reimbursement for a final payment of \$3,250. The organizers also provided evidence that Inyo County was prominently mentioned as a sponsor of the event in ads and other promotional material.

ALTERNATIVES: The Board could deny the request.

OTHER AGENCY INVOLVEMENT: County Administrator's Office, Auditor/Controller.

FINANCING: The Community Project Sponsorship Program is part of the Advertising County Resources budget and is financed from the General Fund. Funds for these grants have been budgeted in the FY 2013-14 Advertising County Resources Budget (011400), Professional Services (5265).

APPROVALS	
COUNTY COUNSEL: N/A	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS <i>(Must be reviewed and approved by county counsel prior to submission to the board clerk.)</i> Approved: _____ Date _____
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS <i>(Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)</i>  Approved: <u>yes</u> Date <u>4/11/2014</u>
PERSONNEL DIRECTOR: N/A	PERSONNEL AND RELATED ITEMS <i>(Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)</i> Approved: _____ Date _____

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)

(The Original plus 20 copies of this document are required)

[Handwritten Signature]

Date: 4/2/14



March 24, 2014

Inyo County Board of Supervisors
Drawer N
Independence CA 93545

Dear Board,

The Lone Pine Chamber is grateful for your participation as a sponsor of the 2014 Early Opener Trout Derby held March 1, 2014.

More and more we devote attention to the kids. This year we gave a prize to every kid who caught a fish. Our agenda is to get the kids hooked on fishing and the parents will keep bringing them to Inyo County to fish.

The statistics show that we had 175 registered fishermen and that over 200 fish were caught. The drop in participates is directly related to the rumor that it was going to rain, well it was a perfect fishing day so those that stayed away because of the rumor missed out on a wonderful day of play.

Sincerely,

Kathleen New
President/CEO
Lone Pine Chamber of Commerce

Lone Pine Early Opener

TROUT DERBY

\$800 Blind Bogey

Prizes for the largest fish,
largest catch and tagged fish.



\$10 Adult entry fee
\$5 for children

*Breakfast & Lunch
available*

March 1st, 2014

Sign-up 6:30-12:00 noon • Diaz Lake

Brought to you by the Business of Lone Pine & the County of Inyo



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

13

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

FROM: Health & Human Services - ESAAA

FOR THE BOARD MEETING OF: April 8, 2014

SUBJECT: Amendment Number 1 of the Standard Agreement for Contract Number A9-1314-16 between California Department of Aging and County of Inyo

DEPARTMENTAL RECOMMENDATION:

Request Board approve Amendment Number 1 to Standard Agreement for Contract Number A9-1314-16, between the County of Inyo and the California Department of Aging, increasing the overall allocation by \$102,532, for a total contract amount of \$539,649, and authorize the Chairperson to sign the Standard Agreement Amendment.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

This contract is being amended to reallocate unexpended funds from the 3 month budget and provides for the allocation of reconciled One-Time-Only (OTO) Title III and VII funds for the Area Agency on Aging (AAA) FY 2012-13 contract and reallocation of unspent federal funds. This increase will expand/enhance services provided under this Agreement.

The additional \$102,532 is as follows: \$964 for IIIB Supportive Services, \$305 for IIIB Ombudsman services, \$276 for VIIB Ombudsman services, \$2,746 for IIIC1 Congregate Nutrition services, \$60,514 for IIIC1 Special Nutrition Funds, \$348 for NSIP C1 for congregate meals, \$540 for IIIC2 Home Delivered services, \$34,923 for IIIC2 Special Nutrition Funds, \$869 for NSIP C2 for home delivered meals, \$76 for IIID Disease Prevention services, \$940 for IIIE Family Caregiver services and \$31 Title VII Elder Abuse Prevention services. The IIIB Supportive Services, Congregate Nutrition, Home Delivered, and NSIP funds will result in an amendment with the Mono County contract in order for the additional funds to be allocated appropriately between the two counties. The Special Nutrition Funds are the funds that were rolled over from the 3 month budget and will be reallocated to Inyo and Mono based on what was unspent in each county.

ALTERNATIVES:

Receipt of this additional funding is contingent upon the execution of this Amendment.

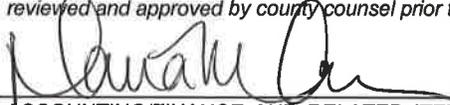
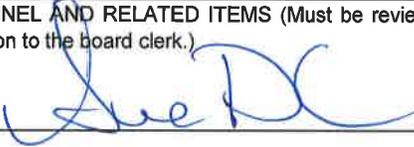
OTHER AGENCY INVOLVEMENT:

California Department of Aging, County of Mono

FINANCING:

State and Federal dollars. Total amount of this contract is \$539,649, and is budgeted as revenue in the ESAAA budget (683001) in the State and Federal revenue object codes. Total federal dollars = \$363,829, and total State dollars = \$175,820.

APPROVALS

COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by county counsel prior to submission to the board clerk.)  Approved: <u>yes</u> Date <u>3/18/14</u>
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)  Approved: <u>yes</u> Date <u>3/18/2014</u>
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)  Approved: <u>J</u> Date <u>3/27/14</u>

DEPARTMENT HEAD SIGNATURE:  Date: 3-31-14
(Not to be signed until all approvals are received)

STATE OF CALIFORNIA
STANDARD AGREEMENT AMENDMENT
 STD. 213 A (Rev 6/03)

CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED _____ Pages

AGREEMENT NUMBER A9-1314-16	AMENDMENT NUMBER 1
REGISTRATION NUMBER	

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

STATE AGENCY'S NAME

California Department of Aging

CONTRACTOR'S NAME

County of Inyo

2. The term of this Agreement is October 1, 2013 through June 30, 2014

3. The maximum amount of this Agreement after this amendment is: **\$ 539,649.00**
 Five hundred thirty-nine thousand six hundred forty-nine and 00/100 dollars

4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:

This contract is being amended to reallocate unexpended funds.

This contract amendment increases funds provided to the contractor by \$ 102,532.00 for a total amount of 539,649.00.

This increase will be used to enhance or maintain services.

Exhibit B, pages 11 and 12, titled Budget Display, amendment 1, is attached and replaces the original Exhibit B, pages 11 and 12, Budget Display.

The Budget, amendment 1, is hereby incorporated by reference and replaces the original Budget.

All other terms and conditions shall remain the same.

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		
ADDRESS 163 May Street BISHOP CA 93514		
STATE OF CALIFORNIA		<input checked="" type="checkbox"/> Exempt per: AG OP 80-111
AGENCY NAME California Department of Aging		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Dyanne Macias, Manager, Contracts and Business Services Section		
ADDRESS 1300 National Drive, Suite 200, Sacramento, CA 95834		

Exhibit B - Budget Detail, Payment Provisions, and Closeout

**AREA PLAN
 Amendment #1
 Fiscal Year 2013/14
 9 Months Contract (effective October 1, 2013-June 30, 2014)
 County of Inyo**

	Baseline	Cumulative Baseline Adjustments	Updated Baseline	Cumulative Transfers	Cumulative OTO	Updated Total	Net Change
Supportive Services							
Federal Title IIIB	81,307	-	81,307	-	964	82,271	964
Total Supportive Services	81,307	-	81,307	-	964	82,271	964
Ombudsman							
Federal Title IIIB	10,929	-	10,929	-	305	11,234	305
Federal Title VII Ombudsman	14,182	-	14,182	-	276	14,458	276
Special Deposit (SDF)	933	-	933	-	-	933	-
SNF Quality & Accountability	12,746	-	12,746	-	-	12,746	-
Total Ombudsman	38,790	-	38,790	-	581	39,371	581
Congregate Nutrition							
Federal Title IIIC1	102,903	1,197	104,100	-	1,549	105,649	2,746
General Fund C1	22,384	-	22,384	-	-	22,384	-
C1 Special Nutrition Funds	-	60,514	60,514	-	-	60,514	60,514
NSIP C1	9,648	295	9,943	-	53	9,996	348
Total Congregate Nutrition	134,935	62,006	196,941	-	1,602	198,543	63,608
Home-Delivered Meals							
Federal Title IIIC2	53,731	310	54,041	-	230	54,271	540
General Fund C2	44,209	-	44,209	-	-	44,209	-
C2 Special Nutrition Funds	-	34,923	34,923	-	-	34,923	34,923
NSIP C2	24,048	736	24,784	-	133	24,917	869
Total Home Delivered Meals	121,988	35,969	157,957	-	363	158,320	36,332
Disease Prevention							
Federal Title IIID	1,888	-	1,888	-	76	1,964	76
Total Disease Prevention	1,888	-	1,888	-	76	1,964	76
Family Caregiver							
Federal Title IIIE	12,556	-	12,556	-	940	13,496	940
Total Family Caregiver	12,556	-	12,556	-	940	13,496	940
Elder Abuse							
Federal Title VII Elder Abuse Prevention	472	-	472	-	31	503	31
Total Elder Abuse	472	-	472	-	31	503	31
Administration							
Federal Title IIIB	14,342	-	14,342	-	-	14,342	-
Federal Title IIIC1	16,265	-	16,265	-	-	16,265	-
Federal Title IIIC2	8,493	-	8,493	-	-	8,493	-
Federal Title IIIE	5,970	-	5,970	-	-	5,970	-
General Fund C1	88	-	88	-	-	88	-
General Fund C2	23	-	23	-	-	23	-
Total Administration	45,181	-	45,181	-	-	45,181	-
Grand Total - All Funds	437,117	97,975	535,092	-	4,557	539,649	102,532

Exhibit B - Budget Detail, Payment Provisions, and Closeout

**AREA PLAN
 Amendment #1
 Fiscal Year 2013/14
 9 Months Contract (effective October 1, 2013-June 30, 2014)
 County of Inyo**

	Baseline	Cumulative Baseline Adjustments	Updated Baseline	Cumulative Transfers	Cumulative OTO	Updated Total	Net Change
Funding Summary							
Federal Funds	356,734	2,538	359,272	-	4,557	363,829	7,095
General Fund	66,704	-	66,704	-	-	66,704	-
Special Nutrition Funds	-	95,437	95,437	-	-	95,437	95,437
SNF Quality & Accountability	12,746	-	12,746	-	-	12,746	-
Special Deposit	933	-	933	-	-	933	-
	437,117	97,975	535,092	-	4,557	539,649	102,532

Comments:

The maximum amount of Title III E expenditures allowable for supplemental services is: 4,940

The maximum amount of Title III E expenditures allowable for Grandparents is: 2,470

The minimum General Fund to be expended for State Match In Title III is: 14,196

CFDA NUMBER	Title	Year	Award Number	Award Name
93.041	Title VII: Elder Abuse Prevention	2013	13AACAT7EA	Older Americans Act Title VII-Allotments for Vulnerable
		2014	14AACAT7EA	Elder Rights Protection Activities
93.042	Title VII:Ombudsman	2013	13AACAT7OM	Older Americans Act Title VII-Allotments for Vulnerable
		2014	14AACAT7OM	Elder Rights Protection Activities
93.043	IIID: Preventive Health	2013	13AACAT3PH	Older Americans Act Title III-Grants for State & Community
		2014	14AACAT3PH	Programs on Aging
93.044	IIIB: Supportive Services	2013	13AACAT3SS	Older Americans Act Title III-Grants for State & Community
		2014	14AACAT3SS	Programs on Aging
93.045	IIIC1: Congregate Meals	2013	13AACAT3CM	Older Americans Act Title III-Grants for State & Community
		2014	14AACAT3CM	Programs on Aging
93.045	IIIC2: Home-Delivered Meals	2013	13AACAT3HD	Older Americans Act Title III-Grants for State & Community
		2014	14AACAT3HD	Programs on Aging
93.052	IIIE: NFCSP	2013	13AACAT3FC	Older Americans Act Title III-Grants for State & Community
		2014	14AACAT3FC	Programs on Aging
93.053	Nutrition Services Incentive Program	2013	13AACANSIP	Older Americans Act Section 311-Nutrition Services
		2014	14AACANSIP	Incentive Program



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
14

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

FROM: HEALTH & HUMAN SERVICES – ESAAA

FOR THE BOARD MEETING OF: April 8, 2014

SUBJECT: Approval of Annual Area Plan Update

DEPARTMENTAL RECOMMENDATION:

Recommend approval of the annual 2014-2015 Area Plan Update for Services for Planning and Services Area 16 (Inyo and Mono Counties), and authorize the Chairperson to sign the required Transmittal Letter.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

Every four years, the Eastern Sierra Area Agency on Aging (ESAAA) is required to conduct an extensive needs assessment of regional seniors, including those living in long-term care facilities. Then annually, updates must be submitted to the California Department of Aging, per their guidance and use of their templates. The update is intended to report any significant changes in services for each year, and is due by May 1 each year. Although specific changes in Inyo's meals program are being discussed, no decisions have been made as of the time of the preparation of this year's Area Plan Update (APU), so those discussions are not reflected in this APU. The proposed APU was reviewed and recommended for approval by the ESAAA Advisory Council following a Public Hearing during the Council's meeting on April 2, 2014. Input from that Public Hearing has been incorporated in the Area Plan Update. All changes from last year's APU are highlighted in yellow for your specific review.

ALTERNATIVES:

Board could choose to delay or deny approval of the plan, which would delay submission to CDA, and delay receipt of current year's funding.

OTHER AGENCY INVOLVEMENT:

County of Mono, California Department of Aging, California Indian Legal Services

FINANCING:

There is no funding involved in this request, although receipt of this document is required before our allocations to ESAAA will be released to the County.

APPROVALS

COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS <i>(Must be reviewed and approved by County Counsel prior to submission to the Board Clerk.)</i> Approved: _____ Date: _____
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS <i>(Must be reviewed and approved by the Auditor/Controller prior to submission to the Board Clerk.)</i> Approved: _____ Date: _____
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS <i>(Must be reviewed and approved by the Director of Personnel Services prior to submission to the Board Clerk.)</i> Approved: _____ Date: _____
BUDGET OFFICER:	BUDGET AND RELATED ITEMS <i>(Must be reviewed and approved by the Budget Officer prior to submission to the Board Clerk.)</i> Approved: _____ Date: _____

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)



Date:

4-2-14

**EASTERN SIERRA AREA AGENCY ON AGING
(ESAAA)
for
PLANNING & SERVICE AREA (PSA) 16**

**2014-2015 Annual
AREA PLAN UPDATE
FOR SERVICES**

*Submitted by
The Eastern Sierra Area Agency on Aging Program
of the
Inyo County Health and Human Services Department
163 May Street
Bishop, CA 93514
760 873-3305*

*Inyo County Board of Supervisors Chairperson Rick Pucci
ESAAA Advisory Council Chairperson Roger Rasche
ESAAA Director Jean Turner
jturner@inyocounty.us*

**TRANSMITTAL LETTER
Four-Year Area Plan
2012-2016**

AAA Name: Eastern Sierra Area Agency on Aging (ESAAA)

PSA 16

This Area Plan is hereby submitted to the California Department of Aging for approval. The Governing Board and the Advisory Council have each had the opportunity to participate in the planning process and to review and comment on the Area Plan. The Governing Board, Advisory Council, and Area Agency Director actively support the planning and development of community-based systems of care and will ensure compliance with the assurances set forth in this Area Plan. The undersigned recognize the responsibility within each community to establish systems in order to address the care needs of older individuals and their family caregivers in this planning and service area.

1. Rick Pucci

Signature: Governing Board Chair¹

April 8, 2014
Date

2. Roger Rasche

Signature: Advisory Council Chair

April 2, 2014
Date

3. Jean Turner

Signature: Area Agency Director

April 8, 2014
Date

1 Original signatures or official signature stamps are required.

SECTION 2. DESCRIPTION OF THE PLANNING AND SERVICE AREA (PSA)

The Counties of Inyo and Mono are located at the eastern edge of California, approximately midway between the northern and southern boundaries of the state. The two-county area is a long triangle of which Mono County forms the apex and Inyo County the base. The east side of the triangle comprises about 300 miles of the California-Nevada border. Kern, San Bernardino, Fresno, Tulare and Alpine Counties share borders on the north, south and west. Total area exceeds 13,000 square miles. The total year-round population is approximately 32,750, but visitors and second homeowners double this at certain times of the year.

The area can be divided into essentially two geographic regions. The Western portion includes the Sierra Nevada Mountain range, which, with its forest, lakes, streams, and ski slopes, plays a major role in the resources and economy of the area, attracting outdoors enthusiasts for hiking, backpacking, hang gliding, snow skiing, snowboarding, fishing, camping and hunting. The Eastern two-thirds of the area is made up essentially of desert basins and mountain ranges, featuring the Death Valley National Park. Emphasizing the contrasting topography of the area is the fact that the western edge of Inyo County contains Mt. Whitney, the highest peak in the United States outside of Alaska, while the eastern region includes Death Valley, in which is found the lowest point in the western hemisphere. Most of the population of the counties is located in the Owens Valley, along the base of the Sierra Nevada Mountains, and in mountain communities in Mono County along US Highway 395. Small pockets of population also are found along Highway 6 in Mono County and, in Inyo County, east of the Death Valley National Park boundary.

This expansive geographic region of over 13,000 square miles, spread out over desert and mountain terrain, coupled with the dispersed and diverse population pockets, also provides significant constraints and challenges in the delivery of services and in the development of overarching systems for services.

Area Plan Update – April 2013 – Estimate of the number of lower income older individuals

According to the 2010 Census Data, there are 7,064 residents aged 60 and over, out of population of 32,748; senior citizens represent 22% of the total population. Attachment A details the population breakdown by community, by age tiers, income and level of remoteness of more urban areas. Of that group, approximately 10% are minority residents, primarily Native American and Hispanic.

SECTION 5. NEEDS ASSESSMENT

No Change

SECTION 7. PUBLIC HEARINGS

PSA 16

At least one public hearing must be held each year of the four-year planning cycle.
 CCR Title 22, Article 3, Section 7302(a)(10) and Section 7308, OAA 2006 306(a)

Fiscal Year	Date	Location	Number of Attendees	Presented in languages other than English? ² Yes or No	Was hearing held at a Long-Term Care Facility? ³ Yes or No
2012-13	Aug. 27-28, 2012	Bishop & Independence, California	35	No	No
2013-14	April 3, 2013	Bishop, California	18	No	Yes
2014-15	April 2, 2014	Independence, CA	17	No	No
2015-16					

The following must be discussed at each Public Hearing conducted during the planning cycle:

1. Summarize the outreach efforts used in seeking input into the Area Plan from institutionalized, homebound, and/or disabled older individuals.

This Area Plan Update was sent to all three skilled nursing facilities in the PSA prior to the Public Hearing, and a Public Hearing on April 2, 2013 was held at the Inyo County Sheriff's Administrative Center. Further a notice about the Area Plan Update was mailed to all homebound/disabled older individuals identified through Home-Delivered Meals program staff with directions on how to receive more detailed information if interested.

2. Were proposed expenditures for Program Development (PD) and Coordination (C) discussed?

Yes. Go to question #3

Not applicable, PD and C funds are not used. Go to question #4

3. Summarize the comments received concerning proposed expenditures for PD and C
N.A.

4. Attendees were provided the opportunity to testify regarding setting of minimum percentages of Title III B program funds to meet the adequate proportion funding for Priority Services

Yes. Go to question #5

No, Explain:

5. The discussion around minimum percentages included a full discussion about (a) the importance of legal services for seniors as a way to offset the onset of other issues; and (b) transportation needs,

² A translator is not required unless the AAA determines a significant number of attendees require translation services.

³ AAAs are encouraged to include individuals in LTC facilities in the planning process, but hearings are not required to be held in LTC facilities.

including assisted transportation and the possible impact of health care reform on the need, including whether or not some transportation could be billed to Medi-Cal/Medicare for eligible seniors.

6. List any other issues discussed or raised at the public hearing.

None

7. Note any changes to the Area Plan which were a result of input by attendees.

None

DRAFT

Goal #1

Goal: Promote positive physical and mental health outcomes for seniors and their caregivers.

Rationale: Most seniors concur that remaining in their own home is of major importance. Ensuring that the physical and mental well-being needs of our senior population are being addressed help to facilitate this outcome. Issues related to meeting the basic nutritional needs of seniors, as well as addressing access to health care services were identified as high priorities during the ESAAA needs assessment.

Objectives:	Projected Start and End Dates	Title III B Funded PD or C	Update Status
<p>1.1 ESAAA staff will coordinate with area service providers to establish a regular quarterly meeting with other service providers, the Long-Term Care Ombudsman, law enforcement and the District Attorney, to ensure that identified at-risk seniors are connected to appropriate resources, as well as trends or gaps are identified and steps taken to adequately address these issues within the community.</p>	<p>July 2013 – June 2014 and Ongoing</p>		<p>No Change: Adult Multi-Disciplinary Meetings established on a quarterly basis with quarterly outreach to service providers.</p>
<p>1.2 ESAAA staff will coordinate with the Long-Term Care Ombudsman and other County-based Social Services programs to ensure that training is provided to individuals, professionals, paraprofessionals and volunteers who provide services to the senior and dependent adult populations on the identification, prevention and treatment of elder abuse, neglect and exploitation on an annual basis. The continuum of training will ensure earlier identification and intervention of abuse and neglect.</p>	<p>July 2013 – June 2014 and Ongoing</p>		<p>The Long Term Ombudsman, which is housed in ESAAA, works in coordination with other County-based social service programs to ensure training needs are met. Training brought to the community or scheduled to occur within 2013/2014 include Trauma Informed Planning, Complex Elder and Dependent Abuse and Elder Abuse and Geriatric Medicine.</p>
<p>1.3 ESAAA staff will coordinate with the County-based Social Services programs, law enforcement, and other senior service providers to bring relevant training in regards to issues impacting the safety of seniors, including, but not limited to</p>	<p>July 2013 – June 2014 and Ongoing</p>		<p>No Change: In addition to the training outlined under 1.2, public information has been provided on</p>

financial abuse, self-neglect, and effective interventions.			a wide range of issues at the senior sites as well as via news articles.
1.4 ESAAA staff will coordinate with Behavioral Health Staff to provide training to employees who deliver meals to homebound seniors, as well as staff in congregate settings, on issues related to the identification of seniors who may be experiencing depression or other Behavioral Health issues such as substance use or medication mismanagement in an effort to support early detection and intervention.	July 2013 – June 2014 and Ongoing		No Change: Training continues at least quarterly with Behavioral Health staff providing training on a wide range of topics.
1.5 ESAAA staff will coordinate with Behavioral Health Staff and nutrition program staff to disseminate information to the senior population on a quarterly basis on issues related to physical and emotional wellness and nutrition education in an effort to provide seniors with information to help them make better informed choices.	July 2013 – June 2014 and Ongoing		No Change: A quarterly newsletter that combines physical and emotional wellness information with nutrition education continues to provide valuable information to the senior population as well as the ESAAA site staff.
1.6 ESAAA staff will coordinate with County-based senior service and social service programs to ensure that home based services such as personal care, homemaking and telephone reassurance are available to seniors to the extent possible in an effort to maintain seniors in their own home safely.	July 2013– June 2014 and Ongoing		No Change: ESAAA has provided outreach to social service staff in both counties regarding the available resources that support seniors' independence.
1.7 ESAAA staff will maintain congregate meal sites, providing basic nutrition services, as well as a resource for socialization and information in an effort to support physical and emotional wellness.	July 2013– June 2014 and Ongoing		No Change: Congregate meal sites are maintained in 6 locations within the service area.
1.8 ESAAA staff will ensure home delivered nutrition services are available to frail and elderly seniors, as well as seniors who are isolated or are not near a	July 2013 – June 2014 and Ongoing		No Change: Home-delivered meal services continue to be

congregate site in an effort to promote physical and emotional well-being.			provided to those frail and elderly seniors who are isolated and/or unable to attend the congregate setting throughout the service area.
1.9. ESAAA staff will coordinate with Behavioral Health to identify and reduce depressive symptoms in the aging population through the implementation of the HEALTHY Ideas, an evidenced based program.	July 2013 – June 2014 and Ongoing		Training of the HEALTHY Ideas program has been provided to ESAAA and Inyo County Behavioral Health staff and included coordination with Behavioral Health staff in Mono County. Implementation of the program is in the early stages for the region.

Goal #2

Goal: Maintain a minimum level of access to services, including health care services and local support services to seniors throughout our communities.			
Rationale: Communities throughout both Inyo and Mono counties are isolated from many support services, including access to primary health care services, pharmacies and grocery vendors. Specialized care is often not locally available, requiring our older adults to travel to urban areas in southern California, as well as southern and northern Nevada. This issue was identified as one of the highest priorities for seniors in both counties.			
Objectives:	Projected Start and End Dates	Title III B Funded PD or C	Update Status
2.1 ESAAA staff will coordinate with County-Based social service programs, such as IHSS to address the caregiving and transportation needs of seniors in an effort to promote access to health care services, both locally and out of the area.	July 2013 – June 2014 and Ongoing		No Change: Coordination of caregiving and transportation needs occurs on a regular basis.
2.2 ESAAA will coordinate with county and city agencies, as well as community based agencies to identify additional resources to support access to medical and other support services.	July 2013 – June 2014 and Ongoing		No Change: ESAAA staff regularly participate in efforts to address

			access issues for seniors living in the service area.
2.3 ESAAA staff will coordinate with other service organizations to ensure that a continuum of services are available and will provide information and assistance services to ensure seniors have access to information that addresses their needs.	July 2013 – June 2014 and Ongoing		No Change: Updated information regarding resources is maintained in order to ensure seniors have access to appropriate service and resource information.
2.4 ESAAA staff will coordinate with and ensure appropriate referrals are made to HICAP in order to help seniors address their medical coverage issues and remove any barriers to health care services.	July 2013 – June 2014 and Ongoing		No Change: Referrals are made as appropriate to the HICAP provider.
2.5 ESAAA staff will coordinate with the Governing Board and the Advisory Council to monitor the needs of seniors throughout the planning area and assess the available opportunities to reach underserved seniors.	July 2013 – June 2014 and Ongoing		No Change: ESAAA staff regularly coordinate with the Advisory Council and Governing Board to ensure that issues impacting underserved seniors are identified and addressed as appropriate.
2.6 ESAAA staff will monitor changing state and federal policies and will coordinate with the Governing Board and Advisory Council to advocate on behalf of seniors to ensure issues related to adequate access to health care and support services remain a focus of policymakers.	July 2013 – June 2014 and Ongoing		No Change: ESAAA staff monitor policies at all levels and keep the Advisory Council and Governing Board apprised of those issues that may impact the senior population and will conduct direct advocacy with policymakers as directed by the

			Governing Board.
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Goal #3

Goal: Strengthen the service delivery system to proactively address unmet needs.

Rationale: Both Inyo and Mono Counties have seniors living in areas that are isolated from the primary service delivery systems. In general, the senior population throughout the entire region has limited access to the wide range of medical and support services found in larger communities. Ensuring adequate information and referral services are available to all community members and actively identifying methods to fill gaps in services continues to be identified as an area of focus by seniors throughout the planning area.

Objectives:	Projected Start and End Dates	Title III B Funded PD or C	Update Status
3.1 ESAAA staff will coordinate with both the public and private sector to identify resources to meet identified needs.	July 2013 – June 2014 and Ongoing		No Change: Efforts to identify both public and private resources continue.
3.2 ESAAA staff will utilize public information mechanisms to ensure that seniors, their caregivers and service providers are aware of the resources available to meet identified needs.	July 2013– June 2014 and Ongoing		No Change: ESAAA staff utilize local media resources and direct distribution methods to educate seniors, caregivers and community members about available resources.
3.3 ESAAA staff will maintain resource information and disseminate information through multiple distribution modes, including web-based access.	July 2013 – June 2014 and Ongoing		No Change: ESAAA continues to maintain resource information and utilize multiple distribution modes.

SECTION 10. Service Unit Plan (SUP) Objectives

PSA 16

**TITLE III/VII SERVICE UNIT PLAN OBJECTIVES
(Units of service are reported for ALL funding sources)**

1. Personal Care (In-Home)

Unit of Service = 1 hour

Fiscal Year	Proposed Units of Service	Goal Numbers	Objective Numbers (if applicable)
2012-2013	-0-		
2013-2014	-0-		

2014-2015	-0-		
2015-2016	-0-		

2. Homemaker Unit of Service = 1 hour

Fiscal Year	Proposed Units of Service	Goal Numbers	Objective Numbers (if applicable)
2012-2013	-0-		
2013-2014	-0-		
2014-2015	-0-		
2015-2016	-0-		

3. Chore Unit of Service = 1 hour

Fiscal Year	Proposed Units of Service	Goal Numbers	Objective Numbers (if applicable)
2012-2013	-0-		
2013-2014	-0-		
2014-2015	-0-		
2015-2016	-0-		

4. Home-Delivered Meal Unit of Service = 1 meal

Fiscal Year	Proposed Units of Service	Goal Numbers	Objective Numbers (if applicable)
2012-2013	50,000	1	
2013-2014	Same	Same	
2014-2015	Same	Same	
2015-2016	Same	Same	

5. Adult Day Care/Adult Day Health Unit of Service = 1 hour

Fiscal Year	Proposed Units of Service	Goal Numbers	Objective Numbers (if applicable)
2012-2013	-0-		
2013-2014	-0-		
2014-2015	-0-		
2015-2016	-0-		

6. Case Management Unit of Service = 1 hour

Fiscal Year	Proposed Units of Service	Goal Numbers	Objective Numbers (if applicable)
2012-2013	-0-		
2013-2014	-0-		
2014-2015	-0-		
2015-2016	-0-		

7. Assisted Transportation Unit of Service = 1 one-way trip

Fiscal Year	Proposed Units of Service	Goal Numbers	Objective Numbers (if applicable)
2012-2013	194	1,2	
2013-2014	Same	Same	
2014-2015	Same	Same	
2015-2016	Same	Same	

8. Congregate Meals Unit of Service = 1 meal

Fiscal Year	Proposed Units of Service	Goal Numbers	Objective Numbers (if applicable)
2012-2013	19,000	1,2	
2013-2014	Same	Same	
2014-2015	Same	Same	
2015-2016	Same	Same	

9. Nutrition Counseling Unit of Service = 1 session per participant

Fiscal Year	Proposed Units of Service	Goal Numbers	Objective Numbers (if applicable)
2012-2013	10	1	
2013-2014	Same	Same	
2014-2015	Same	Same	
2015-2016	Same	Same	

10. Transportation Unit of Service = 1 one-way trip

Fiscal Year	Proposed Units of Service	Goal Numbers	Objective Numbers (if applicable)
2012-2013	2,000	1,2	
2013-2014	Same	Same	
2014-2015	Same	Same	
2015-2016	Same	Same	

11. Legal Assistance Unit of Service = 1 hour

Fiscal Year	Proposed Units of Service	Goal Numbers	Objective Numbers (if applicable)
2012-2013	300	1,2	
2013-2014	Same	Same	
2014-2015	Same	Same	
2015-2016	Same	Same	

12. Nutrition Education Unit of Service = 1 session per participant

Fiscal Year	Proposed Units of Service	Goal Numbers	Objective Numbers (if applicable)
2012-2013	1180	1	

2013-2014	Same	Same	
2014-2015	Same	Same	
2015-2016	Same	Same	

13. Information and Assistance Unit of Service = 1 contact

Fiscal Year	Proposed Units of Service	Goal Numbers	Objective Numbers (if applicable)
2012-2013	300	1,2,3	
2013-2014	Same	Same	
2014-2015	Same	Same	
2015-2016	Same	Same	

14. Telephone Reassurance- In home Unit of Service = 1 contact

Fiscal Year	Proposed Units of Service	Goal Numbers	Objective Numbers (if applicable)
2012-2013	120	1	
2013-2014	Same	Same	
2014-2015	Same	Same	
2015-2016	Same	Same	

TITLE III B, OTHER SUPPORTIVE SERVICES

15. Personal Home Security Unit of Service = 1 unit

Fiscal Year	Proposed Units of Service	Goal Numbers	Objective Numbers (if applicable)
2012-2013	31	1	
2013-2014	-0-		
2014-2015	-0-		
2015-2016	-0-		

TITLE III D, HEALTH PROMOTION

16. Depression Symptom Reduction (AMENDED) Unit of Service = 1 contact

Fiscal Year	Proposed Units of Service	Goal Numbers	Objective Numbers (if applicable)
2012-2013	50	1	1.9 (amended)
2013-2014	Same	Same	
2014-2015	Same	Same	
2015-2016	Same	Same	

TITLE III D, MEDICATION MANAGEMENT

17. (Service Activity) Unit of Service = 1 contact

Fiscal Year	Proposed Units of Service	Goal Numbers	Objective Numbers

			(if applicable)
2012-2013	-0-		
2013-2014	-0-		
2014-2015	-0-		
2015-2016	-0-		

PSA 16

**TITLE III B AND TITLE VII A,
LONG-TERM CARE (LTC) OMBUDSMAN PROGRAM OUTCOMES**

Outcome 1. The problems and concerns of long-term care residents are solved through complaint resolution and other services of the Ombudsman Program [OAA Section 712(a)(3),(5)]

Measures and Targets:

A. Complaint Resolution Rate (AoA Report, Part I-E, Actions on Complaints)

The average California complaint resolution rate for FY 2009-2010 was 73%.

1. FY 2010-2011 Baseline Resolution Rate: <u>58%</u> Number of complaints resolved <u>21</u> + Number of partially resolved complaints <u>2</u> , divided by the Total Number of Complaints Received <u>39</u> = Baseline Resolution Rate <u>58%*</u> * Actual Cases opened were 36, which included 39 separate complaints. While only 21 were resolved to the satisfaction of the resident or complainant and two were partially resolved, the remaining were resolved and closed. This results in a resolution rate of 94%.
2. FY 2014-2015 Target: Resolution Rate <u>85 %</u>
3. FY 2011-2012 AoA Resolution Rate <u>77 %</u> FY 2013-2014 Target: Resolution Rate <u>85 %</u>
4. FY 2012-2013 AoA Resolution Rate <u>79 %**</u> FY 2014-2015 Target: Resolution Rate <u>85 %</u> ** (Based on 34 of 43 resolved as reflected in data management system.) In review of data, it appears that coding errors may have contributed to these statistics and the actual resolution rate was much higher.
5. FY 2013-2014 AoA Resolution Rate <u> </u> % FY 2015-2016 Target: Resolution Rate <u>85 %</u>
Program Goals and Objective Numbers: 1,2

B. Work with Resident Councils (AoA Report, Part III-D, #8)

1. FY 2010-2011 Baseline: number of meetings attended <u>9</u>
2. FY 2012-2013 Target: <u>10</u>
3. FY 2011-2012 AoA Data: <u>4</u> FY 2013-2014 Target: <u>10</u>
4. FY 2012-2013 AoA Data: <u>9</u> FY 2014-2015 Target: <u>10</u>
5. FY 2013-2014 AoA Data: <u> </u> FY 2015-2016 Target: <u> </u>
Program Goals and Objective Numbers: 1,2
Assist Resident Councils to transition to more self-directed oversight.

C. Work with Family Councils (AoA Report, Part III-D, #9)

1. FY 2010-2011 Baseline: number of meetings attended <u>0</u>
2. FY 2012-2013 Target: number <u>2</u>
3. FY 2011-2012 AoA Data: <u>0</u> FY 2013-2014 Target: <u>2</u>
4. FY 2012-2013 AoA Data: <u>0</u> FY 2014-2015 Target: <u>1</u>
5. FY 2013-2014 AoA Data: <u> </u> FY 2015-2016 Target: <u> </u>
Program Goals and Objective Numbers: 2
Continue to promote establishment of Family Councils

D. Consultation to Facilities (AoA Report, Part III-D, #4) Count of instances of Ombudsman representatives' interactions with facility staff for the purpose of providing general information and assistance unrelated to a complaint. Consultation may be accomplished by telephone, letter, email, fax, or in person.

1. FY 2010-2011 Baseline: number of consultations	18
2. FY 2012-2013 Target:	30
3. FY 2011-2012 AoA Data:	10
FY 2013-2014 Target:	15
4. FY 2012-2013 AoA Data:	34
FY 2014-2015 Target:	30
5. FY 2013-2014 AoA Data:	
FY 2015-2016 Target:	
Program Goals and Objective Numbers: 1,3	
Increase contacts with facilities regarding changes in care systems.	

E. Information and Consultation to Individuals (AoA Report, Part III-D, #5) Count of instances of Ombudsman representatives' interactions with residents, family members, friends, and others in the community for the purpose of providing general information and assistance unrelated to a complaint. Consultation may be accomplished by telephone, letter, email, fax, or in person.

1. FY 2010-2011 Baseline: number of consultations	52
2. FY 2012-2013 Target:	50
3. FY 2011-2012 AoA Data:	41
FY 2013-2014 Target:	50
4. FY 2012-2013 AoA Data:	64
FY 2014-2015 Target:	50
5. FY 2013-2014 AoA Data:	
FY 2015-2016 Target:	
Program Goals and Objective Numbers: 1,3	
Advertise Services and ensure volunteers and staff are available to provide information and referrals in a timely manner.	

F. Community Education (AoA Report, Part III-D, #10) LTC Ombudsman Program participation in public events planned to provide information or instruction to community members about the LTC Ombudsman Program or LTC issues. The number of sessions refers to the number of events, not the number of participants.

1. FY 2010-2011 Baseline: number of sessions	16
2. FY 2012-2013 Target: number	6
3. FY 2011-2012 AoA Data:	3
FY 2013-2014 Target:	6
4. FY 2012-2013 AoA Data:	7
FY 2014-2015 Target:	6
5. FY 2013-2014 AoA Data:	
FY 2015-2016 Target:	
Program Goals and Objective Numbers: 1,3	
Continue to develop and provide appropriate educational materials and opportunities for the community.	

G. Systems Advocacy

Systemic Advocacy Effort(s)

The Ombudsman will work with local law enforcement and social services programs to improve response and investigation of abuse complaints in order to improve the long-term care residents' quality of care and quality of life.

Outcome 2. Residents have regular access to an Ombudsman. [(OAA Section 712(a)(3)(D), (5)(B)(ii)]

Measures and Targets:

A. Facility Coverage (other than in response to a complaint), (AoA Report, Part III-D, #6)

Percentage of nursing facilities within the PSA that were visited by an Ombudsman representative at least once each quarter **not** in response to a complaint. The percentage is determined by dividing the number of nursing facilities in the PSA that were visited at least once each quarter not in response to a complaint by the total number of nursing facilities in the PSA. NOTE: This is not the total number of visits per year. In determining the number of facilities visited for this measure, no nursing facility can be counted more than once.

1. FY 2010-2011 Baseline: <u>100</u> %
Number of Nursing Facilities visited at least once a quarter not in response to a complaint <u>2</u> divided by the number of Nursing Facilities <u>2</u>
2. FY 2012-2013 Target: <u>100</u> %
3. FY 2011-2012 AoA Data: <u>100</u> % FY 2013-2014 Target: <u>100</u> %
4. FY 2012-2013 AoA Data: <u>100</u> % FY 2014-2015 Target: <u>100</u> %
5. FY 2013-2014 AoA Data: _____ % FY 2015-2016 Target: <u>100</u> %
Program Goals and Objective Numbers: 1,3
Maintain coverage rate of 100%.

B. Facility Coverage (other than in response to a complaint) (AoA Report, Part III-D, #6)

Percentage of RCFEs within the PSA that were visited by an Ombudsman representative at least once each quarter during the fiscal year **not** in response to a complaint. The percentage is determined by dividing the number of RCFEs in the PSA that were visited at least once each quarter not in response to a complaint by the total number of RCFEs in the PSA. NOTE: This is not the total number of visits per year. In determining the number of facilities visited for this measure, no RCFE can be counted more than once.

1. FY 2010-2011 Baseline: <u>100</u> %
Number of RCFEs visited at least once a quarter not in response to a complaint <u>1</u> divided by the number of RCFEs <u>1</u>
2. FY 2012-2013 Target: <u>100</u> %
3. FY 2011-2012 AoA Data: <u>100</u> % FY 2013-2014 Target: <u>100</u> %
4. FY 2012-2013 AoA Data: <u>100</u> % FY 2014-2015 Target: <u>100</u> %
5. FY 2013-2014 AoA Data: _____ % FY 2015-2016 Target: <u>100</u> %
Program Goals and Objective Numbers: 1,3
Maintain coverage rate at 100%.

C. Number of Full-Time Equivalent (FTE) Staff (AoA Report, Part III.B.2 – Staff and Volunteers)

(One FTE generally equates to 40 hours per **week** or 1,760 hours per year) This number may only include staff time legitimately charged to the LTC Ombudsman Program. For example, the FTE# for a staff member who works in the Ombudsman Program 20 hours a week should be 0.5. Time spent working for or in other programs may not be included in this number. Verify number of staff FTEs with Ombudsman Program Coordinator.

1. FY 2010-2011 Baseline: <u>.9</u> %
2. FY 2012-2013 Target: <u>.60</u> FTEs
3. FY 2011-2012 AoA Data: <u>1.0</u> FTEs FY 2013-2014 Target: <u>0.60</u> FTEs
4. FY 2012-2013 AoA Data: <u>0.6</u> FTEs FY 2014-2015 Target: <u>0.60</u> FTEs
5. FY 2013-2014 AoA Data: _____ FTEs FY 2015-2016 Target: <u>0.60</u> FTEs
Program Goals and Objective Numbers: 1,3

Maintain FTE in a manner that ensures more than one staff person is able to provide Ombudsman services during absence of program coordinator.

D. Number of Certified LTC Ombudsman Volunteers (AoA Report part III.B.2. – Staff and Volunteers) Verify number of volunteers with Ombudsman Program Coordinator.

1. FY 2010-2011 Baseline: <u>5</u> Number of certified LTC Ombudsman volunteers as of June 30, 2010
2. FY 2012-2013 Projected Number of certified LTC Ombudsman volunteers as of June 30, 2013 <u>4</u> Amended: <u>2</u>
3. FY 2011-2012 AoA Data: <u>4</u> certified volunteers FY 2013-2014 Projected Number of certified LTC Ombudsman volunteers as of June 30, 2014 <u>4</u>
4. FY 2012-2013 AoA Data: <u>2</u> certified volunteers FY 2014-2015 Projected Number of certified LTC Ombudsman volunteers as of June 30, 2015 <u>4</u>
5. FY 2013-2014 AoA Data: _____ certified volunteers FY 2015-2016 Projected Number of certified LTC Ombudsman volunteers as of June 30, 2016 _____
Program Goals and Objective Numbers: <u>1</u>

Outcome 3. Ombudsman representatives accurately and consistently report data about their complaints and other program activities in a timely manner. [OAA Section 712(c)]

Reporting of NORS training no longer required.

**Title VII B ELDER ABUSE PREVENTION PSA #16
SERVICE UNIT PLAN OBJECTIVES**

Fiscal Year	Total # of Public Education Sessions	Fiscal Year	Total # of Training Sessions for Professionals
2012-13	2	2012-13	2
2013-14	2	2013-14	2
2014-15	2	2014-15	2
2015-16	2	2015-16	2

Fiscal Year	Total # of Training Sessions for	Fiscal Year	Total # of Hours Spent Developing a Coordinated
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	Caregivers served by Title III E		System
2012-13	2	2012-13	12
2013-14	2	2013-14	12
2014-15	2	2014-15	12
2015-16	2	2015-16	12

Fiscal Year	Total # of Copies of Educational Materials to be Distributed	Description of Educational Materials
2012-13	250	Elder Abuse/Financial Elder Abuse
	250	Psychotropic Drug Abuse
2013-14	250	
	250	
2014-15	250	
	250	
2015-16	250	
	250	

Fiscal Year	Total # of Individuals Served
2012-13	250
2013-14	250
2014-15	250
2015-16	250

TITLE III E SERVICE UNIT PLAN OBJECTIVES PSA #16

Direct and/or contracted III E Services

CATEGORIES	1	2	3
Family Caregiver Services Caring for Elderly	<i>Proposed</i> Units of Service	<i>Required</i> Goal #(s)	<i>Optional</i> Objective #(s)
Information Services	# of activities and Total est. audience for above		
2012-2013	# of activities:-0- Total est. audience for above:		
2013-2014	# of activities:-0- Total est. audience for above:		

2014-2015	# of activities:-0- Total est. audience for above:		
2015-2016	# of activities:-0- Total est. audience for above:		
Access Assistance	Total Contacts		
2012-2013	-0-		
2013-2014	-0-		
2014-2015	-0-		
2015-2016	-0-		
Support Services	Total Hours		
2012-2013	30	1	
2013-2014	Same	Same	
2014-2015	Same	Same	
2015-2016	Same	Same	
Respite Care	Total Hours		
2012-2013	100	1	
2013-2014	Same	Same	
2014-2015	Same	Same	
2015-2016	Same	Same	
Supplemental Services	Total Occurrences		
2012-2013	-0-		
2013-2014	-0-		
2014-2015	-0-		
2015-2016	-0-		

Direct and/or contracted III E Services

CATEGORIES	1	2	3
Grandparent Services	Proposed	Required	Optional
Caring for Children	Units of Service	Goal #(s)	Objective #(s)
Information Services	# of activities and Total est. audience for above		
2012-2013	# of activities:-0- Total est. audience for above:		
2013-2014	# of activities:-0- Total est. audience for above:		
2014-2015	# of activities:-0- Total est. audience for above:		
2015-2016	# of activities:-0- Total est. audience for above:		
Access Assistance	Total Contacts		
2012-2013	-0-		
2013-2014	-0-		
2014-2015	-0-		
2015-2016	-0-		
Support Services	Total Hours		
2012-2013	-0-		
2013-2014	-0-		
2014-2015	-0-		
2015-2016	-0-		

Respite Care	Total Hours		
2012-2013	-0-		
2013-2014	-0-		
2014-2015	-0-		
2015-2016	-0-		
Supplemental Services	Total Occurrences		
2012-2013	-0-		
2013-2014	-0-		
2014-2015	-0-		
2015-2016	-0-		

DRAFT

PSA 16

**HEALTH INSURANCE COUNSELING AND ADVOCACY PROGRAM (HICAP)
SERVICE UNIT PLAN
CCR Article 3, Section 7300(d)**

MULTIPLE PSA HICAPs: If you are a part of a multiple PSA HICAP where two or more AAAs enter into agreement with one “Managing AAA,” then each AAA must enter State and federal performance target numbers in each AAA’s respective SUP. Please do this in cooperation with the Managing AAA. The Managing AAA is responsible for providing HICAP services in the covered PSAs in a way that is agreed upon and equitable among the participating parties.

HICAP PAID LEGAL SERVICES: Complete Section 3 if your Master Contract contains a provision for using HICAP funds to provide HICAP Legal Services.

STATE & FEDERAL PERFORMANCE TARGETS: The Centers for Medicare and Medicaid Services (CMS) requires all State Health Insurance Assistance Programs (SHIP) to meet certain targeted performance measures. To help AAAs complete the Service Unit Plan, CDA will annually provide AAAs with individual PSA state and federal performance measure targets.

Section 1. Primary HICAP Units of Service

Fiscal Year	1.1 Estimated Number of Unduplicated Clients Counseled	Goal Number
2012-2013	40	
2013-2014	40	
2014-2015	48	
2015-2016	53	

Note: Clients Counseled equals the number of Intakes closed and finalized by the Program Manager.

Fiscal Year	1.2 Estimated Number of Public and Media Events	Goal Number
2012-2013	26	
2013-2014	23	
2014-2015	26	
2015-2016	36	

Note: Public and Media events include education/outreach presentations, booths/exhibits at health/senior fairs, and enrollment events, excluding public service announcements and printed outreach.

Section 2: Federal Performance Benchmark Measures

Fiscal Year	2.1 Estimated Number of Contacts for all Clients Counseled	Goal Number
2012-2013	256	
2013-2014	256	
2014-2015	282	
2015-2016	310	

Note: This includes all counseling contacts via telephone, in-person at home, in-person at site, and electronic contacts (e-mail, fax, etc.) for duplicated client counts.

Fiscal Year	2.2 Estimated Number of Persons Reached at Public and Media Events	Goal Number
2012-2013	322	
2013-2014	322	
2014-2015	354	
2015-2016	390	

Note: This includes the estimated number of attendees (e.g., people actually attending the event, not just receiving a flyer) reached through presentations either in person or via webinars, TV shows or radio shows, and those reached through booths/exhibits at health/senior fairs, and those enrolled at enrollment events, **excluding public service announcements (PSAs)** and printed outreach materials.

Fiscal Year	2.3 Estimated Number of Contacts with Medicare Status Due to a Disability Contacts	Goal Number
2012-2013	28	
2013-2014	28	
2014-2015	31	
2015-2016	34	

Note: This includes all counseling contacts via telephone, in-person at home, in-person at site, and electronic contacts (e-mail, fax, etc.), duplicated client counts with Medicare beneficiaries due to disability, and not yet age 65.

Fiscal Year	2.4 Estimated Number of Contacts with Low Income Beneficiaries	Goal Number
2012-2013	87	
2013-2014	89	
2014-2015	98	
2015-2016	108	

Note: This is the number of unduplicated low-income Medicare beneficiary contacts and/or contacts that discussed low-income subsidy (LIS). Low income means 150 percent of the Federal Poverty Level (FPL).

Fiscal Year	2.5 Estimated Number of Enrollment Assistance Contacts	Goal Number
2012-2013	200	
2013-2014	219	
2014-2015	241	
2015-2016	265	

Note: This is the number of unduplicated enrollment contacts during which one or more qualifying enrollment topics were discussed. This includes all enrollment assistance, not just Part D.

Fiscal Year	2.6 Estimated Part D and Enrollment Assistance Contacts	Goal Number
2012-2013	150	
2013-2014	159	
2014-2015	175	
2015-2016	192	

Note: This is a subset of all enrollment assistance in 2.5. It includes the number of Part D enrollment contacts during which one or more qualifying Part D enrollment topics were discussed.

Fiscal Year	2.7 Estimated Number of Counselor Assistance Hours in PSA	Goal Number
2012-2013	149.06	
2013-2014	158	
2014-2015	174	
2015-2016	191	

Note: This is the total number of counseling hours divided by 2000 (considered annual fulltime hours), then multiplied by the total number of Medicare beneficiaries per 10K in PSA.

Section 3: HICAP Legal Services Units of Service (if applicable)

State Fiscal Year	3.1 Estimated Number of Clients Represented per State Fiscal Year	Goal Number
2012-2013	NA-	-
2013-2014	-	-
2014-2015	-	-
2015-2016	-	-

State Fiscal Year	3.2 Estimated Number of Legal Representation Hours Per State Fiscal year (Unit of Service)	Goal Number
2012-2013	NA-	-
2013-2014	-	-
2014-2015	-	-
2015-2016	-	-

State Fiscal Year	3.3 Estimated Number of Program Consultation Hours per State Fiscal Year (Unit of Service)	Goal Number
2012-2013	NA-	-
2013-2014	-	-
2014-2015	-	-
2015-2016	-	-

SECTION 14. Notice of Intent to Provide Direct Services

PSA 16

No Changes

SECTION 15. Request for Approval to Provide Direct Services

PSA 16

No Changes

SECTION 16 - GOVERNING BOARD

PSA 16

**GOVERNING BOARD MEMBERSHIP
2012-2016 Four-Year Area Plan Cycle**

CCR Article 3, Section 7302(a)(11)

Total Number of Board Members: 5

Name and Title of Officers:

Office Term Expires:

Rick Pucci, Chairperson	January 2015
Matt Kingsley, Vice Chairperson	January 2017

Names and Titles of All Members:

Board Term Expires:

Linda Arcularius	January 2015
Jeff Griffiths	January 2017
Mark Tillemans	January 2017

**ADVISORY COUNCIL MEMBERSHIP
2012-2016 Four-Year Planning Cycle**

45 CFR, Section 1321.57
CCR Article 3, Section 7302(a)(12)

Total Council Membership (include vacancies) 9

Number of Council Members over age 60 7

Race/Ethnic Composition	<u>% of PSA's 60+Population</u>	<u>% on Advisory Council</u>
White	_____	_____
Hispanic	_____	_____
Black	_____	_____
Asian/Pacific Islander	_____	_____
Native American/Alaskan Native	_____	_____
Other	_____	_____

Name and Title of Officers:

Office Term Expires:

?, Chairperson	December 31, 2013
Roger Rasche, Vice Chairperson	December 31, 2014

Name and Title of other members:

Office Term Expires:

Rachel Lober	December 31, 2014
Mary Jefferson	December 31, 2013
Phyllis Mikalowsky	December 31, 2014
Matt Kingsley	December 31, 2014
VACANT	December 31, 2013
VACANT	December 31, 2014
VACANT	December 31, 2013

Indicate which member(s) represent each of the "Other Representation" categories listed below.

	Yes	No
Low Income Representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Disabled Representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Supportive Services Provider Representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Health Care Provider Representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Family Caregiver Representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Local Elected Officials	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Individuals with Leadership Experience in Private and Voluntary Sectors	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Explain any "No" answer(s): _____

Briefly describe the local governing board's process to appoint Advisory Council members:

Staff open a recruitment for Advisory Council members. The recruitment is announced at existing Advisory Council meetings, advertised in the local newspaper, and announced on local radio stations. Letters of interest are received and the issue of member appointment is agendaized for a Governing Board meeting that is noticed in accordance with California's Brown Act requirements for notification of public meetings. Staff reviews the above categories with the Governing Board, and recommends appointments that meet categorical representation. The Governing Board then votes to appoint Advisory Council members.

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SECTION 18 - LEGAL ASSISTANCE

PSA 16

1. The mission of ESAAA's Legal Assistance services is to ensure justice, dignity, health, security, maximum autonomy and independence to older residents by protecting and enforcing the legal rights of individuals and by promoting social change through broad elder rights advocacy. The purpose of Legal Assistance is to deliver high quality, cost-effective services designed to address the unmet legal needs of vulnerable older people throughout the PSA, with the following considerations:
 - Recognition of targeted populations: those in greatest social and economic need, disadvantaged or vulnerable older adults.
 - Recognition that Legal Assistance is part of a continuum of care that must be coordinated with other ESAAA services to economize costs and develop systems for greatest impact.
 - Address all Older Americans Act legal services (caregiver, hotline, IIIB).
 - Empowerment of older persons to secure their own rights.
 - Protection against threat/loss of basic and essential civil rights (e.g., shelter, health care, income, personal and economic security).
 - Consideration of outcomes and target resources to achieve outcomes that make a difference in the lives and well-being of disadvantaged or vulnerable older adults.
 - Balance coordination with local needs and situations.
2. The local Community Needs Assessment respondents ranked their need for legal assistance 15th (out of 20) in prioritization of their needs. The minimum percentage of Title III B funding thus was set at 10%, although the annual amount authorized is 18.3% of the III B allocation.
3. Specific to legal services, there have no significant changes noted in local needs in the past four years.
4. Specific to legal services, our targeted senior population is low-income and disabled seniors. We will reach seniors through in-person outreach at Senior Centers. Occasionally some Centers will be linked in via videoconferencing to other Centers. Written educational and outreach literature will also be used at congregate meal settings and through home-delivered meals.
5. Number of legal assistance service providers in PSA 16:

FISCAL YEAR	NUMBER OF LEGAL ASSISTANCE SERVICES PROVIDERS
2012-2013	2
2013-2014	1
2014-2015	1

6. PSA 16 does not have a hotline for legal services.
7. Outreach methods will include a combination of written materials provided at congregate meal sites and through home-delivered meals, mailings to family caregivers, and in-person and/or videoconferenced presentations at Senior Centers throughout the PSA.
8. Geographic regions covered by each provider.

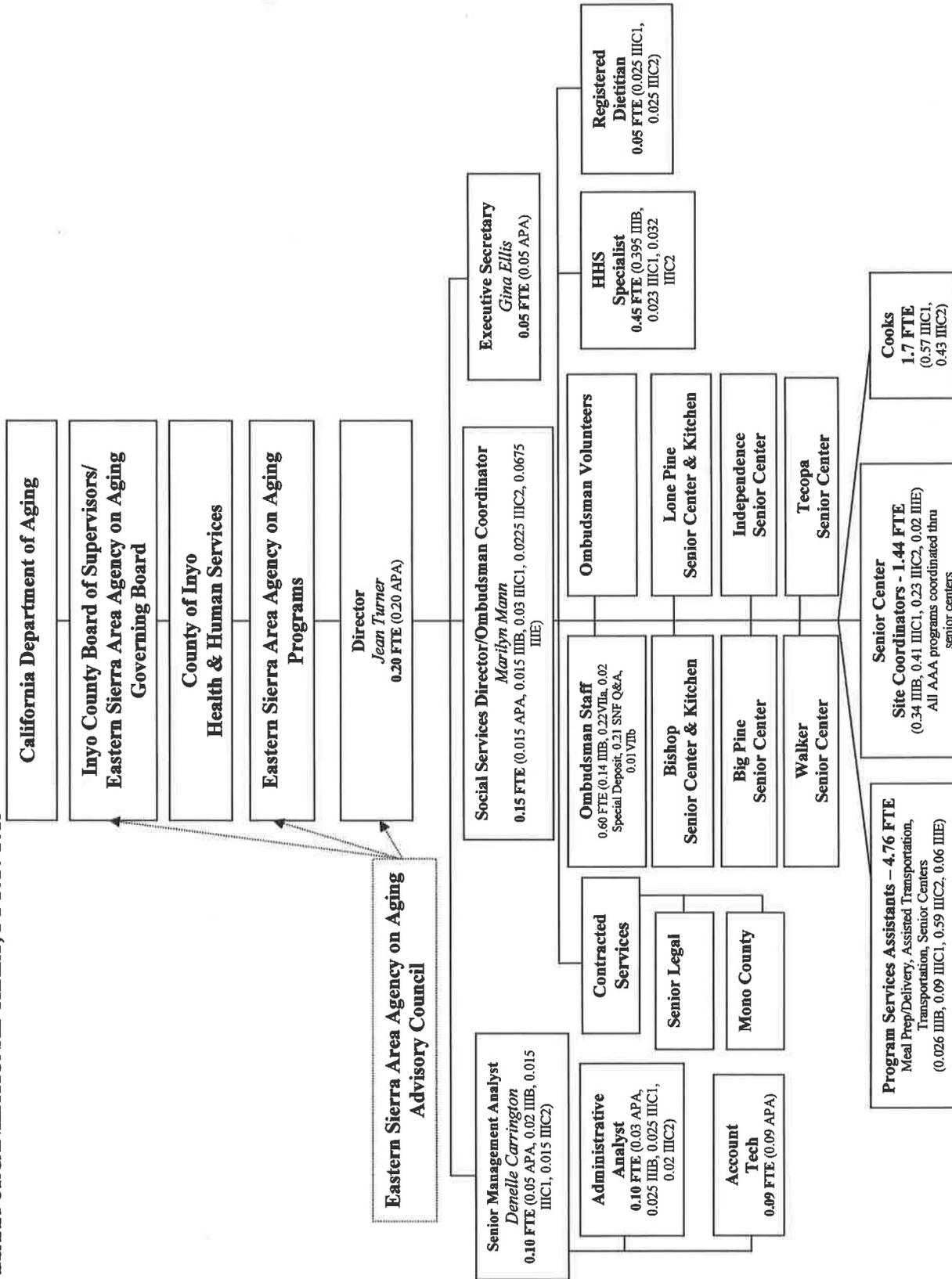
FISCAL YEAR	NAME OF PROVIDER	GEOGRAPHIC REGION COVERED
2012-2013	a. 07/01/12-11/30/12 = California Indian Legal Services b. 12/01/12-04/08/13 = Catherine Denevi c. 04/08/13-06/30/13 = California Indian Legal Services	Entire PSA
2013-2014	a. California Indian Legal Services	Entire PSA
2014-2015	a. California Indian Legal Services	Entire PSA

9. Older adults will access Legal Assistance Services through local telephone contact to the local Legal Assistance office, and through ESAAA sites and staff.
10. Regional older adults who participated in stakeholder Needs Assessment discussions at various Senior Centers in the PSA expressed specific interest in receiving legal guidance and assistance with development of wills and trusts, and management of adult children around those same issues.
11. Previous legal assistance has provided educational information on telephone scams, debt-related problems, among other issues. The request from stakeholders for more guidance with wills and trusts is a shift of focus of legal issues.
12. Barriers to access for legal assistance within the PSA result from the expansive 13,000+ square miles in the PSA, coupled with the sparse population. These two factors combine to make it difficult for private sector for-profit businesses or health care providers to sustain in the PSA. Therefore much of the specialty care and shopping requires extensive assistance with transportation out of the PSA, and even within the PSA. The prioritization of assistance with access to services left smaller amounts of III B funding available for legal assistance. Therefore, ESAAA will be coordinating with legal assistance services to provide videoconferencing capability where possible, in an effort to extend access to legal assistance.
13. The legal service provider will continue to coordinate services with other ESAAA programs, the Ombudsman Coordinator, and with the local bar.

No Changes

SECTION 21 - ORGANIZATION CHART

ESAAA ORGANIZATIONAL CHART, FY 2014-2015



Administrative (APA) FTE's is 0.43 = \$59,900 in Salaries and Benefits + \$29,158 in other costs (A-87, rent, etc.) for a total of \$84,058, which is covered by the CDA Administrative Allocation of \$59,928 and the required match amount of \$24,130 cash



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

15

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

FROM: HEALTH & HUMAN SERVICES

FOR THE BOARD MEETING OF: April 8, 2014

SUBJECT: Agreement between Inyo County and the California Department of Health Care Services (DHCS) for School Based Medi-Cal Administrative Activities (SMAA) Billing

DEPARTMENTAL RECOMMENDATION: Request that your Board 1) approve Agreement No. 14-90004 between Inyo County and the California Department of Health Care Services for School Based Medi-Cal Administrative Activities from July 1, 2014 through June 30, 2017, in an amount not to exceed \$39,425, contingent upon the approval of future budgets, and 2) authorize Jean Turner, HHS Director to sign.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

This contract will allow the Inyo County Superintendent of Schools (ICSOS) to participate in School Based Medi-Cal Administrative Activities (SMAA) through Inyo County's Local Government Agency (LGA).

The SMAA program offers a way for Local Educational Consortia (LEC) to obtain federal reimbursement for the cost of certain administrative activities necessary for the proper and efficient administration of the Medi-Cal program. SMAA activities include: Medi-Cal outreach, Facilitating the Medi-Cal application, Program planning and policy development, training, and General Administration. The LGA or LEC must have a signed contract and an approved claiming plan with DHCS in order to claim federal reimbursement.

ALTERNATIVES:

The County can choose not to approve the Standard Agreement, which would prevent ICSOS from accessing the SMAA funding.

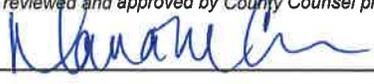
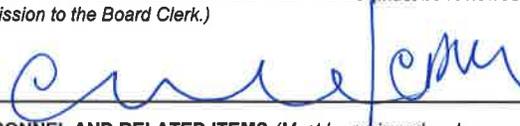
OTHER AGENCY INVOLVEMENT:

California Department of Health Services, and Inyo County Superintendent of Schools.

FINANCING:

SMAA participation by claiming units and filing for reimbursement requires that claiming units document SMAA activities in conformance with administrative standards established by the California Department of Health Services and the federal Medicaid administration. School Based Medi-Cal Administrative Activities involve providing access to Medi-Cal services, which is already part of the claimant's mission. Upon State approval of SMAA Invoices, claiming units are reimbursed for approximately 50% of non-federal expenditures on these activities. There is no cost to Inyo County for ICSOS to participate in this program.

APPROVALS

COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by County Counsel prior to submission to the Board Clerk.)  Approved: <u>yes 2/11/14</u> Date:
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the Auditor/Controller prior to submission to the Board Clerk.)  Approved: <u>yes 2/13/14</u> Date: <u>2/18/2014</u>
PERSONNEL DIRECTOR:	PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the Director of Personnel Services prior to submission to the Board Clerk.)  Approved: <u>✓ 3/27/14</u> Date:

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)



Date: 3-31-14

REGISTRATION NUMBER	AGREEMENT NUMBER 14-90004
---------------------	------------------------------

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

STATE AGENCY'S NAME Department of Health Care Services	(Also known as DHCS, CDHS, DHS or the State)
CONTRACTOR'S NAME Inyo County	(Also referred to as Contractor)
- The term of this Agreement is: **July 1, 2014 or until approved by DGS, whichever is later, through June 30, 2017**
- The maximum amount of this Agreement is: **\$ 39,425**
Thirty Nine Thousand, Four Hundred and Twenty Five Dollars
- 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	7 pages
Exhibit B – Budget Detail and Payment Provisions	6 pages
Exhibit C * – General Terms and Conditions	<u>GTC 610</u>
Exhibit D (F) – Special Terms and Conditions (Attached hereto as part of this agreement)	26 pages
Exhibit E – Additional Provisions	5 pages
Exhibit F – HIPAA Business Associate Addendum	14 pages
Exhibit G – Information Confidentiality and Security Requirements	7 pages
Exhibit H – Travel Reimbursement Information	2 pages
Exhibit I – Contractor's Release	1 page

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

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

CONTRACTOR		<i>California Department of General Services Use Only</i>
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) Inyo County		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Jean Turner, HHS Director		
ADDRESS Inyo County HHS, PO Drawer A Independence, CA 93526		
STATE OF CALIFORNIA		
AGENCY NAME Department of Health Care Services		<input type="checkbox"/> Exempt per:
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Andrew Young, Chief, Contract Management Unit		
ADDRESS 1501 Capitol Avenue, Suite 71.5195, MS 1403, P.O. Box 997413, Sacramento, CA 95899-7413		

AGREEMENT SUMMARY

STD. 215_DHCS (Rev. 01/13)

AGREEMENT NUMBER 14-90004	AMENDMENT NUMBER
-------------------------------------	------------------

CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED

1. CONTRACTOR'S NAME Inyo County	2. FEDERAL I.D. NUMBER 95-6005445
--	---

3. AGENCY TRANSMITTING AGREEMENT Department of Health Care Services	4. DIVISION, BUREAU, OR OTHER UNIT Safety Net Financing Division	5. AGENCY BILLING CODE 085065
---	--	---

6. NAME AND TELEPHONE NUMBER OF CONTRACT ANALYST FOR QUESTIONS REGARDING THIS AGREEMENT
Stephanie Muzzi (Smuzzi@dhcs.ca.gov) 650-0181

7. HAS YOUR AGENCY CONTRACTED FOR THESE SERVICES BEFORE?
 NO YES (If YES, enter prior contractor name and Agreement Number) **Inyo County 11-88021**

8. BRIEF DESCRIPTION OF SERVICES - LIMIT 72 CHARACTERS INCLUDING PUNCTUATION AND SPACES
Perform Medi-Cal Administrative Activities on behalf of DHCS

9. AGREEMENT OUTLINE (Include reason for Agreement: Identify specific problem, administrative requirement, program need or other circumstances making the Agreement necessary; include special or unusual terms and conditions.)
County of Inyo shall perform Medi-Cal Administrative Activities (MAA) on behalf of DHCS to assist in the proper and efficient administration of the Medi-Cal program by improving the availability and accessibility of Medi-Cal services to Medi-Cal eligible and potentially eligible individuals and their families.

Late Reason:

10. PAYMENT TERMS (More than one may apply.)
 MONTHLY FLAT RATE QUARTERLY ONE - TIME PAYMENT PROGRESS PAYMENT
 ITEMIZED INVOICE WITHHOLD _____ % ADVANCED PAYMENT NOT TO EXCEED
 REIMBURSEMENT / REVENUE / INCOMING FUNDS \$ _____ or _____ %
 OTHER (Explain) **See Exhibit B (Budget Detail and Payment Terms)**

11. PROJECTED EXPENDITURES FUND TITLE	ITEM	F.Y.	CHAPTER	STATUTE	PROJECTED EXPENDITURES
Health Care Deposit Fund	4260 603 0912	14/15		2014	\$ 12,500
Health Care Deposit Fund	4260 603 0912	15/16		2015	\$ 13,125
Health Care Deposit Fund	4260 603 0912	16/17		2016	\$ 13,800

OBJECT CODE **14-95910 9912 702** AGREEMENT TOTAL \$ **39,425**

OPTIONAL USE **Funding is subject to passage of Governor's Budget**
 I CERTIFY upon my own personal knowledge that the budgeted funds for the current budget year are available for the period and purpose of the expenditure stated above.

ACCOUNTING OFFICER'S SIGNATURE DATE SIGNED TOTAL AMOUNT ENCUMBERED TO DATE
Signature not required for a no cost transaction. \$

12. AGREEMENT	TERM		TOTAL COST OF THIS TRANSACTION	BID, SOLE SOURCE, EXEMPT
	From	Through		
Original	07/01/14	06/30/17	\$ 39,425	Exempt. See Item 13.
Amendment No. 1			\$	
Amendment No. 2			\$	
Amendment No. 3			\$	
TOTAL			\$ 39,425	

(Continue)

13. BIDDING METHOD USED:

- REQUEST FOR PROPOSAL (RFP)
 Primary Secondary
- INVITATION FOR BID (IFB) USE OF MASTER SERVICE AGREEMENT
- SOLE SOURCE CONTRACT / NCB
(Attach STD. 821 and NCB approval)
- EXEMPT FROM BIDDING
(Give authority for exempt status)
- OTHER *(Explain)*
SCM 5.80B.2.b-Subvention/local asst/direct service

NOTE: *Proof of advertisement in the State Contracts Register or an approved form STD. 821, Contract Advertising Exemption Request, must be attached*

14. SUMMARY OF BIDS *(List of bidders, bid amount and small business status) (If an amendment, sole source, or exempt, leave blank)*

N/A - Exempt from bidding. See Item 13.

15. IF AWARD OF AGREEMENT IS TO OTHER THAN THE LOWER BIDDER, PLEASE EXPLAIN REASON(S) *(If an amendment, sole source, or exempt, leave blank)*

N/A - Exempt from bidding. See Item 13.

16. WHAT IS THE BASIS FOR DETERMINING THAT THE PRICE OR RATE IS REASONABLE?

Rates comply w/Medi-Cal Allocation Plan.

17. JUSTIFICATION FOR CONTRACTING OUT *(Check one)*

- Contracting out is based on cost savings per Government Code 19130(a). The State Personnel Board has been so notified.
- Contracting out is justified based on Government Code 19130(b). Justification for the Agreement is described below.

Justification:

N/A - Direct Service / Subvention agreement.

18. FOR AGREEMENTS IN EXCESS OF \$5,000, HAS THE LETTING OF THE AGREEMENT BEEN REPORTED TO THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING?

- NO YES N/A

19. HAVE CONFLICT OF INTEREST ISSUES BEEN IDENTIFIED AND RESOLVED AS REQUIRED BY THE STATE CONTRACT MANUAL SECTION 7.10?

- NO YES N/A

20. FOR CONSULTING AGREEMENTS, DID YOU REVIEW ANY CONTRACTOR EVALUATIONS ON FILE WITH THE DGS LEGAL OFFICE?

- NO YES NONE ON FILE N/A

21. IS A SIGNED COPY OF THE FOLLOWING ON FILE AT YOUR AGENCY FOR THIS CONTRACTOR?

- A. CONTRACTOR CERTIFICATION CLAUSES B. STD. 204, VENDOR DATA RECORD
 NO YES N/A NO YES N/A

22. REQUIRED RESOLUTIONS ARE ATTACHED

- NO YES N/A

23. ARE DISABLED VETERANS BUSINESS ENTERPRISE GOALS REQUIRED? *(If an amendment, explain changes, if any)*

- NO *(Explain below)* YES *(If YES complete the following)*

DISABLED VETERAN BUSINESS ENTERPRISES: _____ % OF AGREEMENT

Good faith effort documentation attached if 3% goal is not reached.

We have determined that the contractor has made a sincere good faith effort to meet the goal.

Explain: N/A - Direct service / subvention.

24. IS THIS A SMALL BUSINESS CERTIFIED BY OSBCR?

- NO YES *(Indicate Industry Group)* _____

SMALL BUSINESS REFERENCE NUMBER

25. IS THIS AGREEMENT (WITH AMENDMENTS) FOR A PERIOD OF TIME LONGER THAN ONE YEAR? *(If YES, provide justification)*

- NO YES

This term is appropriate to reduce the costs of contract administration and to ensure the continuity of fiscal aid which enables the provision of on-going public assistance. Term of non-bid contract ok'd per SCM 7.80.

I certify that all copies of the referenced Agreement will conform to the original Agreement sent to the Department of General Services.

SIGNATURE/TITLE

DATE SIGNED



CONTRACT REQUEST

(Submit 3 copies)

Expedite (Complete Item 18)

1. Agreement/Amendment number 14-90004	2. Current FY transaction amount \$ 12,500	3. Agreement total \$ 39,425	4. Term start date and end date 07/01/14 – 06/30/17
5. Contractor's/Grantee's name Inyo County		6. Project location (County / Statewide) Inyo County	
7. Contractor's/Grantee's official contact person (name and title) Jean Turner, HHS Director		8. Telephone number (760) 873-3305	
9. Contractor's/Grantee's Contract/Project Manager (name and title) Jean Turner, HHS Director		10. Telephone number (760) 873-3305	11. Fax number (706) 873-6505

12. **Agreement Type** (Check the numbered item that matches the service type. Confirm the choice against a CMU [Decision Tree](#).)

<input type="checkbox"/> 1 Consultant [Non-IT, not for universities/Gov't. entities.]	<input type="checkbox"/> 6 CSU - California State University campus or Trustees
<input checked="" type="checkbox"/> 2 Direct services to Public / Subvention Aid	<input type="checkbox"/> 6 UC - University of California campus or The Regents of UC
<input type="checkbox"/> 2 Grant award (authorized by program statute)	<input type="checkbox"/> 7 Other [Memberships, Subscriptions, Data access, Zero dollar, etc.]
<input type="checkbox"/> 3 Personal service (Non-IT, students, Foundations)	<input type="checkbox"/> 8 Information Technology (MSA or CMAS) - on STD. 213
<input type="checkbox"/> 4 Business service (Non-IT)	<input type="checkbox"/> 9 Incoming Funds - reimbursement/revenue producing
<input type="checkbox"/> 6 State Agency , Department, Board or Commission	

13. **Business Type** (Check the numbered item that matches the Contractor's business type. Confirm Type 1+2 choice with Contractor or STD. 204.)

<input type="checkbox"/> 1 For Profit entity [Individual, commercial business, partnership, joint venture, incorporated or unincorporated organization, etc.]
<input type="checkbox"/> 2 Nonprofit entity [Public or private incorporated organization, e.g., College Foundation. Maintain proof of nonprofit status Program files.]
<input checked="" type="checkbox"/> 3 Government entity [City, County, California State agency, CSU campus/Trustees, federal agency, another State, etc.]
<input type="checkbox"/> 4 Public entity [Public entities (e.g., UC campus/Regents, school/water/utility district), other municipality, joint powers agency, etc.]

14. **For Profit Contractor Information - (Complete if Business Type in Item 13 is 1)** N/A - Nonprofit/Gov't/Public entity or Multi-owner corporation

a. **Owner's Gender** (Check one) - (Enter data of the person with 51% or more ownership interest. If none, mark "N/A" above.) Male Female

b. **Owner's Ethnicity** (Check one) Asian-Indian Black Hispanic Native American Pacific-Asian Other:

c. **Owner's Race** (Check one) American Indian/Alaska Native Asian Black or African American White
 Native Hawaiian or Other Pacific Islander Other:

d. **If Asian or Native Hawaiian or Pacific Islander** (Check one) Asian-Indian Cambodian Chinese
 Filipino Guamanian Hawaiian Japanese Korean Laotian
 Samoan Vietnamese Other:

e. **Small Business / DVBE Status** (Check one) Certified small or microbusiness Certified Disabled Veteran Business Enterprise

15. **DVBE Participation - (Check one)** N/A – Agreement Type is 2, 6, 7, 9 N/A – Business Type is 3 or 4 N/A – Amendment
 DVBE goal achieved DVBE Incentive granted (if applicable) Waived by CMU (Attach proof of CMU waiver if applicable) N/A – Contract total under \$10,000

16. **Subcontractor IFB/RFP Preference - (Check one)** Applies if an IFB or RFP was used and subcontractor preference was granted.
 N/A and/or Amendment Non-small business contractor will use certified small business subcontractors for 25% or more of the total contract amount.

17. **Federal Funding** - Is the agreement federally funded in whole or part or is the amendment federally funded? (Check one) Yes No

18. **Expedite Handling Reason** – Complete as indicated if expedite handling was approved by an appropriate DHCS executive. Emergency
 Contractor cash flow problems Politically sensitive Other - Explain below or in an attachment. Check if proof of expedite approval is attached.
If expedite handling was approved, briefly explain the issues below and attach/cite proof of Executive Office approval. Indicate: (a) Why is expedite handling needed and (b) What negative consequences will occur if the request is not approved?

19. **Non-Debarment Certification** - The person submitting this request hereby certifies the Contractor is presently not debarred or ineligible to receive a contract award. Debarment status was verified at: <http://dhcsintranet/SvcProg/programs/contracts/Pages/Debarred-Suspended.aspx>. Yes No

20. **Funding program contact information**

Program analyst contact name Francisco Yanes	Email address francisco.yanes@dhcs.ca.gov	Telephone number (916) 552-9083	Fax number (916) 324-0738
Division name of funding program Safety Net Financing Division		Section name of funding program Administrative Claiming Local & School Services Branch	
Mailing address (Street Address, Room Number, Mail Station-if appropriate, P.O. Box) 1501 Capitol Avenue, MS 4603, P.O. Box 997436	City Sacramento	State CA	Zip Code 95899-7436

The person signing below certifies as to the necessity and prudence of this contract transaction and the expenditure authority.

Signature of Division Chief or Above 	Printed name and title of person signing John Mendoza, Division Chief	Date signed
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Exhibit A
Scope of Work

1. Service Overview

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

Contractor shall perform Medi-Cal Administrative Activities (MAA) on behalf of DHCS to assist in the proper and efficient administration of the Medi-Cal Program by improving the availability and accessibility of Medi-Cal Services to Medi-Cal eligible and potentially eligible individuals and their families. These activities include: Medi-Cal Outreach, Facilitating Medi-Cal Application, Medi-Cal Non-Emergency Transportation, Contracting for Medi-Cal Services, Program Planning and Policy Development, Medi-Cal Administrative Activities Coordination and Claims Administration and Training.

2. Service Location

The services shall be performed at applicable facilities within the Inyo County geographic region.

3. Service Hours

The services shall be provided during normal Contractor working hours and days.

4. Project Representatives

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

Department of Health Care Services

Carolyn Cain-Smith, Chief
School-Based MAA Unit
Telephone: (916) 552-9049
Fax: (916) 324-0738
E-Mail: Carolyn.Cain-Smith@dhcs.ca.gov

Inyo County

Jean Turner, HHS Director
Inyo County HHS, PO Drawer A
Independence, CA 93526
Telephone: (760) 878-0246
Fax: (760) 878-0266

B. Direct all inquiries to:

Department of Health Care Services

Administrative Claiming Local & Schools
Services Branch
Francisco Yanes, SMAA Analyst
1501 Capitol Ave., MS 4603
P.O. Box 997436
Sacramento, CA 95899-7436

Telephone: (916) 552-9083
Fax: (916) 324-0738
E-Mail: francisco.yanes@dhcs.ca.gov

Inyo County

Attn: Denelle Carrington, LGA
Coordinator/Fiscal Director
Inyo County
Health & Human Services
PO Drawer A
Independence, CA 93526
Telephone: (760) 878-0246

Fax: (760) 878-0266
E-Mail: dcarrington@inyocounty.us

Exhibit A
Scope of Work

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

5. Services to be Performed

- A. The following MAA are *eligible* for 50-percent Federal Financial Participation (FFP) rate.

1) Initial Medi-Cal Outreach

This activity is when school staff performs *initial* activities that inform eligible or potentially eligible individuals about Medi-Cal programs and services and how to access them. Initial activities would include bringing potential eligible's into the Medi-Cal system for the purpose of determining eligibility and initially arranging for the provision of Medi-Cal services. Include related paperwork, clerical activities, or staff travel required to perform these activities (including initiating and responding to email and voicemail). Local Educational Agency (LEA) only conduct outreach for the populations served by their schools (i.e., students and their parents or guardians). The following are examples of activities that are considered Medi-Cal outreach:

- a) Providing initial information about Medi-Cal covered services and/or DHCS screenings (e.g., dental, vision) in the schools that will help identify medical conditions that can be corrected or improved by services through Medi-Cal.
- b) Identifying and referring adolescents who may be in need of Medi-Cal family planning services.
- c) Informing Medi-Cal eligible and potential Medi-Cal eligible children and families about the benefits and availability of services provided by Medi-Cal.
- d) Informing children and their families on how to effectively access, use, and maintain participation in all health resources under the federal Medi-Cal program.
- e) Assisting in the early identification of children who could benefit from the health services provided by Medi-Cal as part of a Medi-Cal outreach campaign.
- f) Contacting pregnant and parenting teenagers about the availability of Medi-Cal prenatal and well-baby care programs and services.
- g) Conducting a family planning health education outreach program or campaign—if it is targeted specifically to family planning Medi-Cal services that are offered to Medi-Cal eligible individuals.
- h) Providing initial referral assistance to families where Medi-Cal services can be provided.
- i) Participating in or coordinating outreach trainings that improve the delivery of Medi-Cal services.
- j) Providing information regarding Medi-Cal managed care programs and health plans to individuals and families and how to access that system.

Exhibit A
Scope of Work

- 2) Activities that are not considered Medi-Cal outreach under any circumstances are:
- a) General preventive health education programs or campaigns addressed to life-style changes in the general population (e.g., dental prevention, anti-smoking, alcohol reduction, etc.), and
 - b) Outreach campaigns directed toward encouraging persons to access social, educational, legal, or other services *not* covered by Medi-Cal.

3) Facilitating Medi-Cal Application

This activity is when school staff assists an individual in becoming eligible for Medi-Cal. Include related, paperwork, clerical activities, or staff travel required to perform these activities, including initiating and responding to email and voicemail. This activity does not include the actual determination of Medi-Cal eligibility.

- a) Verifying an individual's current Medi-Cal eligibility status for the purposes of Medi-Cal program.
- b) Explaining Medi-Cal eligibility rules and the Medi-Cal eligibility process to prospective applicants.
- c) Assisting individuals or families to complete a Medi-Cal eligibility application.
- d) Gathering information related to the application and eligibility determination for an individual, including resource information as a prelude to submitting a formal Medi-Cal application.
- e) Providing necessary forms and packaging all forms in preparation for the Medi-Cal eligibility determination.
- f) Referring an individual or family to the local Medi-Cal eligibility office to make application for Medi-Cal.
- g) Assisting the individual or family in collecting/gathering required information and documents for the Medi-Cal application.
- h) Participating as a Medi-Cal eligibility outreach outstation, but does not include determining eligibility.
- i) Using client information gathered from various programs such as DHCS and the Free and Reduced Lunch Program to facilitate the Medi-Cal application process and expand enrollment into Medi-Cal programs and services.

Exhibit A
Scope of Work

4) Medi-Cal Claims Administration, Coordination and Training

This activity is when coordinators and time survey participants perform activities that are directly related to Medi-Cal claims administration and coordination, and training activities. Staff who time survey should use this activity for time spent after initial or annual training in reviewing how to document relevant MAA through the time survey process. Reasonable time spent reviewing how to survey and working with others to complete the survey is acceptable. Include related paperwork, clerical activities, or staff travel necessary to perform these activities, including initiating and responding to email and voicemail.

- a) Drafting, revising, and submitting MAA operational plans.
- b) Serving as liaison for regional and local MAA claiming programs and with the State and Federal Governments on Medi-Cal administration.
- c) Monitoring the performance of claiming programs.
- d) Administering MAA, including overseeing, preparing, compiling, revising, and submitting claims.
- e) Training program and subcontractor staff on state, federal, and local requirements for MAA claiming.
- f) Ensuring that MAA claims do not duplicate Medi-Cal claims for the same activities from other providers.
- g) Attending meetings and conferences that involve MAA coordinators.

B. The following MAA are eligible for the 50-percent FFP rate however, the allocable share of costs must be determined by applying the discounted or proportional Medi-Cal share (the Medi-Cal percentage). The Medi-Cal share is determined by calculating the ratio of Medi-Cal eligible students to total students.

1) Ongoing Referral, Coordination, and Monitoring of Medi-Cal Services

This activity is when school staff makes ongoing referrals for, coordinating, and/or monitoring the delivery of Medi-Cal covered services. This activity is used after an initial referral is made.

School staff performs this activity when making ongoing referrals for, coordinating, and/or monitoring the delivery of Medi-Cal covered services.

- a) Making referrals for and/or coordinating medical or physical examinations and necessary medical/mental health evaluations.
- b) Making referrals for and/or scheduling certain Medi-Cal covered DHCS screens, inter-periodic screens, and appropriate immunization, but NOT to include the State-mandated health services.
- c) Referring students for necessary medical health, mental health, or substance abuse services covered by Medi-Cal.
- d) Arranging for any Medi-Cal covered medical/mental health diagnostic or treatment services that may be required as the result of a specifically identified medical/mental health condition.
- e) Gathering any information that may be required in advance of these referrals.

Exhibit A
Scope of Work

- f) Participating in a meeting/discussion to coordinate or review a student's needs for health-related services covered by Medi-Cal.
- g) Providing follow-up contact to ensure that a child has received the prescribed medical/mental health services.
- h) Coordinating the completion of the prescribed services, termination of services, and the referral of the child to other Medi-Cal service providers as may be required to provide continuity of care.
- i) Providing information to other staff on the child's related medical/mental health services and plans.
- j) Coordinating the delivery of community-based medical/mental health services for a child with special/severe health care needs.
- k) Monitoring and evaluating the Medi-Cal covered service components.
- l) Coordinating medical/mental health service provisions with managed care plans as appropriate.

2) Arranging Transportation in Support of Medi-Cal Services

This activity is when school staff assists an individual or family to obtain transportation to services covered by Medi-Cal. This does not include:

- a) The provision of the actual transportation service, but rather the administrative activities involved in scheduling or arranging specialized transportation.
- b) Activities that contribute to the actual billing of transportation as a medical service.
- c) Accompanying the Medi-Cal eligible individual to Medi-Cal services as an administrative activity.

Examples:

- d) Scheduling or arranging transportation to Medi-Cal covered services.
- e) A transportation supervisor and staff time coordinating transportation to Medi-Cal services.
- f) Include related paperwork, clerical activities, or staff travel required to perform these activities, including initiating and responding to email and voicemail.

3) Translation

Translation may be allowable as an administrative activity if it is not included and paid for as part of a medical assistance service. However, translation must be provided by a third party translator or by *separate* employees performing translation functions for the school and it must facilitate access to Medi-Cal covered services. Please note that a school district does not need to have a separate administrative claiming unit for translation.

- a) Arranging for or providing translation services (oral, written, and signing) that assist the individual to access and understand necessary care or treatment covered by Medi-Cal.
- b) Arranging for or providing translation to student/parent to understand how to access the application for Medi-Cal.

Exhibit A
Scope of Work

4) Program Planning, Policy Development, and Interagency Coordination Related to Medi-Cal Services.

This activity is when school staff performs collaborative activities with other agencies associated with the development of strategies to improve the coordination and delivery of Medi-Cal covered medical/mental health services to students and their families. Only employees whose position descriptions include program planning, policy development and interagency coordination should perform this activity.

- a) Identifying gaps or duplication of medical/mental health services to students and their families and developing strategies to improve the delivery and coordination of these services.
- b) Developing strategies to assess or increase the capacity of school medical/mental health programs.
- c) Monitoring the medical/mental health delivery systems in schools.
- d) Developing procedures for tracking families' requests for assistance with Medi-Cal covered services and providers. (This does not include the actual tracking of requests for Medi-Cal services.)
- e) Evaluating the need for Medi-Cal services in relation to specific populations or geographic areas.
- f) Analyzing Medi-Cal data related to a specific program, population, or geographic area.
- g) Working with other agencies providing Medi-Cal services, to expand access to specific populations of Medi-Cal eligible, and to improve collaboration around the early identification of medical problems.
- h) Defining the scope of each agency's Medi-Cal service in relation to the other.
- i) Working with Medi-Cal resources, such as the managed care plans, to make good faith efforts to locate and develop health services referral relationships.
- j) Developing advisory or work groups of health professionals to provide consultation and advice regarding the delivery of Medi-Cal care services to the school populations.
- k) Developing medical referral sources, such as directories of Medi-Cal providers and managed care plans.
- l) Coordinating with interagency committees to identify, promote, and develop Medi-Cal and/or the school system.
- m) Negotiating and processing special agreements that support interagency coordination to improve the delivery of Medi-Cal services.
- n) Participating in or coordinating training that enhances early identification, intervention, screening, and referral of students with special health needs to Medi-Cal services.

5) General Administration/Paid Time Off

This activity is a reallocated activity. This general administrative activity must be reallocated across the other activities on a *pro rate* basis.

The purpose this activity is to capture job duties that support time for your primary job. Time recorded under this activity will be apportioned appropriately to MAA and non-MAA. Paid time off is when you are being paid, but you're not at work. This includes paid vacation days, jury duty, sick leave, etc. If you are not paid for your time off, you can't record that time here. Unpaid time off should be left blank on your time survey.

Exhibit A
Scope of Work

Below are typical examples of general administrative activities:

- a) When not included in the indirect rate, the general operation of LEA such as accounting, budgeting, payroll, purchasing and data processing. (Certain functions, such as payroll, maintaining inventories, developing budgets, executive direction, etc., are considered overhead; therefore, they are ONLY allowable through the approved indirect cost rate.)
- b) General supervision of staff or facilities, including staff performance reviews, and personnel management.
- c) Reviewing non-instructional school policies, procedures, or rules.
- d) Attending or facilitating school or unit staff meetings, board meetings, or required in-service trainings and events.
- e) Review of professional and inter-district correspondence.
- f) Completing personal mileage and expense claims.

Exhibit B
Budget Detail and Payment Provisions

1. Invoicing and Payment

- A. For services satisfactorily rendered, and upon receipt and approval of the invoices, DHCS agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates and/or allowable costs specified herein.
- B. Invoices shall include the Agreement Number and shall be submitted not more frequently than quarterly in arrears to:

<u>Regular Mail</u>	<u>Overnight Mail</u>
Carolyn Cain-Smith Department of Health Care Services Safety Net Financing Division Administrative Claiming Local & Schools Services Branch MS 4603 PO Box 997436 Sacramento, CA 95899-7436	Carolyn Cain-Smith Department of Health Care Services Safety Net Financing Division Administrative Claiming Local & Schools Services Branch MS 4603 1501 Capitol Avenue Sacramento, CA 95814

- C. Invoices shall:
- 1) Be prepared on both the Summary Invoice and Detail Invoice incorporated by reference in Exhibit E, Provision 1.
 - 2) Be prepared on Contractor letterhead and must be signed by an authorized official, employee or agent certifying that the expenditures claimed represent actual expenses for the service performed under this agreement on the Summary Invoice.
 - 3) Bear the Contractor's name as shown on the agreement on both the Summary Invoice and on the Detail Invoice.
 - 4) Identify the billing and/or performance period covered by the invoice on both the Summary Invoice and on the Detail Invoice.
 - 5) Itemize costs for the billing period in the same or greater level of detail as indicated in this agreement on the Detail Invoice. Subject to the terms of this agreement, reimbursement may only be sought for those costs and/or cost categories expressly identified as allowable in this agreement and approved by DHCS.
 - 6) Provide the State with complete invoice and expenditure information to include in the Centers for Medicare and Medicaid Services CMS 64 no later than 15 months after the end of the quarter for which the claim was submitted. This information shall be provided on the standardized Summary Invoice and Detail Invoice.
 - 7) Identify on the Detail Invoice, the claim categories to which expenditure data must adhere for insertion into the CMS 64. A separate Detail Invoice shall be submitted for each Local Educational Agency claiming MAA costs pursuant to this agreement, except for contracted employees under the direct control of the Contractor. Contracted employees' costs shall be aggregated and reported in accordance with the MAA Invoice instructions. The Detail Invoice(s) for each of the programs claimed shall correspond to the name of the claiming programs identified in the Contractors MAA Operational Plan. The Invoice instructions and the MAA Operational Plan are found in the California School-Based MAA Provider Manual incorporated by reference in Exhibit E, Provision 1.

Exhibit B
Budget Detail and Payment Provisions

D. Rates Payable

- 1) The invoices may include the cost of expenses of staff and the operating expenses and equipment costs necessary to collect data, disseminate information, and carry out the staff activities outlined in this agreement.
 - a. The rate of federal reimbursement is 50 percent Federal Financial Participation (FFP) for all costs of subcontractors (non-governmental entities) performing allowable administrative activities as defined in Provision 5, Services to be Performed, of Exhibit A-Scope of Work.
 - b. The maximum rate of reimbursement for all non-public subcontractors to the Contractor shall be 50 percent for all categories of cost.

- E. Certify the certified public expenditure from Contractor's General Fund, or from any other funds allowed under federal law and regulation, for Title XIX funds claimed for MAA performed pursuant to W&I Code Section 14132.47. The following certification statement shall be made on each Summary Invoice submitted to the State for Payment for the performance of MAA.

"I certify under penalty of perjury that the information provided on this invoice is true and correct, based on actual expenditures for the period claimed, and that the funds/contributions have been expended as necessary for federal matching funds pursuant to the requirements of 42 CFR 433.51, allowable administrative activities and that these claimed expenditures have not been nor shall not subsequently be used for federal match in this or any other program. I have notice that the information is to be used for filing of a claim with the Federal Government for federal funds and knowing misrepresentation constitutes violation of the Federal False Claims Act."

The State shall deny payment of any claim submitted under this agreement if it determines that the certification is not adequately supported for purposes of Federal Financial Participation (FFP). Expenditures certified for MAA costs shall not duplicate, in whole or in part, claims made for the costs of direct patient care.

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 Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

Exhibit B
Budget Detail and Payment Provisions

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. Amounts Payable

A. The amounts payable under this agreement shall not exceed:

- 1) \$12,500 for the budget period of 07/01/14 through 06/30/15,
- 2) \$13,125 for the budget period of 07/01/15 through 06/30/16,
- 3) \$13,800 for the budget period of 07/01/16 through 06/30/17,

B. Reimbursement shall be made for allowable expenses up to the amount annually encumbered commensurate with the state fiscal year in which services are performed and/or goods are received.

5. Participation in Medi-Cal Administrative Claiming Process

A. As a condition of participation in the Medi-Cal Administrative Claiming process, and in recognition of revenue generated in the Medi-Cal Administrative Claiming process, the Contractor shall pay an annual participation fee through a mechanism agreed to by the State and Contractors, or, if no agreement is reached by August 1 of each year, directly to the State.

B. The participation fee shall be used to cover the cost of administering the Medi-Cal Administrative Claiming process, including, but not limited to, claims processing, technical assistance, and monitoring. The State shall determine and report staffing requirements upon which projected costs will be based.

C. The amount of the participation fee shall be based upon the anticipated State salaries, benefits, operating expenses and equipment, necessary to administer the Medi-Cal Administrative Claiming process and other costs related to that process.

6. Non-Federal Matching Funds for Medi-Cal Administrative Activities

The Contractor will expend 100 percent of the non-federal share of the cost of performing Medi-Cal Administrative Activities. By signing this agreement the Contractor certifies that the funds expended for this purpose shall be from the Contractor's general fund or from any other funds allowable under federal law and regulation.

Exhibit B
Budget Detail and Payment Provisions

7. Claiming Overhead Costs

- A. In order to claim administrative overhead costs, also referred to as "External Administrative Overhead" costs, the Contractor must have a State Controller's Office approved Local Educational Consortia (LEC) administrative overhead cost allocation plan for the applicable period and these costs must be claimed in accordance with the plan. A local governmental agency's plan is submitted to the California State Controller's Office, which has delegated authority from the Federal Government to approve it.
- B. Internal (departmental) administrative overhead costs are allowable for FFP only if there is a departmental overhead indirect cost allocation plan prepared and on file for audit purposes for the applicable period and costs are claimed in accordance with it following Federal Office of Management and Budget (OMB) Circular A-87 guidelines.
- C. Both external and internal administrative cost allocation plans must comply with provisions of the federal OMB Circular A-87, entitled "Cost Principles for State, Local, and Indian Tribal Governments" and Federal Publication OASC-10, entitled "A Guide for State and Local Governments/Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government."
- D. The Contractor must assure that costs claimed as direct costs not duplicate costs claimed through the application of the indirect cost rate.

8. Offset of Revenues

- A. To the extent that other funding sources have paid or would pay for the costs at issue, Federal Financial Participation (FFP) is not available and the costs must be removed from the total costs (*OMB Circular A-87, Attachment A, Part C., Item 4.a.*). The revenue offset categories which must be applied in developing the net costs include, but are not limited to:
 - 1) All unallowable federal funds, including not only federal grants but also federal payments for services under Medicare fee-for-service or encounter rates.
 - 2) All state expenditures which have been previously matched by the federal government (*includes Medicaid funds for medical assistance, such as the payment rate for services under fee-for-service or encounter rates*). Claims submitted will not be duplicative of Medicaid claims for costs that are part of the all inclusive rate for direct patient care.
 - 3) Private insurance and other fees collected from non-governmental sources.
 - 4) All applicable credits must be offset against claims for Medicaid funds. Applicable credits refer to those receipts or reduction of expenditure type transactions that offset or reduce expense items allocable to federal awards as direct or indirect costs.
 - 5) A program may not claim any federal match for administrative activities if its total cost has already been paid by the revenue sources above. A government program may not be reimbursed in excess of its actual costs, i.e., make a profit.

Exhibit B
Budget Detail and Payment Provisions

9. Expense Allowability/Fiscal Documentation

- A. Invoices, received from a Contractor and accepted and/or submitted for payment by the State, shall not be deemed evidence of allowable agreement costs.
- B. Contractor shall maintain for review and audit and supply to DHCS upon request, adequate documentation of all expenses claimed pursuant to this agreement to permit a determination of expense allowability.
- C. If the allowability or appropriateness of an expense cannot be determined by the State because 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 the State. Upon receipt of adequate documentation supporting a disallowed or questionable expense, reimbursement may resume for the amount substantiated and deemed allowable.

10. Federal Audit Disallowances

- A. In addition to the indemnification required by Exhibit C, Provision 5, and notwithstanding any other provision of this agreement, the State shall be held harmless, in accordance with Provision 2, Budget Contingency Clause, paragraphs A and B, from any federal audit disallowance and interest resulting from payments made to the Contractor pursuant to W&I Code Section 14132.47, and this agreement, less the amounts already remitted to the State.
- B. To the extent that a federal audit disallowance and interest results from a claim or claims for the Contractor has received reimbursement for MAA, the State shall recoup from the Contractor which submitted the disallowed claim, through offsets or by direct billing, amounts equal to the amount of the disallowance plus interest in that fiscal year. All subsequent claims submitted to the State applicable to any previously disallowed MAA or claim, may be held in abeyance, with no payment made, until the federal disallowance issue is resolved.
- C. To the extent that a federal audit disallowance and interest results from a claim or claims for which the Contractor has received reimbursement for MAA performed by a non-governmental entity under agreement with, and on behalf of, the Contractor, the State shall be held harmless by that particular Contractor for 100 percent of the amount of any such final federal audit disallowance and interest less the amounts already remitted to the State for the disallowed claim.

11. Timely Submission of Final Invoice

- A. A final undisputed invoice shall be submitted for payment no more than 90 calendar days following the expiration or termination date of this Agreement, unless a later or alternate deadline is agreed to in writing by the Program Contract Manager. Said invoice should be clearly marked "Final Invoice", thus indicating that all payment obligations of DHCS under this Agreement have ceased and that no further payments are due or outstanding.
- B. DHCS may, at its discretion, choose not to honor any delinquent final invoice if the Contractor fails to obtain prior written DHCS approval of an alternate final invoice

Exhibit B
Budget Detail and Payment Provisions

submission deadline. Written DHCS approval shall be sought from the Program Contract Manager prior to the expiration or termination date of this Agreement.

- C. The Contractor is hereby advised of its obligation to submit, with the final invoice, a "Contractor's Release (Exhibit I)" acknowledging submission of the final invoice to DHCS and certifying the approximate percentage amount, if any, of recycled products used in performance of this Agreement.

12. Program Name and Number for Federal Claiming

- A. Title 31 – Money and Finance, Subtitle V – General Assistance Administration, Chapter 75 – Requirements for Single Audits, section 7502 requires each pass-through entity provide the subrecipient program names and any identifying numbers from which such assistance is derived. The Catalog of Federal Domestic Assistance (CFDA) number for this federal program is 93.778, Medical Assistance Program (Medi-Cal).
- B. Contractor shall include the language in Section 12, Item A. in its contracts with subrecipients and vendors.

Special Terms and Conditions

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

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

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

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

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

Index of Special Terms and Conditions

1. Federal Equal Employment Opportunity Requirements	17. Human Subjects Use Requirements
2. Travel and Per Diem Reimbursement	18. Novation Requirements
3. Procurement Rules	19. Debarment and Suspension Certification
4. Equipment Ownership / Inventory / Disposition	20. Smoke-Free Workplace Certification
5. Subcontract Requirements	21. Covenant Against Contingent Fees
6. Income Restrictions	22. Payment Withholds
7. Audit and Record Retention	23. Performance Evaluation
8. Site Inspection	24. Officials Not to Benefit
9. Federal Contract Funds	25. Four-Digit Date Compliance
10. Intellectual Property Rights	26. Prohibited Use of State Funds for Software
11. Air or Water Pollution Requirements	27. Use of Small, Minority Owned and Women's Businesses
12. Prior Approval of Training Seminars, Workshops or Conferences	28. Alien Ineligibility Certification
13. Confidentiality of Information	29. Union Organizing
14. Documents, Publications, and Written Reports	30. Contract Uniformity (Fringe Benefit Allowability)
15. Dispute Resolution Process (Revised 2/2012)	31. Suspension or Stop Work Notification
16. Financial and Compliance Audit Requirements	32. Lobbying Restrictions and Disclosure Certification

1. Federal Equal Opportunity Requirements

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

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or DHCS, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.
- b. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.
- c. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212) and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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

2. Travel and Per Diem Reimbursement

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

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

3. Procurement Rules

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

a. Equipment/Property definitions

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

- (1) **Major equipment/property:** A tangible or intangible item having a base unit cost of **\$5,000 or more** with a life expectancy of one (1) year or more and is either furnished by DHCS or the cost is reimbursed through this Agreement. Software and videos are examples of intangible items that meet this definition.
 - (2) **Minor equipment/property:** A tangible item having a base unit cost of **less than \$5,000** with a life expectancy of one (1) year or more and is either furnished by DHCS or the cost is reimbursed through this Agreement.
- b. **Government and public entities** (including state colleges/universities and auxiliary organizations), whether acting as a contractor and/or subcontractor, may secure all commodities, supplies, equipment and services related to such purchases that are required in performance of this Agreement. Said procurements are subject to Paragraphs d through h of Provision 3. Paragraph c of Provision 3 shall also apply, if equipment/property purchases are delegated to subcontractors that are nonprofit organizations or commercial businesses.
- c. **Nonprofit organizations and commercial businesses**, whether acting as a contractor and/or subcontractor, may secure commodities, supplies, equipment/property and services related to such purchases for performance under this Agreement.
- (1) Equipment/property purchases shall not exceed \$50,000 annually.

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

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

- (2) All equipment/property purchases are subject to Paragraphs d through h of Provision 3. Paragraph b of Provision 3 shall also apply, if equipment/property purchases are delegated to subcontractors that are either a government or public entity.
- (3) Nonprofit organizations and commercial businesses shall use a procurement system that meets the following standards:
 - (a) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement, or bid contract in which, to his or her knowledge, he or she has a financial interest.
 - (b) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.
 - (c) Procurements shall be conducted in a manner that provides for all of the following:
 - [1] Avoid purchasing unnecessary or duplicate items.
 - [2] Equipment/property solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured.
 - [3] Take positive steps to utilize small and veteran owned businesses.
- d. Unless waived or otherwise stipulated in writing by DHCS, prior written authorization from the appropriate DHCS Program Contract Manager will be required before the Contractor will be reimbursed for any purchase of \$5,000 or more for commodities, supplies, equipment/property, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by DHCS, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.
- e. In special circumstances, determined by DHCS (e.g., when DHCS has a need to monitor certain purchases, etc.), DHCS may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. DHCS reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor purchase that DHCS determines to be unnecessary in carrying out performance under this Agreement.
- f. The Contractor and/or subcontractor must maintain a copy or narrative description of the procurement system, guidelines, rules, or regulations that will be used to make purchases under this Agreement. The State reserves the right to request a copy of these documents and to inspect the purchasing practices of the Contractor and/or subcontractor at any time.
- g. For all purchases, the Contractor and/or subcontractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor and/or subcontractor for inspection or audit.
- h. DHCS may, with cause (e.g., with reasonable suspicion of unnecessary purchases or use of inappropriate purchase practices, etc.), withhold, cancel, modify, or retract the delegated purchase authority granted under Paragraphs b and/or c of Provision 3 by giving the Contractor no less than 30 calendar days written notice.

4. Equipment/Property Ownership / Inventory / Disposition

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

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

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

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

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

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

- (a) Include in the inventory report, equipment and/or property in the Contractor's possession and/or in the possession of a subcontractor (including independent consultants).
- (b) Submit the inventory report to DHCS according to the instructions appearing on the inventory form or issued by the DHCS Program Contract Manager.
- (c) Contact the DHCS Program Contract Manager to learn how to remove, trade-in, sell, transfer or survey off, from the inventory report, expired equipment and/or property that is no longer wanted, usable or has passed its life expectancy. Instructions will be supplied by either the DHCS Program Contract Manager or DHCS' Asset Management Unit.

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

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

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

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

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

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

g. **Motor Vehicles**

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

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

Automobile Liability Insurance

- (a) The Contractor, by signing this Agreement, hereby certifies that it possesses or will obtain automobile liability insurance in the amount of \$1,000,000 per occurrence for bodily injury and property damage combined. Said insurance must be obtained and made effective upon the delivery date of any motor vehicle, purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, to the Contractor and/or Subcontractor.
- (b) The Contractor and/or Subcontractor shall, as soon as practical, furnish a copy of the certificate of insurance to the DHCS Program Contract Manager. The certificate of insurance shall identify the DHCS contract or agreement number for which the insurance applies.
- (c) The Contractor and/or Subcontractor agree that bodily injury and property damage liability insurance, as required herein, shall remain in effect at all times during the term of this Agreement or until such time as the motor vehicle is returned to DHCS.
- (d) The Contractor and/or Subcontractor agree to provide, at least thirty (30) days prior to the expiration date of said insurance coverage, a copy of a new certificate of insurance evidencing continued coverage, as indicated herein, for not less than the remainder of the term of this Agreement, the term of any extension or continuation thereof, or for a period of not less than one (1) year.
- (e) The Contractor and/or Subcontractor, if not a self-insured government and/or public entity, must provide evidence, that any required certificates of insurance contain the following provisions:

- [1] The insurer will not cancel the insured's coverage without giving thirty (30) calendar days prior written notice to the State (California Department of Health Care Services).
 - [2] The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State under this Agreement and any extension or continuation of this Agreement.
 - [3] The insurance carrier shall notify the California Department of Health Care Services (DHCS), in writing, of the Contractor's failure to pay premiums; its cancellation of such policies; or any other substantial change, including, but not limited to, the status, coverage, or scope of the required insurance. Such notices shall contain a reference to each agreement number for which the insurance was obtained.
- (f) The Contractor and/or Subcontractor is hereby advised that copies of certificates of insurance may be subject to review and approval by the Department of General Services (DGS), Office of Risk and Insurance Management. The Contractor shall be notified by DHCS, in writing, if this provision is applicable to this Agreement. If DGS approval of the certificate of insurance is required, the Contractor agrees that no work or services shall be performed prior to obtaining said approval.
- (g) In the event the Contractor and/or Subcontractor fails to keep insurance coverage, as required herein, in effect at all times during vehicle possession, DHCS may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

5. Subcontract Requirements

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

- a. Prior written authorization will be required before the Contractor enters into or is reimbursed for any subcontract for services costing \$5,000 or more. Except as indicated in Paragraph a(3) herein, when securing subcontracts for services exceeding \$5,000, the Contractor shall obtain at least three bids or justify a sole source award.
- (1) The Contractor must provide in its request for authorization, all information necessary for evaluating the necessity or desirability of incurring such cost.
 - (2) DHCS may identify the information needed to fulfill this requirement.
 - (3) Subcontracts performed by the following entities or for the service types listed below are exempt from the bidding and sole source justification requirements:
 - (a) A local governmental entity or the federal government,
 - (b) A State college or State university from any State,
 - (c) A Joint Powers Authority,
 - (d) An auxiliary organization of a California State University or a California community college,
 - (e) A foundation organized to support the Board of Governors of the California Community Colleges,
 - (f) An auxiliary organization of the Student Aid Commission established under Education Code § 69522,
 - (g) Firms or individuals proposed for use and approved by DHCS' funding Program via acceptance of an application or proposal for funding or pre/post contract award negotiations,
 - (h) Entities and/or service types identified as exempt from advertising and competitive bidding in State Contracting Manual Chapter 5 Section 5.80 Subsection B.3. View this publication at the following Internet address: <http://www.dgs.ca.gov/ols/Resources/StateContractManual.aspx>.
- b. DHCS reserves the right to approve or disapprove the selection of subcontractors and with advance written notice, require the substitution of subcontractors and require the Contractor to terminate subcontracts entered into in support of this Agreement.

- (1) Upon receipt of a written notice from DHCS requiring the substitution and/or termination of a subcontract, the Contractor shall take steps to ensure the completion of any work in progress and select a replacement, if applicable, within 30 calendar days, unless a longer period is agreed to by DHCS.
- c. Actual subcontracts (i.e., written agreement between the Contractor and a subcontractor) of \$5,000 or more are subject to the prior review and written approval of DHCS. DHCS may, at its discretion, elect to waive this right. All such waivers shall be confirmed in writing by DHCS.
 - d. Contractor shall maintain a copy of each subcontract entered into in support of this Agreement and shall, upon request by DHCS, make copies available for approval, inspection, or audit.
 - e. DHCS assumes no responsibility for the payment of subcontractors used in the performance of this Agreement. Contractor accepts sole responsibility for the payment of subcontractors used in the performance of this Agreement.
 - f. The Contractor is responsible for all performance requirements under this Agreement even though performance may be carried out through a subcontract.
 - g. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this Agreement.
 - h. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:

"(Subcontractor Name) agrees to maintain and preserve, until three years after termination of (Agreement Number) and final payment from DHCS to the Contractor, to permit DHCS or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."
 - i. Unless otherwise stipulated in writing by DHCS, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this Agreement.
 - j. Contractor shall, as applicable, advise all subcontractors of their obligations pursuant to the following numbered provisions of this Exhibit: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 17, 19, 20, 24, 32 and/or other numbered provisions herein that are deemed applicable.

6. Income Restrictions

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

7. Audit and Record Retention

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

- a. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.
- b. The Contractor's and/or subcontractor's facility or office or such part thereof as may be engaged in the performance of this Agreement and his/her records shall be subject at all reasonable times to inspection, audit, and reproduction.
- c. Contractor agrees that DHCS, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this

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

- d. The Contractor and/or Subcontractor shall preserve and make available his/her records (1) for a period of three years from the date of final payment under this Agreement, and (2) for such longer period, if any, as is required by applicable statute, by any other provision of this Agreement, or by subparagraphs (1) or (2) below.
 - (1) If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.
 - (2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.
- e. The Contractor and/or Subcontractor shall comply with the above requirements and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code § 10115.10, if applicable.
- f. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books and records related to this Agreement to microfilm, computer disk, CD ROM, DVD, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.
- g. The Contractor shall, if applicable, comply with the Single Audit Act and the audit reporting requirements set forth in OMB Circular A-133.

8. Site Inspection

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

9. Federal Contract Funds

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

- a. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.
- b. This agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal years covered by the term of this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this Agreement in any manner.

- c. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.
- d. DHCS has the option to invalidate or cancel the Agreement with 30-days advance written notice or to amend the Agreement to reflect any reduction in funds.

10. Intellectual Property Rights

a. Ownership

- (1) Except where DHCS has agreed in a signed writing to accept a license, DHCS shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement.
- (2) For the purposes of this Agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or here after come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.
 - (a) For the purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing those final products. Works does not include articles submitted to peer review or reference journals or independent research projects.
- (3) In the performance of this Agreement, Contractor will exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this Agreement. In addition, under this Agreement, Contractor may access and utilize certain of DHCS' Intellectual Property in existence prior to the effective date of this Agreement. Except as otherwise set forth herein, Contractor shall not use any of DHCS' Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of DHCS. **Except as otherwise set forth herein, neither the Contractor nor DHCS shall give any ownership interest in or rights to its Intellectual Property to the other Party.** If during the term of this Agreement, Contractor accesses any third-party Intellectual Property that is licensed to DHCS, Contractor agrees to abide by all license and confidentiality restrictions applicable to DHCS in the third-party's license agreement.
- (4) Contractor agrees to cooperate with DHCS in establishing or maintaining DHCS' exclusive rights in the Intellectual Property, and in assuring DHCS' sole rights against third parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this Agreement, Contractor shall require the terms of the Agreement(s) to include all Intellectual Property provisions. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to DHCS all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or DHCS and which result directly or indirectly from this Agreement or any subcontract.
- (5) Contractor further agrees to assist and cooperate with DHCS in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce DHCS' Intellectual Property rights and interests.

b. Retained Rights / License Rights

- (1) Except for Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement, Contractor shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this Agreement. Contractor hereby grants to DHCS, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose Contractor's Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this Agreement, unless Contractor assigns all rights, title and interest in the Intellectual Property as set forth herein.
- (2) Nothing in this provision shall restrict, limit, or otherwise prevent Contractor from using any ideas, concepts, know-how, methodology or techniques related to its performance under this Agreement, provided that Contractor's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of DHCS or third party, or result in a breach or default of any provisions of this Exhibit or result in a breach of any provisions of law relating to confidentiality.

c. Copyright

- (1) Contractor agrees that for purposes of copyright law, all works [as defined in Paragraph a, subparagraph (2)(a) of this provision] of authorship made by or on behalf of Contractor in connection with Contractor's performance of this Agreement shall be deemed "works made for hire". Contractor further agrees that the work of each person utilized by Contractor in connection with the performance of this Agreement will be a "work made for hire," whether that person is an employee of Contractor or that person has entered into an agreement with Contractor to perform the work. Contractor shall enter into a written agreement with any such person that: (i) all work performed for Contractor shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to DHCS to any work product made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement.
- (2) All materials, including, but not limited to, visual works or text, reproduced or distributed pursuant to this Agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement, shall include DHCS' notice of copyright, which shall read in 3mm or larger typeface: "© [Enter Current Year e.g., 2010, etc.], California Department of Health Care Services. This material may not be reproduced or disseminated without prior written permission from the California Department of Health Care Services." This notice should be placed prominently on the materials and set apart from other matter on the page where it appears. Audio productions shall contain a similar audio notice of copyright.

d. Patent Rights

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

e. Third-Party Intellectual Property

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

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

f. Warranties

(1) Contractor represents and warrants that:

- (a) It is free to enter into and fully perform this Agreement.
- (b) It has secured and will secure all rights and licenses necessary for its performance of this Agreement.
- (c) Neither Contractor's performance of this Agreement, nor the exercise by either Party of the rights granted in this Agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by Contractor.
- (d) Neither Contractor's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.
- (e) It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites, locations, property or props that may be used or shown.
- (f) It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to DHCS in this Agreement.
- (g) It has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- (h) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Contractor's performance of this Agreement.

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

g. Intellectual Property Indemnity

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

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

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

h. Federal Funding

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

i. Survival

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

11. Air or Water Pollution Requirements

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

- a. Government contractors agree to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act [42 U.S.C. 1857(h)], section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
- b. Institutions of higher education, hospitals, nonprofit organizations and commercial businesses agree to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et seq.), as amended, and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.

12. Prior Approval of Training Seminars, Workshops or Conferences

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

13. Confidentiality of Information

- a. The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this Agreement or persons whose names or identifying information become available or are disclosed to the Contractor, its employees, agents, or subcontractors as a result of services performed under this Agreement, except for statistical information not identifying any such person.
- b. The Contractor and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this Agreement.
- c. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the DHCS Program Contract Manager all requests for disclosure of such identifying information not emanating from the client or person.
- d. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the client, any such identifying information to anyone other than DHCS without prior written authorization from the DHCS Program Contract Manager, except if disclosure is required by State or Federal law.
- e. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.
- f. As deemed applicable by DHCS, this provision may be supplemented by additional terms and conditions covering personal health information (PHI) or personal, sensitive, and/or confidential information (PSCI). Said terms and conditions will be outlined in one or more exhibits that will either be attached to this Agreement or incorporated into this Agreement by reference.

14. Documents, Publications and Written Reports

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

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

15. Dispute Resolution Process

- a. A Contractor grievance exists whenever there is a dispute arising from DHCS' action in the administration of an agreement. If there is a dispute or grievance between the Contractor and DHCS, the Contractor must seek resolution using the procedure outlined below.
 - (1) The Contractor should first informally discuss the problem with the DHCS Program Contract Manager. If the problem cannot be resolved informally, the Contractor shall direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief shall render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. If the Contractor disagrees with the Branch Chief's decision, the Contractor may appeal to the second level.
 - (2) When appealing to the second level, the Contractor must prepare an appeal indicating the reasons for disagreement with Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's

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

- b. If the Contractor wishes to appeal the decision of the Deputy Director of the division in which the branch is organized or his/her designee, the Contractor shall follow the procedures set forth in Health and Safety Code Section 100171.
- c. Unless otherwise stipulated in writing by DHCS, all dispute, grievance and/or appeal correspondence shall be directed to the DHCS Program Contract Manager.
- d. There are organizational differences within DHCS' funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the DHCS Program Contract Manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

16. Financial and Compliance Audit Requirements

- a. The definitions used in this provision are contained in Section 38040 of the Health and Safety Code, which by this reference is made a part hereof.
- b. Direct service contract means a contract or agreement for services contained in local assistance or subvention programs or both (see Health and Safety [H&S] Code Section 38020). Direct service contracts shall not include contracts, agreements, grants, or subventions to other governmental agencies or units of government nor contracts or agreements with regional centers or area agencies on aging (H&S Code Section 38030).
- c. The Contractor, as indicated below, agrees to obtain one of the following audits:
 - (1) ***If the Contractor is a nonprofit organization (as defined in H&S Code Section 38040) and receives \$25,000 or more from any State agency under a direct service contract or agreement;*** the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit. Said audit shall be conducted according to Generally Accepted Auditing Standards. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**
 - (2) ***If the Contractor is a nonprofit organization (as defined in H&S Code Section 38040) and receives less than \$25,000 per year from any State agency under a direct service contract or agreement;*** the Contractor agrees to obtain a biennial single, organization wide financial and compliance audit, unless there is evidence of fraud or other violation of state law in connection with this Agreement. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**
 - (3) ***If the Contractor is a State or Local Government entity or Nonprofit organization (as defined by the Federal Office of Management and Budget [OMB] Circular A-133) and expends \$500,000 or more in Federal awards;*** the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit according to the requirements specified in OMB Circular A-133 entitled "Audits of States, Local Governments, and Non-Profit Organizations". An audit conducted pursuant to this provision will fulfill the audit requirements outlined in Paragraphs c(1) and c(2) above. The audit shall be completed by the end of the ninth month following the end of the audit period. The requirements of this provision apply if:
 - (a) The Contractor is a recipient expending Federal awards received directly from Federal awarding agencies, or
 - (b) The Contractor is a subrecipient expending Federal awards received from a pass-through entity such as the State, County or community based organization.

- (4) If the Contractor submits to DHCS a report of an audit other than an OMB A-133 audit, the Contractor must also submit a certification indicating the Contractor has not expended \$500,000 or more in federal funds for the year covered by the audit report.
- d. Two copies of the audit report shall be delivered to the DHCS program funding this Agreement. The audit report must identify the Contractor's legal name and the number assigned to this Agreement. The audit report shall be due within 30 days after the completion of the audit. Upon receipt of said audit report, the DHCS Program Contract Manager shall forward the audit report to DHCS' Audits and Investigations Unit if the audit report was submitted under Section 16.c(3), unless the audit report is from a City, County, or Special District within the State of California whereby the report will be retained by the funding program.
 - e. The cost of the audits described herein may be included in the funding for this Agreement up to the proportionate amount this Agreement represents of the Contractor's total revenue. The DHCS program funding this Agreement must provide advance written approval of the specific amount allowed for said audit expenses.
 - f. The State or its authorized designee, including the Bureau of State Audits, is responsible for conducting agreement performance audits which are not financial and compliance audits. Performance audits are defined by Generally Accepted Government Auditing Standards.
 - g. Nothing in this Agreement limits the State's responsibility or authority to enforce State law or regulations, procedures, or reporting requirements arising thereto.
 - h. Nothing in this provision limits the authority of the State to make audits of this Agreement, provided however, that if independent audits arranged for by the Contractor meet Generally Accepted Governmental Auditing Standards, the State shall rely on those audits and any additional audit work and shall build upon the work already done.
 - i. The State may, at its option, direct its own auditors to perform either of the audits described above. The Contractor will be given advance written notification, if the State chooses to exercise its option to perform said audits.
 - j. The Contractor shall include a clause in any agreement the Contractor enters into with the audit firm doing the single organization wide audit to provide access by the State or Federal Government to the working papers of the independent auditor who prepares the single organization wide audit for the Contractor.
 - k. Federal or state auditors shall have "expanded scope auditing" authority to conduct specific program audits during the same period in which a single organization wide audit is being performed, but the audit report has not been issued. The federal or state auditors shall review and have access to the current audit work being conducted and will not apply any testing or review procedures which have not been satisfied by previous audit work that has been completed.

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

17. Human Subjects Use Requirements

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

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

18. Novation Requirements

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

19. Debarment and Suspension Certification

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

- a. By signing this Agreement, the Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations including, but not limited to 7 CFR Part 3017, 45 CFR 76, 40 CFR 32 or 34 CFR 85.
- b. By signing this Agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - (2) Have not within a three-year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph b(2) herein; and
 - (4) Have not within a three-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default.
 - (5) Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State.
 - (6) Will include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- c. If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the DHCS Program Contract Manager.
- d. The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.
- e. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the DHCS may terminate this Agreement for cause or default.

20. Smoke-Free Workplace Certification

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

- a. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed.
- b. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.
- c. By signing this Agreement, Contractor or Grantee certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The prohibitions herein are effective December 26, 1994.
- d. Contractor or Grantee further agrees that it will insert this certification into any subawards (subcontracts or subgrants) entered into that provide for children's services as described in the Act.

21. Covenant Against Contingent Fees

(Applicable only to federally funded agreements.)

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

22. Payment Withholds

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

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

23. Performance Evaluation

(Not applicable to grant agreements.)

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

24. Officials Not to Benefit

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

25. Four-Digit Date Compliance

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

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

26. Prohibited Use of State Funds for Software

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

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

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

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

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

- (1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
- (2) Make information on forthcoming purchasing and contracting opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
- (3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
- (4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
- (5) Use the services and assistance, as appropriate, of such organizations as the Federal Small Business Administration and the U.S. Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

28. Alien Ineligibility Certification

(Applicable to sole proprietors entering federally funded agreements.)

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

29. Union Organizing

(Applicable only to grant agreements.)

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

- a. No state funds disbursed by this grant will be used to assist, promote or deter union organizing.
- b. Grantee shall account for state funds disbursed for a specific expenditure by this grant, to show those funds were allocated to that expenditure.
- c. Grantee shall, where state funds are not designated as described in b herein, allocate, on a pro-rata basis, all disbursements that support the grant program.
- d. If Grantee makes expenditures to assist, promote or deter union organizing, Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that Grantee shall provide those records to the Attorney General upon request.

30. Contract Uniformity (Fringe Benefit Allowability)

(Applicable only to nonprofit organizations.)

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

- a. As used herein fringe benefits shall mean an employment benefit given by one's employer to an employee in addition to one's regular or normal wages or salary.
- b. As used herein, fringe benefits do not include:
 - (1) Compensation for personal services paid currently or accrued by the Contractor for services of employees rendered during the term of this Agreement, which is identified as regular or normal salaries and wages, annual leave, vacation, sick leave, holidays, jury duty and/or military leave/training.
 - (2) Director's and executive committee member's fees.
 - (3) Incentive awards and/or bonus incentive pay.
 - (4) Allowances for off-site pay.
 - (5) Location allowances.
 - (6) Hardship pay.
 - (7) Cost-of-living differentials
- c. Specific allowable fringe benefits include:
 - (1) Fringe benefits in the form of employer contributions for the employer's portion of payroll taxes (i.e., FICA, SUI, SDI), employee health plans (i.e., health, dental and vision), unemployment insurance, worker's compensation insurance, and the employer's share of pension/retirement plans, provided they are granted in accordance with established written organization policies and meet all legal and Internal Revenue Service requirements.
- d. To be an allowable fringe benefit, the cost must meet the following criteria:
 - (1) Be necessary and reasonable for the performance of the Agreement.
 - (2) Be determined in accordance with generally accepted accounting principles.
 - (3) Be consistent with policies that apply uniformly to all activities of the Contractor.
- e. Contractor agrees that all fringe benefits shall be at actual cost.

f. Earned/Accrued Compensation

- (1) Compensation for vacation, sick leave and holidays is limited to that amount earned/accrued within the agreement term. Unused vacation, sick leave and holidays earned from periods prior to the agreement term cannot be claimed as allowable costs. See Provision f (3)(a) for an example.
- (2) For multiple year agreements, vacation and sick leave compensation, which is earned/accrued but not paid, due to employee(s) not taking time off may be carried over and claimed within the overall term of the multiple years of the Agreement. Holidays cannot be carried over from one agreement year to the next. See Provision f (3)(b) for an example.
- (3) For single year agreements, vacation, sick leave and holiday compensation that is earned/accrued but not paid, due to employee(s) not taking time off within the term of the Agreement, cannot be claimed as an allowable cost. See Provision f (3)(c) for an example.

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

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

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

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

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

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

31. Suspension or Stop Work Notification

- a. DHCS may, at any time, issue a notice to suspend performance or stop work under this Agreement. The initial notification may be a verbal or written directive issued by the funding Program's Contract Manager. Upon receipt of said notice, the Contractor is to suspend and/or stop all, or any part, of the work called for by this Agreement.
- b. Written confirmation of the suspension or stop work notification with directions as to what work (if not all) is to be suspended and how to proceed will be provided within 30 working days of the verbal notification. The suspension or stop work notification shall remain in effect until further written notice is received from DHCS. The resumption of work (in whole or part) will be at DHCS' discretion and upon receipt of written confirmation.
 - (1) Upon receipt of a suspension or stop work notification, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize or halt the incurrence of costs allocable to the performance covered by the notification during the period of work suspension or stoppage.
 - (2) Within 90 days of the issuance of a suspension or stop work notification, DHCS shall either:
 - (a) Cancel, extend, or modify the suspension or stop work notification; or
 - (b) Terminate the Agreement as provided for in the Cancellation / Termination clause of the Agreement.

- c. If a suspension or stop work notification issued under this clause is canceled or the period of suspension or any extension thereof is modified or expires, the Contractor may resume work only upon written concurrence of funding Program's Contract Manager.
- d. If the suspension or stop work notification is cancelled and the Agreement resumes, changes to the services, deliverables, performance dates, and/or contract terms resulting from the suspension or stop work notification shall require an amendment to the Agreement.
- e. If a suspension or stop work notification is not canceled and the Agreement is cancelled or terminated pursuant to the provision entitled Cancellation / Termination, DHCS shall allow reasonable costs resulting from the suspension or stop work notification in arriving at the settlement costs.
- f. DHCS shall not be liable to the Contractor for loss of profits because of any suspension or stop work notification issued under this clause.

32. Lobbying Restrictions and Disclosure Certification

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

a. Certification and Disclosure Requirements

- (1) Each person (or recipient) who requests or receives a contract or agreement, subcontract, grant, or subgrant, which is subject to Section 1352 of the 31, U.S.C., and which exceeds \$100,000 at any tier, shall file a certification (in the form set forth in Attachment 1, consisting of one page, entitled "Certification Regarding Lobbying") that the recipient has not made, and will not make, any payment prohibited by Paragraph b of this provision.
- (2) Each recipient shall file a disclosure (in the form set forth in Attachment 2, entitled "Standard Form-LLL 'disclosure of Lobbying Activities'") if such recipient has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered federal action) in connection with a contract, or grant or any extension or amendment of that contract, or grant, which would be prohibited under Paragraph b of this provision if paid for with appropriated funds.
- (3) Each recipient shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affect the accuracy of the information contained in any disclosure form previously filed by such person under Paragraph a(2) herein. An event that materially affects the accuracy of the information reported includes:
 - (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action;
 - (b) A change in the person(s) or individuals(s) influencing or attempting to influence a covered federal action; or
 - (c) A change in the officer(s), employee(s), or member(s) contacted for the purpose of influencing or attempting to influence a covered federal action.
- (4) Each person (or recipient) who requests or receives from a person referred to in Paragraph a(1) of this provision a contract or agreement, subcontract, grant or subgrant exceeding \$100,000 at any tier under a contract or agreement, or grant shall file a certification, and a disclosure form, if required, to the next tier above.
- (5) All disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the person referred to in Paragraph a(1) of this provision. That person shall forward all disclosure forms to DHCS Program Contract Manager.

b. Prohibition

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

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

**Attachment 1
State of California
Department of Health Care Services**

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making, awarding or entering into of this Federal contract, Federal grant, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of this Federal contract, grant, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency of the United States Government, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities" in accordance with its instructions.

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C., any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Name of Contractor

Printed Name of Person Signing for Contractor

Contract / Grant Number

Signature of Person Signing for Contractor

Date

Title

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

California Department of Health Care Services

DHCS reserves the right to notify 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

<p>1. Type of Federal Action:</p> <p><input type="checkbox"/> a. contract</p> <p><input type="checkbox"/> b. grant</p> <p><input type="checkbox"/> c. cooperative agreement</p> <p><input type="checkbox"/> d. loan</p> <p><input type="checkbox"/> e. loan guarantee</p> <p><input type="checkbox"/> f. loan insurance</p>	<p>2. Status of Federal Action:</p> <p><input type="checkbox"/> a. bid/offer/application</p> <p><input type="checkbox"/> b. initial award</p> <p><input type="checkbox"/> c. post-award</p>	<p>3. Report Type:</p> <p><input type="checkbox"/> a. initial filing</p> <p><input type="checkbox"/> b. material change</p> <p>For Material Change Only:</p> <p>Year ____ quarter ____</p> <p>date of last report ____.</p>
<p>4. Name and Address of Reporting Entity:</p> <p><input type="checkbox"/> Prime <input type="checkbox"/> Subawardee</p> <p>Tier ____, if known:</p> <p>Congressional District, If known:</p>		<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p> <p>Congressional District, If known:</p>
<p>6. Federal Department/Agency</p>	<p>7. Federal Program Name/Description:</p> <p>CDFA Number, if applicable: ____</p>	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known:</p> <p>\$</p>	
<p>10.a. Name and Address of Lobbying Registrant (If individual, last name, first name, MI):</p>	<p>b. Individuals Performing Services (including address if different from 10a. (Last name, First name, MI):</p>	
<p>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person that fails to file the required disclosure shall be subject to a not more than \$100,000 for each such failure.</p>	<p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No.: _____ Date: _____</p>	
<p>Federal Use Only</p>		<p>Authorized for Local Reproduction Standard Form-LLL (Rev. 7-97)</p>

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 followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if 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 Exhibits

A. The following documents and any subsequent updates are not attached, but are incorporated herein and made a part hereof by this reference. The Contractor is required to fully comply with the directives in each document incorporated by reference herein and each update thereto. These documents may be updated periodically by DHCS, as required by program directives or changes in law or policy. Unless otherwise indicated, DHCS shall provide the Contractor with copies of said documents at or before the agreement is presented to the Contractor for review, acceptance, and signature and will require acknowledgement of receipt. Periodic updates to the below listed documents that are not electronically accessible via the internet, an Extranet link or other mechanism will be presented to the Contractor under separate cover and acknowledgement of receipt will be required. DHCS will maintain on file, all documents referenced herein and any subsequent updates.

- 1) School Based MAA Manual*
- 2) Policy & Procedure Letters*
- 3) School Based Time Survey for Employees Performing Medi-Cal Administrative Activities*
- 4) Medi-Cal Administrative Activities Summary Invoice*
- 5) Medi-Cal Administrative Activities Detail Invoice*

*The above referenced documents can be found on the internet at:
<http://www.dhcs.ca.gov/ProvGovPart/Pages/SMAA.aspx>

2. Amendment Process

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

3. Cancellation/Termination

- A. This agreement may be cancelled or terminated without cause by either party by giving thirty (30) calendar days advance written notice to the other party. Such notification shall state the effective date of termination or cancellation and include any final performance and/or payment/invoicing instructions/requirements.
- B. Upon receipt of a notice of termination or cancellation from DHCS, Contractor shall take immediate steps to stop performance and to cancel or reduce subsequent agreement costs.
- C. The Contractor shall be entitled to payment for all allowable costs authorized under this Agreement, and incurred up to the date of termination or cancellation, including

Exhibit E
Additional Provisions

authorized non-cancelable obligations provided such expenses do not exceed the stated maximum amounts payable.

4. Contractor Responsibilities

- A. Comply with 42 U.S.C., Section 1396 et seq., 42 Code of Federal Regulations (CFR) Part 400 et seq., and 45 CFR Part 95, California Welfare and Institutions Code, Division 9, Part 3, Chapter 7 (commencing with Section 14000) and Chapter 8 (commencing with Section 14200), and Title 22 California Code of Regulations CCR), Division (3 (commencing with Section 50000), all as periodically amended; State issued policy directives; and Federal Office of Management and Budget (OMB) Circular A-87, as periodically amended.
- B. If the Contractor enters into contracts with other organizations to perform MAA in support of the Contractor claiming administrative reimbursement, the Contractor shall have available for State and/or Federal review, any contract to perform administrative activities under the auspices of the Medi-Cal Program.
- C. The Contractor is responsible for the acts or omissions of its employees and/or subcontractors. Submission of a falsified Summary Invoice or Detailed Invoice by a Contractor shall constitute a breach of contract. Submission of a Summary Invoice or Detailed Invoice for which there is no supporting documentation by a Contractor may constitute a breach of contract.
- D. The conviction of an employee or subcontractor of the Contractor, or of an employee of a subcontractor, of any felony or of a misdemeanor involving fraud, abuse of any Medi-Cal applicant or beneficiary, or abuse of the Medi-Cal Program, shall result in the exclusion of that employee or subcontractor, or employee of a subcontractor, from participation in the Medi-Cal Administrative Claiming process. Failure of a Contractor to exclude a convicted individual from participation in the Medi-Cal Administrative Claiming process shall constitute a breach of contract.
- E. Exclusion after conviction shall result regardless of any subsequent order under Section 1203.4 of the Penal Code allowing a person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.
- F. Suspension or exclusion of an employee or subcontractor, or of an employee of a subcontractor, from participation in the Medi-Cal Program, the Medicaid Program, or the Medicare Program, shall result in the exclusion of that employee or subcontractor, or employee of a subcontractor, from participation in the Medi-Cal Administrative Claiming process. Failure of a Contractor to exclude a suspended or excluded individual from participation in the Medi-Cal Administrative Claiming process shall constitute a breach of contract.
- G. Revocation, suspension, or restriction of the license, certificate, or registration of any employee, subcontractor, or employee of a subcontractor, shall result in exclusion from the Medi-Cal Administrative Claiming process, when such license, certificate, or registration is required for the performance of Medi-Cal administrative activities. Failure

Exhibit E
Additional Provisions

of a Contractor to exclude an individual whose license, certificate, or registration has been revoked, suspended, or restricted, from participation in the Medi-Cal Administrative Claiming process, may constitute a breach of contract.

5. State Responsibilities

- A. Review, approve, as appropriate, and process Contractor claims for reimbursement of the allowable actual costs of providing administrative activities necessary for the proper and efficient administration of the Medi-Cal Program. Reimbursement shall be made subsequent to the quarter for which a claim for MAA is made. Any claim that cannot be approved shall be returned to the Contractor with a written explanation of the basis for disapproval.
- B. Provide the Contractor with a standardized format for the Summary Invoice, Detailed Invoice and MAA Claiming Plan which will be disseminated through policy directives issued by the State.
- C. Review MAA Claiming Plan and amendment(s) to the MAA Claiming Plan. Any amendment that cannot be approved shall be returned to the Contractor with a written explanation of the basis for disapproval.
- D. Provide program monitoring and oversight including periodic site reviews for compliance with State and federal requirements and regulations. DHCS will retain ultimate responsibility for program oversight and policy interpretation.
- E. Submit approved MAA Claiming Plans and amendments to the Centers for Medicare and Medicaid Services (CMS) for review and approval if required.
- F. Make available to Contractors, training and technical support on proper administrative activities to be claimed, identifying costs related to these activities, and billing procedures. Training material is to be developed by and/or approved by DHCS.

6. Joint Responsibilities

- A. The State and the Contractor hereby agree to comply with all applicable laws governing the confidentiality of client information for Medi-Cal clients served by the Contractor, or subcontractor, under this agreement. Applicable laws include, but are not limited to, 42 U.S.C. Section 1396a(a)7, 42 CFR Section 431.300, 45 CFR Sections 160, 162, and 164, Welfare and Institutions Code, Section 14100.2, and 22 California Code of Regulations, Section 51009.

Exhibit E
Additional Provisions

7. Audit

- A. This provision supersedes Provision #4, entitled "Audit" in General Terms & Conditions (GTC 610). View Exhibit C at the following Internet site:
<http://www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx>.
- B. Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative, and employees of the California Department of Justice, and the United States Centers for Medicare and Medicaid Services, shall have the right to review, access, examine, monitor, audit, and to copy any records and supporting documentation pertaining to the performance of this agreement. Contractor agrees to allow interviews of any employees, or staff of any subcontractor, who might reasonably have information related to such records by either state and/or federal authorities. For MAA, all records in support of allowable MAA activities must be maintained for a minimum of three fiscal years after the end of the quarter in which the LGA or LEC receives reimbursement from the Department of Health Care Services (DHCS) for the expenditures incurred. If an audit is in progress, all records relevant to the audit shall be retained until the completion of the audit or the final resolution of all audit exceptions, deferrals, and/or disallowances, whichever is later, and if litigation has been initiated, all necessary records shall be retained until the final resolution of the litigation. The records shall fully disclose the type and extent of administrative activities performed by the appropriate staff. The Contractor shall furnish such documentation and any other information regarding the performance of and payment for MAA, upon request, to the state or federal government.

8. Definitions

- A. The following definitions are applicable to this Contract.
- 1) "CFDA number" means the number assigned to a federal program in the Catalog of Federal Domestic Assistance (CFDA).
 - 2) "Federal award" means federal financial assistance and federal cost-reimbursement contracts that non-federal entities receive directly from federal awarding agencies or indirectly from pass-through entities. It does not include procurement contracts, under grants or contracts, used to buy goods or services from vendors.
 - 3) "Federal awarding agency" means the federal agency that provides an award directly to the recipient.
 - 4) "Federal program" means all federal awards to a non-federal entity assigned a single number in the CFDA.
 - 5) "Pass-through entity" means a non-federal entity that provides a federal award to a subrecipient to carry out a federal program.
 - 6) "Recipient" means a non-federal entity that expends federal awards received directly from a federal awarding agency to carry out a federal program.

Exhibit E
Additional Provisions

- 7) "Subrecipient" means a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency. Guidance on distinguishing between a subrecipient and a vendor is provided in OMB Circular A-133.

- 8) A. "Vendor" means a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a federal program. These goods or services may be for an organization's own use or for the use of beneficiaries of the federal program. Additional guidance on distinguishing between a subrecipient and a vendor is provided in OMB Circular A-133.

- B. The definitions in Section 8, Item 8.A. shall be included in all of Contractor's contracts with subrecipients and vendors.

Exhibit F
HIPAA Business Associate Addendum

I. Recitals

- A. This Contract (Agreement) has been determined to constitute a business associate relationship under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), 42 U.S.C. section 17921 et seq., and their implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations").
- B. The Department of Health Care Services ("DHCS") wishes to disclose to Business Associate certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information ("PHI"), including protected health information in electronic media ("ePHI"), under federal law, and personal information ("PI") under state law.
- C. As set forth in this Agreement, Contractor, here and after, is the Business Associate of DHCS acting on DHCS' behalf and provides services, arranges, performs or assists in the performance of functions or activities on behalf of DHCS and creates, receives, maintains, transmits, uses or discloses PHI and PI. DHCS and Business Associate are each a party to this Agreement and are collectively referred to as the "parties."
- D. The purpose of this Addendum is to protect the privacy and security of the PHI and PI that may be created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, and to comply with certain standards and requirements of HIPAA, the HITECH Act and the HIPAA regulations, including, but not limited to, the requirement that DHCS must enter into a contract containing specific requirements with Contractor prior to the disclosure of PHI to Contractor, as set forth in 45 CFR Parts 160 and 164 and the HITECH Act.
- E. The terms used in this Addendum, but not otherwise defined, shall have the same meanings as those terms have in the HIPAA regulations. Any reference to statutory or regulatory language shall be to such language as in effect or as amended.

II. Definitions

- A. Breach shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- B. Business Associate shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- C. Covered Entity shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- D. Electronic Health Record shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C Section 17921 and implementing regulations.
- E. Electronic Protected Health Information (ePHI) means individually identifiable health information transmitted by electronic media or maintained in electronic media, including but not limited to electronic media as set forth under 45 CFR section 160.103.
- F. Individually Identifiable Health Information means health information, including demographic information collected from an individual, that is created or received by a health care provider, health plan, employer or health care clearinghouse, and relates to the past, present or future physical or mental health or

Exhibit F
HIPAA Business Associate Addendum

condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, that identifies the individual or where there is a reasonable basis to believe the information can be used to identify the individual, as set forth under 45 CFR section 160.103.

- G. Privacy Rule shall mean the HIPAA Regulation that is found at 45 CFR Parts 160 and 164.
- H. Personal Information shall have the meaning given to such term in California Civil Code section 1798.29.
- I. Protected Health Information means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or is transmitted or maintained in any other form or medium, as set forth under 45 CFR section 160.103.
- J. Required by law, as set forth under 45 CFR section 164.103, means a mandate contained in law that compels an entity to make a use or disclosure of PHI that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
- K. Secretary means the Secretary of the U.S. Department of Health and Human Services ("HHS") or the Secretary's designee.
- L. Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI or PI, or confidential data that is essential to the ongoing operation of the Business Associate's organization and intended for internal use; or interference with system operations in an information system.
- M. Security Rule shall mean the HIPAA regulation that is found at 45 CFR Parts 160 and 164.
- N. Unsecured PHI shall have the meaning given to such term under the HITECH Act, 42 U.S.C. section 17932(h), any guidance issued pursuant to such Act and the HIPAA regulations.

III. Terms of Agreement

A. Permitted Uses and Disclosures of PHI by Business Associate

Permitted Uses and Disclosures. Except as otherwise indicated in this Addendum, Business Associate may use or disclose PHI only to perform functions, activities or services specified in this Agreement, for, or on behalf of DHCS, provided that such use or disclosure would not violate the HIPAA regulations, if done by DHCS. Any such use or disclosure must, to the extent practicable, be limited to the limited data set, as defined in 45 CFR section 164.514(e)(2), or, if needed, to the minimum necessary to accomplish the intended purpose of such use or disclosure, in compliance with the HITECH Act and any guidance issued pursuant to such Act, and the HIPAA regulations.

1. **Specific Use and Disclosure Provisions.** Except as otherwise indicated in this Addendum, Business Associate may:

Exhibit F
HIPAA Business Associate Addendum

- a. **Use and disclose for management and administration.** Use and disclose PHI for the proper management and administration of the Business Associate provided that such disclosures are required by law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware that the confidentiality of the information has been breached.
- b. **Provision of Data Aggregation Services.** Use PHI to provide data aggregation services to DHCS. Data aggregation means the combining of PHI created or received by the Business Associate on behalf of DHCS with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of DHCS.

B. Prohibited Uses and Disclosures

1. Business Associate shall not disclose PHI about an individual to a health plan for payment or health care operations purposes if the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full and the individual requests such restriction, in accordance with 42 U.S.C. section 17935(a) and 45 CFR section 164.522(a).
2. Business Associate shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of DHCS and as permitted by 42 U.S.C. section 17935(d)(2).

C. Responsibilities of Business Associate

Business Associate agrees:

1. **Nondisclosure.** Not to use or disclose Protected Health Information (PHI) other than as permitted or required by this Agreement or as required by law.
2. **Safeguards.** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of DHCS, in compliance with 45 CFR sections 164.308, 164.310 and 164.312, and to prevent use or disclosure of PHI other than as provided for by this Agreement. Business Associate shall implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications and other requirements of 45 CFR section 164, subpart C, in compliance with 45 CFR section 164.316. Business Associate 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 Business Associate's operations and the nature and scope of its activities, and which incorporates the requirements of section 3, Security, below. Business Associate will provide DHCS with its current and updated policies.
3. **Security.** To take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI and/or PI, and to protect paper documents containing PHI and/or PI. These steps shall include, at a minimum:
 - a. Complying with all of the data system security precautions listed in Attachment A, the Business Associate Data Security Requirements;

Exhibit F
HIPAA Business Associate Addendum

- b. Achieving and maintaining compliance with the HIPAA Security Rule (45 CFR Parts 160 and 164), as necessary in conducting operations on behalf of DHCS under this Agreement;
- c. Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III - Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies; and
- d. In case of a conflict between any of the security standards contained in any of these enumerated sources of security standards, the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to PHI from unauthorized disclosure. Further, Business Associate must comply with changes to these standards that occur after the effective date of this Agreement.

Business Associate shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with DHCS.

D. *Mitigation of Harmful Effects.* To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or its subcontractors in violation of the requirements of this Addendum.

E. *Business Associate's Agents and Subcontractors.*

1. To enter into written agreements with any agents, including subcontractors and vendors, to whom Business Associate provides PHI or PI received from or created or received by Business Associate on behalf of DHCS, that impose the same restrictions and conditions on such agents, subcontractors and vendors that apply to Business Associate with respect to such PHI and PI under this Addendum, and that comply with all applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, including the requirement that any agents, subcontractors or vendors implement reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI and PI. Business Associate shall incorporate, when applicable, the relevant provisions of this Addendum into each subcontract or subaward to such agents, subcontractors and vendors, including the requirement that any security incidents or breaches of unsecured PHI or PI be reported to Business Associate.
2. In accordance with 45 CFR section 164.504(e)(1)(ii), upon Business Associate's knowledge of a material breach or violation by its subcontractor of the agreement between Business Associate and the subcontractor, Business Associate shall:
 - a. Provide an opportunity for the subcontractor to cure the breach or end the violation and terminate the agreement if the subcontractor does not cure the breach or end the violation within the time specified by DHCS; or
 - b. Immediately terminate the agreement if the subcontractor has breached a material term of the agreement and cure is not possible.

F. *Availability of Information to DHCS and Individuals.* To provide access and information:

Exhibit F
HIPAA Business Associate Addendum

1. To provide access as DHCS may require, and in the time and manner designated by DHCS (upon reasonable notice and during Business Associate's normal business hours) to PHI in a Designated Record Set, to DHCS (or, as directed by DHCS), to an Individual, in accordance with 45 CFR section 164.524. Designated Record Set means the group of records maintained for DHCS that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for DHCS health plans; or those records used to make decisions about individuals on behalf of DHCS. Business Associate shall use the forms and processes developed by DHCS for this purpose and shall respond to requests for access to records transmitted by DHCS within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.
 2. If Business Associate maintains an Electronic Health Record with PHI, and an individual requests a copy of such information in an electronic format, Business Associate shall provide such information in an electronic format to enable DHCS to fulfill its obligations under the HITECH Act, including but not limited to, 42 U.S.C. section 17935(e).
 3. If Business Associate receives data from DHCS that was provided to DHCS by the Social Security Administration, upon request by DHCS, Business Associate shall provide DHCS with a list of all employees, contractors and agents who have access to the Social Security data, including employees, contractors and agents of its subcontractors and agents.
- G. *Amendment of PHI.*** To make any amendment(s) to PHI that DHCS directs or agrees to pursuant to 45 CFR section 164.526, in the time and manner designated by DHCS.
- H. *Internal Practices.*** To make Business Associate's internal practices, books and records relating to the use and disclosure of PHI received from DHCS, or created or received by Business Associate on behalf of DHCS, available to DHCS or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by DHCS or by the Secretary, for purposes of determining DHCS' compliance with the HIPAA regulations. If any information needed for this purpose is in the exclusive possession of any other entity or person and the other entity or person fails or refuses to furnish the information to Business Associate, Business Associate shall so certify to DHCS and shall set forth the efforts it made to obtain the information.
- I. *Documentation of Disclosures.*** To document and make available to DHCS or (at the direction of DHCS) to an Individual such disclosures of PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of PHI, in accordance with the HITECH Act and its implementing regulations, including but not limited to 45 CFR section 164.528 and 42 U.S.C. section 17935(c). If Business Associate maintains electronic health records for DHCS as of January 1, 2009, Business Associate must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations, effective with disclosures on or after January 1, 2014. If Business Associate acquires electronic health records for DHCS after January 1, 2009, Business Associate must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations, effective with disclosures on or after the date the electronic health record is acquired, or on or after January 1, 2011, whichever date is later. The electronic accounting of disclosures shall be for disclosures during the three years prior to the request for an accounting.
- J. *Breaches and Security Incidents.*** During the term of this Agreement, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and to take the following steps:

Exhibit F
HIPAA Business Associate Addendum

1. **Notice to DHCS.** (1) To notify DHCS **immediately by telephone call plus email or fax** upon the discovery of a breach of unsecured PHI or PI in electronic media or in any other media if the PHI or PI was, or is reasonably believed to have been, accessed or acquired by an unauthorized person, or upon the discovery of a suspected security incident that involves data provided to DHCS by the Social Security Administration. (2) To notify DHCS **within 24 hours by email or fax** of the discovery of any suspected security incident, intrusion or unauthorized access, use or disclosure of PHI or PI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. A breach shall be treated as discovered by Business Associate as of the first day on which the breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the breach) who is an employee, officer or other agent of Business Associate.

Notice shall be provided to the DHCS Program Contract Manager, the DHCS Privacy Officer and the DHCS Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notice shall be provided by calling the DHCS ITSD Service Desk. Notice shall be made using the "DHCS Privacy Incident Report" form, including all information known at the time. Business Associate shall use the most current version of this form, which is posted on the DHCS Privacy Office website (www.dhcs.ca.gov, then select "Privacy" in the left column and then "Business Use" near the middle of the page) or use this link: <http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/DHCSBusinessAssociatesOnly.aspx>

Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of PHI or PI, Business Associate shall take:

- a. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
 - b. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
2. **Investigation and Investigation Report.** To immediately investigate such security incident, breach, or unauthorized access, use or disclosure of PHI or PI. Within 72 hours of the discovery, Business Associate shall submit an updated "DHCS Privacy Incident Report" containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer:
 3. **Complete Report.** To provide a complete report of the investigation to the DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall be submitted on the "DHCS Privacy Incident Report" form and shall include an assessment of all known factors relevant to a determination of whether a breach occurred under applicable provisions of HIPAA, the HITECH Act, the HIPAA regulations and/or state law. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If DHCS requests information in addition to that listed on the "DHCS Privacy Incident Report" form, Business Associate shall make reasonable efforts to provide DHCS with such information. If necessary, a Supplemental Report may be used to submit revised or additional information after the completed report is submitted, by submitting the revised or additional information on an updated "DHCS Privacy Incident Report" form. DHCS will review and approve the determination of whether a breach occurred and individual notifications are required, and the corrective action plan.

Exhibit F
HIPAA Business Associate Addendum

4. **Notification of Individuals.** If the cause of a breach of PHI or PI is attributable to Business Associate or its subcontractors, agents or vendors, Business Associate shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The notifications shall comply with the requirements set forth in 42 U.S.C. section 17932 and its implementing regulations, including, but not limited to, the requirement that the notifications be made without unreasonable delay and in no event later than 60 calendar days. The DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made.

5. **Responsibility for Reporting of Breaches.** If the cause of a breach of PHI or PI is attributable to Business Associate or its agents, subcontractors or vendors, Business Associate is responsible for all required reporting of the breach as specified in 42 U.S.C. section 17932 and its implementing regulations, including notification to media outlets and to the Secretary. If a breach of unsecured PHI involves more than 500 residents of the State of California or its jurisdiction, Business Associate shall notify the Secretary of the breach immediately upon discovery of the breach. If Business Associate has reason to believe that duplicate reporting of the same breach or incident may occur because its subcontractors, agents or vendors may report the breach or incident to DHCS in addition to Business Associate, Business Associate shall notify DHCS, and DHCS and Business Associate may take appropriate action to prevent duplicate reporting. The breach reporting requirements of this paragraph are in addition to the reporting requirements set forth in subsection 1, above.

6. **DHCS Contact Information.** To direct communications to the above referenced DHCS staff, the Contractor shall initiate contact as indicated herein. DHCS reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Addendum or the Agreement to which it is incorporated.

DHCS Program Contract Manager	DHCS Privacy Officer	DHCS Information Security Officer
See the Scope of Work exhibit for Program Contract Manager information	Privacy Officer c/o: Office of HIPAA Compliance Department of Health Care Services P.O. Box 997413, MS 4722 Sacramento, CA 95899-7413 Email: privacyofficer@dhcs.ca.gov Telephone: (916) 445-4646 Fax: (916) 440-7680	Information Security Officer DHCS Information Security Office P.O. Box 997413, MS 6400 Sacramento, CA 95899-7413 Email: iso@dhcs.ca.gov Fax: (916) 440-5537 Telephone: ITSD Service Desk (916) 440-7000 or (800) 579-0874

Exhibit F
HIPAA Business Associate Addendum

- K. Termination of Agreement.** In accordance with Section 13404(b) of the HITECH Act and to the extent required by the HIPAA regulations, if Business Associate knows of a material breach or violation by DHCS of this Addendum, it shall take the following steps:
1. Provide an opportunity for DHCS to cure the breach or end the violation and terminate the Agreement if DHCS does not cure the breach or end the violation within the time specified by Business Associate; or
 2. Immediately terminate the Agreement if DHCS has breached a material term of the Addendum and cure is not possible.
- L. Due Diligence.** Business Associate shall exercise due diligence and shall take reasonable steps to ensure that it remains in compliance with this Addendum and is in compliance with applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, and that its agents, subcontractors and vendors are in compliance with their obligations as required by this Addendum.
- M. Sanctions and/or Penalties.** Business Associate understands that a failure to comply with the provisions of HIPAA, the HITECH Act and the HIPAA regulations that are applicable to Business Associate may result in the imposition of sanctions and/or penalties on Business Associate under HIPAA, the HITECH Act and the HIPAA regulations.

IV. Obligations of DHCS

DHCS agrees to:

- A. Notice of Privacy Practices.** Provide Business Associate with the Notice of Privacy Practices that DHCS produces in accordance with 45 CFR section 164.520, as well as any changes to such notice. Visit the DHCS Privacy Office to view the most current Notice of Privacy Practices at: <http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/default.aspx> or the DHCS website at www.dhcs.ca.gov (select "Privacy in the left column and "Notice of Privacy Practices" on the right side of the page).
- B. Permission by Individuals for Use and Disclosure of PHI.** Provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures.
- C. Notification of Restrictions.** Notify the Business Associate of any restriction to the use or disclosure of PHI that DHCS has agreed to in accordance with 45 CFR section 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.
- D. Requests Conflicting with HIPAA Rules.** Not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA regulations if done by DHCS.

V. Audits, Inspection and Enforcement

- A.** From time to time, DHCS may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement and this Addendum. Business Associate shall promptly remedy any violation of any provision of this Addendum and shall certify the same to the DHCS Privacy Officer in writing. The fact that DHCS inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Addendum, nor does DHCS':

Exhibit F
HIPAA Business Associate Addendum

1. Failure to detect or
 2. Detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of DHCS' enforcement rights under this Agreement and this Addendum.
- B.** If Business Associate is the subject of an audit, compliance review, or complaint investigation by the Secretary or the Office of Civil Rights, U.S. Department of Health and Human Services, that is related to the performance of its obligations pursuant to this HIPAA Business Associate Addendum, Business Associate shall notify DHCS and provide DHCS with a copy of any PHI or PI that Business Associate provides to the Secretary or the Office of Civil Rights concurrently with providing such PHI or PI to the Secretary. Business Associate is responsible for any civil penalties assessed due to an audit or investigation of Business Associate, in accordance with 42 U.S.C. section 17934(c).

VI. Termination

- A. Term.** The Term of this Addendum shall commence as of the effective date of this Addendum and shall extend beyond the termination of the contract and shall terminate when all the PHI provided by DHCS to Business Associate, or created or received by Business Associate on behalf of DHCS, is destroyed or returned to DHCS, in accordance with 45 CFR 164.504(e)(2)(ii)(I).
- B. Termination for Cause.** In accordance with 45 CFR section 164.504(e)(1)(ii), upon DHCS' knowledge of a material breach or violation of this Addendum by Business Associate, DHCS shall:
1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by DHCS; or
 2. Immediately terminate this Agreement if Business Associate has breached a material term of this Addendum and cure is not possible.
- C. Judicial or Administrative Proceedings.** Business Associate will notify DHCS if it is named as a defendant in a criminal proceeding for a violation of HIPAA. DHCS may terminate this Agreement if Business Associate is found guilty of a criminal violation of HIPAA. DHCS may terminate this Agreement if a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate is a party or has been joined.
- D. Effect of Termination.** Upon termination or expiration of this Agreement for any reason, Business Associate shall return or destroy all PHI received from DHCS (or created or received by Business Associate on behalf of DHCS) that Business Associate still maintains in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, Business Associate shall notify DHCS of the conditions that make the return or destruction infeasible, and DHCS and Business Associate shall determine the terms and conditions under which Business Associate may retain the PHI. Business Associate shall continue to extend the protections of this Addendum to such PHI, and shall limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

VII. Miscellaneous Provisions

- A. Disclaimer.** DHCS makes no warranty or representation that compliance by Business Associate with this Addendum, HIPAA or the HIPAA regulations will be adequate or satisfactory for Business

Exhibit F
HIPAA Business Associate Addendum

Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

- B. *Amendment.*** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon DHCS' request, Business Associate agrees to promptly enter into negotiations with DHCS concerning an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable laws. DHCS may terminate this Agreement upon thirty (30) days written notice in the event:
1. Business Associate does not promptly enter into negotiations to amend this Addendum when requested by DHCS pursuant to this Section; or
 2. Business Associate does not enter into an amendment providing assurances regarding the safeguarding of PHI that DHCS in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA regulations.
- C. *Assistance in Litigation or Administrative Proceedings.*** Business Associate shall make itself and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this Agreement, available to DHCS at no cost to DHCS to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DHCS, its directors, officers or employees based upon claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inactions or actions by the Business Associate, except where Business Associate or its subcontractor, employee or agent is a named adverse party.
- D. *No Third-Party Beneficiaries.*** Nothing express or implied in the terms and conditions of this Addendum is intended to confer, nor shall anything herein confer, upon any person other than DHCS or Business Associate and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- E. *Interpretation.*** The terms and conditions in this Addendum shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the HIPAA regulations and applicable state laws. The parties agree that any ambiguity in the terms and conditions of this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act and the HIPAA regulations.
- F. *Regulatory References.*** A reference in the terms and conditions of this Addendum to a section in the HIPAA regulations means the section as in effect or as amended.
- G. *Survival.*** The respective rights and obligations of Business Associate under Section VI.D of this Addendum shall survive the termination or expiration of this Agreement.
- H. *No Waiver of Obligations.*** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

Exhibit F
HIPAA Business Associate Addendum

Attachment A
Business Associate Data Security Requirements

I. Personnel Controls

- A. *Employee Training.*** All workforce members who assist in the performance of functions or activities on behalf of DHCS, or access or disclose DHCS PHI or PI must complete information privacy and security training, at least annually, at Business Associate's expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following contract termination.
- B. *Employee Discipline.*** Appropriate sanctions must be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.
- C. *Confidentiality Statement.*** All persons that will be working with DHCS PHI or PI must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to DHCS PHI or PI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for DHCS inspection for a period of six (6) years following contract termination.
- D. *Background Check.*** Before a member of the workforce may access DHCS PHI or PI, a thorough background check of that worker must be conducted, with evaluation of the results to assure that there is no indication that the worker may present a risk to the security or integrity of confidential data or a risk for theft or misuse of confidential data. The Contractor shall retain each workforce member's background check documentation for a period of three (3) years following contract termination.

II. Technical Security Controls

- A. *Workstation/Laptop encryption.*** All workstations and laptops that process and/or store DHCS PHI or PI must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved by the DHCS Information Security Office.
- B. *Server Security.*** Servers containing unencrypted DHCS PHI or PI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
- C. *Minimum Necessary.*** Only the minimum necessary amount of DHCS PHI or PI required to perform necessary business functions may be copied, downloaded, or exported.
- D. *Removable media devices.*** All electronic files that contain DHCS PHI or PI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.

Exhibit F
HIPAA Business Associate Addendum

- E. *Antivirus software.*** All workstations, laptops and other systems that process and/or store DHCS PHI or PI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- F. *Patch Management.*** All workstations, laptops and other systems that process and/or store DHCS PHI or PI must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release.
- G. *User IDs and Password Controls.*** All users must be issued a unique user name for accessing DHCS PHI or PI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password, at maximum within 24 hours. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed every 90 days, preferably every 60 days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:
- Upper case letters (A-Z)
 - Lower case letters (a-z)
 - Arabic numerals (0-9)
 - Non-alphanumeric characters (punctuation symbols)
- H. *Data Destruction.*** When no longer needed, all DHCS PHI or PI must be wiped using the Gutmann or US Department of Defense (DoD) 5220.22-M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission of the DHCS Information Security Office.
- I. *System Timeout.*** The system providing access to DHCS PHI or PI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- J. *Warning Banners.*** All systems providing access to DHCS PHI or PI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.
- K. *System Logging.*** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for DHCS PHI or PI, or which alters DHCS PHI or PI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If DHCS PHI or PI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.
- L. *Access Controls.*** The system providing access to DHCS PHI or PI must use role based access controls for all user authentications, enforcing the principle of least privilege.

Exhibit F
HIPAA Business Associate Addendum

- M. *Transmission encryption.*** All data transmissions of DHCS PHI or PI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing PHI can be encrypted. This requirement pertains to any type of PHI or PI in motion such as website access, file transfer, and E-Mail.
- N. *Intrusion Detection.*** All systems involved in accessing, holding, transporting, and protecting DHCS PHI or PI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

III. Audit Controls

- A. *System Security Review.*** All systems processing and/or storing DHCS PHI or PI must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.
- B. *Log Reviews.*** All systems processing and/or storing DHCS PHI or PI must have a routine procedure in place to review system logs for unauthorized access.
- C. *Change Control.*** All systems processing and/or storing DHCS PHI or PI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

IV. Business Continuity / Disaster Recovery Controls

- A. *Emergency Mode Operation Plan.*** Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic DHCS PHI or PI 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 DHCS PHI to maintain retrievable exact copies of DHCS PHI or PI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and an estimate of the amount of time needed to restore DHCS PHI or PI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of DHCS data.

V. Paper Document Controls

- A. *Supervision of Data.*** DHCS PHI or PI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. DHCS PHI or PI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
- B. *Escorting Visitors.*** Visitors to areas where DHCS PHI or PI is contained shall be escorted and DHCS PHI or PI shall be kept out of sight while visitors are in the area.

Exhibit F
HIPAA Business Associate Addendum

- C. **Confidential Destruction.** DHCS PHI or PI must be disposed of through confidential means, such as cross cut shredding and pulverizing.
- D. **Removal of Data.** DHCS PHI or PI must not be removed from the premises of the Contractor except with express written permission of DHCS.
- E. **Faxing.** Faxes containing DHCS PHI or PI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.
- F. **Mailing.** Mailings of DHCS PHI or PI shall be sealed and secured from damage or inappropriate viewing of PHI or PI to the extent possible. Mailings which include 500 or more individually identifiable records of DHCS PHI or PI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of DHCS to use another method is obtained.

Exhibit G
Information Confidentiality and Security Requirements

1. **Definitions.** For purposes of this Exhibit, the following definitions shall apply:
 - A. **Public Information:** Information that is not exempt from disclosure under the provisions of the California Public Records Act (Government Code sections 6250-6265) or other applicable state or federal laws.
 - B. **Confidential Information:** Information that is exempt from disclosure under the provisions of the California Public Records Act (Government Code sections 6250-6265) or other applicable state or federal laws.
 - C. **Sensitive Information:** Information that requires special precautions to protect from unauthorized use, access, disclosure, modification, loss, or deletion. Sensitive Information may be either Public Information or Confidential Information. It is information that requires a higher than normal assurance of accuracy and completeness. Thus, the key factor for Sensitive Information is that of integrity. Typically, Sensitive Information includes records of agency financial transactions and regulatory actions.
 - D. **Personal Information:** Information that identifies or describes an individual, including, but not limited to, their name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. **It is DHCS' policy to consider all information about individuals private unless such information is determined to be a public record.** This information must be protected from inappropriate access, use, or disclosure and must be made accessible to data subjects upon request. Personal Information includes the following:
 - Notice-triggering Personal Information: Specific items of personal information (name plus Social Security number, driver license/California identification card number, or financial account number) that may trigger a requirement to notify individuals if it is acquired by an unauthorized person. 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. See Civil Code sections 1798.29 and 1798.82.
2. **Nondisclosure.** The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure any Personal Information, Sensitive Information, or Confidential Information (hereinafter identified as PSCI).
3. The Contractor and its employees, agents, or subcontractors shall not use any PSCI for any purpose other than carrying out the Contractor's obligations under this Agreement.
4. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the DHCS Program Contract Manager all requests for disclosure of any PSCI not emanating from the person who is the subject of PSCI.
5. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the person who is the subject of PSCI, any PSCI to anyone other than DHCS without prior written authorization from the DHCS Program Contract Manager, except if disclosure is required by State or Federal law.

Exhibit G
Information Confidentiality and Security Requirements

6. The Contractor shall observe the following requirements:

A. Safeguards. The Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PSCI, including electronic PSCI that it creates, receives, maintains, uses, or transmits on behalf of DHCS. 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, including at a minimum the following safeguards:

1) Personnel Controls

- a. **Employee Training.** All workforce members who assist in the performance of functions or activities on behalf of DHCS, or access or disclose DHCS PSCI, must complete information privacy and security training, at least annually, at Business Associate's expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following contract termination.
- b. **Employee Discipline.** Appropriate sanctions must be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.
- c. **Confidentiality Statement.** All persons that will be working with DHCS PHI or PI must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to DHCS PHI or PI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for DHCS inspection for a period of six (6) years following contract termination.
- d. **Background Check.** Before a member of the workforce may access DHCS PHI or PI, a thorough background check of that worker must be conducted, with evaluation of the results to assure that there is no indication that the worker may present a risk to the security or integrity of confidential data or a risk for theft or misuse of confidential data. The Contractor shall retain each workforce member's background check documentation for a period of three (3) years following contract termination.

2) Technical Security Controls

- a. **Workstation/Laptop encryption.** All workstations and laptops that process and/or store DHCS PHI or PI must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved by the DHCS Information Security Office.
- b. **Server Security.** Servers containing unencrypted DHCS PHI or PI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.

Exhibit G
Information Confidentiality and Security Requirements

- c. **Minimum Necessary.** Only the minimum necessary amount of DHCS PHI or PI required to perform necessary business functions may be copied, downloaded, or exported.
- d. **Removable media devices.** All electronic files that contain DHCS PHI or PI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.
- e. **Antivirus software.** All workstations, laptops and other systems that process and/or store DHCS PHI or PI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- f. **Patch Management.** All workstations, laptops and other systems that process and/or store DHCS PHI or PI must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release.
- g. **User IDs and Password Controls.** All users must be issued a unique user name for accessing DHCS PHI or PI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password, at maximum within 24 hours. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed every 90 days, preferably every 60 days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:
- Upper case letters (A-Z)
 - Lower case letters (a-z)
 - Arabic numerals (0-9)
 - Non-alphanumeric characters (punctuation symbols)
- h. **Data Destruction.** When no longer needed, all DHCS PHI or PI must be wiped using the Gutmann or US Department of Defense (DoD) 5220.22-M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission of the DHCS Information Security Office.
- i. **System Timeout.** The system providing access to DHCS PHI or PI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- j. **Warning Banners.** All systems providing access to DHCS PHI or PI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.
- k. **System Logging.** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for DHCS PHI or PI, or which alters

Exhibit G
Information Confidentiality and Security Requirements

DHCS PHI or PI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If DHCS PHI or PI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.

- l. Access Controls.** The system providing access to DHCS PHI or PI must use role based access controls for all user authentications, enforcing the principle of least privilege.
- m. Transmission encryption.** All data transmissions of DHCS PHI or PI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing PHI can be encrypted. This requirement pertains to any type of PHI or PI in motion such as website access, file transfer, and E-Mail.
- n. Intrusion Detection.** All systems involved in accessing, holding, transporting, and protecting DHCS PHI or PI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

3) Audit Controls

- a. System Security Review.** All systems processing and/or storing DHCS PHI or PI must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.
- b. Log Reviews.** All systems processing and/or storing DHCS PHI or PI must have a routine procedure in place to review system logs for unauthorized access.
- c. Change Control.** All systems processing and/or storing DHCS PHI or PI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

4) Business Continuity / Disaster Recovery Controls

- a. Emergency Mode Operation Plan.** Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic DHCS PHI or PI 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 DHCS PHI to maintain retrievable exact copies of DHCS PHI or PI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and an estimate of the amount of time needed to restore DHCS PHI or PI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of DHCS data.

5) Paper Document Controls

Exhibit G
Information Confidentiality and Security Requirements

- a. **Supervision of Data.** DHCS PHI or PI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. DHCS PHI or PI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
 - b. **Escorting Visitors.** Visitors to areas where DHCS PHI or PI is contained shall be escorted and DHCS PHI or PI shall be kept out of sight while visitors are in the area.
 - c. **Confidential Destruction.** DHCS PHI or PI must be disposed of through confidential means, such as cross cut shredding and pulverizing.
 - d. **Removal of Data.** DHCS PHI or PI must not be removed from the premises of the Contractor except with express written permission of DHCS.
 - e. **Faxing.** Faxes containing DHCS PHI or PI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.
 - f. **Mailing.** Mailings of DHCS PHI or PI shall be sealed and secured from damage or inappropriate viewing of PHI or PI to the extent possible. Mailings which include 500 or more individually identifiable records of DHCS PHI or PI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of DHCS to use another method is obtained.
- B. Security Officer.** The Contractor shall designate a Security Officer to oversee its data security program who will be responsible for carrying out its privacy and security programs and for communicating on security matters with DHCS.
- C. Discovery and Notification of Breach.** The Contractor shall notify DHCS **immediately by telephone call plus email or fax** upon the discovery of breach of security of PSCI in computerized form if the PSCI was, or is reasonably believed to have been, acquired by an unauthorized person, or upon the discovery of a suspected security incident that involves data provided to DHCS by the Social Security Administration **or within twenty-four (24) hours by email or fax** of the discovery of any suspected security incident, intrusion or unauthorized use or disclosure of PSCI in violation of this Agreement, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the DHCS Program Contract Manager, the DHCS Privacy Officer and the DHCS Information Security Officer. Notice shall be made using the "DHCS Privacy Incident Report" form, including all information known at the time. The Contractor shall use the most current version of this form, which is posted on the DHCS Privacy Office website (www.dhcs.ca.gov, then select "Privacy" in the left column and then "Business Use" near the middle of the page) or use this link: <http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/DHCSBusinessAssociatesOnly.aspx> If the incident occurs after business hours or on a weekend or holiday and involves electronic PSCI, notification shall be provided by calling the DHCS Information Technology Services Division (ITSD) Help Desk. Contractor shall take:
- 1) Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and

Exhibit G
 Information Confidentiality and Security Requirements

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

D. Investigation of Breach. The Contractor shall immediately investigate such security incident, breach, or unauthorized use or disclosure of PSCI and within seventy-two (72) hours of the discovery, The Contractor shall submit an updated "DHCS Privacy Incident Report" containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer:

E. Written Report. The Contractor shall provide a written report of the investigation to the DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. 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 improper use or disclosure.

F. Notification of Individuals. The Contractor shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer shall approve the time, manner and content of any such notifications.

7. **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. The Contractor shall incorporate the contents of this Exhibit into each subcontract or subaward to its agents, subcontractors, or independent consultants.

8. **Contact Information.** To direct communications to the above referenced DHCS staff, the Contractor shall initiate contact as indicated herein. DHCS 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.

DHCS Program Contract Manager	DHCS Privacy Officer	DHCS Information Security Officer
See the Scope of Work exhibit for Program Contract Manager information	Privacy Officer c/o Office of Legal Services Department of Health Care Services P.O. Box 997413, MS 0011 Sacramento, CA 95899-7413 Email: privacyofficer@dhcs.ca.gov Telephone: (916) 445-4646	Information Security Officer DHCS Information Security Office P.O. Box 997413, MS 6400 Sacramento, CA 95899-7413 Email: iso@dhcs.ca.gov Telephone: ITSD Help Desk (916) 440-7000 or (800) 579-0874

9. **Audits and Inspections.** From time to time, DHCS may inspect the facilities, systems, books and records of the Contractor to monitor compliance with the safeguards required in the Information Confidentiality and Security Requirements (ICSR) exhibit. Contractor shall promptly remedy any violation of any provision of this ICSR exhibit. The fact that DHCS inspects, or fails to inspect, or has

Exhibit G
Information Confidentiality and Security Requirements

the right to inspect, Contractor's facilities, systems and procedures does not relieve Contractor of its responsibility to comply with this ICSR exhibit.

Travel Reimbursement Information
(Lodging and Per Diem Reimbursement Increase – Effective for travel on/after January 1, 2014)

1. The following rate policy is to be applied for reimbursing the travel expenses of persons under contract. The terms "contract" and/or "subcontract" have the same meaning as "grantee" and/or "subgrantee" where applicable.
 - a. Reimbursement for travel and/or per diem shall be at the rates established for nonrepresented/excluded state employees. Exceptions to California Department of Human Resources (CalHR) AKA California Department of Personnel Administration (DPA) lodging rates may be approved by the Department of Health Care Services (DHCS) upon the receipt of a statement on/with an invoice indicating that State employee travel rates are not available.
 - b. Short Term Travel is defined as a 24-hour period, and less than 31 consecutive days, and is at least 50 miles from the main office, headquarters or primary residence. Starting time is whenever a contract or subcontract employee leaves his or her home or headquarters. "Headquarters" is defined as the place where the contracted personnel spends the largest portion of their working time and returns to upon the completion of assignments. Headquarters may be individually established for each traveler and approved verbally or in writing by the program funding the agreement. Verbal approval shall be followed up in writing or email.
 - c. Contractors on travel status for more than one 24-hour period and less than 31 consecutive days may claim a fractional part of a period of more than 24 hours. Consult the chart appearing on Page 2 of this document to determine the reimbursement allowance. All lodging reimbursement claims must be supported by a receipt*. If a contractor does not or cannot present receipts, lodging expenses will not be reimbursed.

(1) Lodging (with receipts*):

Travel Location / Area	Reimbursement Rate
Statewide (excluding the counties identified below)	\$ 90.00 plus tax
Counties of Napa, Riverside and Sacramento	\$ 95.00 plus tax
Counties of Los Angeles (excluding City of Santa Monica), Orange, Ventura and Edwards AFB	\$120.00 plus tax
Counties of Alameda, Monterey, San Diego, San Mateo and Santa Clara	\$125.00 plus tax
San Francisco County and the City of Santa Monica	\$150.00 plus tax

Reimbursement for actual lodging expenses that exceed the above amounts may be allowed with the advance approval of the Deputy Director of DHCS or his or her designee. Receipts are required.

*Receipts from Internet lodging reservation services such as Priceline.com which require prepayment for that service, ARE NOT ACCEPTABLE LODGING RECEIPTS and are not reimbursable without a valid lodging receipt from a lodging establishment.

- (2) Meal/Supplemental Expenses: With substantiating receipts, a contractor may claim actual expenses incurred up to the following maximum reimbursement rates for each full 24-hour period of travel.

Meal / Expense	Reimbursement Rate
Breakfast	\$ 7.00
Lunch	\$ 11.00
Dinner	\$ 23.00
Incidental expenses	\$ 5.00

- d. Out-of-state travel may only be reimbursed if such travel is necessitated by the scope or statement of work and has been approved in advance by the program with which the contract is held. For out-of-state travel, contractors may be reimbursed actual lodging expenses, supported by a receipt, and may be reimbursed for meals and supplemental expenses for each 24-hour period computed at the rates listed in c. (2) above. For all out-of-state travel, contractors/subcontractors must have prior DHCS written or verbal approval. Verbal approval shall be confirmed in writing (email or memo).
- e. In computing allowances for continuous periods of travel of less than 24 hours, consult the chart appearing on Page 2 of this document.
- f. No meal or lodging expenses will be reimbursed for any period of travel that occurs within normal working hours, unless expenses are incurred at least 50 miles from headquarters.

- If any of the reimbursement rates stated herein is changed by CalHR aka DPA, no formal contract amendment will be required to incorporate the new rates. However, DHCS shall inform the contractor, in writing, of the revised travel reimbursement rates and the applicable effective date of any rate change.

At DHCS' discretion, changes or revisions made by DHCS to this exhibit, excluding travel reimbursement policies established by CalHR aka DPA may be applied retroactively to any agreement to which a Travel Reimbursement Information exhibit is attached, incorporated by reference, or applied by DHCS program policy. Changes to the travel reimbursement rates stated herein may not be applied earlier than the date a rate change is approved by CalHR aka DPA.

- For transportation expenses, the contractor must retain receipts for parking; taxi, airline, bus, or rail tickets; car rental; or any other travel receipts pertaining to each trip for attachment to an invoice as substantiation for reimbursement. Reimbursement may be requested for commercial carrier fares; private car mileage; parking fees; bridge tolls; taxi, bus, or streetcar fares; and auto rental fees when substantiated by a receipt.
- Auto mileage reimbursement:** If a contractor uses his/her or a company car for transportation, the rate of reimbursement will be **56 cents** maximum per mile. If a contractor uses his/her or a company car "in lieu of" airfare, the air coach fare will be the maximum paid by the State. The contractor must provide a cost comparison upon request by the State. Gasoline and routine automobile repair expenses are not reimbursable.
- The contractor is required to furnish details surrounding each period of travel. Travel expense reimbursement detail may include, but not be limited to: purpose of travel, departure and return times, destination points, miles driven, mode of transportation, etc. Reimbursement for travel expenses may be withheld pending receipt of adequate travel documentation.
- Contractors are to consult with the program funding the contract to obtain specific invoicing procedures.

Per Diem Reimbursement Guide

Length of travel period	And this condition exists...	Meal allowed with receipt
Less than 24 hours	▶ Trip begins at or before 6:00 a.m. and ends at or after 9:00 a.m.	Breakfast
	▶ Trip ends at least one hour after the regularly scheduled workday ends or begins at or before 4:00 p.m. and ends after 7:00 p.m.	Dinner
<i>Lunch or incidentals cannot be claimed on one-day trips.</i>		
24 hours or more	▶ Trip begins at or before 6:00 a.m.	Breakfast
	▶ Trip begins at or before 11:00 a.m.	Lunch
	▶ Trip begins at or before 5:00 p.m.	dinner
More than 24 hours	▶ Trip ends at or after 8:00 a.m.	Breakfast
	▶ Trip ends at or after 2:00 p.m.	Lunch
	▶ Trip ends at or after 7:00 p.m.	Dinner
<p>The following meals may not be claimed for reimbursement: meals provided by the State, meals included in hotel expenses or conference fees, meals included in transportation costs such as airline tickets, or meals that are otherwise provided. Snacks and/or continental breakfasts such as rolls, juice, and coffee are not considered to be a meal.</p> <p>No meal expense may be claimed for reimbursement more than once in any given 24-hour period.</p>		

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 14-90004 entered into between the Department of Health Care Services (DHCS) 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 DHCS or purchased with or reimbursed by contract funds)

Unless DHCS has approved the continued use and possession of State equipment (as defined in the above referenced contract) for use in connection with another DHCS agreement, Contractor agrees to promptly initiate arrangements to account for and return said equipment to DHCS, at DHCS' 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 IT TO THE FINAL INVOICE

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

Signature of Contractor or Official Designee: _____ Date: _____

Printed Name/Title of Person Signing: _____

Distribution: Accounting (Original) Program

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.

<i>Contractor/Bidder Firm Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of</i>	

CONTRACTOR CERTIFICATION CLAUSES

1. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and,
- 4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

- 1) receive a copy of the company's drug-free workplace policy statement; and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the

certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lessor of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.

b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations,

or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

7. DOMESTIC PARTNERS: For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

- 1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

- 1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

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AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
 16

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

FROM: Supervisor Matt Kingsley

FOR THE BOARD MEETING OF: April 8, 2014

SUBJECT: Appointment of Fifth District Planning Commissioner

DEPARTMENTAL RECOMMENDATION: Request Board appoint Mr. John "Jim" Gentry as the Fifth District Planning Commissioner, to complete an unexpired four-year term ending January 4, 2017. (*Notice of vacancy resulted in request appointment being received from Mr. Gentry.*)

SUMMARY DISCUSSION: The terms of the Inyo County Planning Commissioners coincide with those of the Board of Supervisors. Mr. Paul Payne, a resident of the Fifth District, has been serving as the Fifth District Planning Commissioner for many years and has asked to be replaced. Upon receiving Mr. Payne's request I had the required notice of vacancy issued per the Board's policy. I received one request for appointment from Mr. Jim Gentry and am pleased to request our Board appoint Mr. John "Jim" Gentry to the Inyo County Planning Commission representing the Fifth District to complete a four-year term ending January 4, 2017.

ALTERNATIVES: N/A

OTHER AGENCY INVOLVEMENT: -

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

APPROVALS

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

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)

(The Original plus 20 copies of this document are required)

Date: _____

RECEIVED

2014 MAR 28 AM 10:55

Matt Kingsley
Inyo County 5th District Supervisor

INYO COUNTY
ADMINISTRATOR
CLERK OF THE BOARD

Please accept my request for appointment to the Inyo County Planning Commission, representing the 5th district.

I am sixty-three years old. I have lived in the 5th district most of my life! I own property in two of the towns in the 5th district, I'm semi-retired so I can attend most if not all of the meetings. I have been on board and commissions in the past so I understand the rules and the importance of them.

Thank you for your time and consideration

Sincerely

(Jim)
John J. Gentry



CC: Patricia Gunsolley
Kevin Carunchio
Josh Hart



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

17

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

FROM: Probation Department – Juvenile Institutions

FOR THE BOARD MEETING OF: April 8, 2014

SUBJECT: Request for Approval of Contract

DEPARTMENTAL RECOMMENDATION: Request Board to:

- 1) declare Allvest Information Services Inc. dba Assessments.com as a sole source provider;
- 2) ratify the contract between the County of Inyo and Allvest Information Services Inc. dba Assessments.com for consulting, training, and software programming services in an amount not to exceed \$20,900.00 for the period of January 1, 2014 through June 30, 2014; and,
- 3) authorize the Chairperson to sign the contract.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

History: On July 13, 2010, your Board approved Resolution #2010-32 authorizing the Chief Probation Officer to submit and/or sign the County's Juvenile Accountability Block Grants (JABG) program application and related contracts, amendments, or extensions with the State of California Corrections Standards Authority (CSA). About a year and a half ago, the CSA changed their name to the Board of State and Community Corrections (BSCC). At the time, CSA had developed a project known as Best Practices Approach Initiative (BPAI) and awarded monies to Allvest Information Services dba Assessments.com (ADC) to provide direct services for the project and monies to the Administrative Office of the Courts (AOC) to support the inclusion of the courts and other court partners in this initiative. The BPAI project objectives were to provide regional trainings, develop participant training guides, develop monitoring tools for CSA, conduct a statewide review and assessment of evidence based practice (EBP) in all county probation departments, and complete an end-of-the-project report, with the majority of the funding directed toward providing two-years of intensive on the ground training, support and technical assistance to three county level juvenile justice communities seeking to implement or enhance use of EBP.

Thereafter, in August 2010, Inyo County was selected along with Shasta and San Diego Counties as the three local juvenile justice jurisdictions to receive technical assistance through a grant, referred to as the BPAI Grant; said Grant expired in July 2012. Progress fluctuated due to many variables, including each county's readiness to proceed as well as ADC's ability to respond and schedule activities. At the end of the BPAI Grant period, numerous deliverables remained outstanding for both Inyo and Shasta Counties. ADC was able to complete the deliverables for the San Diego implementation.

CSA authorized the BPAI Executive Steering Committee (ESC) to redirect remaining project funds to complete the outstanding deliverables. ESC authorized that the remaining funds be made available to Inyo and Shasta Counties in the form of a *direct grant agreement and contract* with each County to cover the cost of the outstanding deliverables not completed in their initial BPAI Scope of Work.

Specifically for Inyo County, we did not receive several deliverables that were on our list of priorities and goals to implement evidence based practices throughout the juvenile justice system. These deliverables include data collection, training, policy and procedure development, public outreach, and sustainability measures [Continuous Quality Improvement (CQI)].

Along with the assistance of our contact at the Administrative Office of the Courts, Inyo County Probation applied for the BPAI Grant Extension and in mid-March 2013 this Department was awarded a total of \$128,468, which is available to be used to contract with a vendor to provide consulting, training, and software programming services and a very small portion to cover administrative overhead. The BPAI Grant Extension period began on January 1, 2013 expiring December 31, 2013.

In April 2013, your Board declared ADC a sole source provider; approved a contract in the amount of \$89,000 for the time period of May 1, 2013 through December 31, 2013; and, amended the Fiscal Year 2012-13 Juvenile Institutions Budget (023100) to accommodate this contract. The contract crossed over two (2) budget fiscal years and monies have been budgeted within the current fiscal year (2013-14) Juvenile Institutions budget 023100 in State Other Revenue Object Code 4499 and in Professional Services Expenditure Object Code 5265.

Current: In December 2013, we evaluated the Department's progress of meeting all of our goals and objectives as outlined in the BPAI Grant Extension and determined that we were very close to reaching all of our goals. We requested another extension from BSCC, and in mid-January 2014, we received paperwork from BSCC notifying that our BPAI Grant had been extended again, retroactively to January 1, 2014 with a new expiration date of June 30, 2014.

As you know, this Department has had an on-going relationship with ADC for the last six (6) years. ADC is a sole provider of a licenses, copyrighted and patented good and service. We respectfully request that the Board declare ADC as a sole source provider for the consulting, training, and software programming services to accomplish the remaining BPAI Grant Extension deliverables. We will adhere with the County's purchasing policy as required. The sole source justification form is attached.

The contract with ADC which expired on December 31, 2013 had \$20,900.00 remaining in the encumbered contract. We respectfully request that the Board ratify the attached contract between Inyo County and Assessments.com in an amount not to exceed \$20,900.00 for the time period of January 1, 2014 through June 30, 2014. This contract reflects the time period of the BPAI Grant extension and covers a one (1) on-line training in late January that occurred with Staff. The contract deliverables are specified in Attachment A – Scope of Work, which are also the BPAI Grant Extension deliverables.

ALTERNATIVES: The Board could choose not to declare ADC as a sole course provider, and not ratify the contract with Assessments.com; however, this is not recommended. We have the opportunity and the funding to complete all of this Department's BPAI goals by using ADC by June 30, 2014. Due to our time constraints, it would be a fruitless endeavor to seek out another Vendor.

OTHER AGENCY INVOLVEMENT:

Board of State and Community Corrections

FINANCING: This contract has been budgeted in the FY13/14 Juvenile Institutions Budget 023100, Professional Services Expenditure Object Code 5265 and funded with BPAI Grant Extension monies.

APPROVALS	
COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS <i>(Must be reviewed and approved by county counsel prior to submission to the board clerk.)</i>  Approved: <u>yes</u> Date <u>3-21-14</u>
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS <i>(Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.)</i>  Approved: <u>yes</u> Date <u>3/25/2014</u>
PERSONNEL DIRECTOR: <u>N/A</u>	PERSONNEL AND RELATED ITEMS <i>(Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)</i> Approved: _____ Date _____

DEPARTMENT HEAD SIGNATURE:  Date: 3/26/14
 (Not to be signed until all approvals are received)

INFORMATION SERVICES:  DATE: 2/31/14

Sole Source Justification Form

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

This is a sole source because:

- There is only one known source because: Assessments.com is the developer of a unique and proprietary recidivism database system and risk/needs assessment tool.
- This is a sole provider of a licensed, copyrighted, or patented good or service.
- This is a sole provider of items compatible with existing equipment or systems.
- This is a sole provider of factory-authorized warranty service.
- This is a sole provider of goods or services that perform the intended function or meet the specialized needs of the County (Please detail in an attachment).
- The requested product is used or demonstration equipment available at a lower – than-new-cost.
- One source is the only practical way to respond to overriding circumstances that make compliance with competitive procedures under the Authority's policies not in the best interest of the Authority (Please detail in an attachment).

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

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

<p>Describe the item or service, its function and the total cost estimate (if practical, separate labor and materials) in the space below or in a separate attached label: Description of Item or Service. Allvest Information Services, Inc. dba Assessments.com is the developer of a unique and proprietary recidivism database system and risk/needs assessment tool of which this Department has been using for several years. The system is licensed, copyrighted and a patented good. Funding for this contract is provided through the BPAI Grant Extension set to expire on June 30, 2014.</p>	
<p>DEPARTMENT CONTACT PERSON & TITLE Jeffrey L. Thomson, Chief Probation Officer</p>	
<p>DEPARTMENT NAME Probation – Juvenile Institutions</p>	<p>PHONE 760-872-4111</p>
<p>REQUESTED SUPPLIER/CONSULTANT NAME Allvest Information Services, Inc. dba Assessments.com</p>	<p>SUPPLIER CONTACT PERSON Sean Hossman, President</p>
<p>SUPPLIER ADDRESS 201 South Main Street, Suite 1300 Salt Lake City, UT 84111</p>	<p>SUPPLIER CONTACT'S PHONE NUMBER (877) 277-3778</p>

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



Signature of Requestor



Date

President/CEO Approval

Date

**AGREEMENT BETWEEN COUNTY OF INYO
AND ALLVEST INFORMATION SERVICES, INC. DBA ASSESSMENTS.COM
FOR THE PROVISION OF CONSULTING, TRAINING AND SOFTWARE PROGRAM SERVICES**

INTRODUCTION

WHEREAS, the County of Inyo (hereinafter referred to as "County") may have the need for the consulting, training, software prgrm. services of Allvest Information Services, Inc. dba Assessments.com of Salt Lake City, Utah (hereinafter referred to as "Contractor"), and in consideration of the mutual promises, covenants, terms, and conditions hereinafter contained, the parties hereby agree as follows:

TERMS AND CONDITIONS

1. SCOPE OF WORK.

The Contractor shall furnish to the County, upon its request, those services and work set forth in Attachment A, attached hereto and by reference incorporated herein. Requests by the County to the Contractor to perform under this Agreement will be made by Jeffrey Thomson or his designee, whose title is: Chief Probation Officer. Requests to the Contractor for work or services to be performed under this Agreement will be based upon the County's need for such services. The County makes no guarantee or warranty, of any nature, that any minimum level or amount of services or work will be requested of the Contractor by the County under this Agreement. County by this Agreement incurs no obligation or requirement to request from Contractor the performance of any services or work at all, even if County should have some need for such services or work during the term of this Agreement.

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

2. TERM.

The term of this Agreement shall be from January 1, 2014 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 which are performed by Contractor at the County's request.

B. Travel and per diem. Contractor will not be paid or reimbursed for travel expenses or per diem which Contractor incurs in providing services and work requested by County under this Agreement.

C. No additional consideration. Except as expressly provided in this Agreement, Contractor shall not be entitled to, nor receive, from County, any additional consideration, compensation, salary, wages, or other type of remuneration for services rendered under this Agreement. Specifically, Contractor shall not be entitled, by virtue of this Agreement, to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leaves of absence of any type or kind whatsoever.

D. Limit upon amount payable under Agreement. The total sum of all payments made by the County to Contractor for services and work performed under this Agreement shall not exceed Twenty thousand nine hundred and no/100 ----- Dollars (hereinafter referred to as "contract limit"). County expressly reserves the right to deny any payment or reimbursement requested by Contractor for services or work performed which is in excess of the contract limit.

E. Billing and payment. Contractor shall submit to the County, once a month, an itemized statement of all services and work described in Attachment A, which were done at the County's request. This statement will be submitted to the County not later than the fifth (5th) day of the month. The statement to be submitted will cover the period from the first (1st) day of the preceding month through and including the last day of the preceding month. This statement will identify the date on which the services and work were performed and describe the nature of the services and work which were performed on each day. Upon timely receipt of the statement by the fifth (5th) day of the month, County shall make payment to Contractor on the last day of the month.

F. Federal and State taxes.

(1) Except as provided in subparagraph (2) below, County will not withhold any federal or state income taxes or social security from any payments made by County to Contractor under the terms and conditions of this Agreement.

(2) County will withhold California State income taxes from payments made under this Agreement to non-California resident independent contractors when it is anticipated that total annual payments to Contractor under this Agreement will exceed one thousand four hundred ninety nine dollars (\$1,499.00).

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

(4) The total amounts paid by County to Contractor, and taxes withheld from payments to non-California residents, if any, will be reported annually to the Internal Revenue Service and the California State Franchise Tax Board. To facilitate this reporting, Contractor shall complete and submit to the County an Internal Revenue Service (IRS) Form W-9, attached hereto as Attachment C, upon executing this Agreement.

4. WORK SCHEDULE.

Contractor's obligation is to perform, in a timely manner, those services and work identified in Attachment A which are requested by the County. It is understood by Contractor that the performance of these services and work will require a varied schedule. Contractor will arrange his/her own schedule, but will coordinate with County to insure that all services and work requested by County under this Agreement will be performed within the time frame set forth by County.

5. REQUIRED LICENSES, CERTIFICATES, AND PERMITS.

A. Any licenses, certificates, or permits required by the federal, state, county, municipal governments, for contractor to provide the services and work described in Attachment A must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates, and permits in full force and effect. Licenses, certificates, and permits may include, but are not limited to, driver's licenses, professional licenses

or certificates, and business licenses. Such licenses, certificates, and permits will be procured and maintained in force by Contractor at no expense to the County. Contractor will provide County, upon execution of this Agreement, with evidence of current and valid licenses, certificates and permits which are required to perform the services identified in Attachment A. Where there is a dispute between Contractor and County as to what licenses, certificates, and permits are required to perform the services identified in Attachment A, County reserves the right to make such determinations for purposes of this Agreement.

B. Contractor warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Contractor also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration available at: <http://www.epls.gov>.

6. OFFICE SPACE, SUPPLIES, EQUIPMENT, ETC.

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

7. COUNTY PROPERTY.

A. Personal Property of County. Any personal property such as, but not limited to, protective or safety devices, badges, identification cards, keys, etc. provided to Contractor by County pursuant to this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of County. Contractor will use reasonable care to protect, safeguard and maintain such items while they are in Contractor's possession. Contractor will be financially responsible for any loss or damage to such items, partial or total, which is the result of Contractor's negligence.

B. Products of Contractor's Work and Services. Any and all compositions, publications, plans, designs, specifications, blueprints, maps, formulas, processes, photographs, slides, video tapes, computer programs, computer disks, computer tapes, memory chips, soundtracks, audio recordings, films, audio-visual presentations, exhibits, reports, studies, works of art, inventions, patents, trademarks, copyrights, or intellectual properties of any kind which are created, produced, assembled, compiled by, or are the result, product, or manifestation of, Contractor's services or work under this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of the County. At the termination of the Agreement, Contractor will convey possession and title to all such properties to County.

8. WORKERS' COMPENSATION.

Contractor shall provide Statutory California Worker's Compensation coverage and Employer's Liability coverage for not less than \$1,000,000 per occurrence for all employees engaged in services or operations under this Agreement. The County of Inyo, its agents, officers and employees shall be named as additional insured or a waiver of subrogation shall be provided.

9. INSURANCE.

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

10. STATUS OF CONTRACTOR.

All acts of Contractor, its agents, officers, and employees, relating to the performance of this Agreement, shall be performed as independent contractors, and not as agents, officers, or employees of County. Contractor, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in Attachment A, Contractor has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer, or employee of the County is to be considered an employee of Contractor. It is understood by both Contractor and County that this Agreement shall not under any circumstances be construed or considered to create an employer-employee relationship or a joint venture. As an independent contractor:

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

B. Contractor shall be responsible to County only for the requirements and results specified in this Agreement, and except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement.

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

11. DEFENSE AND INDEMNIFICATION.

Contractor shall defend, indemnify, and hold harmless County, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees, arising out of, resulting from, or in connection with, the performance of this Agreement by Contractor, or Contractor's agents, officers, or employees. Contractor's obligation to defend, indemnify, and hold the County, its agents, officers, and employees harmless applies to any actual or alleged personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use. Contractor's obligation under this paragraph extends to any claim, damage, loss, liability, expense, or other costs which is caused in whole or in part by any act or omission of the Contractor, its agents, employees, supplier, or any one directly or indirectly employed by any of them, or anyone for whose acts or omissions any of them may be liable.

Contractor's obligation to defend, indemnify, and hold the County, its agents, officers, and employees harmless under the provisions of this paragraph is not limited to, or restricted by, any requirement in this Agreement for Contractor to procure and maintain a policy of insurance.

To the extent permitted by law, County shall defend, indemnify, and hold harmless Contractor, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees, arising out of, or resulting from, the active negligence, or wrongful acts of County, its officers, or employees.

12. RECORDS AND AUDIT.

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

B. Inspections and Audits. Any authorized representative of County shall have access to any books, documents, papers, records, including, but not limited to, financial records of Contractor, which County determines to be pertinent to this Agreement, for the purposes of making audit, evaluation, examination, excerpts, and transcripts during the period such records are to be maintained by Contractor. Further, County has the right, at all reasonable times, to audit, inspect, or otherwise evaluate the work performed or being performed under this Agreement.

13. NONDISCRIMINATION.

During the performance of this Agreement, Contractor, its agents, officers, and employees shall not unlawfully discriminate in violation of any federal, state, or local law, against any employee, or applicant for employment, or person receiving services under this Agreement, because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex. Contractor and its agents, officers, and employees shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), and the applicable regulations promulgated thereunder in the California Code of Regulations. Contractor shall also abide by the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, and all administrative rules and regulations issued pursuant to said act.

14. CANCELLATION.

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

15. ASSIGNMENT.

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

16. DEFAULT.

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

17. WAIVER OF DEFAULT.

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided in paragraph twenty-four (24) below.

18. CONFIDENTIALITY.

Contractor agrees to comply with the various provisions of the federal, state, and county laws, regulations, and ordinances providing that information and records kept, maintained, or accessible by

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

19. CONFLICTS.

Contractor agrees that it has no interest, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the work and services under this Agreement.

20. POST AGREEMENT COVENANT.

Contractor agrees not to use any confidential, protected, or privileged information which is gained from the County in the course of providing services and work under this Agreement, for any personal benefit, gain, or enhancement. Further, Contractor agrees for a period of two years after the termination of this Agreement, not to seek or accept any employment with any entity, association, corporation, or person who, during the term of this Agreement, has had an adverse or conflicting interest with the County, or who has been an adverse party in litigation with the County, and concerning such, Contractor by virtue of this Agreement has gained access to the County's confidential, privileged, protected, or proprietary information.

21. SEVERABILITY.

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction, or if it is found in contravention of any federal, state, or county statute, ordinance, or regulation, the remaining provisions of this Agreement, or the application thereof, shall not be invalidated thereby, and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

22. FUNDING LIMITATION.

The ability of County to enter this Agreement is based upon available funding from various sources. In the event that such funding fails, is reduced, or is modified, from one or more sources, County has the option to cancel, reduce, or modify this Agreement, or any of its terms within ten (10) days of its notifying Contractor of the cancellation, reduction, or modification of available funding. Any reduction or modification of this Agreement made pursuant to this provision must comply with the requirements of paragraph twenty-four (24) (Amendment).

23. ATTORNEY'S FEES.

If either of the parties hereto brings an action or proceeding against the other, including, but not limited to, an action to enforce or declare the cancellation, termination, or revision of the Agreement, the prevailing party in such action or proceeding shall be entitled to receive from the other party all reasonable attorney's fees and costs incurred in connection therewith.

24. AMENDMENT.

This Agreement may be modified, amended, changed, added to, or subtracted from, by the mutual consent of the parties hereto, if such amendment or change is in written form and executed with the same formalities as this Agreement, and attached to the original Agreement to maintain continuity.

25. NOTICE.

Any notice, communication, amendments, additions, or deletions to this Agreement, including change of address of either party during the terms of this Agreement, which Contractor or County shall be required, or may desire, to make, shall be in writing and may be personally served, or sent by prepaid first class mail to, the respective parties as follows:

County of Inyo	
Probation	Department
918 North Main Street	Street
Bishop, CA 93514	City and State

Contractor:	
Allvest Info. Services dba Assessments.com	Name
201 South Main Street, Suite #1300	Street
Salt Lake City, UT 84111	City and State

26. ENTIRE AGREEMENT.

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

///

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**AGREEMENT BETWEEN COUNTY OF INYO
AND ALLVEST INFORMATION SERVICES, INC. DBA ASSESSMENTS.COM
FOR THE PROVISION OF CONSULTING, TRAINING AND SOFTWARE PROGRAM SERVICES**

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

COUNTY OF INYO

By: _____

Dated: _____

CONTRACTOR

By:  _____
Signature

Marjorie Rist
Print or Type Name

Dated: 02/21/14

APPROVED AS TO FORM AND LEGALITY:



County Counsel

APPROVED AS TO ACCOUNTING FORM:



County Auditor

APPROVED AS TO PERSONNEL REQUIREMENTS:

Personnel Services

APPROVED AS TO INSURANCE REQUIREMENTS:

County Risk Manager

ATTACHMENT A

**AGREEMENT BETWEEN COUNTY OF INYO
AND ALLVEST INFORMATION SERVICES, INC. DBA ASSESSMENTS.COM
FOR THE PROVISION OF CONSULTING, TRAINING AND SOFTWARE PROGRAM SERVICES**

TERM:

FROM: 1/1/2014 **TO:** 6/30/14

SCOPE OF WORK:

Assessments.com (ADC) will be performing work that builds upon that which was completed under the Board of State and Community Corrections (BSCC) - sponsored Best Practices Approval Initiative (BPAI). The following core deliverable areas are:

Goal #1: Data Collection and Management Assessment

1. Implementation of the ADAPT DataMart
2. Implementation of the Recidivism Database
3. Data Management Systems Feasibility Analysis and Report

Goal #2: Training to fully implement Evidence Based Practices (EBP)

1. Preparation, Training and Coaching for Continuous Quality Improvement (CQI)
2. PACT Case Plan implementation

Goal #3: Policy and Procedure / Business Rules

1. Consulting on development of policy and procedure to support the use of the PACT

Goal #4: Public Outreach

1. Develop EBP Communications and Education Plan

Goal #5: Implement Efficacy and Sustainability Measures

1. Develop Project Implementation Plan

Notwithstanding Paragraph 7B, County and Contractor agree to the following:

PROTECTION OF INTELLECTUAL PROPERTY.

1. Ownership. Customer acknowledges that all Intellectual Property (excluding the Other Programs and elements derived there from) is the exclusive property of Allvest. The foregoing shall be so regardless of whether Customer or Customer Personnel may have contributed to the conception or development of the same, or may have paid Allvest for the development or use of the same. Nothing in this Agreement shall be construed as an assignment, transfer or grant to Customer of, nor shall Customer otherwise acquire pursuant to this Agreement, any ownership rights in, the Intellectual Property. All use of the Programs, Program Upgrades and Documentation by Customer shall be solely as provided in this Agreement. Customer shall not in any manner represent that it has any ownership rights in the Intellectual Property. Customer acknowledges that use of the Allvest Programs, Program Upgrades and Documentation and the goodwill generated thereby shall inure solely to the benefit of Allvest. Customer further acknowledges the value of and Allvest's exclusive rights in the goodwill in the foregoing. Customer agrees that it will not, during the term of this Agreement or thereafter, attack or otherwise challenge Allvest's exclusive ownership rights in the Allvest Programs, Program Upgrades and Documentation or the validity of this Agreement, or do anything that would jeopardize or diminish Allvest's rights in the Intellectual Property.

2. Proprietary Notices. Customer shall not remove any copyright, trademark, service mark, patent or other proprietary or restrictive notice or legend contained in or included on any Programs, Program Upgrades or Documentation. Customer shall modify existing notices and apply such additional notices as Allvest may request from time to time.

ATTACHMENT A
AGREEMENT BETWEEN COUNTY OF INYO
AND ALLVEST INFORMATION SERVICES, INC. DBA ASSESSMENTS.COM
FOR THE PROVISION OF CONSULTING, TRAINING,
AND SOFTWARE PROGRAM SERVICES

TERM:

FROM: January 1, 2014 TO: June 30, 2014

SCOPE OF WORK Continued:

3. Protective Action. Customer shall immediately notify Allvest of any infringement of or challenge to Customer's licensed use of the Allvest Programs, Program Upgrades or Documentation, or Allvest's rights in the Intellectual Property, or of any claim by any person, business or entity to any rights in the Intellectual Property, whenever it first comes to Customer's attention. Allvest shall have sole discretion to take such action as it deems appropriate, and the right to exclusively control any litigation, action, or proceeding, whether before a court, administrative agency or otherwise, arising out of any such infringement, challenge or claim, or otherwise relating to the Intellectual Property, and Customer agrees to execute any and all instruments and documents, render such assistance and do such acts or things as may, in the opinion of Allvest or its counsel, be reasonably necessary to protect or maintain the interests of Allvest in any such litigation, action or proceeding, or to otherwise protect and maintain the interests of Allvest in the Intellectual Property.

4. Exclusion of Liability. Allvest shall have no liability to Customer or Customer Personnel for any claim, action, proceeding or litigation by third parties for infringement relating to or arising from the Intellectual Property.

PROTECTION OF CONFIDENTIAL INFORMATION.

1. Ownership. Customer acknowledges and agrees that the Confidential Information is proprietary and confidential, that it is not generally known or available in the industry, that it constitutes trade secrets of and is of great value to Allvest, and that all rights to the same are and shall remain the sole property of Allvest.

2. Use, Disclosure or Copying. Customer acknowledges and agrees that at all times, both during the term of this Agreement and thereafter, Customer shall not use, disclose, copy or remove, nor permit any Customer Personnel to use, disclose, copy or remove, any Confidential Information, except to the extent such use, disclosure, copying or removal is specifically authorized by this Agreement.

PROTECTION OF DATA.

1. Ownership. Allvest acknowledges and agrees that the Data is proprietary and confidential, that it is not generally known or available in the industry, that it constitutes trade secrets of and is of great value to Customer, and that all rights to the same are and shall remain the property of Customer.

**ATTACHMENT A
AGREEMENT BETWEEN COUNTY OF INYO
AND ALLVEST INFORMATION SERVICES, INC. DBA ASSESSMENTS.COM
FOR THE PROVISION OF CONSULTING, TRAINING,
AND SOFTWARE PROGRAM SERVICES**

TERM:

FROM: January 1, 2014 TO: June 30, 2014

SCOPE OF WORK Continued:

2. Use, Disclosure or Copying. Allvest acknowledges and agrees that at all times, both during the term of this Agreement and thereafter, Allvest shall not use, disclose, copy or remove, nor permit any officer, employee or agent of Allvest to use, disclose, copy or remove, any Data, except to the extent such use, disclosure, copying or removal is specifically authorized by the customer, this Agreement, by law or by a court or government agency.

3. Limited Use. Notwithstanding anything in this Agreement to the contrary, the parties agree that Allvest shall have access to all Data that is downloaded and/or stored on the System pursuant to and during the term of this Agreement, with Allvest authorized to select, aggregate and use anonymized Data for purposes of research, analysis, statistical study and instrument validation, during and after the term of this Agreement. Actual disclosure or release of Data by Allvest beyond that noted above or beyond the scope of this Agreement shall be permitted solely upon the written consent of Customer.

ATTACHMENT B

**AGREEMENT BETWEEN COUNTY OF INYO
AND ALLVEST INFORMATION SERVICES, INC. DBA ASSESSMENTS.COM
FOR THE PROVISION OF CONSULTING, TRAINING AND SOFTWARE PROGRAM SERVICES**

TERM:

FROM: 1/1/2014

TO: 6/30/2014

SCHEDULE OF FEES:

To be billed as services are provided and/or complete. A total not to exceed twenty thousand nine hundred and no/100 dollars (\$20,900.00).

Off-site consulting, training and/or engineering rate: \$150 per hour

On-site consulting, training and/or engineering rate: \$2,500 per day per person or a prorated amount, includes travel costs.

ATTACHMENT C

**AGREEMENT BETWEEN COUNTY OF INYO
AND ALLVEST INFORMATION SERV., INC. DBA ASSESSMENTS.COM
FOR THE PROVISION OF CONSULTING, TRAINING AND SOFTWARE PROGRAM SERVICES**

TERM:

FROM: 1/1/2014

TO: 6/30/2014

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 appropriate to the Consultant's profession, with limit no less than **\$1,000,000** per occurrence or claim, \$2,000,000 aggregate.

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

Other Insurance Provisions

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

Additional Insured Status

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

Primary Coverage

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

Notice of Cancellation

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

Waiver of Subrogation

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

Deductibles and Self-Insured Retentions

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

Acceptability of Insurers

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

Claims Made Policies

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

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

Verification of Coverage

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

Subcontractors

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

Special Risks or Circumstances

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



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only: AGENDA NUMBER 18

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

FROM: Sheriff William Lutze

FOR THE BOARD MEETING OF: April 8, 2014

SUBJECT: Memorandum of Understanding

DEPARTMENTAL RECOMMENDATION:

Request your board:

- A) Approve a M.O.U. (Memorandum of Understanding) between the Inyo County Sheriff's Department and the Olancha/Cartago Volunteer Fire Department for Limited Advanced Life Support and Advanced Life Support.
- B) Authorize Sheriff William Lutze to sign the Memorandum of Understanding with the Olancha/Cartago Volunteer Fire Department.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

The Sheriff's Office operates a Special Enforcement Detail (also known as a SWAT team) comprised of members of the Inyo County Sheriff's Department and the Bishop Police Department. This Detail is highly trained and responds to high risk incidents including barricaded suspects, high risk search and arrest warrants, armed suspects and other incidents that are considered to be specialized in nature. During these operations of high risk it is vital that the team as well as suspects and other persons involved have immediate medical aid available by specialized trained personnel who can enter "hot" zones and provide the needed medical assistance. The Olancha/Cartago Volunteer Fire Department has members who are trained as tactical Medics. These Medics will train with our team on a regular basis and provide the needed medical assistance during an operation involving the Sheriff's S.E.D. team.

This M.O.U. will outline and identify the purpose, procedures and responsibilities of each agency during training and operations.

ALTERNATIVES:

Deny the M.O.U.

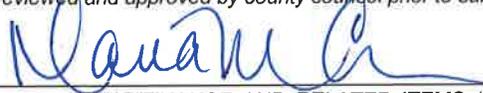
OTHER AGENCY INVOLVEMENT:

Olancha/Cartago Volunteer Fire Department
Bishop Police Department

FINANCING:

Needed equipment will be purchased using County Purchasing Policy and will be paid for from board approved authorized budget.

APPROVALS

COUNTY COUNSEL:	AGREEMENTS, CONTRACTS AND ORDINANCES AND CLOSED SESSION AND RELATED ITEMS (Must be reviewed and approved by county counsel prior to submission to the board clerk.)  Approved: <u>yes</u> Date <u>3-21-14</u>
AUDITOR/CONTROLLER:	ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor-controller prior to submission to the board clerk.) N/A 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.) N/A Approved: _____ Date _____

DEPARTMENT HEAD SIGNATURE:

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



Date: 3-26-14

**MEMORANDUM OF UNDERSTANDING BETWEEN
OLANCHA CARTAGO FIRE DEPARTMENT AND THE COUNTY OF INYO
GOVERNING THE PROVISION OF LIMITED ADVANCED LIFE SUPPORT
AND ADVANCED LIFE SUPPORT SERVICES**

WHEREAS, the Inyo County Sheriff's Office (ICSO) through its Special Enforcement Division (SED), engages in operations and training during which it is necessary and beneficial to have emergency medical support; and

WHEREAS, the Olancha Cartago Fire Department (OCFD) is able to provide both Limited Advanced Life Support (LALS) and Advanced Life Support (ALS) services; and

WHEREAS, Inyo County Sheriff's Office has requested, and Olancha Cartago Fire Department has agreed, that OCFD will provide emergency medical support during Special Enforcement Division operations and trainings; and

WHEREAS, Inyo County Sheriff's Office and Olancha Cartago Fire Department desire to establish procedures and protocols for the implementation and oversight of SED-Emergency Medical Support (SED-EMS) programs as set forth in this Memorandum of Understanding.

NOW, THEREFORE, INYO COUNTY SHERIFF'S OFFICE AND OLANCHA CARTAGO FIRE DEPARTMENT AGREE AS FOLLOWS:

1. Inyo County Sheriff's Office with input from Olancha Cartago Fire Department will develop procedures and protocols for the stationing of Olancha Cartago Fire Department Emergency Medical personnel. Such emergency medical services personnel will be located within "staged" areas designated as by the ICSO operational commander, which areas shall be in reasonable proximity to the scene of the operations or training scenario. OCFD emergency medical personnel shall be responsible for removing any injured persons to the "staged" areas for treatment and transport to medical facilities. OCFD shall provide sufficient emergency medical personnel during SED operations and events.

ROLES AND RESPONSIBILITIES

ICSO will:

1. Maintain complete responsibility for the overall direction of the tactical operation and training scenarios.
2. Designate Supervisory personnel to be responsible for the supervision and control of all EMS (transport) and SED-EMS personnel during the time such personnel are involved in an operation of training scenario.
3. Provide the supplies and equipment necessary to carry out any assignment conducted pursuant to this MOU, specifically as it relates to any supplies and equipment meant to serve as wearable ballistic protective equipment equal to that of the SED law enforcement operators.
4. Make training arrangements and provide timely notice to the SED-EMS personnel concerning when their services are needed.
5. Provide round trip transportation when necessary for the SED-EMS personnel from the Field Office (or other agreed-upon location) to the training or operational site utilizing ICSO vehicles.
6. Reimburse travel expenses incurred for the EMS personnel, while deploying at ICSO request, not to exceed the maximum per diem amount of Expenses allowable by Federal Law to ICSO.

The Olancha Cartago Fire Department will:

1. Maintain overall administrative responsibility relating to the EMS personnel for all matters unrelated to the operation.
2. Provide emergency medical support and not act in any other capacity. SED-EMS Personnel assigned to any tactical operation or training scenario shall not be considered "law enforcement officers" or "peace officers" as those terms are commonly defined under Federal and State Laws and shall have no law enforcement powers or responsibilities.
3. Will not utilize any vehicles, machinery or equipment of the ICSO except as specifically authorized by the ICSO Supervisor assigned to a tactical operation or training scenario.
4. Execute a standard Non-Disclosure Agreement regarding the non-disclosure of all ICSO related information obtained during the course of any ICSO training or operational activity or any operation the SED-EMS Providers engage in on behalf of the ICSO.
5. Provide or supply all necessary medical tools and/or supplies used during the normal course of their duties, including all supplies or items needed to provide regular or emergency medical support for any ICSO tactical operation or training activity.

FUNDING FOR THE OCFD EMS PROVIDER PERSONNEL

Absent a separate written agreement to the contrary, the ICSO will not be responsible for providing compensation to OCFD personnel who render emergency medical treatment or services in connection with this agreement. This provision does not exclude compensation from non-ICSO sources.

MEDIA RELEASES

Any media releases or statements regarding tactical operation and training scenarios will be handled according to ICSO procedures.

EFFECTIVE DATE, DURATION, MODIFICATION AND TERMINATION

This MOU will become effective on the date of the last party signature and will remain in effect until modified or terminated. It may be amended or terminated by either party upon thirty day written notice to the other.

This document constitutes a complete agreement between ICSO and OCFD and modifications will not be in force until such modification is reduced to writing and signed by all parties.

By subscription of their signatures below, the parties herewith acknowledge that they have read, understood, and will abide by the foregoing statements.

2. Olancha Cartago Fire Department shall hold harmless, defend and indemnify Inyo County its officers, officials, employees, and volunteers from and against all claims, damages, losses and expenses including attorney fees arising out of the performance of the work described herein, caused in whole or in part by any negligence act or omission of OCFD, except where caused by the active negligence or willful misconduct of Inyo County its officers, officials, employees and volunteers. This clause shall survive any termination or expiration of this MOU.

3. Inyo County shall hold harmless, defend and indemnify Olancha Cartago Fire Department its officers, officials, employees, and volunteers from and against all claims, damages, losses and expenses including attorney fees arising out of the performance of the work described herein, caused in whole or in part by any negligence act or omission of OCFD, except where caused by the active negligence or willful misconduct of OCFD its officers, officials, employees and volunteers. This clause shall survive any termination or expiration of this MOU.

4. Olancha Cartago Fire Department (OCFD) shall maintain Workers' Compensation insurance as required by the State of California, with statutory limits, and Employers' Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease. OCFD hereby agrees to waive rights of subrogation which any insurer of OCFD may acquire from OCFD by virtue of the payment of any loss. OCFD agrees to obtain any endorsement that may be

necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the County of Inyo, it's agents, officers, employees and volunteers.

5. This MOU shall take effect when it is signed by authorized representatives of Olancha Cartago Fire Department and Inyo County. It shall remain in effect until terminated by OCFD or Inyo County, which either may do, without cause or legal excuse, and without incurring any liability to the other party, by giving the other party 15 days' written notice of its intent to terminate the MOU.

6. This MOU may be amended by a writing signed by authorized representatives of Olancha Cartago Fire Department and Inyo County.

7. This MOU shall be administered on behalf of Olancha Cartago Fire Department and Inyo County by the following persons, to whom any notices or correspondence concerning the MOU shall be directed:

Olancha Cartago Fire Department:

Steve Davis, Chief

Inyo County:

William R. Lutze, Sheriff

By the signatures of their authorized representatives appearing below, Olancha Cartago Fire Department and Inyo County agree to perform and abide by the terms of this MOU.

Olancha Cartago Fire Department

By:  _____

Dated: 12/6/2013

Inyo County

By:  _____

Dated: 12-3-13

APPROVED AS TO FORM:

County Counsel

By: _____

Dated: _____

By:  _____

Dated: 12-10-13

APPROVED FOR RISK MANAGEMENT:

APPROVED FOR RISK MANAGEMENT:

By: Marlene Baker

By: _____

Dated: 12-3-13

Dated: _____



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
19

FROM: Public Works Department

FOR THE BOARD MEETING OF: April 8, 2014

SUBJECT: Lease Amendment 912-918 North Main St., Bishop, CA

DEPARTMENTAL RECOMMENDATIONS:

Request your Board approve an amendment to the lease between the County of Inyo and Denver Gardens LLC for the property located at 912, 914, 916 and 918 North Main Street, Bishop, CA. The proposed amendment will extend the existing lease for a period of five (5) years, maintaining all current provisions and conditions while reducing the annual lease fee and the annual accelerator. Approval is contingent upon obtaining the appropriate signatures.

CAO RECOMMENDATION:

SUMMARY DISCUSSION:

The proposed amendment will extend the existing lease for a period of five (5) years, maintaining all current provisions and conditions with the following exceptions: the annual lease rate and annual accelerator will be decreased as identified in the spreadsheet below.

TERMS	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	% Increase	TOTAL SAVINGS
Current Terms	113,701.00	119,386.00	125,355.00	131,623.00	138,204.00	5%	
Renegotiated Lease	98,599.00	101,557.00	104,604.00	107,742.00	110,974.00	3%	
Annual Savings	15,102.00	17,829.00	20,751.00	23,881.00	27,230.00		\$ 104,793.00

The Public Works Department recently concluded negotiations with representatives of Denver Gardens LLC, the landlord for the leased property located at 912-918 North Main Street. Emphasis was placed upon the County's cost for comparable property within the Bishop area, the relatively low risk associated with leasing to the County of Inyo and the current demand for properties of this type. Public Works staff ultimately negotiated reduced annual lease fees and a reduction in the annual accelerator as compared to the current lease terms. The result of these negotiations is a projected decrease in lease payments of \$104,793 for the five (5) year term.

ALTERNATIVES:

Direct staff to return to the Board with additional information.

OTHER AGENCY INVOLVEMENT:

County Counsel
Auditor Controller

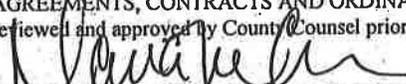
FINANCING:

Funding for the lease costs are derived from the budgets of Departments utilizing the space.

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.)

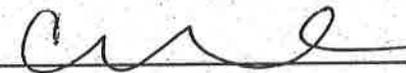


Approved: ups

Date 4-1-14

AUDITOR/CONTROLLER

ACCOUNTING/FINANCE AND RELATED ITEMS (Must be reviewed and approved by the auditor/controller prior to submission to the board clerk.)



Approved: cys

Date 4-1-14

PERSONNEL DIRECTOR

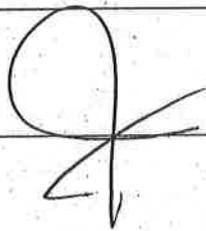
PERSONNEL AND RELATED ITEMS (Must be reviewed and approved by the director of personnel services prior to submission to the board clerk.)

Approved: _____

Date _____

DEPARTMENT HEAD SIGNATURE:

(Not to be signed until all approvals are received)



Date: 4/2/14

JAMES A. GINSBURG
Attorney at Law
433 North Camden Drive, Suite 500
Beverly Hills, California 90210
Telephone (310) 278-2511
Facsimile (310) 278-2991
email: JamesGLAW@aol.com

March 27, 2014

BY EMAIL

Mr. Jim Tatum
County of Inyo
jtatum@inyocounty.us

Re: County of Inyo Lease at 912, 914, 916 and 918 North Main Street, Bishop, CA

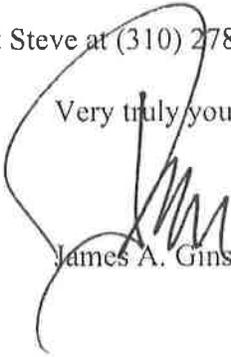
Dear Mr. Tatum:

As you requested, I have revised the Amendment sent to you on March 12th to increase the extension to 5 years. Attached is the revised Amendment.

Presuming the Amendment now meets with your approval, please make two copies of the Amendment, sign both copies in the space above where your names are typed on page two and return them to me for signature by the Landlord. I will then return one fully executed copy to you.

If you have any questions, please contact Steve at (310) 278-2036, extension 4.

Very truly yours,


James A. Ginsburg

JAG:wg
Attachment
L:\Bilak\Kmart\Bishop\CountyInyo_Amdmt_Ltr2.wpd

cc: Steve Moaven [w/attachment]

AMENDMENT No. 1 OF LEASE

This Amendment No. 1 of Lease ("Amendment") is entered into effective as of March 12, 2014 (the "Effective Date"), by and between The Denver Gardens Company LLC, a California limited liability company ("Landlord") and County of Inyo ("Tenant"), and made with reference to the following facts:

A. Landlord is the owner of the Bishop Shopping Center in Bishop, California (the "Shopping Center").

B. Tenant leases space from Landlord at the Shopping Center commonly known as 912, 914, 916 and 918 North Main Street, Bishop, California (the "Premises") pursuant to a written lease dated March 8, 2008 (the "Lease").

C. The term of the Lease expires on April 30, 2014. Landlord and Tenant desire to extend the term of the Lease for 5 additional years in accordance with the provisions in this Amendment.

NOW, THEREFORE, the parties agree as follows:

1. Term of Extension of Lease. The term of the Lease is extended for a 5 additional years from May 1, 2014, and expiring on April 30, 2019 (the "Extended Term").

2. Rental for the Extended Term. Tenant agrees to pay to Landlord, in advance, as rental for the Premises during the Extended Term, without deduction, offset, prior notice or demand, Minimum Monthly Rent as follows:

<u>Time Period</u>	<u>Minimum Monthly Rent</u>
May 1, 2014 - April 30, 2015	\$8,216.55
May 1, 2015 - April 30, 2016	\$8,463.05
May 1, 2016 - April 30, 2017	\$8,716.94
May 1, 2017 - April 30, 2018	\$8,978.45
May 1, 2018 - April 30, 2019	\$9,247.80

3. Acceptance of Premises. As of the effective date of this Amendment and continuing throughout the Extended Term, Tenant will be in possession of the Premises. Tenant has inspected the Premises, knows the physical condition of the Premises and accepts the Premises in its "as-is" condition on the Effective Date, without any representations or warranties, express or implied, by Landlord. Tenant acknowledges that Landlord is not required to perform any work to the Premises under this Amendment.

4. Security Deposit. Tenant acknowledges that Landlord is currently not holding a security deposit.

5. Ratification. The Lease, as amended by this Amendment, continues in full force and effect throughout the Extended Term and is ratified, confirmed and approved.

6. Interpretation. No provision of this Amendment is to be interpreted for or against any party because the party or that party's legal representative drafted such provision. Nothing in this Amendment is for the benefit of any one not a direct party to this Amendment. To the extent that there is any variance, difference or inconsistency between a provision of this Amendment and a provision of the Lease, the provision of this Amendment will control and prevail. All capitalized terms which are not defined in this Amendment are to have the same meaning as contained in the Lease. Landlord and Tenant are sometimes individually referred to as a "party" and collectively as the "parties".

IN WITNESS WHEREOF, the parties have executed this Amendment effective as of the Effective Date.

TENANT:

LANDLORD:

County of Inyo

The Denver Gardens Company LLC

By: _____

By: _____

Name: _____

James A. Ginsburg,
Vice President

Title: _____

**APPROVED AS TO FORM
AND LEGALITY**

DEPUTY COUNTY COUNSEL



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
20

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

FROM: Inyo County Planning Department

FOR THE BOARD MEETING OF: April 8, 2014

SUBJECT: Correspondence to Senator Pavley regarding Senate Bill 1270 concerning surface mining operations

DEPARTMENTAL RECOMMENDATION: Review draft correspondence to Senator Pavley regarding Senate Bill 1270 concerning surface mining operations and authorize the Chair to sign.

SUMMARY DISCUSSION: Senator Pavley has introduced legislation proposing to alter certain aspects of the State's surface mining regulations (refer to Attachment 2). Of particular concern, the proposed bill would provide for decision-making authority for financial assurances to the State and require State mine inspections. Staff has prepared draft correspondence for the Board's consideration objecting to the proposed legislation.

ALTERNATIVES: The Board may consider not providing input regarding SB 1270; this is not recommended given that the proposed legislation would eliminate local land use authority over reclamation and financial assurances.

OTHER AGENCY INVOLVEMENT: California Office of Mine Reclamation and other agencies involved in surface mining regulation, and other California counties

FINANCING: General fund resources are utilized to monitor State legislative activities.

APPROVALS

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

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

A handwritten signature in cursive script, appearing to read "Jonathan Hart", written over a horizontal line.

Date: 4/2/14

Attachments

1. Draft Correspondence
2. SB 1270

April 8, 2014

Senator Fran Pavely, District 27
State Capitol, Room 4035
Sacramento, CA 95814

RE: SB 1270: Surface Mining and Reclamation Act

Honorable Senator Pavely:

On behalf of the Inyo County Board of Supervisors, I am writing to you to express our deep concern about Senate Bill (SB) 1270. Inyo County is the lead agency for numerous mining operations regulated under Surface Mining and Reclamation Act (SMARA) and we have implemented SMARA lead agency responsibilities successfully since its inception. It is important for Inyo County to maintain its lead agency status, which includes its authority to conduct mining inspections and approve financial assurances.

We understand that SB 1270 proposes to sidestep local land use authority by requiring State approval of financial assurances for local mining operations, State mining inspections, and lead agencies to issue notices of violations promulgated by the State. Additional onerous fees are proposed to carry out these new regulations. Mining is an important industry in Inyo County, and such regulations would significantly impact our economy, society, and culture.

Local lead agencies are best suited to understanding and dealing with the unique local conditions and needs affecting a particular mining site. Inyo County has substantial experience reviewing and approving mine reclamation plans and has a positive working relationship with the Office of Mine Reclamation (OMR). We do not see how the proposed changes would result in a substantial improvement in compliance with existing statutes. Each lead agency reviews and approves reclamation plans in consideration of local conditions and local environmental concerns in consultation with OMR and other State agencies. The State does not understand specific local conditions that must be considered in reviewing and approving reclamation plans and financial assurances.

We urge you to reconsider your support for SB 1270. Thank you for your attention to these matters. If you have any questions, please contact the County's Administrative Officer, Kevin Carunchio, at (760) 878-0292 or kcarunchio@inyocounty.us.

Sincerely,

Rick Pucci, Chair
Inyo County Board of Supervisors

cc: County Administrative Officer
Planning Director
Senator Fuller
Assemblywoman Conway
California State Association of Counties
Rural County Representatives of California

Introduced by Senator PavleyFebruary 21, 2014

An act to amend Sections 607, 677, 2006, 2207, 2208, 2733, 2770, 2772, 2773.1, 2774, 2774.1, and 2774.4 of, and to add Sections 2006.5 and 2717.5 to, the Public Resources Code, relating to mining.

LEGISLATIVE COUNSEL'S DIGEST

SB 1270, as introduced, Pavley. Surface mining operations.

(1) Under existing law, the Department of Conservation, under the supervision of the Director of Conservation, is comprised of various entities, including the State Mining and Geology Board, and the work of the department is divided into divisions including the California Geological Survey and the Office of Mine Reclamation. Existing law requires the board to nominate, and the director to appoint, the State Geologist to advise the director regarding technical, scientific, and engineering issues, including the scientific quality of the products and activities of the California Geological Survey, and requires the State Geologist to meet specific qualifications.

This bill would instead require an unspecified individual or entity to appoint the State Geologist and would make that individual responsible for the management of the California Geological Survey. The bill would change the qualifications for that person. The bill would also designate the Office of Mine Reclamation as the Division of Mines, would require an unspecified individual or entity to appoint a State Mine Inspector to be responsible for the management of the Division of Mines, and would prescribe the specific qualifications for that person.

(2) Existing law requires the owner or operator of a mining operation to forward annually to the director and the lead agency a report that provides specified information with respect to the mining operation.

This bill would require that report to be submitted to the State Mine Inspector and the lead agency.

(3) The Surface Mining and Reclamation Act of 1975, administered by the board, prohibits a person, with exceptions, from conducting surface mining operations unless, among other things, a reclamation plan, as specified, is submitted to and approved by, and financial assurances for reclamation have been approved by, the lead agency for the operation. Existing law provides an appeals process for decisions of the lead agency in approval or denial of approval of a reclamation plan.

This bill would instead make the director responsible for reviewing and approving financial assurances in surface mining operations and would require the director to take specified actions in seeking forfeiture of those financial assurances. The bill would also provide an appeals process for the director's approval or denial of approval of financial assurances. The bill would require a portion of the reclamation plan to be certified by a registered professional geologist, geophysicist, or professional engineer and to include a schedule with time limits for completing reclamation, as specified, and would require the lead agency to determine a time period for reclamation to be complete in certain circumstances. By imposing additional duties on lead agencies, this bill would impose a state-mandated local program.

(4) Existing law requires the lead agency to conduct an inspection of a surface mining operation with 6 months of receipt by the lead agency of the annual report described in (2) above. Under existing law, if the lead agency or the director determines that a surface mining operation is not in compliance, the lead agency or director is required to notify the operator of that violation.

This bill would instead require the director to conduct an inspection of those operations withing one year of receipt of the report by the State Mine Inspector. The bill would require the notice of violation to include, among other things, specific remedial steps to be taken to correct the noncompliance and also information on time to comply.

(5) Existing law requires the board to assume the powers and duties under the act of the lead agency if, following a public hearing, as prescribed, the board finds deficiencies in the lead agency's implementation and enforcement of the act.

This bill would authorize a lead agency to unilaterally and voluntarily relinquish its responsibilities under the act and would require the board

to assume those responsibilities. The bill would also authorize the lead agency to resume its relinquished role if certain requirements are met.

(6) Existing law requires the board to adopt a schedule of fees to cover the department's costs of carrying out specified provisions and to impose an annual reporting fee on each mining operation, not to exceed \$4,000 annually for any single mining operation and not be less than \$100. Existing law requires the board to adjust the fees if the director determines the resources collected were greater to or less than the department's costs.

This bill would require that an annual reporting fee on each mining operation not be less than \$1,000 and would require the fee to be based on a cost per acre as determined by the board. The bill would authorize the board to recommend expenditures of these funds as part of the annual budget process and would require the board to adjust the fees if the State Mine Inspector determines the revenues collected were greater to or less than the department's costs.

(7) Existing law requires the department to quarterly publish in the California Regulatory Notice Register, or otherwise make available, upon request, to the Department of General Services or any other state or local agency, a list identifying the status of compliance of certain surface mining operations, as specified. Existing law also prohibits a state agency from acquiring or utilizing mined material, or from contracting with a person utilizing these materials, as specified, unless the material is produced from a mining operation on that list and that meets certain requirements.

This bill would authorize an affected mine operator, a lead agency with jurisdiction over the operation, or an affected person to appeal to the board the department's determination regarding a mining operation's placement on, removal from, or denial of placement on or removal from, the list.

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares the following:

2 (a) Since its passage, the implementation of the Surface Mining
3 and Reclamation Act of 1975 has depended on coordinated
4 administrative efforts by local governments, the Department of
5 Conservation, and the State Mining and Geology Board. Two of
6 the major goals of the act are to encourage production and
7 conservation of minerals in California, and to assure reclamation
8 of mined lands.

9 (b) The essential components of the act for each of the more
10 than 2,000 mines in California are annual inspections, reclamation
11 plans for mines that have ceased production, and a financial surety
12 mechanism to pay for reclamation in the event the operator is
13 unable or fails to do so.

14 (c) It is the intent of the Legislature that siting decisions for
15 mines and the approval of reclamation plans for those mines remain
16 with local governments.

17 (d) The act provides for approval procedures for financial
18 assurances and reclamation plans that depend on active inspections,
19 remediation of compliance shortfalls, and appropriate updates to
20 financial assurance commitments. Based on a review of official
21 state data, industry and government analysts agree that the goals
22 of the act are not being achieved because of multiple failures in
23 the internal processes of this important legislation. As examples:

24 (1) Twenty-five percent of mines that have closed have not
25 begun reclamation. This includes about 100 mines in the state.

26 (2) Inspection rates by counties who serve as lead agencies
27 under the act, over a multiyear period, range from 66 percent to
28 74 percent, inclusive, but 12 counties have inspection rates below
29 50 percent.

30 (3) Data on inspections by cities that serve as lead agencies
31 under the act, over the same multiyear period, indicate that 22
32 cities have inspected all of its mines annually, 25 cities have an
33 inspection rate below 50 percent, and 14 have never inspected a
34 mine.

35 (4) Financial assurance documents that ensure the ability to pay
36 for mine reclamation are not routinely updated. The adjustment
37 rate for counties is about 27 percent, based on official data, and
38 about 20 percent for cities.

1 (e) It is the intent of the Legislature to retain the existing
2 structure of the act while improving the statutory relationships
3 between state and local government entities by strengthening the
4 interconnections between inspections, financial assurances, and
5 reclamation plans, in order to ensure improved compliance with
6 the provisions of this important law.

7 SEC. 2. Section 607 of the Public Resources Code is amended
8 to read:

9 607. The work of the department shall be divided into at least
10 the following:

- 11 (a) California Geological Survey.
- 12 (b) Division of Oil, Gas, and Geothermal Resources.
- 13 (c) Division of Land Resource Protection.
- 14 (d) ~~Office of Mine Reclamation.~~ *Division of Mines.*

15 SEC. 3. Section 677 of the Public Resources Code is amended
16 to read:

17 ~~677. The board shall nominate, and the director shall appoint,~~
18 ~~the State Geologist, who~~ *(a) A State Geologist shall be appointed*
19 *and shall be responsible for the management of the California*
20 *Geological Survey. The State Geologist shall either be registered*
21 *in compliance with the Geologist and Geophysicist Act (Chapter*
22 *12.5 (commencing with Section 7800) of Division 3 of the Business*
23 *and Professions Code) at least one year from the date of*
24 *appointment, or the Board for Professional Engineers, and Land*
25 *Surveyors, and Geologists may, upon the review of academic and*
26 *professional experience, grant registration. The State Geologist*
27 *shall possess general knowledge of mineral resources, resources*
28 *and structural geology, seismology, engineering geology, and*
29 *related disciplines in science and engineering, and the reclamation*
30 *of mined lands and waters engineering. The State Geologist shall*
31 *advise the director regarding technical, scientific, and engineering*
32 *issues, including the scientific quality of the division's products*
33 *and activities of the California Geological Survey.*

34 *(b) A State Mine Inspector shall be appointed and shall be*
35 *responsible for the management of the Division of Mines. The State*
36 *Mine Inspector shall either be registered in compliance with the*
37 *Geologist and Geophysicist Act (Chapter 12.5 (commencing with*
38 *Section 7800) of Division 3 of the Business and Professions Code)*
39 *or the Professional Engineers Act (Chapter 7 (commencing with*
40 *Section 6700) of Division 3 of the Business and Professions Code)*

1 at least one year from the date of appointment, or the Board for
2 Professional Engineers, Land Surveyors, and Geologists may,
3 upon the review of academic and professional experience, grant
4 registration. The State Mine Inspector shall possess general
5 knowledge of mining, mineral resources, structural geology,
6 seismology, engineering geology, and related disciplines in science
7 and engineering, and the reclamation of mined lands and waters.
8 The State Mine Inspector shall advise the director regarding
9 technical, scientific, and engineering issues, including the scientific
10 quality of the products and activities of the Division of Mines.

11 SEC. 4. Section 2006 of the Public Resources Code is amended
12 to read:

13 2006. "State Geologist" means the individual holding the office
14 created by subdivision (a) of Section 677.

15 SEC. 5. Section 2006.5 is added to the Public Resources Code,
16 to read:

17 2006.5. "State Mine Inspector" means the individual holding
18 the office created by subdivision (b) of Section 677.

19 SEC. 6. Section 2207 of the Public Resources Code is amended
20 to read:

21 2207. (a) The owner or the operator of a mining operation
22 within the state shall forward to the ~~director~~ State Mine Inspector
23 annually, not later than a date established by the ~~director~~, State
24 Mine Inspector, upon forms approved by the board from time to
25 time, a report that identifies all of the following:

26 (1) The name, address, and telephone number of the person,
27 company, or other owner of the mining operation.

28 (2) The name, address, and telephone number of a designated
29 agent who resides in this state, and who will receive and accept
30 service of all orders, notices, and processes of the lead agency,
31 board, ~~director~~, State Mine Inspector, or court.

32 (3) The location of the mining operation, its name, its mine
33 number as issued by the ~~Bureau of Mines or the director~~, State
34 Mine Inspector, its section, township, range, latitude, longitude,
35 and approximate boundaries of the mining operation marked on a
36 United States Geological Survey 7½-minute or 15-minute
37 quadrangle map.

38 (4) The lead agency.

39 (5) The approval date of the mining operation's reclamation
40 plan.

1 (6) The mining operation's status as active, idle, reclaimed, or
2 in the process of being reclaimed.

3 (7) The commodities produced by the mine and the type of
4 mining operation.

5 (8) Proof of annual inspection by the lead agency.

6 (9) Proof of financial assurances.

7 (10) Ownership of the property, including government agencies,
8 if applicable, by the assessor's parcel number, and total assessed
9 value of the mining operation.

10 (11) The approximate permitted size of the mining operation
11 subject to Chapter 9 (commencing with Section 2710), in acres.

12 (12) The approximate total acreage of land newly disturbed by
13 the mining operation during the previous calendar year.

14 (13) The approximate total of disturbed acreage reclaimed during
15 the previous calendar year.

16 (14) The approximate total unreclaimed disturbed acreage
17 remaining as of the end of the calendar year.

18 (15) The total production for each mineral commodity produced
19 during the previous year.

20 (16) A copy of any approved reclamation plan and any
21 amendments or conditions of approval to any existing reclamation
22 plan approved by the lead agency.

23 (b) (1) Every year, not later than the date established by the
24 ~~director~~, *State Mine Inspector*, the person submitting the report
25 pursuant to subdivision (a) shall forward to the lead agency, upon
26 forms furnished by the board, a report that provides all of the
27 information specified in paragraphs (1) to (16), inclusive, of
28 subdivision (a).

29 (2) The owner or operator of a mining operation shall allow
30 access to the property to any governmental agency or the agent of
31 any company providing financial assurances in connection with
32 the reclamation plan, in order that the reclamation can be carried
33 out by the entity or company, in accordance with the provisions
34 of the reclamation plan.

35 (c) Subsequent reports shall include only changes in the
36 information submitted for the items described in subdivision (a),
37 except that, instead of the approved reclamation plan, the reports
38 shall include any reclamation plan amendments approved during
39 the previous year. The reports shall state whether review of a
40 reclamation plan, financial assurances, or an interim management

1 plan is pending under subdivision (b), (c), (d), or (h) of Section
2 2770, or whether an appeal before the board or lead agency
3 governing body is pending under subdivision (e) or (h) of Section
4 2770. ~~The director~~ *State Mine Inspector* shall notify the person
5 submitting the report and the owner's designated agent in writing
6 that the report and the fee required pursuant to subdivision (d)
7 have been received, specify the mining operation's mine number
8 if one has not been issued by the ~~Bureau of Mines,~~ *State Mine*
9 *Inspector*, and notify the person and agent of any deficiencies in
10 the report within 90 days of receipt. That person or agent shall
11 have 30 days from receipt of the notification to correct the noted
12 deficiencies and forward the revised reports to the ~~director~~ *State*
13 *Mine Inspector* and the lead agency. Any person who fails to
14 comply with this section, or knowingly provides incorrect or false
15 information in reports required by this section, may be subject to
16 an administrative penalty as provided in subdivision (c) of Section
17 2774.1.

18 (d) (1) The board shall impose, by regulation, pursuant to
19 paragraph (2), an annual reporting fee on, and method for collecting
20 annual fees from, each active or idle mining operation. The
21 ~~maximum~~ *minimum* fee for any single mining operation may not
22 exceed ~~four thousand dollars (\$4,000) annually and may not~~ be
23 less than ~~one hundred thousand dollars (\$100)~~ *(\$1,000)* annually,
24 as adjusted for the cost of living as measured by the California
25 Consumer Price Index for all urban consumers, calendar year
26 averages, using the percentage change in the previous year,
27 beginning with the ~~2005-06~~ *2014-15* fiscal year and annually
28 thereafter.

29 (2) (A) The board shall adopt, by regulation, a schedule of fees
30 authorized under paragraph (1) to cover the department's cost in
31 carrying out this section and Chapter 9 (commencing with Section
32 2710), as reflected in the Governor's Budget, and may adopt those
33 regulations as emergency regulations. In establishing the schedule
34 of fees to be paid by each active and idle mining operation, the
35 ~~fees shall be calculated on~~ *board shall consider and establish a*
36 *cost per acre on* an equitable basis reflecting the size and type of
37 ~~operation. The board shall also consider the total assessed value~~
38 ~~of the mining operation, the acreage disturbed and undisturbed by~~
39 ~~mining activities, and the acreage subject to the reclamation plan,~~
40 *and other factors addressed by the approved reclamation plan.*

1 (B) Regulations adopted pursuant to this subdivision shall be
2 adopted by the board in accordance with Chapter 3.5 (commencing
3 with Section 11340) of Part 1 of Division 3 of Title 2 of the
4 Government Code. The adoption of any emergency regulations
5 pursuant to this subdivision shall be considered necessary to
6 address an emergency and shall be considered by the Office of
7 Administrative Law to be necessary for the immediate preservation
8 of the public peace, health, safety, and general welfare.

9 (3) ~~The total revenue generated by the reporting fees may not
10 exceed, and may be less than, the amount of three million five
11 hundred thousand dollars (\$3,500,000), as adjusted for the cost of
12 living as measured by the California Consumer Price Index for all
13 urban consumers, calendar year averages, using the percentage
14 change in the previous year, beginning with the 2005-06 fiscal
15 year and annually thereafter shall be based on a cost per acre,
16 subject to the approved reclamation plan, as determined by the
17 board pursuant to paragraph (2). If the ~~director~~ State Mine
18 Inspector determines that the revenue collected during the
19 preceding fiscal year was greater or less than the cost to operate
20 the program, the board shall adjust the fees to compensate for the
21 overcollection or undercollection of revenues.~~

22 (4) (A) The reporting fees established pursuant to this
23 subdivision shall be deposited in the Mine Reclamation Account,
24 which is hereby created. Any fees, penalties, interest, fines, or
25 charges collected by the ~~director~~ State Mine Inspector or board
26 pursuant to this chapter or Chapter 9 (commencing with Section
27 2710) shall be deposited in the Mine Reclamation Account. *The
28 board may recommend expenditures of these funds as part of the
29 annual budget process.* ~~The money moneys~~ in the account shall
30 be available to the department and board, upon appropriation by
31 the Legislature, for the purpose of carrying out this section and
32 complying with Chapter 9 (commencing with Section 2710), which
33 includes, but is not limited to, classification and designation of
34 areas with mineral resources of statewide or regional significance,
35 reclamation plan and financial assurance review, mine inspection,
36 and enforcement.

37 (B) (i) In addition to reporting fees, the board shall collect five
38 dollars (\$5) per ounce of gold and ten cents (\$0.10) per ounce of
39 silver mined within the state and shall deposit the fees collected
40 in the Abandoned Mine Reclamation and Minerals Fund

1 Subaccount, which is hereby created in the Mine Reclamation
2 Account. The department may expend the moneys in the
3 subaccount, upon appropriation by the Legislature, for only the
4 purposes of Section 2796.5 and as authorized herein for the
5 remediation of abandoned mines.

6 (ii) Notwithstanding subdivision (j) of Section 2796.5, fees
7 collected pursuant to clause (i) may also be used to remediate
8 features of historic abandoned mines and lands that they impact.
9 For the purposes of this section, historic abandoned mines are
10 mines for which operations have been conducted before January
11 1, 1976, and include, but are not limited to, historic gold and silver
12 mines.

13 (5) In case of late payment of the reporting fee, a penalty of not
14 less than one hundred dollars (\$100) or 10 percent of the amount
15 due, whichever is greater, plus interest at the rate of 1½ percent
16 per month, computed from the delinquent date of the assessment
17 until and including the date of payment, shall be assessed. New
18 mining operations that have not submitted a report shall submit a
19 report prior to commencement of operations. The new operation
20 shall submit its fee according to the reasonable fee schedule
21 adopted by the board, and the month that the report is received
22 shall become that operation's anniversary month.

23 (e) The lead agency, or the board when acting as the lead agency,
24 may impose a fee upon each mining operation to cover the
25 reasonable costs incurred in implementing this chapter and Chapter
26 9 (commencing with Section 2710).

27 (f) For purposes of this section, "mining operation" means a
28 mining operation of any kind or character whatever in this state,
29 including, but not limited to, a mining operation that is classified
30 as a "surface mining operation" as defined in Section 2735, unless
31 excepted by Section 2714. For the purposes of fee collections only,
32 "mining operation" may include one or more mines operated by
33 a single operator or mining company on one or more sites, if the
34 total annual combined mineral production for all sites is less than
35 100 troy ounces for precious metals, if precious metals are the
36 primary mineral commodity produced, or less than 100,000 short
37 tons if the primary mineral commodity produced is not precious
38 metals.

39 (g) Any information in reports submitted pursuant to subdivision
40 (a) that includes or otherwise indicates the total mineral production,

1 reserves, or rate of depletion of any mining operation may not be
2 disclosed to any member of the public, as defined in subdivision
3 (b) of Section 6252 of the Government Code. Other portions of
4 the reports are public records unless excepted by statute. Statistical
5 bulletins based on these reports and published under Section 2205
6 shall be compiled to show, for the state as a whole and separately
7 for each lead agency, the total of each mineral produced therein.
8 In order not to disclose the production, reserves, or rate of depletion
9 from any identifiable mining operation, no production figure shall
10 be published or otherwise disclosed unless that figure is the
11 aggregated production of not less than three mining operations. If
12 the production figure for any lead agency would disclose the
13 production, reserves, or rate of depletion of less than three mining
14 operations or otherwise permit the reasonable inference of the
15 production, reserves, or rate of depletion of any identifiable mining
16 operation, that figure shall be combined with the same figure of
17 not less than two other lead agencies without regard to the location
18 of the lead agencies. The bulletin shall be published annually by
19 June 30 or as soon thereafter as practicable.

20 (h) The approval of a form by the board pursuant to this section
21 is not the adoption of a regulation for purposes of Chapter 3.5
22 (commencing with Section 11340) of Part 1 of Division 3 of Title
23 2 of the Government Code and is not subject to that chapter.

24 SEC. 7. Section 2208 of the Public Resources Code is amended
25 to read:

26 2208. The *State Mine Inspector*, director, or a qualified assistant
27 may at any time enter or examine any and all mines, quarries,
28 wells, mills, reduction works, refining works, and other mineral
29 properties or working plants in this state in order to gather data to
30 comply with the provisions of this chapter.

31 SEC. 8. Section 2717.5 is added to the Public Resources Code,
32 to read:

33 2717.5. (a) An affected mine operator, a lead agency with
34 jurisdiction over the operation, or an affected person, may appeal
35 to the board the department's determination regarding a mining
36 operation's placement on, removal from, or denial of placement
37 on or removal from, the list identified in subdivision (b) of Section
38 2717.

39 (b) An appeal pursuant to subdivision (a) shall be subject to the
40 following requirements, as applicable:

1 (1) The appeal shall be made in writing, on a form provided by
2 the board, and shall be received by the board within 15 days of the
3 operator's, lead agency, or affected person's receipt of a notice of
4 the department's determination as described in subdivision (a), or
5 within 15 days of the department's posting of the notice on its
6 Internet Web site.

7 (2) An appeal filed by a lead agency shall demonstrate good
8 cause for reversal of a determination.

9 (3) An appeal filed by an affected person other than a lead
10 agency shall demonstrate that the affected person has a sufficient
11 connection to, or direct impact from, the operation of the mine at
12 issue.

13 (4) Where the board is the lead agency, it may not appeal the
14 decision of the department but may follow the department's
15 procedures for removal of a mining operation from the list. The
16 board may hear an appeal filed by any other party pursuant to
17 subdivision (a).

18 (5) The appeal shall demonstrate, as a necessary element of the
19 appeal, that the facts and issues relevant to the appeal were brought
20 to the attention of the department prior to the department's
21 determination described in subdivision (a).

22 (c) The board shall promptly notify the department and the lead
23 agency that the appeal has been received by the board. Where the
24 appeal is filed by the lead agency or the board is the lead agency,
25 no notice to the lead agency shall be required.

26 (d) (1) A mining operation seeking placement on the list shall
27 not be placed on the list pending the final outcome of an appeal
28 filed pursuant to subdivision (a).

29 (2) A mining operation appealing the department's removal of
30 the operation from the list shall remain on the list pending the final
31 outcome of an appeal filed pursuant to subdivision (a).

32 (e) (1) (A) The board shall hear the appeal if the chair of the
33 board or his or her designated hearing officer determines the appeal
34 is within the jurisdiction of the board and the appeal raises a
35 substantial issue related to the department's determination
36 regarding a mining operation's placement on, removal from, or
37 denial of placement on or removal from, the list.

38 (B) A determination of the board's jurisdiction by the chair or
39 his or her designee shall consider all of the following:

1 (i) Whether the information presented with the appeal presents
2 any dispute of the material fact or facts supporting the department's
3 determination.

4 (ii) Whether the appeal is an attempt to challenge an enforcement
5 decision or a court decision.

6 (iii) Whether the appellant has standing.

7 (iv) Whether the appeal is timely.

8 (v) Whether the facts constituting the basis for the appeal have
9 been presented to the department prior to the department's
10 determination as described in subdivision (a).

11 (vi) Whether any relevant circumstances exist that are not
12 specifically identified but which, in the judgment of the chair or
13 his or her designee, preclude the appeal.

14 (2) If the chair or hearing officer finds, based on the criteria
15 described in paragraph (1), that the appeal is not within the
16 jurisdiction of the board or does not raise a substantial issue, the
17 chair or his or her designee shall refuse to grant the appeal and the
18 department's decision shall be deemed final for purposes of seeking
19 judicial review of that decision.

20 (f) A decision by the board pursuant to this section shall not
21 preclude any party from initiating a new proceeding to be included
22 on the list, to be maintained on the list, or to effect removal of a
23 mining operation from the list, in accordance with this section or
24 based on new or different circumstances than were determined by
25 the chair or his or her designee on a previous appeal.

26 SEC. 9. Section 2733 of the Public Resources Code is amended
27 to read:

28 2733. "Reclamation" means the combined process of land
29 treatment that minimizes water degradation, air pollution, damage
30 to aquatic or wildlife habitat, flooding, erosion, and other adverse
31 effects from surface mining operations, including adverse surface
32 effects incidental to underground mines, so that mined lands are
33 reclaimed, to a usable condition ~~which~~ *that* is readily adaptable
34 for alternate land ~~uses~~ *uses*, and create no danger to public health
35 or safety. The process may extend to affected lands surrounding
36 mined lands, ~~and~~; may require backfilling, grading, resoiling,
37 revegetation, soil compaction, stabilization, or other measures;
38 *and shall be certified by a registered professional geologist,*
39 *geophysicist, or professional engineer.*

1 SEC. 10. Section 2770 of the Public Resources Code is
2 amended to read:

3 2770. (a) Except as provided in this section, a person shall not
4 conduct surface mining operations unless a permit is obtained
5 from, *and* a reclamation plan has been submitted to and approved
6 ~~by, and financial assurances for reclamation have been approved~~
7 by, the lead agency for the operation *and financial assurances for*
8 *reclamation pursuant to the reclamation plan have been submitted*
9 *to and approved by the director* pursuant to this article.

10 (b) A person with an existing surface mining operation who has
11 vested rights pursuant to Section 2776 and who does not have an
12 approved reclamation plan shall submit a reclamation plan to the
13 lead agency not later than March 31, 1988. If a reclamation plan
14 application is not on file by March 31, 1988, the continuation of
15 the surface mining operation is prohibited until a reclamation plan
16 is submitted to the lead agency. For purposes of this subdivision,
17 a reclamation plan may consist of all or the appropriate sections
18 of any plans or written agreements previously approved by the
19 lead agency or another agency, together with any additional
20 documents needed to substantially meet the requirements of
21 Sections 2772 and 2773 and the lead agency surface mining
22 ordinance adopted pursuant to subdivision (a) of Section 2774,
23 provided that all documents which together were proposed to serve
24 as the reclamation plan are submitted for approval to the lead
25 agency in accordance with this chapter.

26 (c) If a person with an existing surface mining operation has
27 received lead agency approval of its financial assurances for
28 reclamation prior to January 1, ~~1991~~, 2015, ~~the lead agency director~~
29 shall administratively review *and make any changes to ensure*
30 those existing financial assurances *are* in accordance with
31 subdivision (d) prior to January 1, ~~1992~~ 2016. The review of
32 existing financial assurances shall not be considered a project for
33 purposes of Division 13 (commencing with Section 21000). A
34 person with an existing surface mining operation that does not
35 have financial assurances that received ~~lead agency~~ *the director's*
36 approval prior to January 1, ~~1991~~, 2016, shall submit financial
37 assurances for reclamation *to the director* for review in accordance
38 with subdivision (d).

39 (d) The lead agency's review of a reclamation plan submitted
40 pursuant to subdivision (b) or *the director's review* of financial

1 assurances pursuant to subdivision (c) is limited to whether the
2 plan or the financial assurances substantially meet the applicable
3 requirements of Sections 2772, 2773, and 2773.1, and the lead
4 agency surface mining ordinance adopted pursuant to subdivision
5 (a) of Section 2774, but, in any event, the ~~lead agency director~~
6 shall require that financial assurances for reclamation be sufficient
7 to perform reclamation of lands remaining disturbed. ~~Reclamation~~
8 *For purposes of this chapter, reclamation plans or financial*
9 *assurances determined to substantially meet these requirements*
10 *shall be approved by the lead agency for purposes of this chapter*
11 *and financial assurances determined to substantially meet these*
12 *requirements shall be approved by the director.* Reclamation plans
13 or financial assurances determined not to substantially meet these
14 requirements shall be returned to the operator within 60 days. The
15 operator ~~has~~ shall have 60 days to revise the plan or financial
16 assurances to address identified deficiencies, at which time the
17 revised plan ~~or financial assurances~~ shall be returned to the lead
18 agency for review and approval, *or the revised reclamation plan*
19 *shall be returned to the director for review and approval.* Except
20 as specified in subdivision (e) or (i), ~~unless the operator has filed~~
21 ~~on or before July 1, 1990, an appeal pursuant to subdivision (e)~~
22 ~~with regard to nonapproval of the reclamation plan, or has filed~~
23 ~~on or before January 1, 1994, an appeal pursuant to subdivision~~
24 ~~(e) with regard to nonapproval of financial assurances, and that~~
25 ~~appeal is pending before the board,~~ the continuation of the surface
26 mining operation is prohibited until a reclamation plan *is approved*
27 *by a lead agency* and financial assurances for reclamation are
28 approved by the ~~lead agency director~~.

29 (e) (1) A person who, based on the evidence of the record, ~~can~~
30 ~~substantiate claims~~ that a lead agency has either ~~(1) (A)~~ failed to
31 act according to due process or has relied on considerations not
32 related to the specific applicable requirements of Sections 2772,
33 2773, and 2773.1, and the lead agency surface mining ordinance
34 adopted pursuant to subdivision (a) of Section 2774, in reaching
35 a decision to *approve or deny approval of a reclamation plan, or*
36 ~~financial assurances for reclamation,~~ (2) (B) failed to act within a
37 reasonable time of receipt of a completed application, or ~~(3) (C)~~
38 failed to review and approve reclamation plans ~~or financial~~
39 ~~assurances~~ as required by subdivisions (c) and (d), may appeal that
40 action or inaction to the board.

1 (2) *A person who, based on the evidence of the record, claims*
2 *that the director has either (A) failed to act according to due*
3 *process or has relied on considerations not related to the specific*
4 *applicable requirements of Sections 2772, 2773, and 2773.1, in*
5 *reaching a decision to approve or deny approval of financial*
6 *assurances, or (B) failed to review and approve financial*
7 *assurances as required by subdivisions (c) and (d), may appeal*
8 *that action or inaction to the board.*

9 (f) The board may decline to hear an appeal if it determines that
10 the appeal raises no substantial issues related to the lead agency's
11 or the director's review pursuant to this section.

12 (g) Appeals that the board does not decline to hear shall be
13 scheduled and heard at a public hearing within 45 days of the filing
14 of the appeal, or a longer period as may be mutually agreed upon
15 by the board and the person filing the appeal. In hearing an appeal,
16 the board shall only determine whether the reclamation plan or the
17 financial assurances substantially meet the applicable requirements
18 of Sections 2772, 2773, and 2773.1, and the lead agency surface
19 mining ordinance adopted pursuant to subdivision (a) of Section
20 2774. A reclamation plan or financial assurances determined to
21 meet these requirements shall be approved. A reclamation plan or
22 financial assurances determined not to meet these requirements
23 shall be returned to the ~~person filing the appeal~~ operator with a
24 notice of deficiencies, who shall be granted, once only, a period
25 of 30 days, or a longer period mutually agreed upon by the operator
26 and the board, to correct the noted deficiencies and submit the
27 revised reclamation plan to the lead agency or the revised financial
28 assurances to the lead agency director for review and approval.

29 (h) (1) Within 90 days of a surface mining operation becoming
30 idle, as defined in Section 2727.1, the operator shall submit to the
31 lead agency for review and approval, an interim management plan.
32 The review and approval of an interim management plan shall not
33 be considered a project for purposes of Division 13 (commencing
34 with Section 21000). The approved interim management plan shall
35 be considered an amendment to the surface mining operation's
36 approved reclamation plan, for purposes of this chapter. The
37 interim management plan shall provide measures the operator will
38 implement to maintain the site in compliance with this chapter,
39 including, but not limited to, all permit conditions.

1 (2) The interim management plan may remain in effect for a
2 period not to exceed five years, at which time the lead agency shall
3 do one of the following:

4 (A) Renew the interim management plan for an additional period
5 not to exceed five years, which may be renewed for one additional
6 five-year renewal period at the expiration of the first five-year
7 renewal period, if the lead agency finds that the surface mining
8 operator has complied fully with the interim management plan.

9 (B) Require the surface mining operator to commence
10 reclamation in accordance with its approved reclamation plan.

11 (3) The financial assurances required by Section 2773.1 shall
12 remain in effect during the period that the surface mining operation
13 is idle. If the surface mining operation is still idle after the
14 expiration of its interim management plan, the surface mining
15 operation shall commence reclamation in accordance with its
16 approved reclamation plan.

17 (4) Within 60 days of the receipt of the interim management
18 plan, or a longer period mutually agreed upon by the lead agency
19 and the operator, the lead agency shall review and approve the
20 plan in accordance with its ordinance adopted pursuant to
21 subdivision (a) of Section 2774, so long as the plan satisfies the
22 requirements of this subdivision, and so notify the operator in
23 writing. Otherwise, the lead agency shall notify the operator in
24 writing of any deficiencies in the plan. The operator shall have 30
25 days, or a longer period mutually agreed upon by the operator and
26 the lead agency, to submit a revised plan.

27 (5) The lead agency shall approve or deny approval of the
28 revised interim management plan within 60 days of receipt. If the
29 lead agency denies approval of the revised interim management
30 plan, the operator may appeal that action to the lead agency's
31 governing body, which shall schedule a public hearing within 45
32 days of the filing of the appeal, or a longer period mutually agreed
33 upon by the operator and the governing body.

34 (6) Unless review of an interim management plan is pending
35 before the lead agency, or an appeal is pending before the lead
36 agency's governing body, a surface mining operation that remains
37 idle for over one year after becoming idle as defined in Section
38 2727.1 without obtaining approval of an interim management plan
39 shall be considered abandoned and the operator shall commence

1 and complete reclamation in accordance with the approved
2 reclamation plan.

3 (i) An enforcement action that may be brought against a surface
4 mining operation for operating without an approved reclamation
5 plan, financial assurance, or interim management plan shall be
6 held in abeyance pending review pursuant to subdivision (b), (c),
7 (d), or (h), or the resolution of an appeal filed with the board
8 pursuant to subdivision (e), or with a lead agency governing body
9 pursuant to subdivision (h).

10 SEC. 11. Section 2772 of the Public Resources Code is
11 amended to read:

12 2772. (a) The reclamation plan shall be filed with the lead
13 agency, on a form provided by the lead agency, by any person who
14 owns, leases, or otherwise controls or operates on all, or any ~~portion~~
15 *portion, of any, any* mined lands, and who plans to conduct surface
16 mining operations on the lands.

17 (b) All documentation for the reclamation plan shall be
18 submitted by the lead agency to the department at one time.

19 (c) The reclamation plan shall include all of the following
20 information and documents:

21 (1) The name and address of the surface mining operator and
22 the names and addresses of any persons designated by the operator
23 as an agent for the service of process.

24 (2) The anticipated quantity and type of minerals for which the
25 surface mining operation is to be conducted.

26 (3) The proposed dates for the initiation and termination of
27 surface mining operation.

28 (4) The maximum anticipated depth of the surface mining
29 operation.

30 (5) The size and legal description of the lands that will be
31 affected by the surface mining operation, a map that includes the
32 boundaries and topographic details of the lands, a description of
33 the general geology of the area, a detailed description of the
34 geology of the area in which surface mining is to be conducted,
35 the location of all streams, roads, railroads, and utility facilities
36 within, or adjacent to, the lands, the location of all proposed access
37 roads to be constructed in conducting the surface mining operation,
38 and the names and addresses of the owners of all surface interests
39 and mineral interests in the lands.

1 (6) A description of, and a plan for, the type of surface mining
2 to be employed, and a time schedule that will provide for the
3 completion of surface mining on each segment of the mined lands
4 so that reclamation can be initiated at the earliest possible time on
5 those portions of the mined lands that will not be subject to further
6 disturbance by the surface mining operation.

7 (7) A description of the proposed use or potential uses of the
8 mined lands after reclamation and evidence that all owners of a
9 possessory interest in the land have been notified of the proposed
10 use or potential uses.

11 (8) A description of the manner in which reclamation, adequate
12 for the proposed use or potential ~~uses~~ *uses*, will be accomplished,
13 *as certified by a registered professional geologist, geophysicist,*
14 *or professional engineer, pursuant to Section 2733, including both*
15 *of the following:*

16 (A) A description of the manner in which contaminants will be
17 controlled, and mining waste will be disposed.

18 (B) A description of the manner in which affected streambed
19 channels and streambanks will be rehabilitated to a condition
20 minimizing erosion and sedimentation will occur.

21 (9) An assessment of the effect of implementation of the
22 reclamation plan on future mining in the area.

23 (10) A statement that the person submitting the reclamation
24 plan accepts responsibility for reclaiming the mined lands in
25 accordance with the reclamation plan.

26 (11) *A schedule with time limits, updated annually, for*
27 *completing reclamation in accordance with the reclamation plan*
28 *and the then-current condition of the mining site.*

29 ~~(11)~~

30 (12) Any other information ~~which~~ *that* the lead agency may
31 require by ordinance.

32 (d) An item of information or a document required pursuant to
33 subdivision (c) that has already been prepared as part of a permit
34 application for the surface mining operation, or as part of an
35 environmental document prepared for the project pursuant to
36 Division 13 (commencing with Section 21000), may be included
37 in the reclamation plan by reference, if that item of information
38 or that document is attached to the reclamation plan when the lead
39 agency submits the reclamation plan to the director for review. To
40 the extent that the information or document referenced in the

1 reclamation plan is used to meet the requirements of subdivision
2 (c), the information or document shall become part of the
3 reclamation plan and shall be subject to all other requirements of
4 this article.

5 (e) Nothing in this section is intended to limit or expand the
6 department's authority or responsibility to review a document in
7 accordance with Division 13 (commencing with Section 21000).

8 SEC. 12. Section 2773.1 of the Public Resources Code is
9 amended to read:

10 2773.1. (a) Lead agencies shall require financial assurances,
11 *as determined by the director based on the most recent inspection*,
12 of each surface mining operation to ensure reclamation is
13 performed in accordance with the surface mining operation's
14 approved reclamation plan, as follows:

15 (1) Financial assurances may take the form of surety bonds
16 executed by an admitted surety insurer, as defined in subdivision
17 (a) of Section 995.120 of the Code of Civil Procedure, irrevocable
18 letters of credit, trust funds, or other forms of financial assurances
19 specified by the board pursuant to subdivision (e), ~~which~~ *that* the
20 ~~lead agency~~ *director* reasonably determines are adequate to perform
21 reclamation in accordance with the surface mining operation's
22 approved reclamation plan.

23 (2) The financial assurances shall remain in effect for the
24 duration of the surface mining operation and any additional period
25 until reclamation is completed.

26 (3) (A) The amount of financial assurances required of a surface
27 mining operation for any one year shall be adjusted annually *by*
28 *the director* to account for new lands disturbed by surface mining
29 operations, inflation, and reclamation of lands accomplished in
30 accordance with the approved reclamation plan.

31 (B) *The annual adjustment of financial assurances is not subject*
32 *to the procedures specified in paragraph (3) of subdivision (d) of*
33 *Section 2774 unless made in response to an amendment to an*
34 *existing reclamation plan.*

35 (4) The financial assurances shall be made payable to the lead
36 agency and the department. Financial assurances that were
37 approved by the lead agency prior to January 1, 1993, and were
38 made payable to the State Geologist shall be considered payable
39 to the department for purposes of this chapter. However, if a surface
40 mining operation has received approval of its financial assurances

1 from a public agency other than the lead agency, the ~~lead agency~~
2 *director* shall deem those financial assurances adequate for
3 purposes of this section, or shall credit them toward fulfillment of
4 the financial assurances required by this section, if they are made
5 payable to the public agency, the lead agency, and the department
6 and otherwise meet the requirements of this section. In any event,
7 if a lead agency and one or more public agencies exercise
8 jurisdiction over a surface mining operation, the total amount of
9 financial assurances required by the ~~lead agency~~ *director* and the
10 public agencies for any one year shall not exceed that amount
11 which is necessary to perform reclamation of lands remaining
12 disturbed. For purposes of this paragraph, a “public agency” may
13 include a federal agency.

14 (b) If the lead agency or the board, following a public hearing,
15 determines that the operator is financially incapable of performing
16 reclamation in accordance with its approved reclamation plan, or
17 has abandoned its surface mining operation without commencing
18 reclamation, either the lead agency or the director shall do all of
19 the following:

20 (1) Notify the operator by personal service or certified mail that
21 the lead agency or the director intends to take appropriate action
22 to forfeit the financial assurances and specify the reasons for so
23 doing.

24 (2) (A) Allow the operator 60 days to commence or cause the
25 commencement of reclamation in accordance with its approved
26 reclamation plan and require that reclamation be completed within
27 the time limits specified in the approved reclamation plan or some
28 other time period mutually agreed upon by the lead agency ~~or the~~
29 ~~director~~ and the operator.

30 (B) *If no time period is specified in the reclamation plan, or if*
31 *the time period specified is determined by the lead agency to be*
32 *inappropriate for the condition of the site, the lead agency shall*
33 *determine a time period for reclamation to be completed if an*
34 *agreement for such a time period cannot be reached between the*
35 *lead agency and the operator.*

36 (3) Proceed to take appropriate action to require forfeiture of
37 the financial assurances if the operator does not substantially
38 comply with paragraph (2).

39 (4) Use the proceeds from the forfeited financial assurances to
40 conduct and complete reclamation in accordance with the approved

1 reclamation plan. In no event shall the financial assurances be used
2 for any other purpose. The operator is responsible for the costs of
3 conducting and completing reclamation in accordance with the
4 approved reclamation plan ~~which~~ *that* are in excess of the proceeds
5 from the forfeited financial assurances.

6 (c) Financial assurances shall no longer be required of a surface
7 mining operation, and shall be released, upon written notification
8 by the lead agency, *with the concurrence of the director*, which
9 shall be forwarded to the ~~operator and the director~~, *operator*, that
10 reclamation has been completed in accordance with the approved
11 reclamation plan. If a mining operation is sold or ownership is
12 transferred to another person, the existing financial assurances
13 shall remain in force and shall not be released by the lead agency
14 *or the director* until new financial assurances are secured from the
15 new owner and have been approved by the ~~lead agency~~ *director*
16 in accordance with Section 2770.

17 (d) (1) The lead agency shall have primary responsibility to
18 seek forfeiture of financial assurances and to reclaim mine sites
19 under subdivision (b). However, in cases where the board is not
20 the lead agency pursuant to Section 2774.4, the director may act
21 to seek forfeiture of financial assurances and reclaim mine sites
22 pursuant to subdivision (b) only if both of the following occurs:

23 (1)

24 (A) The financial incapability of the operator or the abandonment
25 of the mining operation has come to the attention of the director.

26 (2)

27 (B) The lead agency has been notified in writing by the director
28 of the financial incapability of the operator or the abandonment
29 of the mining operation for at least 15 days, and has not taken
30 appropriate measures to seek forfeiture of the financial assurances
31 and reclaim the mine site; and one of the following has occurred:

32 (A)

33 (i) The lead agency has been notified in writing by the director
34 that failure to take appropriate measures to seek forfeiture of the
35 financial assurances or to reclaim the mine site shall result in
36 actions being taken against the lead agency under Section 2774.4.

37 (B)

38 (ii) The director determines that there is a violation that amounts
39 to an imminent and substantial endangerment to the public health,
40 safety, or to the environment.

1 (E)

2 (iii) The lead agency notifies the director in writing that its good
3 faith attempts to seek forfeiture of the financial assurances have
4 not been successful.

5 ~~The director shall comply with subdivision (b)~~

6 (2) *The director, in seeking forfeiture of financial assurances
7 and reclaiming mine sites, shall do all of the following:*

8 (A) *Notify the operator by personal service or certified mail
9 that the director intends to take appropriate action to forfeit the
10 financial assurances and specify the reasons for so doing.*

11 (B) (i) *Allow the operator 60 days to commence or cause the
12 commencement of reclamation in accordance with its approved
13 reclamation plan and require that reclamation be completed within
14 the time limits specified in the approved reclamation plan or some
15 other time period mutually agreed upon by the director and the
16 operator.*

17 (ii) *If no time period is specified in the reclamation plan, or if
18 the time period specified is determined by the director to be
19 inappropriate for the condition of the site, the director shall
20 determine a time period for reclamation to be completed if an
21 agreement for such a time period cannot be reached between the
22 director and the operator pursuant to clause (i).*

23 (C) *Proceed to take appropriate action to require forfeiture of
24 the financial assurances if the operator does not substantially
25 comply with subparagraph (B).*

26 (D) *Use the proceeds from the forfeited financial assurances to
27 conduct and complete reclamation in accordance with the approved
28 reclamation plan. In no event shall the financial assurances be
29 used for any other purpose. The operator shall be responsible for
30 the costs of conducting and completing reclamation in accordance
31 with the approved reclamation plan that are in excess of the
32 proceeds from the forfeited financial assurances.*

33 (e) The board may adopt regulations specifying financial
34 assurance mechanisms other than surety bonds, irrevocable letters
35 of credit, and trust funds, ~~which~~ *that* the board determines are
36 reasonably available and adequate to ensure reclamation pursuant
37 to this chapter, but these mechanisms may not include financial
38 tests, or surety bonds executed by one or more personal sureties.
39 These mechanisms may include reclamation bond pool programs.

1 (f) ~~On or before March 1, 1993, the~~ The board shall adopt, and
2 *update as required*, guidelines to implement this section. The
3 guidelines are exempt from the requirements of Chapter 3.5
4 (commencing with Section 11340) of Part 1 of Division 3 of Title
5 2 of the Government Code, and are not subject to review by the
6 Office of Administrative Law.

7 SEC. 13. Section 2774 of the Public Resources Code is
8 amended to read:

9 2774. (a) Every lead agency shall adopt ordinances in
10 accordance with state policy that establish procedures for the
11 review and approval of reclamation plans, ~~and receipt of~~ financial
12 assurances *approved by the director*, and the issuance of a permit
13 to conduct surface mining operations, except that any lead agency
14 without an active surface mining operation in its jurisdiction may
15 defer adopting an implementing ordinance until the filing of a
16 permit application. The ordinances shall establish procedures
17 requiring at least one public hearing and shall be periodically
18 reviewed by the lead agency and revised, as necessary, to ensure
19 that the ordinances continue to be in accordance with state policy.

20 (b) ~~The lead agency director~~ shall conduct an inspection of a
21 surface mining operation ~~within six months~~ *one year* of receipt by
22 ~~the lead agency~~ *State Mine Inspector* of the surface mining
23 operation's report submitted pursuant to Section 2207, solely to
24 determine whether the surface mining operation is in compliance
25 with this chapter. In no event shall ~~a lead agency~~ *the director*
26 inspect a surface mining operation less than once in any calendar
27 year. ~~The lead agency director~~ may cause an inspection to be
28 conducted by a state licensed geologist, state licensed civil
29 engineer, state licensed landscape architect, or state licensed
30 forester, who is experienced in land reclamation and who has not
31 been employed by a surface mining operation within the
32 jurisdiction of the lead agency in any capacity during the previous
33 12 months. All inspections shall be conducted using a form
34 developed by the department and approved by the board that shall
35 include the professional licensing and disciplinary information of
36 the person who conducted the inspection. The operator shall be
37 solely responsible for the reasonable cost of the inspection. ~~The~~
38 ~~lead agency director~~ shall notify ~~the director~~ *lead agency* within
39 30 days of the date of completion of the inspection that the
40 inspection has been conducted. The notice shall contain a statement

1 regarding the surface mining operation's compliance with this
2 chapter, shall include a copy of the completed inspection form,
3 and shall specify which aspects of the surface mining operations,
4 if any, are inconsistent with this chapter. If the surface mining
5 operation has a review of its reclamation plan, financial assurances,
6 or an interim management plan pending under subdivision (b), (c),
7 (d), or (h) of Section 2770, or an appeal pending before the board
8 or lead agency governing body under subdivision (e) or (h) of
9 Section 2770, the notice shall so indicate. ~~The lead agency director~~
10 shall forward to the operator a copy of the notice, a copy of the
11 completed inspection form, and any supporting documentation,
12 including, but not limited to, any inspection report prepared by the
13 geologist, civil engineer, landscape architect, or forester, who
14 conducted the inspection.

15 (c) Before approving a surface mining operation's reclamation
16 ~~plan, financial assurances, including existing financial assurances~~
17 ~~reviewed by the lead agency~~ *plan* pursuant to subdivision (c) of
18 Section 2770, or any amendments, the lead agency shall submit
19 ~~the plan, assurances,~~ *plan* or amendments to the director for review.
20 All documentation for that submission shall be submitted to the
21 director at one time. When the lead agency submits a reclamation
22 plan or plan amendments to the director for review, the lead agency
23 shall also submit to the director, for use in reviewing the
24 reclamation plan or plan amendments, information from any related
25 document prepared, adopted, or certified pursuant to Division 13
26 (commencing with Section 21000), and shall submit any other
27 pertinent information. The lead agency shall certify to the director
28 that the reclamation plan is *complete and* in compliance with the
29 applicable requirements of this chapter and Article 1 (commencing
30 with Section 3500) of Chapter 8 of Division 2 of Title 14 of the
31 California Code of Regulations and the lead agency's mining
32 ordinance in effect at the time that the reclamation plan is submitted
33 to the director for review.

34 (d) (1) The director shall have 30 days from the date of receipt
35 of a *complete* reclamation plan or *complete* plan amendments
36 submitted pursuant to subdivision ~~(e)~~, ~~and 45 days from the date~~
37 ~~of receipt of financial assurances submitted pursuant to subdivision~~
38 ~~(e)~~, *(c)* to prepare written comments, if the director so chooses.
39 The lead agency shall evaluate written comments received from
40 the director relating to the reclamation ~~plan,~~ *plan or plan*

1 amendments, ~~or financial assurances~~ within a reasonable amount
2 of time.

3 (2) The lead agency shall prepare a written response to the
4 director's comments describing the disposition of the major issues
5 raised by the director's comments, and submit the lead agency's
6 proposed response to the director at least 30 days prior to approval
7 of the ~~reclamation plan, plan or plan amendment, or financial~~
8 ~~assurance amendment~~. The lead agency's response to the director's
9 comments shall describe whether the lead agency proposes to adopt
10 the director's comments to the ~~reclamation plan, plan or plan~~
11 ~~amendment, or financial assurance amendment~~. If the lead agency
12 does not propose to adopt the director's comments, the lead agency
13 shall specify, in detail, why the lead agency proposes not to adopt
14 the comments. Copies of any written comments received and
15 responses prepared by the lead agency shall be forwarded to the
16 operator. The lead agency shall also give the director at least 30
17 days' notice of the time, place, and date of the hearing before the
18 lead agency at which time the ~~reclamation plan, plan or plan~~
19 ~~amendment, or financial assurance amendment~~ is scheduled to be
20 approved by the lead agency. If no hearing is required by this
21 chapter, or by the local ordinance, or other state law, then the lead
22 agency shall provide 30 days' notice to the director that it intends
23 to approve the ~~reclamation plan, plan or plan amendment, or~~
24 ~~financial assurance amendment~~. The lead agency shall send to the
25 director its final response to the director's comments within 30
26 days following its approval of the ~~reclamation plan, plan or plan~~
27 ~~amendment, or financial assurance amendment~~ during which period
28 the department retains all powers, duties, and authorities of this
29 chapter.

30 (3) (A) *Prior to approving initial financial assurances for a*
31 *reclamation plan or any amendments, pursuant to subdivision (a)*
32 *of Section 2770, the director shall have 45 days from the date of*
33 *receipt of a complete reclamation plan or complete plan*
34 *amendments submitted pursuant to subdivision (c) to prepare*
35 *financial assurances for reclamation pursuant to the proposed*
36 *reclamation plan and to submit the proposed financial assurances*
37 *to the lead agency for review.*

38 (B) *The lead agency shall have 30 days from the date of its*
39 *receipt of the financial assurances to evaluate the financial*

1 *assurances prepared by the director and to submit written*
2 *comments, if the lead agency so chooses.*

3 *(C) The director shall evaluate any written comments received*
4 *from the lead agency pursuant to subparagraph (B) and shall*
5 *prepare a written response to the lead agency's comments,*
6 *describing the disposition of the major issues raised by the lead*
7 *agency's comments. The response shall indicate whether the*
8 *director proposes to adopt the lead agency's comments or, if not,*
9 *shall specify, in detail, why the director does not propose to adopt*
10 *the lead agency's comments. Copies of any written comments*
11 *received and responses prepared by the director shall be forwarded*
12 *to the operator. The director shall submit the response and the*
13 *approved financial assurances to the lead agency and to the*
14 *operator within 30 days of receipt of the lead agency's comments.*

15 ~~(3)~~

16 *(4) To the extent that there is a conflict between the comments*
17 *of a trustee agency or a responsible agency that are based on the*
18 *agency's statutory or regulatory authority and the comments of*
19 *other commenting agencies which are received by the lead agency*
20 *pursuant to Division 13 (commencing with Section 21000)*
21 *regarding a reclamation plan or plan amendments, the lead agency*
22 *shall consider only the comments of the trustee agency or*
23 *responsible agency.*

24 *(e) A lead agency shall notify the director of the filing of an*
25 *application for a permit to conduct surface mining operations*
26 *within 30 days of an application being filed with the lead agency.*
27 ~~*By July 1, 1991, each lead agency shall submit to the director for*~~
28 ~~*every active or idle mining operation within its jurisdiction, a copy*~~
29 ~~*of the mining permit required pursuant to Section 2774, and any*~~
30 ~~*conditions or amendments to those permits. By July 1 of each*~~
31 ~~*subsequent year, the lead agency shall submit to the director for*~~
32 ~~*each active or idle mining operation a copy of any permit or*~~
33 ~~*reclamation plan amendments, as applicable, or a statement that*~~
34 ~~*there have been no changes during the previous year. Failure to*~~
35 ~~*file with the director the information required under this section*~~
36 ~~*shall be cause for action under Section 2774.4.*~~

37 SEC. 14. Section 2774.1 of the Public Resources Code is
38 amended to read:

39 2774.1. (a) Except as provided in subdivision (i) of Section
40 2770, if the lead agency or the director determines, based upon an

1 annual inspection pursuant to Section 2774, or otherwise confirmed
2 by an inspection of the mining operation, that a surface mining
3 operation is not in compliance with this chapter, the lead agency
4 or the director ~~may~~ shall notify the operator of that violation by
5 personal service or certified mail. *The notice of violation shall*
6 *specify the remedial steps to be taken to correct any noncompliance*
7 *identified in the notice, as well as a reasonable time for compliance*
8 *of each instance of noncompliance if compliance cannot reasonably*
9 *be attained within 30 days of the date of the notice. If ~~the~~ a*
10 *violation extends beyond 30 days after the date of the lead agency's*
11 *or the director's notification, unless the operator has accepted a*
12 *scope of work and schedule, agreed to by the lead agency or the*
13 *director, for achieving compliance, the lead agency or the director*
14 ~~may~~ shall issue an order by personal service or certified mail
15 requiring the operator to comply with this chapter or, if the operator
16 does not have an approved reclamation plan or financial assurances,
17 cease all further mining activities.

18 (b) An order issued under subdivision (a) shall not take effect
19 until the operator has been provided a hearing before the lead
20 agency for orders issued by the lead agency, or board for orders
21 issued by the director, concerning the alleged violation. An order
22 issued under subdivision (a) shall specify which aspects of the
23 surface mine's activities or operations are inconsistent with this
24 chapter, shall specify a time for compliance that the lead agency
25 or director determines is reasonable, taking into account the
26 seriousness of the violation and any good faith efforts to comply
27 with applicable requirements, and shall set a date for the hearing,
28 which shall not be sooner than 30 days after the date of the order.

29 (c) An operator who violates or fails to comply with an order
30 issued under subdivision (a) after the order's effective date, as
31 provided in subdivision (b), or who fails to submit a report to the
32 ~~director~~ *State Mine Inspector* or lead agency as required by Section
33 2207, shall be subject to an order by the lead agency or the director
34 imposing an administrative penalty of not more than five thousand
35 dollars (\$5,000) per day, assessed from the original date of
36 noncompliance with this chapter or Section 2207. The penalty may
37 be imposed administratively by the lead agency or the director. In
38 determining the amount of the administrative penalty, the lead
39 agency or the director shall take into consideration the nature,
40 circumstances, extent, and gravity of the violation or violations,

1 any prior history of violations, the degree of culpability, economic
2 savings, if any, resulting from the violation, and any other matters
3 justice may require. Orders setting administrative penalties shall
4 become effective upon issuance of the order and payment shall be
5 made to the lead agency or the director within 30 days, unless the
6 operator petitions the legislative body of the lead agency, the board,
7 or the superior court for review as provided in Section 2774.2. An
8 order shall be served by personal service or by certified mail upon
9 the operator. Penalties collected by the director shall not be used
10 for purposes other than to cover the reasonable costs incurred by
11 the director *or the State Mine Inspector* in implementing this
12 chapter or Section 2207.

13 (d) If the lead agency or the director determines that the surface
14 mine is not in compliance with this chapter, so that the surface
15 mine presents an imminent and substantial endangerment to the
16 public health or the environment, the lead agency or the Attorney
17 General, on behalf of the director, may seek an order from a court
18 of competent jurisdiction enjoining that operation.

19 (e) Upon a complaint by the director, the department, or the
20 board, the Attorney General may bring an action to recover
21 administrative penalties under this section, and penalties under
22 Section 2207, in any court of competent jurisdiction in this state
23 against any person violating any provision of this chapter or Section
24 2207, or any regulation adopted pursuant to this chapter or Section
25 2207. The Attorney General may bring this action on his or her
26 own initiative if, after examining the complaint and the evidence,
27 he or she believes a violation has occurred. The Attorney General
28 may also seek an order from a court of competent jurisdiction
29 compelling the operator to comply with this chapter and Section
30 2207.

31 (f) (1) The lead agency has primary responsibility for enforcing
32 this chapter and Section 2207. In cases where the board is not the
33 lead agency pursuant to Section 2774.4, enforcement actions may
34 be initiated by the director pursuant to this section only after the
35 violation has come to the attention of the director and either of the
36 following occurs:

37 (A) The lead agency has been notified by the director in writing
38 of the violation for at least 30 days, and has not taken appropriate
39 enforcement action, which may include failing to issue an order

1 to comply within a reasonable time after issuing a notice of
2 violation.

3 (B) The director determines that there is a violation that amounts
4 to an imminent and substantial endangerment to the public health
5 or safety, or to the environment.

6 (2) The director shall comply with this section in initiating
7 enforcement actions.

8 (g) Remedies under this section are in addition to, and do not
9 supersede or limit, any and all other remedies, civil or criminal.

10 SEC. 15. Section 2774.4 of the Public Resources Code is
11 amended to read:

12 2774.4. (a) If the board finds that a lead agency either has (1)
13 approved reclamation plans or, *prior to January 1, 2015*, financial
14 assurances ~~which~~ *that* are not consistent with this chapter, (2)
15 failed, *prior to January 1, 2015*, to inspect or cause the inspection
16 of surface mining operations as required by this chapter, (3) failed
17 to seek forfeiture of financial assurances and to carry out
18 reclamation of surface mining operations as required by this
19 chapter, (4) failed to take appropriate enforcement actions as
20 required by this chapter, (5) intentionally misrepresented the results
21 of inspections required under this chapter, or (6) failed to submit
22 information to the department as required by this chapter, the board
23 shall exercise any of the powers of that lead agency under this
24 chapter, except for permitting authority.

25 (b) If, no sooner than three years after the board has taken action
26 pursuant to subdivision (a), the board finds, after a public hearing,
27 that a lead agency has corrected its deficiencies in implementing
28 and enforcing this chapter, and the rules and regulations adopted
29 pursuant to this chapter, the board shall restore to the lead agency
30 the powers assumed by the board pursuant to subdivision (a).

31 (c) Before taking any action pursuant to subdivision (a), the
32 board shall first notify the lead agency of the identified
33 deficiencies, and allow the lead agency 45 days to correct the
34 deficiencies to the satisfaction of the board. If the lead agency has
35 not corrected the deficiencies to the satisfaction of the board within
36 the 45-day period, the board shall hold a public hearing within the
37 lead agency's area of jurisdiction, upon a 45-day written notice
38 given to the public in at least one newspaper of general circulation
39 within the city or county, and directly mailed to the lead agency
40 and to all surface mining operators within the lead agency's

1 jurisdiction who have submitted reports as required by Section
2 2207.

3 (d) Affected surface mining operators and interested persons
4 have the right, at the public hearing, to present oral and written
5 evidence on the matter being considered. The board may, at the
6 public hearing, place reasonable limits on the right of affected
7 surface mining operators and interested persons to question and
8 solicit testimony.

9 (e) If, after conducting the public hearing required by
10 subdivision (c), the board decides to take action pursuant to
11 subdivision (a), the board shall, based on the record of the public
12 hearing, adopt written findings which explain all of the following:

- 13 (1) The action to be taken by the board.
- 14 (2) Why the board decided to take the action.
- 15 (3) Why the action is authorized by, and meets the requirements
16 of, subdivision (a).

17 In addition, the findings shall address the significant issues
18 raised, or written evidence presented, by affected surface mining
19 operators, interested persons, or the lead agency. The transcript of
20 testimony and exhibits, together with all papers and requests filed
21 in the proceedings, shall constitute the exclusive record for decision
22 by the board.

23 (f) The lead agency, any affected surface mining operator, or
24 any interested person who has presented oral or written evidence
25 at the public hearing before the board pursuant to subdivision (d)
26 may obtain review of the board's action taken pursuant to
27 subdivision (a) by filing in the superior court a petition for writ of
28 mandate within 30 days following the issuance of the board's
29 decision. Section 1094.5 of the Code of Civil Procedure governs
30 judicial proceedings pursuant to this subdivision, except that in
31 every case the court shall exercise its independent judgment. If a
32 petition for a writ of mandate is not filed within the time limits set
33 by this subdivision, the board's action under subdivision (a) shall
34 not be subject to review by any court or agency.

35 (g) (1) *A lead agency may unilaterally and voluntarily relinquish*
36 *its responsibilities under this chapter, and the board shall assume*
37 *those responsibilities.*

38 (2) (A) *No sooner than three years after relinquishing its lead*
39 *agency responsibilities, the lead agency may request the board to*
40 *authorize it to resume its role as a lead agency.*

1 (B) *If the board finds, after holding a public hearing as*
2 *described in subdivision (d), that the lead agency has corrected*
3 *all deficiencies, if any, pursuant to subdivision (a) in implementing*
4 *and enforcing this chapter and its implementing regulations, the*
5 *board shall restore to the agency the lead agency powers assumed*
6 *by the board pursuant to this subdivision.*

7 SEC. 16. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 a local agency or school district has the authority to levy service
10 charges, fees, or assessments sufficient to pay for the program or
11 level of service mandated by this act, within the meaning of Section
12 17556 of the Government Code.



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

21

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

FROM: Kevin D. Carunchio, County Administrator

FOR THE BOARD MEETING OF April 8, 2014

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

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

DEPARTMENT HEAD SIGNATURE:

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

Date: _____



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER
 22

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

FROM: Kevin D. Carunchio, County Administrator

FOR THE BOARD MEETING OF April 8, 2014

SUBJECT: Continuation of declaration of local emergency

DEPARTMENTAL RECOMMENDATION: - Request Board discuss and consider staff's recommendation regarding continuation of the local emergency, The Gully Washer Emergency, that resulted in flooding in the central, south and southeastern portion of Inyo County during the month of July, 2013.

SUMMARY DISCUSSION: - During your August 6, 2013 Board of Supervisors meeting your Board took action to declare a local emergency, which has been named The Gully Washer Emergency, which was a result of flooding in the central, southern and southeastern portion of Inyo County during the month of July. 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

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

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



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

23

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

FROM: Kevin D. Carunchio, County Administrator

FOR THE BOARD MEETING OF April 8, 2014

SUBJECT: Continuation of declaration of local emergency

DEPARTMENTAL RECOMMENDATION: - Request Board discuss and consider staff's recommendation regarding continuation of the local emergency, The Canyon Crusher Emergency, that resulted in flooding in the portions of Inyo County during the month of August, 2013.

SUMMARY DISCUSSION: - During your September 17, 2013 Board of Supervisors meeting your Board took action to declare a local emergency, which has been named The Canyon Crusher Emergency, which was a result of flooding in the portions 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

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

DEPARTMENT HEAD SIGNATURE:

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

Date: _____



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

24

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

FROM: Kevin D. Carunchio, County Administrator

FOR THE BOARD MEETING OF April 8, 2014

SUBJECT: Continuation of proclamation of local emergency

DEPARTMENTAL RECOMMENDATION: - Request Board discuss and consider staff's recommendation regarding continuation of the local emergency, known as the "Land of EVEN Less Water Emergency" that was proclaimed as a result of extreme drought conditions that exist in the County.

SUMMARY DISCUSSION: - During your January 28, 2014 Board of Supervisors meeting your Board took action to proclaim a local emergency, which has been named the Land of EVEN Less Water Emergency, that is a result of severe and extreme draught conditions that exist in the County. Since the circumstances and conditions relating to this emergency persist, your Board directed that the continuation of the resolution be considered on a by-weekly basis.

ALTERNATIVES: N/A

OTHER AGENCY INVOLVEMENT: N/A

FINANCING: N/A

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

DEPARTMENT HEAD SIGNATURE:

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

Date: _____



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

27

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

FROM: Inyo County Planning Department

FOR THE BOARD MEETING OF: April 8, 2014

SUBJECT: Workshop Regarding Inyo County Code Title 21 and Active Applications from Northland Power Independence, LLC and Munro Valley Solar, LLC for Renewable Energy Projects

DEPARTMENTAL RECOMMENDATION: Receive a presentation from staff regarding Inyo County Code Title 21 and current procedures for the processing of existing applications for renewable energy projects and provide direction.

SUMMARY DISCUSSION: In 2010, Inyo County adopted Title 21 of the Inyo County Code (ICC) – refer to attached – establishing regulation of solar and wind renewable energy development. Through the use of the County's police power, the Ordinance protects the health, safety and welfare of the County's citizens, environment, and public trust resources by requiring that the adverse impacts of development of the County's solar and wind resources are avoided or acceptably mitigated. As part of these protections, the Ordinance requires a reclamation plan and financial assurances adequate to ensure that project sites are fully reclaimed upon cessation of operations.

Under the Ordinance, before commencing construction of a solar thermal, photovoltaic, or wind energy powerplant or an electric transmission line associated with these types of powerplants, a developer is required to obtain a Renewable Energy Permit from the County or enter into a Renewable Energy Development Agreement with the County. The Ordinance requires a Renewable Energy Impact Determination from the County in instances in which the project is not required to obtain a Renewable Energy Permit from the County. The purpose of the Renewable Energy Impact Determination is to ensure that mitigation measures that would otherwise be addressed in a Renewable Energy Permit and/or Renewable Energy Development Agreement that are identified by the Renewable Energy Impact Determination are, to the extent possible, incorporated into any approval of the facility granted by another agency.

The Ordinance exempts developers of renewable energy projects from the requirement of obtaining a Renewable Energy Permit or Renewable Energy Impact Determination from the County if the developer and the County enter a mutually agreeable Renewable Energy Development Agreement. The Ordinance encourages Renewable Energy Development Agreements.

The Ordinance stipulates that: (1) the County Planning Commission will not be involved in the consideration, approval, or review of Renewable Energy Development Agreements or related environmental documents (the Board will handle those responsibilities); (2) Renewable Energy Development Agreements may be exempted by the Board from the annual review provision applicable to Development Agreements, and; (3) the County may impose upon projects subject to Renewable Energy Development Agreements and Renewable Energy Permits such standards as are deemed appropriate to address noise, light and glare, setbacks to property lines and between

structures in lieu of imposing the standards that would normally be applicable that are contained in the County Zoning Ordinance.

Under the Ordinance, all renewable energy projects must be consistent with the County General Plan. The General Plan only permits renewable energy projects in the General Industrial Land Use Classification. Rather than redesignate sites to this Classification, staff prefers to create a Solar Overlay or other similar mechanism that only adds one specific land use – i.e., solar energy. Several projects are being processed currently, and staff seeks direction regarding this issue given the ongoing work on the Renewable Energy General Plan Amendment. With the several projects currently being processed, staff will continue to evaluate each in a manner consistent with County land use policies and make appropriate recommendations.

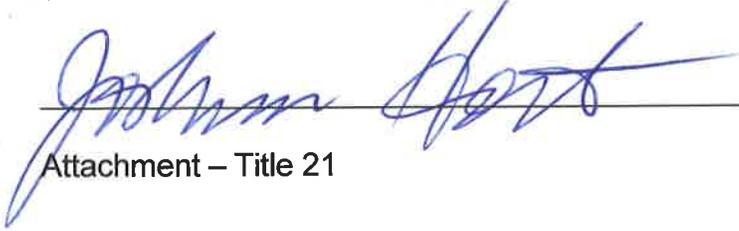
OTHER AGENCY INVOLVEMENT: None directly; other agencies may be involved in permitting specific projects.

FINANCING: General fund resources are utilized to monitor State legislative activities.

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

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

Date: 4-3-14


Attachment – Title 21

ORDINANCE NO. 1158

AN ORDINANCE OF THE INYO COUNTY BOARD OF SUPERVISORS TO ADD TITLE 21 OF THE INYO COUNTY CODE TO ENCOURAGE AND REGULATE THE DEVELOPMENT OF RENEWABLE ENERGY RESOURCES WITHIN INYO COUNTY, TO AMEND TITLE 2, SECTION 2.40.070 OF THE INYO COUNTY CODE AND TO ADD SECTION 20.08.120 TO TITLE 20 OF THE INYO COUNTY CODE

The Board of Supervisors of the County of Inyo ordains as follows:

SECTION 1 DECLARATIONS

- A. The County of Inyo ("County") supports and encourages the responsible utilization of its natural resources, including the development of its solar and wind resources for the generation and transmission of clean, renewable electric energy.
- B. The increased use of solar radiation and wind to generate and transmit clean, renewable electric energy is a benefit not only to the citizens of the County, but also to citizens of California and the United States.
- C. The development of solar and wind resources to generate and transmit clean renewable electric energy for use in and outside the County, can provide a great benefit to the citizens of the County by providing employment in the County and increasing economic activity within the County.
- D. The large scale development of solar and wind resources to generate and transmit clean, renewable electric energy within the County will have significant beneficial and adverse impacts on the environment, economy and way of life of the County.
- E. Potential adverse impacts resulting from the development of the County's solar and wind resources may include, but are not limited to, the following:
 1. During construction, there will be an increase in air pollution and noise and impacts to vegetation, wildlife, public trust resources and/or archaeological sites due to ground disturbance and vegetation removal. Wear-and-tear on County roads will increase due to the delivery of construction materials. Due to new construction workers, demand for already scarce housing will increase, as will the demand for domestic water and sewage disposal, health and emergency services and law enforcement services.
 2. Following construction, the disturbance of large areas of land will impact native vegetation, wildlife and habitat, including sensitive plants, wildlife and air quality, as well as disrupting ranching, animal husbandry, other agricultural activities, access, and other existing land uses. Due to the use of water for cooling and other operational purposes, the County's water resources may be depleted which may affect vegetation, wildlife and habitat. Scenic views may be blocked or degraded, which may affect the attractiveness of the County for tourism. Wind generation will impact wildlife, including birds. Other impacts may result, including, but not limited to, light and glare, noise, and increased demand for housing, utilities, and public services.
- F. The County has a responsibility to exercise its full authority to protect the health, safety and welfare of its citizens and to protect the County's environment, including its public trust resources, by requiring that the adverse impacts of the development of the County's solar and wind resources to generate and transmit clean, renewable electric energy are avoided or acceptably mitigated.

- G. The County has a responsibility to exercise its full authority to ensure that its citizens and its environment do not bear an undue burden as a result of the development of the County's solar and wind resources to generate and transmit clean, renewable electric energy.
- H. The County has a responsibility to exercise its full authority to ensure that the producers and users of electrical energy generated from solar and wind resources in the County offset the cost to the County of increased services necessitated as a result of the generation and transmission of such power and that the citizens of Inyo County equitably share in the benefits resulting from the use of such resources.
- I. The County has a responsibility to promote economic development in the County including attracting, expanding and retaining businesses which generate electricity, businesses that consume electricity, businesses that create living wage jobs, businesses that provide goods and services contributing to self-sufficiency for the County and its businesses and residents, and businesses which generate taxes and other revenues to maintain and enhance governmental and educational services to residents and businesses of the County.
- J. To facilitate the development of renewable electric energy in the County it is desirable to encourage agreements between developers of such projects and the County that expedite the approval and construction of renewable electric energy projects and that allow flexibility in the application of the County land use standards in appropriate circumstances.
- K. In order to encourage and support the development of the County's solar and wind energy resources for the generation of clean, renewable electric energy while, at the same, establishing reasonable regulation of such development to protect the health, safety and welfare of its citizens and to protect the County's environment, including its public trust resources, this Board deems it appropriate and proper to adopt this Ordinance.

SECTION 2 CALIFORNIA ENVIRONMENTAL QUALITY ACT

The adoption of this Ordinance is a discretionary activity of the County; however, the adoption of this Ordinance does not have a potential for causing a significant effect on the environment; therefore, the adoption of this Ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA"). This finding is based upon the following:

- A. Section 15061(B)(3) of the CEQA Guidelines provides that where it can be seen with certainty that an activity will not have a significant effect on the environment, the activity is not subject to CEQA.
- B. The adoption of this Ordinance does not have a significant effect on the environment since it only establishes reasonable regulation of certain projects in a manner that protects the health, safety and welfare of the County's citizens and protects the County's environment, including its public trust resources.
- C. The adoption of this Ordinance does not approve the construction of any project that may have a significant effect on the environment.
- D. Before any project that is subject to this ordinance can be approved or constructed, there will have to be compliance with CEQA with regard to such project.

SECTION 3 ADDITION OF TITLE 21

Title 21, "Renewable Energy Development," is added to the Inyo County Code as follows:

CHAPTER 21.04

TITLE, AUTHORITY AND PURPOSE

21.04.010 Title

This title shall be known as the Inyo County Renewable Energy Ordinance.

21.04.020 Authority

Article XI, section 7 of the California Constitution empowers Inyo County ("County") to make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws. The County's police powers extend to all lands within the County. The police powers of the County of Inyo include:

- A. Protection of the environment of Inyo County, including biological and other natural resources, aesthetics, recreational attractiveness and availability, traditional social activities and values of the citizens of the County, housing, public services, utilities, and economic potential within the County.
- B. Traditional authority over the use of land within the County, where such authority is not preempted by federal or state law.
- C. The public trust doctrine under which the County is empowered to exercise its police power to protect natural resources such as streams, lakes, marshlands, tidelands, wildlife and other resources.

21.04.030 Purpose

- A. It is in the public interest to support, encourage and regulate the development of solar and wind resources for the generation and transmission of clean, renewable electric energy. By this ordinance, the County intends to: (1) support and encourage the responsible development of its solar and wind resources to generate and transmit clean, renewable electric energy while protecting the health, safety and welfare of its citizens and its environment, including its public trust resources, by requiring that the adverse impacts of such development are avoided or acceptably mitigated, (2) recover the County's costs of increased services resulting from such development, and (3) ensure that the citizens of Inyo County equitably share in the benefits resulting from the use of such resources.
- B. To support, encourage and facilitate the responsible utilization of its solar and wind resources for the generation and transmission of clean, renewable electric energy, the County encourages potential developers of such resources to work with the County and to enter into a mutually agreeable renewable energy development agreement in lieu of applying for the issuance of a renewable energy impact determination or a renewable energy permit.

CHAPTER 21.08

DEFINITIONS

21.08.010 Environment

For the purposes of this title, the term environment includes the ecological environment of the County as well as the social, aesthetic and economic environment of the County. Impacts upon the quality of life within the County are considered environmental impacts. Therefore, the definition of environment is not limited by and may be broader than environmental considerations under the California Environmental Quality Act or the National Environmental Policy Act.

21.08.020 Electric transmission line

Electric transmission line means any electric powerline within Inyo County carrying power from a photovoltaic, solar thermal or wind energy powerplant located within or outside Inyo County to a point of junction with an interconnected transmission system. Electric transmission line does not include any replacement on the existing site of existing electric powerlines with electric powerlines equivalent to such existing electric powerlines or the placement of new or additional conductors, insulators, or accessories related to such electric powerlines on supporting structures in existence on the effective date of this Title or certified pursuant to this Title.

21.08.030 Facility

Facility means any electric transmission line, solar thermal powerplant, photovoltaic powerplant, or wind energy powerplant to be constructed in Inyo County. A facility does not include a "solar energy system" or a pilot or proof of concept powerplant.

21.08.040 Mitigation

Mitigation refers to mitigation of adverse environmental impacts and includes:

1. Avoiding the impact altogether by not taking a certain action or parts of an action,
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation,
3. Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment,
4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action,
5. Compensating for the impact by replacing or providing substitute resources or environments.

21.08.050 Modification of an existing facility

A modification of an existing facility is an increase in the electric generating capacity of an existing facility or electric transmission line by 10 percent or more.

21.08.060 Person

Person means any natural person and any corporation, partnership, association, public entity and any other entity with legal existence under California law. Person also includes any city, county, public district or agency, the state or any department or agency thereof, and the United States and any department or agency thereof.

21.08.070 Photovoltaic powerplant

Photovoltaic powerplant means an electrical generating facility in which the total energy output is from the direct conversion of solar energy into electricity and which transmits a portion of the electrical energy off the site of the facility. The definition of a photovoltaic powerplant does not include a "solar energy system."

21.08.080 Pilot or proof of concept powerplant

A pilot or proof of concept powerplant is a powerplant with a capacity of five megawatts or less that is designed and constructed to test the feasibility of constructing and operating larger capacity facilities.

21.08.090 Public trust resources

Resources protected by the "public trust doctrine" are as defined by statute and the courts. Such resources include tidelands, navigable bodies of water, tributaries to navigable bodies of water, wildlife and wildlife habitat.

21.08.100 Renewable energy development agreement

Renewable energy development agreement means an agreement for the development of a facility entered into by the County and a developer of a facility in lieu of a renewable energy permit or a renewable energy impact determination. A renewable energy development agreement shall be processed in the same manner as a development agreement described in Title 20 of this Code except that the County Planning Commission will not be involved in the consideration, approval or review of such agreements, nor will the Planning Commission be the County agency for the purpose of California Environmental Quality Act review and processing for such projects. Further, a renewable energy development agreement may be exempted from the annual review provisions of Title 20, section 20.08.050 if the renewable energy development agreement contains the enforcement provisions set forth in sections 21.24.10 to 21.24.080 of this Title. The County Planning Director is the point of contact regarding a renewable energy development agreement. Renewable energy development agreements must include a reclamation plan, acceptable financial assurances, be consistent with the County General Plan, be approved by the Board of Supervisors, which will be the review and processing agency for compliance with the California Environmental Quality Act, and must include provisions acknowledging that the agreement is enforceable by injunctive relief contractual remedies and other remedies provided by law and equity.

21.08.110 Small wind energy conversion system

Small wind energy conversion system is as defined in section 18.79.040 of this Code. As defined in that section, a small wind energy conversion system means a facility consisting of a tower, wind turbine generator with blades, guy wires and anchors, and associated control and conversion electronic equipment to convert wind movement into electricity, and that is incidental and subordinate to another use on the same parcel. A facility shall be considered a small wind energy conversion system if it supplies electrical power solely for on-site use; however, a facility shall also be considered a small wind energy conversion system if it is located on a parcel that also receives electrical power supplied by a utility company and any excess electrical power generated by the small wind energy conversion system not then needed for on-site use, is used by the utility company in exchange for a reduction in the cost of electrical power supplied by that company to the parcel for on-site use. No net revenue to the owners shall be produced by such excess electrical power generation.

21.08.120 Solar energy system

A solar energy system has the same meaning as set forth in paragraphs (1) and (2) of subdivision (a) of Section 801.5 of the California Civil Code and as used in Section 65850.5 of the California Government Code.

21.08.130 Solar thermal powerplant

Solar thermal powerplant means an electrical generating facility in which a portion of the total energy output is from solar energy converted to heat to produce electricity and which transmits a portion of the electrical energy off the site of the facility. The definition of a solar thermal powerplant does not include a "solar energy system."

21.08.140 Wind energy powerplant

Wind energy powerplant means an electrical generating facility that converts wind energy into electricity which is transmitted off the site of the facility. A wind energy powerplant does not include a small wind energy conversion system or windmills that do not generate electricity.

CHAPTER 21.16

GENERAL PROVISIONS

21.16.010 Renewable Energy Permit

Any person who proposes to construct a facility within the County or modify an existing facility within the County shall, prior to the commencement of construction or modification, first apply for and obtain from the County Planning Commission a renewable energy permit, unless specifically exempted from such requirements by this Title or by state or federal law.

21.16.020 Renewable Energy Impact Determination

Any person who proposes to construct a facility within the County or modify an existing facility within the County who is not subject to a renewable energy permit issued by the County for the facility, shall, prior to the commencement of construction or modification, first apply for and obtain from the County Planning Commission a renewable energy impact determination that identifies environmental and other impacts expected to result from such project and mitigation for those impacts. As part of its analysis, the County Planning Commission shall determine whether the project is consistent with the County general plan. The goal of the renewable energy impact determination is to ensure that mitigation measures that would otherwise be addressed in a renewable energy permit and/or renewable energy development agreement that are identified pursuant to the renewable energy impact determination are, to the extent possible, incorporated into any approval of the facility granted by a state or federal agency.

21.16.030 Exemptions

Any person applying for a renewable energy permit need not apply for a renewable energy impact determination. Any person who has a renewable energy development agreement with the County for the construction or modification of a facility need not apply for a renewable energy impact determination or a renewable energy permit for the facility that is the subject of the renewable energy development agreement.

21.16.040 Applications

An application for a renewable energy impact determination or a renewable energy permit shall be filed and processed in the same manner as land use and conditional use permit applications submitted to the County as provided in section 18.81.160 to 18.81.300 of this Code.

21.16.050 Application fees

An applicant for a renewable energy impact determination and/or permit shall pay fees and costs to the County Planning Department as provided in Chapter 3.60 of this Code. The fee for either a renewable energy impact determination or a renewable energy permit shall be equal to the fee charged for a conditional use permit.

21.16.060 Application processing procedures

Upon completion of the County's environmental review process and the filing of all required documents, a noticed public hearing will be scheduled and conducted by the County Planning Commission to consider issuance of a renewable energy impact determination or to consider issuance of a renewable energy permit. Such a hearing will be scheduled and conducted in accordance with this Title and Chapter 18.81 of this Code.

21.16.070 Appeals

Appeals of an action by the County Planning Department or the County Planning Commission shall be in conformance with the procedures described in sections 18.81.270 to 18.81.300 of this Code.

CHAPTER 21.20

MINIMUM REQUIREMENTS FOR RENEWABLE ENERGY IMPACT DETERMINATIONS AND RENEWABLE ENERGY PERMITS

21.20.010 Mitigation measures

As a condition to the issuance of a renewable energy impact determination or a renewable energy permit, the County Planning Commission may, in the case of a renewable energy impact determination, incorporate, and in the case of a renewable energy permit, impose such reasonable and feasible mitigation measures as it finds to be necessary to protect the health, safety and welfare of the County's citizens, the County's environment, including its public trust resources, and to ensure that the County and its citizens do not bear an undue financial burden from the project.

21.20.020 Development standards

In lieu of imposing the standards and procedures set forth in Title 18 concerning: (1) permitted, conditional, and/or accessory uses related to a facility and its accessory uses and structures, (2) distance between buildings, (3) height, density and intensity, (4) light and glare, (5) noise, and (6) wireless communications facilities directly related to the facility, with regard to renewable energy development agreements, the County Board of Supervisors shall incorporate, and with regard to renewable energy permits, the County Planning Commission shall impose, such standards as are deemed appropriate and may incorporate or impose such other standards and mitigation measures as are deemed necessary. Except for those exceptions specified in the preceding sentence, any facility for which a renewable energy development agreement or a renewable energy permit is required shall, to the extent allowed by law, be governed by the standards and/or procedures in Title 18.

21.20.030 Reclamation plan

Any person who submits an application for a renewable energy impact determination or a renewable energy permit shall, at the time of the submission of the application, submit a plan for reclamation/revegetation of the site of the facility once the facility is decommissioned or otherwise ceases to be operational. The reclamation plan shall be based upon the character of the surrounding area and such characteristics of the property as type of native vegetation, soil type, habitat, climate, water resources, and the existence of public trust resources. Reclamation plans issued pursuant to this chapter shall run with the land affected thereby and shall be binding on all successors, heirs and assigns of the applicant.

In the case of the issuance of a renewable energy impact determination, the County Planning Commission shall incorporate into the determination, and in the case of a renewable energy permit, shall impose as a condition of approval, a plan for the reclamation/revegetation of the site of the facility at the time that the facility is decommissioned, or otherwise ceases to be operational, and shall establish site-specific criteria for evaluating and monitoring compliance with the approved reclamation plan.

21.20.040 Financial assurances

As a condition to the approval of a renewable energy permit, in order to ensure that reclamation will proceed and be accomplished in accordance with an approved reclamation plan, the County Planning Commission shall require financial assurances from the applicant as provided below:

- A. Financial assurances may take the form of surety bonds, irrevocable letters of credit, trust funds or other mechanisms.
- B. Public agencies may satisfy financial assurance requirements by using "pledges of revenue" or "budget set aside" as acceptable financial assurances mechanisms.
- C. The financial assurances shall remain in effect for the duration of the operation and any additional period until reclamation is completed.
- D. Financial assurances shall be sufficient to cover the costs of fully implementing the reclamation plan.
- E. The financial assurances shall be made payable to Inyo County and any other affected public agency. However, if a facility has received approval of its financial assurances from a public agency other than the county, the county shall deem those financial assurances adequate for purposes of this section, or shall credit them toward fulfillment of financial assurances required by this section, if they are made payable to the public agency, the county, and otherwise meet the requirements of this Title.
- F. If a permitted facility is sold or ownership is transferred to another person, the existing financial assurances shall remain in force and shall not be released by the County until new financial assurances are secured from the new owner and have been approved by the County.
- G. The release of financial assurances shall be with the concurrence of all agencies named on the financial assurance. The criteria for release of financial assurances, or part of the financial assurances, shall be made part of the reclamation plan. In no case shall the financial assurance be released until reclamation has been completed.
- H. The amount of financial assurances shall be reviewed annually, or as deemed necessary, by the County Planning Commission and adjusted, if required, to ensure that the assurances are sufficient to cover the costs of fully implementing the reclamation plan.

21.20.050 Term of permit

Each applicant for a renewable energy permit pursuant to this Title shall specify in the application the duration or term of the permit requested. The County Planning Commission shall determine the term of the permit if it grants the permit.

21.20.060 Consistency with the Inyo County General Plan

Prior to the issuance of renewable energy impact determination or the granting of a renewable energy permit, the Inyo County Planning Commission must find that the proposed facility is consistent with the Inyo County General Plan. Prior to entering into a renewable energy development agreement, the County Board of Supervisors must find that the proposed facility is consistent with the Inyo County General Plan.

21.20.070 Health safety and welfare of the County's citizens

Prior to the issuance of a renewable energy impact determination or the granting of a renewable energy permit, the County Planning Commission must find that, through the imposition of mitigation measures, the approval of a reclamation plan, the receipt of adequate financial assurances, and by other conditions incorporated into the determination or imposed upon the permit, the health, safety and welfare of the County's citizens, the County's environment, including its public trust resources, and the County's financial wellbeing, have been adequately safeguarded.

CHAPTER 21.24

ENFORCEMENT

21.24.010 Prohibition

No person shall construct a facility without first obtaining a renewable energy development agreement, a renewable energy permit or a renewable energy impact determination and no person shall operate a facility in violation of a renewable energy permit or renewable energy development agreement.

21.24.020 Notice

Where it appears to the County Planning Department that a facility is in violation of any condition of a renewable energy development agreement, a renewable energy permit, an approved reclamation plan or any applicable statute, regulation or ordinance, the Planning Department shall serve formal notice to the facility operator and/or owner stating the nature of the violation and the specified time frame to correct the violation before an order is issued.

21.24.030 Timing of remedy

The time within which the facility operator and/or owner must commence correction of the violation shall be sooner than sixty days from the notice of violation.

21.24.040 Order

An order shall be issued if the facility operator and/or owner fails to comply with the notice within the specified time limit. Not sooner than thirty days after the date of the order, a hearing shall be held by the County Planning Director or his designee, for which at least ten days' written notice has been given to the facility operator and/or owner. The order shall not take effect until after the hearing.

21.24.050 Failure to comply

Failure to comply with the order shall be subject to an order setting administrative penalties and permit modification or revocation. Penalties shall be assessed from the date of original noncompliance.

21.24.060 Penalty

In determining the amount of administrative penalty, the County shall take into consideration the nature, circumstances, extent and gravity of the violation or violations, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and any other matters as justice may require.

21.24.070 Payment of penalty

Orders setting administrative penalties and revoking or modifying the determination or permit shall become effective upon issuance thereof. Payment of penalties shall be made to the Planning Department unless the affected facility operator and/or owner files an appeal with the County Board of Supervisors within ten days of the issuance of such administrative penalties. If after the hearing, the Board affirms an order setting administrative penalties, the facility operator and/or owner shall pay the administrative penalties set by the Board's order within thirty days of the service of that order. A permit modification or revocation shall become effective thirty days after the Board's order.

21.24.080 Enforcement authority

The provisions of this chapter shall be enforced by the County Planning Director or his designated appointee. Violations of section 21.24.010 or other provision of the chapter may be prosecuted by the Inyo County District Attorney.

21.24.090 Additional remedies

Notwithstanding the foregoing, a violation of this chapter may be enforced by the County by the use of any legal or equitable remedy available to the County.

CHAPTER 21.28

SEVERABILITY

21.28.010 Severability

If any section, subsection, sentence, clause, or phrase of this Title, as applied to any person, is for any reason held to be illegal, invalid, unconstitutional, or outside the jurisdiction and/or the police powers of the County of Inyo, as determined by any court of competent jurisdiction, such decision shall not affect the validity of the Title as to other

persons. If any section, subsection, sentence, clause, or phrase of this Title is for any reason held illegal, invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. This Title, and each section, subsection, sentence, clause or phrase hereof, would have been enacted irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid, unconstitutional, or outside the jurisdiction and/or police powers of the County of Inyo as to certain entities or persons.

SECTION 4 AMENDMENTS OF THE INYO COUNTY CODE

- A. Title 2 (Administration and Personnel), section 2.40.070 of the Inyo County Code is amended to read as follows (additions shown in italics, deletions shown by strikeover):

2.40.070 Procedural requirements—Powers and duties.

The commission shall adopt rules for the transaction of business and shall keep records of its business transactions, findings and determinations which records shall be public records. The commission may, with the approval of the board of supervisors, appoint such other officers and employees as it deems necessary for its work, whose appointment, promotion, demotion and removal shall be subject to the same provisions of law as govern other corresponding county employees. The commission may also recommend the employment of planning consultants and other specialists for such services as it may require. *Except as provided in Title 20, section 20.08.120, †the* commission shall perform such functions and duties and shall have such power and duties as are prescribed by law, and in particular as are prescribed in Chapter 3 of Title VII of the Government Code of the state, and amendments thereto, and in addition the commission shall perform such other functions and duties with respect to county planning matters as the board of supervisors shall refer.

- B. Section 20.08.120 is added to Title 20 (Development Agreements) of the Inyo County Code reads as follows:

20.08.120 Renewable Energy Development Agreements

Title 21, Section 21.08.100 of this Code provides that renewable energy development agreements shall be processed in the same manner entered into in accordance with the procedures set forth in Title 20 of this Code except that the County Planning Commission will not be involved in the consideration, approval or review of such agreements. Section 21.08.100 also provides that a renewable energy development agreement may be exempted from the annual

review provisions of Title 20, section 20.08.050 if the renewable energy development agreement contains the enforcement provisions set forth in sections 21.24.10 to 21.24.080 of Title 21. In accordance with section 21.08.100, the planning commission shall not be involved with the consideration, approval or review of renewable energy development permits, including related California Environmental Quality Act documents, and in a renewable energy development agreement, the Board of Supervisors may exempt the agreement from the annual review provisions of Title 20, section 20.08.050 if the agreement contains the enforcement provisions set forth in sections 21.24.10 to 21.24.080 of this Title.

SECTION 5 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 thereof, this Ordinance shall be published as required by Government Code Section 25124. The Clerk of this Board is hereby instructed and ordered to so publish this Ordinance together with the names of the Board voting for and against the same.

PASSED AND ADOPTED this 17th day of August, 2010.

AYES: Supervisors Arcularius, Cash, Brown, Fortney and Cervantes
NOES: -0-
ABSENT: -0-
ABSTAIN: -0-



Chairperson, Inyo County Board of Supervisors

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

by: 
Patricia Gunsolley, Assistant



AGENDA REQUEST FORM
BOARD OF SUPERVISORS
COUNTY OF INYO

For Clerk's Use Only:
AGENDA NUMBER

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

FROM: Inyo County Planning Department

FOR THE BOARD MEETING OF: April 8, 2014

SUBJECT: Workshop Regarding Inyo County Code Title 21 and Active Applications from Northland Power Independence, LLC and Munro Valley Solar, LLC for Renewable Energy Projects

DEPARTMENTAL RECOMMENDATION: Receive a presentation from staff regarding Inyo County Code Title 21 and current procedures for the processing of existing applications for renewable energy projects and provide direction.

SUMMARY DISCUSSION: In 2010, Inyo County adopted Title 21 of the Inyo County Code (ICC) – refer to attached – establishing regulation of solar and wind renewable energy development. Through the use of the County's police power, the Ordinance protects the health, safety and welfare of the County's citizens, environment, and public trust resources by requiring that the adverse impacts of development of the County's solar and wind resources are avoided or acceptably mitigated. As part of these protections, the Ordinance requires a reclamation plan and financial assurances adequate to ensure that project sites are fully reclaimed upon cessation of operations.

Under the Ordinance, before commencing construction of a solar thermal, photovoltaic, or wind energy powerplant or an electric transmission line associated with these types of powerplants, a developer is required to obtain a Renewable Energy Permit from the County or enter into a Renewable Energy Development Agreement with the County. The Ordinance requires a Renewable Energy Impact Determination from the County in instances in which the project is not required to obtain a Renewable Energy Permit from the County. The purpose of the Renewable Energy Impact Determination is to ensure that mitigation measures that would otherwise be addressed in a Renewable Energy Permit and/or Renewable Energy Development Agreement that are identified by the Renewable Energy Impact Determination are, to the extent possible, incorporated into any approval of the facility granted by another agency.

The Ordinance exempts developers of renewable energy projects from the requirement of obtaining a Renewable Energy Permit or Renewable Energy Impact Determination from the County if the developer and the County enter a mutually agreeable Renewable Energy Development Agreement. The Ordinance encourages Renewable Energy Development Agreements.

The Ordinance stipulates that: (1) the County Planning Commission will not be involved in the consideration, approval, or review of Renewable Energy Development Agreements or related environmental documents (the Board will handle those responsibilities); (2) Renewable Energy Development Agreements may be exempted by the Board from the annual review provision applicable to Development Agreements, and; (3) the County may impose upon projects subject to Renewable Energy Development Agreements and Renewable Energy Permits such standards as are deemed appropriate to address noise, light and glare, setbacks to property lines and between

structures in lieu of imposing the standards that would normally be applicable that are contained in the County Zoning Ordinance.

Under the Ordinance, all renewable energy projects must be consistent with the County General Plan. The General Plan only permits renewable energy projects in the General Industrial Land Use Classification. Rather than redesignate sites to this Classification, staff prefers to create a Solar Overlay or other similar mechanism that only adds one specific land use – i.e., solar energy. Several projects are being processed currently, and staff seeks direction regarding this issue given the ongoing work on the Renewable Energy General Plan Amendment. With the several projects currently being processed, staff will continue to evaluate each in a manner consistent with County land use policies and make appropriate recommendations.

OTHER AGENCY INVOLVEMENT: None directly; other agencies may be involved in permitting specific projects.

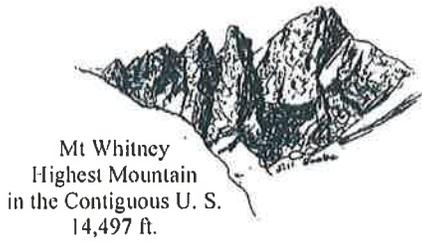
FINANCING: General fund resources are utilized to monitor State legislative activities.

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

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

Date: _____

28



Inyo County Superintendent of Schools
Dr. Terence K. McAteer

Date: April 1, 2014

To: Inyo County Board of Supervisors

From: Dr. Terence K. McAteer, Inyo County
Superintendent of Schools

Subject: **Order of Election and Request for Consolidated Election**

There have been no changes in the boundaries of the Inyo County Board of Education trustee areas.

The Inyo County Board of Education requests consolidation with the June 3, 2014 election.

Attached is the Order of Election Resolution ratified at the Inyo County Board of Education meeting on January 21, 2014, and copies of the agenda and minutes of the meeting.

Respectfully,

Terence K. McAteer

88

ORDER OF ELECTION
Inyo County Board of Education
Resolution No. 2014-01

TO: Inyo County Clerk

FROM: Inyo County Board of Education

WHEREAS the election for Trustees of the Inyo County Board of Education is to be held on June 3, 2014

NOW THEREFORE BE IT RESOLVED that at said election there will be a total of 4 offices to be voted upon to elect Trustees to serve until their terms expire (Ed. Code §1007) and,

The Trustee Areas up for election are: AREAS I, II, III AND V

That Trustees for the Inyo County board of Education are elected by Trustee Area. Candidates must qualify by area and only those voters residing within a trustee area may vote for candidates within that area and,

FURTHERMORE this election is to be held pursuant to Board action, and the Board has determined the following election particulars:

- A. Length of Candidates' Statements shall not exceed 200 words (Specify either 200 or 400 words (E.C. §13307a)
- B. The cost of the Candidates' Statements shall be paid by the CANDIDATES (Specify candidate or district (E.C. §13307e)
- C. In the case of a tie vote, the election shall be determined by LOT (Specify by lot or run off election)
- D. That all election costs shall be paid by the County Board of Education in accordance with §10517 and 10520 of the California Elections Code. The Board hereby requests the Inyo County Clerk to provide all necessary assistance and services under these provisions.
- E. The Board requests that if our election is contained either wholly or in part within any other jurisdiction going to election on the same date that our election be consolidated with said election so that the same polling places may be used and only one form of ballot required. (E.C. §10403)
- F. The County Board of Education hereby certifies that:

- There have been no Trustee Area boundary changes since our last election
- There have been changes to Trustee area boundaries since our last election as shown on the attached map and/or description.

IT IS HEREBY ORDERED that the Clerk of the Inyo County Board of Education shall deliver not less than 125 days prior to the date set for the election a copy of this Resolution and Order to the Inyo County Clerk and the Inyo County Board of Supervisors.

The foregoing Resolution and Order was adopted by a formal vote of the Inyo County Board of Education, being the Board authorized by law to make the designations therein contained on January 21, 2014, by the following vote:

Ayes: 5
Noes: 0
Absent: 0

CERTIFICATION

STATE OF CALIFORNIA, County of Inyo

I hereby certify that the foregoing is a full, true, and correct transcript of a resolution duly adopted and affirmed by a formal vote of the members of the Inyo County Board of Education named therein at a duly constituted Regular meeting of said Board which was open to the public, held at its usual meeting place on January 21, 2014, as it appears upon the minutes of said meeting of the Board.

1/20/14 (Signed) [Signature]
Date Secretary of the Governing Board

at Bishop, California
Place Executed

INYO COUNTY BOARD OF EDUCATION
Meeting – Tuesday, January 21, 2014

Inyo County Superintendent of Schools
George Lozito Conference Room
166 Grandview Lane
Bishop, California

Regular Meeting – 12:15 p.m.

AGENDA

An individual who requires disability-related accommodations or modifications, including auxiliary aids and services, in order to participate in the Board meeting should contact the Superintendent's office. (Government Code 54954.2)

Any writings or documents that are public records and are provided to a majority of the governing board regarding an open session item on this agenda will be made available for public inspection in the Inyo County Superintendent of Schools administrative office located at 555 S. Clay Street, Independence, CA 93526 during normal business hours.

Members of the public are encouraged to attend Board meetings and address the Board concerning any item on the agenda within the Board's jurisdiction. A person wishing to be heard by the Board shall first be recognized by the President and shall then proceed to comment as briefly as the subject permits. (Board Bylaw 9323)

Please note early start at 12:15 p.m. - Touring laptop classrooms 1:00 – 2:20

I. PRELIMINARY ACTION

- A. Call to Order
- B. Flag Salute
- C. Roll Call/Quorum
- D. Approval of the Agenda

II. PUBLIC COMMENT SESSION

At this point, members of the audience, staff and/or Board may make statements to the Board.
No action will be taken at this time.

III. ACTION SESSION

- A. General Functions of the Board
 - 1. Approval of Consent Agenda Action
 - a. Approval of Minutes (December 11, 2013 - Regular Meeting)
 - b. Ratification of Temporary Certificates Issued prior to January 21, 2014
- B. Business
 - 1. Budget Revisions (Snyder) Action
 - 2. Acceptance of the 2012-13 Audit Report (Snyder) Action
- C. Open Items
 - 1. Williams Settlement Legislation Quarterly Uniform Complaint Reports Information
 - 2. Adoption of Board Resolution #2014-01 "Notice of Order of Election of the Inyo County Board of Education" trustee election and request the Board of Supervisors consolidate the election Action
 - 3. Notification of intent to employ Sara Vega on a provisional basis at the Jill Kinmont Boothe School Information
 - 4. Board/Superintendent Round Table Information

IV. DISCUSSION/CONSULTATION SESSION

- A. Correspondence
 - 1. Thank you card from Kim and Sara in Compton
 - 2. Christmas card from YouthBuild
- B. Next Meeting

Tuesday, February 18, 2014 – Inyo County Superintendent of Schools, Bishop – 11:00 a.m. (Regular Meeting)

V. ADJOURNMENT

INYO COUNTY BOARD OF EDUCATION
REGULAR MEETING OF THE BOARD OF TRUSTEES
MINUTES

PRELIMINARY ACTION

1. Call To Order
The meeting was called to order at 12:22 p.m. at the GLCC in Bishop, CA.
2. Roll Call/Quorum
Roll call established a quorum with the following members present:

Chris Langley, President	Alden Nash, Vice President	Mary Kemp, Member
David Hefner, Member	LeeAnn Rasmuson, Member	
<u>Staff:</u> Terry McAteer	Kim Cash-Miller	
<u>ICSOS Staff:</u> Dan Munis	Tom Snyder	Pamela Jones
<u>Public:</u> Deborah Murphy		
3. Approval Of The Agenda
M. Kemp moved, seconded by D. Hefner to approve the agenda. Motion carried 5-0.

PUBLIC COMMENT SESSION

No public comment was expressed during the comment session.

ACTION SESSION

1. Approval of Consent Agenda - M. Kemp moved, seconded by D. Hefner, to approve the revised minutes of the December 11 Regular Meeting and to ratify temporary county certificates issued prior to January 21, 2014. Motion carried 5-0.
2. Business - Budget Revisions – A. Nash moved, seconded by L. Rasmuson, to approve the budget revisions. Motion carried 5-0. Acceptance of the 2012-2013 Audit Report - M. Kemp moved, seconded by D. Hefner, to accept the 2012-2013 Audit Report. Motion carried 5-0.

OPEN ITEMS

1. Superintendent's Report – Williams Settlement Legislation Quarterly Uniform Complaint Reports were presented as information only and there were no complaints. Adoption of Board Resolution #2014-01 "Notice of Order of Election of the Inyo County Board of Education" trustee election and request the Board of Supervisors consolidate the election - M. Kemp moved, seconded by D. Hefner, to adopt. Motion carried 5-0. Notification of intent to employ Sara Vega on a provisional basis at the Jill Kinmont Boothe School was given. T. McAteer handed out a list of dates for the upcoming Community Reads events, and a thank you letter from Cerro Coso for the generous donation of the IT equipment for the great room.

The members of the Board went to tour the classrooms that are utilizing the new laptops at Bishop and Round Valley schools.

ADJOURNMENT

The meeting adjourned at 2:30 p.m. to Tuesday, February 18th, 2014, at the GLCC in Bishop, CA.

Respectfully submitted,

Dr. Terence K. McAteer
Inyo County Superintendent/Secretary to the Board