

# Agenda



## County of Inyo Board of Supervisors

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

**NOTICE TO THE PUBLIC:** In order to minimize the spread of the COVID-19 virus, Governor Newsom has issued Executive Orders that temporarily suspend certain requirements of the Brown Act. Please be advised that the Board of Supervisors Chambers are closed to the public, and the Board will be conducting its meetings exclusively online. Board Members and Staff will participate via Zoom videoconference from individual, separate locations. The videoconference is accessible to the public at <https://zoom.us/j/868254781>. Individuals will be asked to provide their name and an email address in order to access the videoconference. Anyone who does not want to provide their email address may use the following generic, non-functioning address to gain access: [donotreply@inyocounty.us](mailto:donotreply@inyocounty.us).

Anyone wishing to make either a general public comment or a comment on a specific agenda item prior to the meeting, or as the item is being heard, may do so either in writing, or by utilizing the “**hand-waving**” feature when appropriate in the Zoom meeting (the Board Chair will call on those who wish to speak). Written public comment, limited to **250 words or less**, may be emailed to the Assistant Clerk of the Board at [boardclerk@inyocounty.us](mailto:boardclerk@inyocounty.us). Your emailed comments may or may not be read aloud, but all comments will be made a part of the record. Please make sure to submit a separate email for each item that you wish to comment upon.

**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.

### July 7, 2020 - 8:30 AM

1. **PUBLIC COMMENT** (Join meeting via Zoom [here](#))

### CLOSED SESSION

2. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION** – Los Angeles Department of Water and Power v. County of Inyo et al, Kern Superior Court Case No. BCV-18-101513-KCT (CEQA).
3. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION** – Names of cases: County of Inyo et al. v. Amerisourcebergen Drug Corporation et al (National Prescription Opiate Litigation – Northern District of Ohio. MDL 2804); and In Re Purdue Pharma, L.P., et al., Case No. 19-23649 (RDD) (Bankr. S.D.N.Y.).
4. **CONFERENCE WITH COUNTY’S LABOR NEGOTIATORS** – Regarding employee organizations: Deputy Sheriff’s Association (DSA); Elected Officials Assistant Association (EOAA); Inyo County Correctional Officers Association (ICCOA); Inyo County Employees Association (ICEA); Inyo County Probation Peace Officers Association (ICPPOA); IHSS Workers; Law Enforcement Administrators’ Association (LEAA). Unrepresented employees: all. County designated representatives – Administrative Officer Clint Quilter, Assistant County Administrator Leslie Chapman,

Deputy Personnel Director Sue Dishion, County Counsel Marshall Rudolph, Health and Human Services Director Marilyn Mann, and Chief Probation Officer Jeff Thomson.

**OPEN SESSION** (With the exception of timed items, all open-session items may be considered at any time and in any order during the meeting in the Board's discretion.)

- 10 A.M.
5. ***PLEDGE OF ALLEGIANCE***
  6. ***REPORT ON CLOSED SESSION AS REQUIRED BY LAW.***
  7. ***PUBLIC COMMENT***
  8. ***COUNTY DEPARTMENT REPORTS*** (*Reports limited to two minutes*)
  9. ***COVID-19 STAFF UPDATE***

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

10. **Clerk/Recorder** - Request Board authorize payment to Granicus in an amount of \$10,772.00 for the annual CRiis™ Software License Maintenance and Support Fee, contingent upon the Board's adoption of the Fiscal Year 2020-2021 Budget.
11. **Environmental Health** - Request Board approve Resolution No. 2020-29, titled, "A Resolution of the Board of Supervisors, County of Inyo, State of California Authorizing the Submittal of the Local Enforcement Agency Grant Application," and authorize the Chairperson to sign.
12. **Probation** - Request Board approve Amendment No. 1 to the contract between the County of Inyo and Inyo Council for the Arts of Bishop, CA, to extend the term end date from August 31, 2020 to December 31, 2020, and authorize the Chairperson to sign, contingent upon all appropriate signatures being obtained.
13. **Public Works** - Request Board approve Resolution No. 2020-30, titled, "A Resolution of the Board of Supervisors, County of Inyo, State of California, Adopting Rocking W Drive into the Inyo County Maintained Mileage," and authorize the Chairperson to sign.
14. **Public Works** - Request Board approve the contract between Inyo County and Fountainhead Consulting Services of Anaheim, CA for the performance of construction management services for the North Round Valley Bridge Construction Project in an amount not to exceed \$339,928.37 for the period of July 7, 2020 through December 31, 2021, and authorize the Chairperson to sign, contingent upon all appropriate signatures being obtained.
15. **Public Works** - Request Board authorize an increase of Public Works' Fiscal Year 2019-2020 purchasing authority with Britt's Diesel of Bishop, CA by \$15,000 to a total not-to-exceed amount of \$80,000, Quinn Company by \$20,000 to a total not-to-exceed amount of \$40,000 and Western Nevada Supply by \$20,000 to a total not-to-



exceed amount of \$50,000 for the purchase of auto and building repair items.

16. **Public Works** - Request Board authorize issuance of blanket purchase orders for Fiscal Year 2020-2021 in the following amounts payable to the following vendors, for vehicle and building repair items for Public Works, totaling \$490,000: Britt's Diesel, \$70,000; Silverstate International, \$30,000; Bishop Welding, \$20,000; High Country Building & Lumber, \$30,000; Mission Linen, \$40,000; Coastline Equipment, \$40,000; Snow Survey Associates, \$20,000; Quinn Company, \$30,000; Environmental Concepts, \$40,000; Dave Auto Parts, \$50,000; Western Nevada Supply, \$50,000; Steve's Auto & Truck Parts, \$40,000, and High Desert Trucking School, \$30,000.
17. **Public Works** - Request Board: A) authorize Public Works personnel to sign the California Department of Fish and Wildlife's Incidental Take Permit for the Walker Creek Road Bridge Project; and B) authorize a purchase order in an amount not to exceed \$39,100, payable to West Mojave Conservation Bank-Natural Resources Group, Inc. of West Sacramento, CA for the mitigation credits required by the permit.
18. **Sheriff** - Request Board: A) declare California Department of Justice a sole-source provider of fingerprint verification services; and B) authorize a purchase order in an amount not to exceed \$15,000, payable to California Department of Justice for livescan services, contingent upon the Board's adoption of the Fiscal Year 2020-2021 budget.
19. **Sheriff** - Request Board authorize issuance of a blanket purchase order in an amount not to exceed \$20,000, payable to Office Depot for the purchase of office supplies.
20. **Sheriff** - Request Board authorize issuance of a blanket purchase order in an amount not to exceed \$20,000, payable to Wye Road Feed of Bishop, CA for the purchase of animal supplies, feed and vaccines, contingent upon the Board's adoption of the Fiscal Year 2020-2021 budget.

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

21. **Water Department** - Request Board provide direction to the Owens Valley Groundwater Authority representatives in advance of the OVGA meeting scheduled for July 9, 2020.
22. **Sheriff** - Request Board: A) declare Idemia Identity & Security of Bloomington, MN a sole-source provider of livescan machine maintenance; B) ratify and approve the agreement between the County of Inyo and Idemia Identity & Security of Bloomington, MN for the provision of annual livescan machine maintenance in an amount not to exceed \$12,000 for the period of July 1, 2020 through June 30, 2021, contingent upon the Board's approval of the Fiscal Year 2020-2021 Budget; and C) authorize the Chairperson to sign, contingent upon all appropriate signatures being obtained.
23. **Environmental Health** - Request Board ratify and approve the contract between the County of Inyo (contractor) and the County of Mono (contractee) allowing the contractor to provide personnel services required by Mono County to operate their CUPA program for the period of July 1, 2020 through June 30, 2023, at the rate of \$88/hour, not to exceed \$100,000 in any Fiscal Year, and authorize the Chairperson

to sign.

24. **Public Works** - Request Board: A) approve Resolution No. 2020-31, titled, "A Resolution of the Board of Supervisors of the County of Inyo, State of California, Authorizing Emergency Pavement Repair and Construction on Birchim Lane," and authorize the Chairperson to sign (*4/5ths vote required*); and B) approve the Agreement between the County of Inyo and Qualcon Contractors, Inc. for the provision of emergency paving services in the amount not to exceed \$383,628.96 for the period of July 7, 2020 to August 7, 2020, and authorize the Chairperson to sign, contingent upon the appropriate signatures being obtained.
25. **Probation** - Request Board ratify and approve Amendment No. 5 to the Agreement between the County of Inyo and Noble Software Group, LLC. of Redding, California, to extend the Agreement from July 1, 2020 to June 30, 2021 with the same cost \$5,719 for the annual hosting fee (up to 16 Users) and \$800 for quality assurance (IRR Site Access, 8 Users), remove Section 23- Limitation of Liability of the original Agreement, and add Section 22.5 to the Agreement - Inyo County, its officers, officials, employees, and volunteers are covered as additional insureds on the general liability policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations, contingent upon the Board's approval of the Fiscal Year 2020-2021 Budget, and authorize the Chairperson to sign, contingent upon all appropriate signatures being obtained.
26. **Probation** - Request Board ratify and approve Amendment No. 1 to the Agreement between the County of Inyo and Siemens Industry Inc. of Fresno, CA, to extend the Agreement from July 1, 2020 to June 30, 2021 with the same cost of \$7,242 paid in two installments per year for the semi-annual inspection and maintenance of equipment services (fire and safety equipment – fire suppression system), contingent upon the Board's approval of the Fiscal Year 2020-2021 Budget, and authorize the Chairperson to sign, contingent upon all appropriate signatures being obtained.
27. **Health & Human Services - Health/Prevention** - Request Board ratify and approve agreement 20-10220 between the County of Inyo and the California Department of Health Care Services (DHCS) for the reimbursement of administrative costs for the Medi-Cal Inmate Program (MCIP) to DHCS in an amount not to exceed \$2,500 for the period of July 1, 2020 to June 30, 2023, contingent upon the Board's approval of future budgets, and authorize the HHS Director to sign 2 copies.
28. **Health & Human Services - Health/Prevention** - Request Board ratify and approve the Standard Agreement Between the County of Inyo and California Department of Public Health, AIDS Drug Assistance Program, Office of AIDS, Agreement 20-10139, to continue Inyo County HHS/Public Health as an Enrollment site, for the period of July 1, 2020 through June 30, 2023 and authorize the HHS Director to sign the Standard Agreement, Contractor Certification CCC-307 form and Darfur Contracting Act form.
29. **Health & Human Services - Social Services** - Request Board ratify and approve the Memorandum of Understanding with Kern County for provision of Adoptions Services for the period July 1, 2020 through June 30, 2025, and authorize the Chairperson to sign four (4) original copies.

30. **County Administrator - Recycling & Waste Management** - Request Board ratify and approve the contract between the County of Inyo and Brown's Supply of Bishop, CA for the provision of cardboard processing in an amount not to exceed \$126,000 for the period of July 1, 2020 through June 30, 2023, contingent upon the Board's approval of future budgets, and authorize the Chairperson to sign, contingent upon all appropriate signatures being obtained.
31. **Clerk of the Board** - Request Board approve the minutes of the regular Board of Supervisors meetings of June 9, 2020 and June 16, 2020, and the special Board meeting of June 30, 2020.

**TIMED ITEMS** (Items will not be considered before scheduled time but may be considered any time after the scheduled time.)

32. **10:30 A.M. - PUBLIC WORKS - Road Department** - Request Board approve an ordinance titled, "An Ordinance of the Board of Supervisors of the County of Inyo, State of California, Adding Chapter 12.20 to the Inyo County Code and Amending Chapter 12.08 of the Inyo County Code."

**CORRESPONDENCE - ACTION**

33. **Inyo-Mono Advocates for Community Action** - Request Board authorize the County Administrator's signature on Attachment C to Inyo-Mono Advocates for Community Action's Grant Application for funding services and activities for homeless and at-risk of homelessness populations.

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

34. **PUBLIC COMMENT**

**BOARD MEMBERS AND STAFF REPORTS**

**CORRESPONDENCE - INFORMATIONAL**

35. **Inyo County Auditor-Controller** - An actual count of money in the hands of the Treasurer made June 30, 2020.
36. **Inyo County Sheriff** - Sheriff's Office and Jail Overtime Reports for February, March, April, and May 2020.
37. **Inyo County Treasurer-Tax Collector** - Treasury Status Report for the Quarter Ending March 31, 2020.



# County of Inyo



## Clerk/Recorder

### CONSENT - ACTION REQUIRED

**MEETING:** July 7, 2020

**FROM:** Clerk-Recorder's Department

**SUBJECT:** Approval to authorize payment to Granicus for annual Software License Maintenance and Support Fee.

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**RECOMMENDED ACTION:**

Request Board authorize payment to Granicus in an amount of \$10,772.00 for the annual CRiis™ Software License Maintenance and Support Fee, contingent upon the Board's adoption of the Fiscal Year 2020-2021 Budget.

**SUMMARY/JUSTIFICATION:**

AtPac is the sole source provider of the Recorder's Cashiering and Imaging System (CRiis™). The payment of this annual CRiis™ license fee is a requirement of continuing with the Recorder's Cashiering and Imaging System. CRiis™ is the cashiering system for the offices of the County Clerk, Recorder and Registrar of Voters. CRiis™ is also the system that facilitates recording land documents into the permanent record, issuance of Marriage Licenses and issuance of certified copies of Vital Records. A five year Agreement was entered into by Inyo County and AtPac on July 1, 2016, which shall expire July 1, 2021. Southtech Systems, LLC purchased AtPac on March 1, 2017 and an Assignment and Novation Agreement was signed by Inyo County, AtPac and Southtech Systems, LLC. On November 9, 2018, Granicus, LLC acquired Southtech Systems with Granicus being the Sole Member.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

N/A

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

The Board can deny the payment, which would result in the discontinuation of the Recorder's Cashiering and Imaging System (CRiis™) and the inability to issue Marriage Licenses or to record documents into the permanent records as required by State law.

**OTHER AGENCY INVOLVEMENT:**

**FINANCING:**

Sufficient funds to cover this annual payment are contained in budget (023401-5311), contingent upon the adoption of the 2020-2021 budget.

**ATTACHMENTS:**

1. Granicas Invoice
2. SouthTech Systems LLC Operating Agreement
3. Atpac Contract
4. Assignment and Novation Agreement Atpac and Southtech 2016

**APPROVALS:**

|                   |                               |
|-------------------|-------------------------------|
| Michele Hartshorn | Created/Initiated - 6/18/2020 |
| Darcy Ellis       | Approved - 6/25/2020          |
| Michele Hartshorn | Approved - 6/25/2020          |
| Marshall Rudolph  | Approved - 6/25/2020          |
| Amy Shepherd      | Approved - 6/29/2020          |
| Kammi Foote       | Final Approval - 6/29/2020    |



# Invoice

Granicus  
 Dept CH – Box 19634  
 Palatine, IL 60055 - 9634

Please remit via ACH to:  
 Routing #: 022000020 Acct #: 269099115

|                    |           |                  |           |
|--------------------|-----------|------------------|-----------|
| <b>Date</b>        | 5/31/2020 | <b>Invoice #</b> | 127357    |
| <b>Terms</b>       | Net 30    | <b>Due Date</b>  | 6/30/2020 |
| <b>P.O. Number</b> |           |                  |           |

|   |
|---|
| <b>Bill To</b>  |
| Inyo County CA<br>P.O. Drawer N<br>Independence CA 93526<br>United States |

|   |
|---|
| <b>Sold To</b>  |
| Inyo County CA<br>P.O. Drawer N<br>Independence CA 93526<br>United States |

| Description                                | Term Start Date | Term End Date | Amount    |
|--|-----------------|---------------|-----------|
| CRiis CyberScience Maintenance and Support | 7/1/2020        | 6/30/2021     | 692.00    |
| CRiis Maintenance and Support              | 7/1/2020        | 6/30/2021     | 10,080.00 |

For any questions about your invoice, please contact us at  
 AR@granicus.com or 1-800-314-0147

Thank you for your business

|                   |                  |
|-------------------|------------------|
| <b>Total</b>      | \$ 10,772.00 USD |
| <b>Amount Due</b> | \$ 10,772.00 USD |
| <b>Total</b>      | \$10,772.00      |

OPERATING AGREEMENT  
OF  
SOUTHTECH SYSTEMS, LLC

This Operating Agreement (this “Agreement”) of SouthTech Systems, LLC, a California limited liability company (the “Company”), is entered into as of January 3, 2019, by Granicus, LLC, a Minnesota limited liability company and sole member of the Company (the “Member”).

RECITALS

Pursuant to the filing of the “Articles of Organization-Conversion” (“Articles”) with the California Secretary of State, the Company was formed as a California limited liability company on January 3, 2019 under the California Revised Uniform Limited Liability Company Act, as amended from time to time (the “Act”). The Company was formerly a California corporation and converted to a California limited liability company in conjunction with the filing of the Articles.

In connection with the transactions contemplated under that certain Securities Purchase and Contribution Agreement, dated as of November 9, 2018, by and among the Member and other parties named therein, the Member has acquired all of the membership interests of the Company.

The Member desires to enter into this Agreement, pursuant to which the rights and obligations of the Member and certain other constituencies of the Company shall be set forth and agreed upon as of the date hereof.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby established, the Member hereby agrees as follows:

AGREEMENT

1. Name. The name of the Company is SouthTech Systems, LLC.
2. Purpose. The Company is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, engaging in any lawful act or activity for which limited liability companies may be formed under the Act.
3. Term. The existence of the Company as a California limited liability company commenced on the date the Articles were filed with the Secretary of State of California and shall continue until the Company is dissolved by act of the Member or by operation law.
4. Principal Office Address. The address of the principal office address of the Company is 4181 Flat Rock Drive, Ste. 300, Riverside, California 92505.
5. Registered Agent. The name and address of the registered agent of the Company for service of process on the Company in the State of California is C T Corporation System at 818 West Seventh Street, Suite 930, Los Angeles, California 90017, or other such qualified person as the Member shall from time to time select.
6. Member and Membership Interests Ownership. The Member and its percentage ownership of the Company are set forth in Exhibit A, as amended from time to time in accordance with the terms of this Agreement.



7. Management.

(a) All management powers over the business and affairs of the Company shall be exclusively vested in the Member, and the Member shall conduct, direct and exercise full control over all activities of the Company.

(b) Unless otherwise restricted by the Company's Articles of Organization, any action required to be taken at any meeting of the members or any action which may be taken at any annual or special meeting of such members, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken and bearing the dates of signature of the members who signed the consent or consents, shall be signed by the holders of outstanding membership interests having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all membership interests entitled to vote thereon were present and voted and shall be delivered to the Company by delivery to its registered office in the state of California, or the Company's principal place of business, or an officer or agent of the corporation having custody of the book or books in which proceedings of meetings of the members are recorded. Any action taken pursuant to such written consent or consents of the members shall have the same force and effect as if taken by the members at a meeting thereof.

(c) The Member may, from time to time, designate one or more persons to be officers of the Company. No officer need be a resident of the State of California or a member. Any officers so designated shall have such authority and perform such duties as the Member may, from time to time, delegate to them. The Member may assign titles to particular officers. Unless the Member otherwise decides, if the title is one commonly used for officers of a business corporation, the assignment of such title shall constitute the delegation to such officer of the authority and duties that are normally associated with that office, subject to any specific delegation of authority and duties made to such officer by the Member. Each officer shall hold office until his successor shall be duly designated and shall qualify or until his death or until he or she shall resign or shall have been removed in the manner hereinafter provided. Any number of offices may be held by the same individual. Any officer may resign as such at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, at the time of its receipt by the Member. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation. Any officer may be removed as such, either with or without cause, by the Member whenever in the Member's judgment the best interests of the Company shall be served thereby.

8. Allocations of Profits and Losses. The Company's profits and losses shall be allocated to the Member as determined by the Member.

9. Distributions. Distributions shall be made to the Member at the time and in the aggregate amounts determined by the Member.

10. Indemnification; Exculpation.

(a) The Company hereby agrees to indemnify and hold harmless any person (each an "Indemnified Person") to the fullest extent permitted under the Act, as the same now exists or may hereafter be amended, substituted or replaced (but, in the case of any such amendment, substitution or replacement only to the extent that such amendment, substitution or replacement permits the Company to provide broader indemnification rights than the Company is providing immediately prior to such amendment), against all expenses, liabilities and losses (including attorneys' fees, judgments, fines, excise taxes or penalties) reasonably incurred or suffered by such person by reason of the fact that such person is or was a member of the Company, is or was serving as an officer of the Company or is or was

serving at the request of the Company as an officer, director, principal, member, employee or agent of another corporation, partnership, joint venture, limited liability company, trust or other enterprise; provided that (unless the Member otherwise consents) no Indemnified Person shall be indemnified for any expenses, liabilities and losses suffered that are attributable to such Indemnified Person's gross negligence, willful misconduct or knowing violation of law. Expenses, including attorneys' fees, incurred by any such Indemnified Person in defending a proceeding shall be paid by the Company in advance of the final disposition of such proceeding, including any appeal therefrom, upon receipt of an undertaking by or on behalf of such Indemnified Person to repay such amount if it shall ultimately be determined that such Indemnified Person is not entitled to be indemnified by the Company. The Company may, by action of the Member, provide indemnification to employees and agents of the corporation with the same scope and effect as the foregoing indemnification of members and officers.

(b) Notwithstanding anything contained herein to the contrary, any indemnity by the Company shall be provided out of and to the extent of Company assets only, and the Member shall have no personal liability on account thereof and shall not be required to make additional capital contributions to help satisfy such indemnity of the Company.

(c) None of the Indemnified Persons shall be liable to the Member or the Company for mistakes of judgment, or for action or inaction, taken in good faith, or for losses due to such mistakes, action or inaction, or to the negligence, dishonesty, or bad faith of any employee, broker or other agent of the Company, provided that such employee, broker or agent was selected, engaged, or retained with reasonable care. Any party entitled to relief hereunder may consult with legal counsel and accountants in respect of affairs of the Company and be fully protected and justified in any reasonable action or inaction that is taken in good faith in accordance with the advice or opinion of such counsel or accountants, provided that they shall have been selected with reasonable care. Notwithstanding any of the foregoing to the contrary, the provisions of this paragraph shall not be construed so as to relieve (or attempt to relieve) any person of any liability (i) for conduct which is grossly negligent, reckless, or intentionally wrongful or criminally unlawful, provided that such person had no reasonable cause to believe that his or its conduct was unlawful, or (ii) to the extent (but only to the extent) that such liability may not be waived, modified, or limited under applicable law.

(d) The right to indemnification and the advancement and payment of expenses conferred in this Section 10 shall not be exclusive of any other right which an Indemnified Person may have or hereafter acquire under any law (common or statutory), agreement, vote of the Member or otherwise.

11. Membership Interests Certificates. The membership interests of the Member as provided on Exhibit A, shall be uncertificated unless otherwise determined by the Member.

12. Pledgee's Rights. Notwithstanding anything contained herein to the contrary, the Member shall be permitted to pledge or hypothecate any or all of its membership interests, including all interests, economic rights, control rights, and status rights as a Member, to any lender to the Company or an affiliate of the Company or any agent acting on such lender's behalf, and any transfer of such membership interests pursuant to any such lender's (or agent's) exercise of remedies in connection with any such pledge or hypothecation shall be permitted under this Agreement with no further action or approval required hereunder. Notwithstanding anything contained herein to the contrary, upon default under the financing giving rise to any pledge or hypothecation of membership interests, the lender (or agent) shall have the right, as set forth in the applicable pledge or hypothecation agreement, and without further approval of the Member and without becoming a member, to exercise the membership voting rights of the Member granting such pledge or hypothecation. Notwithstanding anything contained herein to the contrary, and without complying with any other procedures set forth in this Agreement, upon the

exercise of remedies in connection with a pledge or hypothecation, (a) the lender (or agent) or transferee of such lender (or agent), as the case may be, shall become a member under this Agreement and shall succeed to all of the rights and powers, including the right to participate in the management of the business and affairs of the Company, and shall be bound by all of the obligations, of a member under this Agreement without taking any further action on the part of such lender (or agent) or transferee, as the case may be, and (b) following such exercise of remedies, the pledging Member shall cease to be a member and shall have no further rights or powers under this Agreement. The execution and delivery of this Agreement by a member shall constitute any necessary approval of such member under the Act to the foregoing provisions of this Section 12. This Section 12 may not be amended or modified so long as any of the membership interests are subject to a pledge or hypothecation without the pledgee's (or the transferee of such pledgee's) prior written consent. Each recipient of a pledge or hypothecation of the membership interest shall be a third party beneficiary of the provisions of this Section 12.

13. Assignments. The Member may assign, sell, transfer or otherwise dispose of, in whole or in part, its membership interest in the Company.

14. Additional Members. One or more additional members of the Company may be admitted to the Company with the consent of the Member.

15. Liability of Members. The Member shall not have any liability for the obligations or liabilities of the Company except to the extent required by the Act.

16. Governing Law. This Agreement shall be governed by, and construed under, the laws of the State of California, all rights and remedies being governed by said laws.

17. Amendment. This Agreement may be amended or modified only by a writing that makes reference to this Agreement and is signed by the Member.

\* \* \* \* \*

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Limited Liability Company Agreement as of the day first above-written.

**SOLE MEMBER:**

**GRANICUS, LLC**

By:   
Name: Mark Hynes  
Its: Chief Executive Officer and Secretary

**Exhibit A**

| <u>Member</u>  | <u>Percentage Ownership</u> |
|--|-----------------------------|
| Granicus, LLC<br>707 17th Street, Suite 4000<br>Denver, CO 80202 | 100%                        |

## *CRIS* PROGRAM LICENSE AGREEMENT

|                                |         |                                    |
|--------------------------------|---------|------------------------------------|
|                                | between |                                    |
| County of Inyo                 | and     | <i>AtPac</i>                       |
| 168 North Edwards Street       |         | 10113 Alta Sierra Drive, Suite 102 |
| Independence, California 93526 |         | Grass Valley, California 95949     |
| Attn: Beverly J. Harry         |         | Attn: James P. Maclam              |
| (760) 878-0220                 |         | (530) 272-0596                     |
| (760) 878-2298/Fax             |         | (530) 272-5098/Fax                 |
| as Licensee                    |         | as Licensor                        |

### Recitals

Whereas, it is the desire of the Licensee to acquire a Clerk-Recorder Imaging Information System (*CRIS*) license from Licensor, and

Whereas, it is the desire of Licensor to provide the *CRIS* license to Licensee according to the terms and conditions of this Agreement, and

Whereas, it is the understanding of the parties that Licensor is providing, for a fee, the *CRIS* licensed software in combination with other products to meet the needs of the Licensee as stated in Licensee's Request for Proposals and *AtPac*'s Response dated October 15, 1999,

Now therefore, the parties mutually agree as follows:

### 1. License.

#### **1.1 Type; Fees.**

The parties hereby agree that Licensor shall grant a non-transferable and non-exclusive license to Licensee under the terms and conditions stated below. Licensee shall pay to Licensor a fee for the license rights and obligations defined in this Agreement. All fees for this license and other products and services are described in Attachment A of this Agreement.

#### **1.2 Package.**

This license shall apply to the Licensor's functional description of the software products and services listed in Attachment A of this Agreement, in any form or medium, and all associated or related documentation and materials whether supplied as part of the license or as part of a bid or other proposal document (package). The package shall at all times be proprietary to the Licensor. No transfer of title or property vis-a-vis the package is intended by this Agreement.

#### **1.3 Acceptance; Termination**

This license becomes effective when signed by the Licensor and Licensee, on the date of the later signature. Licensee may terminate the license granted by this Agreement upon ninety (90) days prior written notice to Licensor. Licensor may terminate the license granted by this Agreement in the event the Licensee fails to comply with any of the terms and/or conditions of this

Agreement upon ninety (90) days prior written notice.

#### 1.4 Package Use.

The package may only be used, on and in connection with central processing unit(s) (System) located at:

168 North Edwards Street, Independence, California

or as they may be from time-to-time moved with the Licensee operations.

## 2. Terms and Conditions

### 2.1 Definitions

This Agreement incorporates by reference the standard definitions of the computer industry established by trade usage or custom to the extent such standard definitions do not contradict the definitions provided in this Agreement.

### 2.2 Proprietary Rights; Non-disclosure.

Licensor, the originator of the package (products), retains title to the package. Licensee acknowledges that the package (software programs, scripts, macros, documentation, user manuals, help files, and other materials) supplied by Licensor to Licensee are subject to the proprietary rights of Licensor, are trade secrets of Licensor and are protected by civil and criminal law. Licensee will use its best efforts to carefully and continuously protect the confidentiality of said trade secrets and will not release or disclose them to third parties. At the option of Licensor, the Licensee will have its employees, agents, officers, and/or sub-contractors execute non-disclosure agreements for the protection of Licensor's intellectual property.

### 2.3 Notice of Rights

Licensee shall reproduce and include the entire notice of proprietary rights of Licensor on all copies of the package in any form, in whole or in part. Said copies shall only be made as expressly provided by this Agreement.

### 2.4 Notice of Unauthorized Use.

Licensee shall notify Licensor immediately of known or suspected unauthorized use, access, or possession of the package or any part thereof. Licensee shall assist Licensor in the protections of its proprietary rights by permitting representatives of Licensor to inspect at all reasonable times any location at which package is used or kept, or may be located or kept.

### 2.5 Reproduction

Unless otherwise provided in writing, all documents provided to the Licensee per this Agreement may not be reproduced by Licensee. Additional copies of user documentation may be obtained from Licensor. Documentation shall only be given to employees, for internal use, subject to all the terms and conditions of this Agreement.



#### **2.6 Copies; Audit**

Any licensed programs which are provided in machine-readable form may be copied, in whole or in part, in printed machine-readable form in sufficient number for use by the Licensee with the designated central processing unit, for backup purposes, provided however, that no more than three (3) printed copies will be under any license at any one time without the prior written consent of Licensor. The Licensee agrees to maintain appropriate records of the number and locations of copies of the licensed package. The original, and any copies of the licensed package, in whole or in part, which are made by the Licensee shall be the property of Licensor. This does not imply that Licensor owns the media on which the licensed package is recorded. Licensee agrees to make its facilities available upon written notice for inspection and audit at the cost of Licensor for determination of the number of copies and/or license locations.

#### **2.7 Default.**

Deliberate failure on the part of Licensee to comply with any provisions of this Agreement shall be cause for default and termination. Upon such termination any and all fees shall become immediately due and payable.

#### **2.8 Duty Upon Termination.**

Upon expiration or termination of this Agreement, Licensee will return the package to Licensor and all materials of a confidential and/or proprietary nature, as well as any and all copies of the same, and all property (tangible or intangible) belonging to Licensor; or, will certify to Licensor in writing through the best efforts of Licensee; and to the best of Licensee's knowledge, the original and all copies, in whole or in part, in any form, of the package received under the terms of this Agreement or made in connections with this Agreement have been destroyed, except that the Licensee may retain a copy for archive purposes.

#### **2.9 Liens.**

Licensee shall keep each and every item to which Licensor retains title free and clear of all claims, liens and encumbrances except those of Licensor, and any act of Licensee, voluntary or involuntary, purporting to create a claim of law or encumbrance on such an item shall be void.

#### **2.10 Insolvency.**

If Licensor ceases conducting business in the normal manner, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or its assets or avails itself of, or becomes subject to, any proceeding under the Federal Bankruptcy Act, other than re-organization, Licensee may, at its own option, terminate this Agreement upon five (5) days written notice. At such time, Licensee may have End User licensed access to the Source Code for the sole purpose of maintaining and updating the Clerk-Recorder System to avoid cessation of service or loss to Licensee for the term of the then current license term. An Escrow Agreement Memorandum is attached hereto and made a part of this Agreement.

**2.11 Notice.**

All notices, requests, demands and other communications called for or contemplated in this **Agreement** shall be in writing and shall be deemed to have been duly given when personally delivered, or four (4) days after being mailed (the date of the mailing shall count as the first day) by United States certified or registered mail, postage prepaid, addressed to the appropriate party at the first above-mentioned address or such other address as the parties may designate by written notice in the manner described above.

**2.12 Assignability**

This **Agreement** and any of the licensed materials, products, and any and all related materials to which it applies may not be assigned, sub-licensed or otherwise transferred by the **Licensee**. Any attempt by the **Licensee** to assign any of its rights, duties, or obligations under this **Agreement**, or any of the **Licensor's** package or materials to which this **Agreement** applies are void.

**2.13 Taxes.**

**Licensee** is responsible for the payment of any and all taxes or other governmental charges resulting from this license and/or use of the package, including but not limited to sales taxes, excise taxes, permit fees, governmental license fees, and other such governmental charges associated with the license of the **Licensor's** materials.

**2.14 Delays.**

**Licensor** shall not be liable for any damages or penalty for delay in delivery or non-performance on its part, when such results from cause beyond the control of **Licensor**, including but not limited to delays in transportation.

**2.15 Arbitration.**

By mutual agreement of the parties, any controversy between the parties to this **Agreement** involving the construction or application of any term, condition, or promise contained in this **Agreement**, or with respect to any breach or alleged breach of any obligation, duty, responsibility or covenant contained in this **Agreement**, may be submitted to arbitration, upon written consent of one party served on the other party, and such arbitration shall be governed by the provisions of the California Arbitration Act, as set forth in the California Code of Civil Procedure.

**2.16 Attorney's Fees.**

If any legal claim or arbitration is brought or commenced by either party to this **Agreement** against the other for the enforcement of this **Agreement** or because of an alleged dispute, breach or default under this **Agreement**, the prevailing party shall be entitled to recovery of reasonable attorney's fees and other cost in such action in addition to all other relief to which said party may be entitled.

**2.17 Injunctive Relief.**

If the **Licensee** attempts to use, copy, license or convey the items supplied by the **Licensor** under

the terms and conditions of this Agreement, in a manner contrary to this Agreement or the terms of any collateral Agreement, or in derogation of the Licensor's proprietary rights, whether these rights are explicitly stated in this Agreement or are determined by law, Licensor shall have, in addition to any other remedies available to it, the right to injunctive relief enjoining such action.

**2.18 Warranty.**

Licensee acknowledges the complexity and interrelationship of each of the component parts comprising the package and agrees that the sole liability of the Licensor to the Licensee, and Licensee's exclusive remedy against the Licensor for any inherent defects in the package shall be limited to the Licensor providing adequate programming services to correct any such inherent defect, by repairing or replacing, as Licensor deems necessary or appropriate, upon notice from Licensee, within thirty (30) days.

LICENSOR MAKES NO WARRANTY, WHETHER EXPRESSED OR IMPLIED, OR WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, CONCERNING THE PACKAGE. EXCEPT FOR THE EXPRESS WARRANTY SET FORTH IN THE FIRST SENTENCE OF PARAGRAPH 2.18, THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THE PACKAGE AND/OR EACH OF THE COMPONENT PARTS, AS IT OR THEY CURRENTLY EXIST OR MAY BE MODIFIED OR SUPPLEMENTED IN THE FUTURE, AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE HAVE BEEN ELIMINATED BY AGREEMENT OF THE PARTIES HERETO. EXCEPT AS PROVIDED IN THE FIRST SENTENCE OF THIS PARAGRAPH LICENSOR SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH THE USE OR MAINTENANCE OF THE PACKAGE, OR ANY OF ITS COMPONENT PARTS, AND IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY INCIDENTAL AND/OR CONSEQUENTIAL DAMAGES.

LICENSOR'S WARRANTY HEREUNDER SHALL BE VOID IF THE PACKAGE HAS BEEN SUBJECT TO ABUSE, MISUSE, ACCIDENT, ALTERATION, NEGLIGENCE, UNAUTHORIZED REPAIR OR INSTALLATION BY LICENSEE.

SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE STATED LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.

**2.19 Waiver.**

No rights shall be waived, and no breach excused, unless the waiving or consenting party gives notice in writing. Any such waiver or consent does not constitute waiver or consent with respect to any other act or omission.

**2.20 Limitations of Actions.**

No action, regardless of form, arising out of this Agreement may be brought by either party more than one (1) year after the cause has arisen.

**2.21 Integration.**

This Agreement, and any Attachments hereto, constitute the entire agreement between the parties with respect to the subject matter; all prior or contemporaneous negotiations, agreements, representations, statements and undertakings with respect to this subject matter are hereby superseded.

**2.22 Governing Law.**

This Agreement shall be governed by the laws of the State of California. If any part of this Agreement is found to be illegal or unenforceable, that part alone shall be deemed stricken; the remainder of the Agreement will still be in full force and effect.

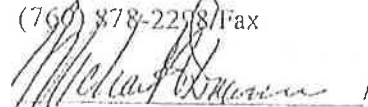
**2.23 Acknowledgment.**

Each party signing this Agreement has full power and authority to do so. Each party acknowledges that he or she has read this Agreement, understands it, and agrees to be bound by it.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the year and date and in the place indicated below.

**Licensee**

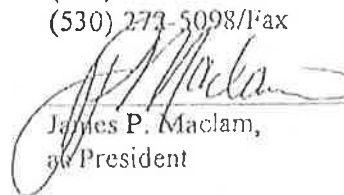
County of Inyo  
168 North Edwards Street  
Independence, California 93526  
Attn: Beverly J. Harry  
(760) 878-0220  
(760) 878-2258/Fax

  
\_\_\_\_\_  
Michael Dorame, Chairperson  
Inyo County Board of Supervisors

(Date)

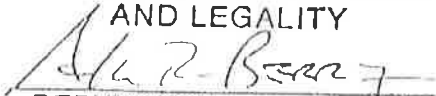
**Licensor**

*AtPac*  
10113 Alta Sierra Drive, Suite 102  
Grass Valley, California 95949  
Attn: James P. Maclam  
(530) 272-0596  
(530) 273-5098/Fax

  
\_\_\_\_\_  
James P. Maclam,  
President

3/21/2000  
(Date)

APPROVED AS TO FORM  
AND LEGALITY

  
\_\_\_\_\_  
DEPUTY COUNTY COUNSEL

## ATTACHMENT A LICENSE AGREEMENT

This is an identified attachment to the *CRUs* License Agreement (License) by and between

**Licensee: County of Inyo**

and

**Licensor: *AtPac***

**1. Term.**

The term of the License shall be five (5) calendar years from the date of the License, and shall be renewable every five (5) years thereafter, at an annual cost not to exceed the most recent prior year's License cost plus five percent (5%), unless otherwise terminated by the terms of the License, mutual written agreement of the parties, or by an intentional act of the Licensee to not appropriate funds for the annual maintenance fees.

**2. Fees, Annual Fee(s).**

The first year License Fee, \$48,450.00, is due and payable in one (1) installment upon completion of installation, testing, and acceptance by Licensee, in writing, of Licensor's package of identified *CRUs* products.

**Annual Maintenance, Support, Service Fees.**

The fees for System Administration Support and License Maintenance services described on Page 2, Paragraph 4 of this Attachment are as follows excluding all applicable taxes:

| Year   | Paid Monthly | Paid Annually |
|--------|--------------|---------------|
| Year 2 | \$800.00     | \$9,300.00    |
| Year 3 | \$800.00     | \$9,300.00    |
| Year 4 | \$825.00     | \$9,600.00    |
| Year 5 | \$825.00     | \$9,600.00    |

**File Conversion, File Recovery, Implementation, and Training Fees.**

File conversion, implementation, installation, and five (5) days of on-site training are included in the initial license fee.

**Other Services, Materials.**

Other services are provided on an invoiced basis. These fee amounts shall be identified in the License Service Orders, which shall be made a part of the Agreement. License Service Order invoices are due and payable when presented, unless otherwise stated on the Licensor's invoice. The hourly fee for services not otherwise defined is ninety-five dollars (\$95.00) per man hour. Materials and per diem are invoiced at cost plus ten percent (10%).

All fees are exclusive of any and all sales taxes, business license, and permit fees.

3. Computer Serial Number and Identification.

*CRUs* is licensed to run only on the computer central processing units on which it is installed by *AtPac*. Serial numbers of licensed units will be determined upon installation of *CRUs*.

4. *CRUs* Products & Services Functional Descriptions.

For the below-identified included modules *AtPac* provides the following services:

- Telephonic response to initial problem or procedural call from Licensee shall be within one (1) hour of notification to Licensor office or Licensor on-call personnel.
- Electronic problem reporting shall be from the application software module *CRUs Log*.
- Licensor and Licensee personnel shall coordinate problem escalation from initial telephone and dial-in support to on-site support. Fees for on-site support shall be determined prior to the dispatch of Licensor personnel and agreed to by authorized representatives of both parties.
- Revisions and Releases of *CRUs* application software will be coordinated between Licensor and Licensee personnel. The procedure for such revisions and releases as they occur from time-to-time shall be for the initial implementation in the identified "test" system with implementation into the "production" system as agreed to by the parties.
- Training beyond 5 days shall be provided, for the hourly fees identified on Page 1 of this Attachment, under Other Services, Materials, at the Licensor training facilities or at Licensee site, as agreed to by the Licensor and Licensee, from time-to-time.
- Custom programming and consulting services shall be provided for the Licensee, for the hourly fees indicated on Page 1 of this Attachment, under Other Services, Materials, and as agreed to by the Licensor and Licensee, in writing, from time-to-time.

The *CRUs* software modules, materials and services covered by this License and Agreement are those identified below:

ITEM

Database Software License Maintenance  
PC/POS Cashiering  
Terminal Cashiering  
Fund Accounting

ITEM

PC Terminal Emulation (CQCS)  
Dumb Terminal Emulation  
ANSI Standard

ITEM

Clerk's Office *CRUs*  
Fictitious Businesses  
Marriage Licenses  
Notary Public  
Professional Photocopier  
Domestic Partners  
Public Inquiry  
3.5" Floppy Disk

ITEM

Vital Records *CRUs*  
Birth Certificates  
Death Certificates  
Marriage Licenses  
Public Inquiry  
3.5" Floppy Disk

ITEM

Real Property Records *CRUs*  
Data Indexing & Verification  
Public Inquiry  
Remote Inquiry  
Networked Inquiry

ITEM

Imaging *CRUs*  
Scanning  
Storage  
Public Inquiry  
Remote Inquiry  
Networked Inquiry



ITEM

License Services *CRUs*  
Software Patches  
Modem Support  
800 Telephone Support  
*CRUs* Software Revisions  
Training  
Installations (*AtPac* Software Only)  
File Conversions

ITEM

The following items will be provided on a limited basis for hourly fees as described on Page 1 of this Attachment under **Other Services, Materials**.

File Recovery *CRUs*  
File Recovery Film/Fiche  
Product Customization  
Product Development  
General Consulting Services

ITEM


Taxes (Federal, State, Local, Other) are not included.

5. Executed

This Attachment A to the *CRUs* License Agreement is executed on the date and in the place indicated below:

Licensee:

County of Inyo  
168 North Edwards Street  
P. O. Drawer F  
Independence, California 93526  
Attn: Beverly J. Harry  
(760) 878-0220  
(760) 872-2712/Fax

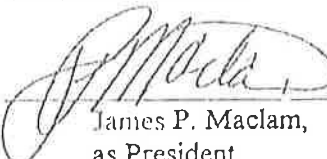
  
\_\_\_\_\_  
Michael Dorame, Chairperson  
Inyo County Board of Supervisors

APPROVED AS TO FORM  
AND LEGALITY

  
\_\_\_\_\_  
ALTA R. BERRY  
DEPUTY COUNTY COUNSEL

Licensor:

*AtPac*  
10113 Alta Sierra Drive, Suite 102  
Grass Valley, California 95949  
Attn: James P. Maclam  
(530) 272-0596  
(530) 272-5098/Fax

  
\_\_\_\_\_  
James P. Maclam,  
as President

3/21/2000  
(Date)

*AtPac*

10113 Alta Sierra Drive, Suite 102  
Grass Valley, California 95949  
Attention James P. Maclam  
(530) 272-0596  
(530) 272-0598 / Fax

**ESCROW AGREEMENT MEMORANDUM**

TO: James E. Strachan  
Attorney at Law  
625 The City Drive South, Suite 440  
Orange, California 92668

RE: *CRis*™ Source Code Escrow for Inyo County Recorder

It is agreed that the Source Code for the above Software licensed to Inyo County will be lodged with you on digital audio tape (DAT) in a format created with UNIX cpio command structures. You agree to hold same and release it pursuant to the following:

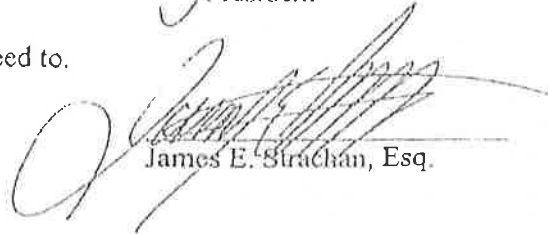
In the event that *AtPac*, the Licensor of the *CRis*™ Software, shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or its assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act, other than a re-organization, Inyo County may, at its option, terminate this Agreement upon 5 days written notice. At such time, Inyo County may have End User licensed access to the Source Code for the sole purpose of maintaining and updating the Clerk-Recorder System to avoid cessation of service or loss to the County for the term of the then current license term.

*AtPac*

By: 

James P. Maclam  
President

The above terms and conditions are agreed to.

  
James E. Strachan, Esq.

# Cyberscience Corporation

# Tri-Partite License Agreement

This Tri-Partite License Agreement ("AGREEMENT") number 4421 is made this 5<sup>th</sup> day of July, 2000, by and between: CYBERSCIENCE CORPORATION, a Colorado Corporation, located at 10055 E. Harvard Avenue, Denver, Colorado 80231, hereafter called "CYBERSCIENCE", and the following Value Added Reseller: and the following End User:

AtPac  
10113 Alta Sierra Dr.  
Grass Valley, California 95949

Inyo County  
168 N. Edwards Street  
Independence, California 93526

hereafter called the "VAR"

hereafter called the "END USER".

## 1. DEFINITIONS

"CLASS" means the specific configuration of the SOFTWARE license provided under this AGREEMENT as described in Exhibit "A", attached hereto and by this reference incorporated within.

"CPU" means the computer processing unit utilizing the SOFTWARE.

The CPU is located at the address: **168 N. Edwards Street  
Independence, California 93526**

"SOFTWARE" means all or any combination of computer software components comprising the object code, in machine readable form, of the CYBERSCIENCE computer program(s) described in Exhibit "A", together with any derivatives, parts, modified versions or new releases supplied by CYBERSCIENCE and any associated user manuals or other documents supplied by CYBERSCIENCE.

## 2. TERM

This AGREEMENT shall commence upon the date executed and continue unless terminated under the provisions of Paragraph 11 below.

## 3. LICENSE

- 3.1. In consideration of payment of the LICENSE FEE, CYBERSCIENCE hereby grants to the END USER a personal, non-transferable, non-exclusive perpetual license ("LICENSE") to use the SOFTWARE exclusively for the END USER's internal business operations only for the LICENSE(s) and CPU(s) listed in Paragraph 16.
- 3.2. The END USER shall be entitled to use the SOFTWARE only as authorized herein. The END USER shall be permitted to make only one backup copy of the SOFTWARE as reasonably necessary to support the authorized use of the SOFTWARE hereunder. The END USER shall make no other copies of the SOFTWARE without the prior written consent of CYBERSCIENCE. All copies of the SOFTWARE, whether made by CYBERSCIENCE or the END USER, shall be in machine readable form only, shall contain all copyright, trademark or other notices as they appear on the SOFTWARE, and shall be the property of CYBERSCIENCE. The END USER shall maintain a record of the number of and location of all copies of the SOFTWARE and shall make the list available to CYBERSCIENCE upon request.
- 3.3. For the mutual security of all parties each copy of the SOFTWARE contains an expiration date. This device does not restrict the LICENSE granted by Paragraph 3.1.
- 3.4. CYBERSCIENCE will notify the END USER automatically in advance through the SOFTWARE that an expiration date is imminent and to provide patches to the VAR to extend the END USER's copy of the SOFTWARE in advance of each expiry date. The END USER and the VAR are responsible for ensuring that such patches are received and applied in a timely fashion.

## 4. LICENSE FEES AND PAYMENTS

- 4.1. The END USER shall pay the following amounts ("LICENSE FEE") to the VAR for the benefit of CYBERSCIENCE:  
LICENSE and SUPPORT FEE : U.S. Dollars: \$ PER P.O. (written) PER PURCHASE ORDER  
This LICENSE FEE must be paid to the VAR within 60 days of the execution of this AGREEMENT.
- 4.2. The END USER shall also pay any and all federal, state and local sales, service and use taxes levied or imposed upon the sale of the SOFTWARE. In the event the VAR shall pay or be required to pay or collect any sales, service or use taxes, the END USER shall immediately pay the same to the VAR.
- 4.3. The END USER agrees to pay interest on all amounts not paid as described above at the rate of eighteen percent per annum commencing from the date of delivery of the SOFTWARE.

5. SUPPORT SERVICES

END USER shall order software support services from the VAR.

6. END USER REPRESENTATIONS, WARRANTIES AND OBLIGATIONS

- 6.1. The END USER shall only allow employees, agents and sub-contractors whose job performance is dependant on the SOFTWARE to have access to the SOFTWARE, and then only upon giving prior instruction to the individuals relating to the representations, warranties and covenants of the END USER under this AGREEMENT.
- 6.2. The END USER agrees not to cause or permit: (a) the modification of the SOFTWARE in any way, (b) the deletion of any proprietary rights notices, trademarks, trade names, symbols, abbreviations, logos or otherwise, contained in or on the SOFTWARE or any user manuals provided by CYBERSCIENCE, or (c) to reverse engineer, reverse compile, reverse assemble or disassemble the SOFTWARE.
- 6.3. The END USER agrees to not sell, convey, share or use in connection with or otherwise permit or allow any third-party to see, utilize, or become familiar with the SOFTWARE. The END USER shall not disclose, disseminate, communicate or otherwise permit or allow any third-party to become privy to CYBERSCIENCE's trade secrets, proprietary information, proprietary material and/or information and the END USER recognizes that the SOFTWARE is provided to it in confidence and in secrecy.

7. OWNERSHIP / TITLE

CYBERSCIENCE warrants that it has the right to license the SOFTWARE. The END USER acknowledges and agrees that title to the SOFTWARE and all materials, documentation and information and any translations is vested exclusively in CYBERSCIENCE and that all patent, copyright and other intellectual property rights and all associated trademarks, trade names, devices, symbols, abbreviations and secrets, goodwill and confidential and proprietary information therein are and shall remain vested in CYBERSCIENCE. The END USER agrees to sign such documents as are reasonably requested by CYBERSCIENCE from time to time to confirm or protect the foregoing proprietary rights.

8. CONFIDENTIALITY AND PUBLICITY

- 8.1. Each party, for themselves and their directors, officers, partners, employees, agents, representatives, contractors and distributors agree that during the term of this AGREEMENT and thereafter, subject to Paragraph 8.2 below, they shall treat as confidential and not disclose, communicate, disseminate, or publish to any third-party without the prior written consent of the other, details of the other's business operations, proprietary rights and techniques, the know-how, ideas and concepts relating to the SOFTWARE, contemplated new products, internal documentation, protection and computer security schemes and customer lists. The obligations of this Paragraph shall not relate to information which is or becomes public knowledge through no fault of either party or has been properly obtained from a third-party lawfully entitled to possess the information.
- 8.2. All parties agree that each may publicize the existence but not the details of this AGREEMENT.

9. LIMITED WARRANTIES/LIMITATION OF LIABILITY

- 9.1. CYBERSCIENCE warrants for a period of ninety days from date of delivery of the SOFTWARE that it constitutes an accurate manufacture of CYBERSCIENCE's products and shall substantially conform with all concurrently published specifications delivered therewith. CYBERSCIENCE makes no warranties or representations of any kind, character, or nature with respect to the SOFTWARE or its performance except as set forth hereinabove. **CYBERSCIENCE MAKES OR GIVES NO WARRANTIES, CONDITIONS OR GUARANTEES, EXPRESSED OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THOSE RELATING TO MERCHANTABILITY OR FITNESS FOR INTENDED OR PARTICULAR USE, AND ALL WARRANTIES (EXCEPT THOSE WHICH MAY NOT BE LAWFULLY EXCLUDED) ARE HEREBY EXCLUDED.** Any warranties hereunder shall be void if the SOFTWARE has been subject to abuse, misuse, accident, alteration, neglect, unauthorized repair or installation.
- 9.2. CYBERSCIENCE SHALL NOT BE LIABLE TO THE VAR OR THE END USER OR ANY THIRD-PARTY UNDER THE LAW OF TORT, CONTRACT OR OTHERWISE, FOR ANY LOSS OR DAMAGE, WHETHER DIRECT OR INDIRECT INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER CAUSED BY THE NEGLIGENCE OF CYBERSCIENCE OR OTHERWISE ARISING BY, RESULTING FROM, OR IN CONNECTION WITH THE USE, POSSESSION OR PERFORMANCE OF THE SOFTWARE. ANY LIABILITY OF CYBERSCIENCE SHALL BE LIMITED TO THE LICENSE FEES RECEIVED BY CYBERSCIENCE FOR SUCH PROVEN DEFECTIVE SOFTWARE OR THE REPLACEMENT OF PROVEN DEFECTIVE SOFTWARE, FROM WHICH SUCH LIABILITY DIRECTLY ARISES, AS CYBERSCIENCE SHALL IN ITS SOLE DISCRETION CHOOSE. WITHOUT PREJUDICE TO THE ABOVE, IN THE EVENT THAT CYBERSCIENCE IS HELD LIABLE, IN NO CASE SHALL CYBERSCIENCE'S LIABILITY FOR DAMAGES HEREUNDER EXCEED \$100,000.
- 9.3. Neither party shall be liable for any failure on its part to perform the obligations under this AGREEMENT if such failure results, wholly or partly, from acts of God, any matters beyond the control of the defaulting party, industrial disputes, shortage of materials, decisions of federal, state or local governments, fire, explosion or accidents and other acts of force majeure.
10. PATENT/COPYRIGHT INDEMNITY
- 10.1. CYBERSCIENCE will defend and indemnify the END USER against a claim that the SOFTWARE furnished and used within the scope of this AGREEMENT infringes upon a United States copyright or patent, provided that: (a) END USER notifies CYBERSCIENCE in writing within thirty days of the claim, (b) CYBERSCIENCE has sole control of the defense and all related settlement negotiations; and (c) the END USER provides CYBERSCIENCE with the assistance, information and authority necessary to perform the above. Reasonable out of pocket expenses incurred by the END USER in providing such assistance will be reimbursed by CYBERSCIENCE.
- 10.2. CYBERSCIENCE shall have no liability for any claim of infringement based on: (a) the use of a superseded or altered release of the SOFTWARE if such an infringement would have been avoided by the use of a current unaltered release of the SOFTWARE that CYBERSCIENCE provides to the VAR or END USER; or (b) the combination, operation, or use of any SOFTWARE furnished under this AGREEMENT with programs or data not furnished by CYBERSCIENCE if such infringement would have been avoided by the use of the SOFTWARE without such programs or data.
- 10.3. If a final injunction is awarded stating that the SOFTWARE has infringed, CYBERSCIENCE shall have the option, at its expense, to (a) modify the SOFTWARE to be non-infringing, (b) obtain for the END USER a license to continue using the SOFTWARE, or (c) terminate the license

for the infringing SOFTWARE and refund the LICENSE FEES paid for the SOFTWARE, prorated over a five year term from the commencement date. This Paragraph 10 states CYBERSCIENCE's entire liability for infringement.

#### 11. TERMINATION AND SUSPENSION

- 11.1. The END USER may terminate this agreement at any time upon thirty days notice to the other parties, and only after complying with the terms of Paragraph 11.5.
- 11.2. Either CYBERSCIENCE or the END USER may, upon written notice to the other parties, immediately terminate this agreement at any time in the event of a breach of Paragraph 8.1 by CYBERSCIENCE or the END USER.
- 11.3. CYBERSCIENCE may terminate this AGREEMENT immediately upon written notice to the other parties if:
  - 11.3.1. The END USER fails to pay the LICENSE FEE within the terms of Paragraph 4.
  - 11.3.2. If the END USER files a petition under any provision of the Federal Bankruptcy Code or any state law relating to insolvency or any such petition is filed against either party, unless such petition and all proceedings thereunder are dismissed within thirty days from such filing; or a trustee or receiver is appointed for all or any assets, unless such appointment is vacated or dismissed within thirty days from the date of such appointment, or the affected party is adjudicated insolvent or bankrupt.
  - 11.3.3. If any of the END USER's voting interests or any partnership interest (whichever is applicable) is acquired by a competitor of CYBERSCIENCE.
- 11.4. In the event of any other default hereunder which is not cured within thirty days of written notice, CYBERSCIENCE may immediately terminate this AGREEMENT.
- 11.5. In the event of any termination of this AGREEMENT, the END USER shall immediately deliver to CYBERSCIENCE all originals and copies of the SOFTWARE in the END USER's possession. The END USER shall certify in writing to CYBERSCIENCE that the END USER has complied with this obligation.
- 11.6. Termination of this agreement by any party will not result in the refund of any money to the END USER or the VAR by CYBERSCIENCE.

#### 12. RELATIONSHIP OF PARTIES

The parties to this AGREEMENT are independent contractors. No partnership, joint venture, or relationship of principal to agent, master to servant, employer to employee or franchiser to franchisee or otherwise is established hereby between any of the parties. No party has the authority to bind the other or incur any obligation on the other party's behalf.

#### 13. ASSIGNMENT

As a result of the confidences to be kept by the END USER and the VAR, and as part of the consideration paid by the END USER hereunder, neither the END USER or the VAR may assign, mortgage, pledge, hypothecate or convey, in whole or in part, this AGREEMENT or any of the rights and duties under it without the prior written consent of CYBERSCIENCE.

#### 14. NOTICE

Any notice, payment, consent, approval or other communication required or permitted under this AGREEMENT shall be deemed duly given if in writing and personally delivered or sent by certified mail, postage prepaid, to the address at the head of this agreement, to the attention of the president, and shall be deemed to be given on the date of first attempted delivery and any notice delivered by personal delivery, shall be deemed delivered as of the date delivered. Any party, by written notice as described in this paragraph, may change the address to which future notices may be sent.

#### 15. MISCELLANEOUS

- 15.1. This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their respective permitted heirs, executors, personal representatives, successors and assigns.
- 15.2. This AGREEMENT, together with any Exhibits attached hereto, constitutes the entire agreement of the parties and supersedes prior proposals, agreements and representations between them, whether written or oral. This AGREEMENT may not be modified, changed or amended in any manner except by instrument in writing signed by the parties hereto. It is expressly agreed that any terms and conditions of the END USER or VAR's purchase order shall be superseded by the terms and conditions of the AGREEMENT.
- 15.3. The paragraph headings herein are inserted for convenience of reference only and do not define, limit or proscribe the scope of this AGREEMENT or any Exhibit attached hereto.
- 15.4. In the event any provision of this AGREEMENT is held to be invalid or unenforceable, the remaining provisions of this AGREEMENT will remain in full force and effect. Any waiver hereunder by any party must be in writing and signed by the party to be charged. No waiver by any party of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by any party of the same or any other provision.
- 15.5. The parties hereto acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, covenant, obligation and provision hereof, and that failure to timely perform any of the terms, conditions, covenants, obligations or provisions hereof by either party shall constitute a breach of and a default under this AGREEMENT by the party so failing to perform.
- 15.6. The parties hereto acknowledge and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this AGREEMENT or any amendments or Exhibits hereto.
- 15.7. This AGREEMENT shall be governed by and construed in accordance with the laws of the State of Colorado. Any action relating to this AGREEMENT brought by the VAR or the END USER against CYBERSCIENCE will be instituted in a State or Federal Court in the State of Colorado.

16. SOFTWARE LICENSE INFORMATION

| Item        | Quantity | Concurrent User(s) | SOFTWARE CLASS Definition(s) | CPU                            | Serial Number | LICENSE FEE        | ANNUAL SUPPORT FEE |
|-------------|----------|--------------------|------------------------------|--------------------------------|---------------|--------------------|--------------------|
| 1           | 1        | 2                  | CQ DM                        | Intel Pentium Single Processor | N/A           |                    |                    |
| 2           | 1        | 5                  | CQ RT                        | Intel Pentium Single Processor | N/A           |                    |                    |
| 3           | 1        | 5                  | CS RT                        | Intel Pentium Single Processor | N/A           |                    |                    |
| TOTAL FEES: |          |                    |                              |                                |               | PER PURCHASE ORDER |                    |

IN WITNESS WHEREOF, this AGREEMENT has been executed as of the day and year first above written.

for CYBERSCIENCE: Cyberscience Corporation,  
a Colorado Corporation

for the VAR: Ch. P. Co.

By: [Signature]  
Print Name: Nigel Brownjohn  
Title: Vice President Operations

By: [Signature]  
Print Name: SAMUEL P. MACLAREN  
Title: PROS

for the END USER: [Signature]  
By: Beverly S. HARRY  
Print Name: Beverly S. HARRY  
Title: Sanjo County Clerk/Recorder

## Exhibit "A"

### CYBERSCIENCE LICENSE CLASS DEFINITIONS

#### SOFTWARE COMPONENT DEFINITIONS

- DEVELOPMENT - A version of the SOFTWARE described below which is capable of developing, compiling and running new programs or commands written in the language under the terms of the END USER's license agreement.
- RUNTIME - A version of the SOFTWARE described below which is only capable of executing programs or commands which have been previously compiled with properly licensed DEVELOPMENT software.
- CYBERSCREEN - A screen based and batch processing application development language.
- CYBERQUERY - A screen based interactive tool for creating, maintaining and processing reports. CYBERQUERY licenses include the complete capabilities of the CYBERQUERY Language and includes a RUNTIME CYBERQUERY license.
- CQ - A version of CYBERQUERY which is only capable of running and creating a subset of the reports available in CQ PROFESSIONAL.
- DATA DICTIONARY MANAGER - A utility for defining or maintaining a new or existing application's physical and logical files, variables and file relationships.
- NAMED USER - An individual employed by the END USER who is authorized by the END USER to use the licensed SOFTWARE on the Designated System under the terms of the license agreement, regardless of whether the individual is actively using the licensed SOFTWARE at any given time. The number of named users is determined by simply counting the number of people who will have access to the SOFTWARE.
- CONCURRENT USERS - The maximum number of users to access the designated HOST or SERVER SOFTWARE at a given point in time in order to use the licensed SOFTWARE on the Designated System under the terms of the license agreement. A CONCURRENT USER is defined as one log-in from a single terminal, workstation or PC client with each CYBERQUERY and/or CYBERSCREEN related processes counting as one CONCURRENT USER.
- CLIENT - A version of the SOFTWARE capable of running on an intelligent workstation allowing network communications with another computer running a version of the SOFTWARE.
- SERVER - A version of the SOFTWARE capable of running on a computer allowing network communications with multiple CLIENTS residing on intelligent workstations.
- HOST - A character based version of the SOFTWARE capable of running on a computer supporting multiple character based terminals.

#### SOFTWARE CLASS DEFINITIONS FOR SERVER & HOST BASED SOFTWARE LICENSES

- CQ - A version of CYBERQUERY with CQ capable of running a SERVER or HOST based version of the SOFTWARE.
- CQ DM - A version of CQ PROFESSIONAL and DATA DICTIONARY MANAGER capable of running a SERVER or HOST based version of the SOFTWARE.
- CQ RT - A RUNTIME version of CYBERQUERY capable of running a SERVER or HOST based version of the SOFTWARE.
- CS RT - A RUNTIME version of CYBERSCREEN capable of running a SERVER or HOST based version of the SOFTWARE.
- CS DEV DM - A version of CYBERSCREEN and the DATA DICTIONARY MANAGER capable of running a SERVER or HOST based version of the SOFTWARE.
- FULL CQCS - A version of CYBERSCREEN and CYBERQUERY with CQ DM and the DATA DICTIONARY MANAGER capable of running a SERVER or HOST based version of the SOFTWARE.

#### SOFTWARE CLASS DEFINITIONS FOR CLIENT BASED SOFTWARE LICENSES

- CQCS-W - A CLIENT version of the SOFTWARE allowing access to FULL CQCS SOFTWARE on the SERVER.
- CQ-W - A CLIENT version of the SOFTWARE allowing access to CQ DM SOFTWARE on the SERVER.
- CS-W - A CLIENT version of the SOFTWARE allowing access to CS DEV DM SOFTWARE on the SERVER.
- CQ RT-W - A CLIENT version of the SOFTWARE allowing access to CQ RT SOFTWARE on the SERVER.



# Cyberscience Corporation

# Amendment

This AMENDMENT ("AMENDMENT") is to TRI-PARTITE LICENSE AGREEMENT number 4421 dated July 5, 2000 ("AGREEMENT") by and between CYBERSCIENCE, the VAR, and the END USER.

BACKGROUND: The parties hereto desire to amend certain terms and provisions of the AGREEMENT by this AMENDMENT. In the event of a conflict between the terms and provisions of the AGREEMENT and this AMENDMENT, this AMENDMENT shall control and be the operative terms and provisions. Defined terms used herein but not defined herein, shall have the same definition and meaning as set forth in the AGREEMENT.

CQCS CPU Upgrade for the following Site:

END USER: Inyo County  
 Address: 168 N. Edwards Street  
 P.O. Box F  
 City: Independence, California 93526

**1. Upgraded License**

The upgraded license will be from the original PER USER LICENSE, referenced below, running on an Intel Pentium Single Processor, to a PER USER LICENSE, referenced below, running on a Xeon Single Processor.

The existing SOFTWARE Licensed under the Agreement is:

| Item | Quantity | User(s) | SOFTWARE CLASS Definition(s) | Databases | Operating System | CPU                            | Serial Number |
|------|----------|---------|------------------------------|-----------|------------------|--------------------------------|---------------|
| 1    | 1        | 2       | CQ DM                        | C-ISAM    | SCO 5            | Intel Pentium Single Processor | N/A           |
| 2    | 1        | 5       | CQ RT                        | C-ISAM    | SCO 5            | Intel Pentium Single Processor | N/A           |
| 3    | 1        | 5       | CS RT                        | C-ISAM    | SCO 5            | Intel Pentium Single Processor | N/A           |

The new SOFTWARE Licensed under this Amendment shall be as follows ("LICENSE"):

| Item | Quantity | User(s) | SOFTWARE CLASS Definition(s) | Databases | Operating System | CPU                   | Serial Number |
|------|----------|---------|------------------------------|-----------|------------------|-----------------------|---------------|
| 1    | 1        | 2       | CQ                           | C-ISAM    | Linux            | Xeon Single Processor | N/A           |
| 2    | 1        | 8       | CS RT                        | C-ISAM    | Linux            | Xeon Single Processor | N/A           |
| 3    | 1        | 2       | CQ-W                         | N/A       | N/A              | Windows Workstations  | N/A           |
| 4    | 1        | 8       | CS-W                         | N/A       | N/A              | Windows Workstations  | N/A           |

The Intel Pentium Single Processor is being upgraded to a Xeon Single Processor and END USER no longer is licensed to use the SOFTWARE on the Intel Pentium Single Processor. CYBERSCIENCE agrees to allow END USER to use the SOFTWARE on both CPUs for a conversion and testing period which shall not exceed ninety (90) days from the execution of this AMENDMENT. Upon expiration of this period, END USER will delete the SOFTWARE from the Intel Pentium Single Processor and will provide written notice to CYBERSCIENCE that such deletion has been completed.

**2. Upgrade Fee**


As consideration for the upgraded License, END USER shall pay VAR on behalf of CYBERSCIENCE a one-time fee of \$10.00 payable net 30 days from the date of this AMENDMENT. This Upgrade fee shall be in addition to the License Fee paid under the AGREEMENT mentioned above and includes the additional cost incurred in upgrading your current software support service.

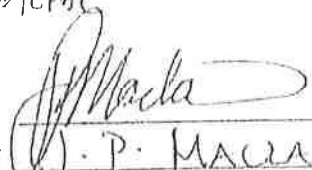
**3. Entire Agreement**

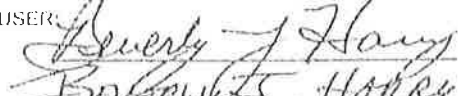
The foregoing represents the entire agreement of the parties hereto with respect to the subject matter hereof. Except as amended by this AMENDMENT, all of the terms and conditions of the AGREEMENT shall remain in full force and effect.

IN WITNESS WHEREOF, this AGREEMENT has been executed as of March 2, 2004 for the VAR: *ACPC*

Cyberscience Corporation,  
 a Colorado corporation

By:   
 Print Name: Nigel Brownjohn  
 Title: Executive Vice President

By:   
 Print Name: J.P. Macnam  
 Title: PRESIDENT  
 Date: 3/1/04

for the END USER:  
 By:   
 Print Name: Beverly J. Hays  
 Title: Inyo County Recorder  
 Date: March 4, 2004



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
12/17/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER  
Wells Fargo Ins Svs USA IncCADOI0D08408  
131 Mill Street  
Grass Valley CA 95945-4701

CONTACT NAME: Amy Galloway  
PHONE (AG, Ho, Ext): (530) 273-7213 FAX (AG, No): (530) 273-8114  
E-MAIL: doh1.cabell@wellsfargo.com  
ADDRESS:

| INSURER(S) AFFORDING COVERAGE              | NAIC # |
|--|--------|
| INSURER A: Philadelphia Indemnity Ins. Co. | 18058  |
| INSURER B:                                 |        |
| INSURER C:                                 |        |
| INSURER D:                                 |        |
| INSURER E:                                 |        |
| INSURER F:                                 |        |

INSURED  
ATPAC  
13300 New Airport Rd, Ste 101  
Auburn CA 95602-  
(530) 887-2249

COVERAGES CERTIFICATE NUMBER: Cert ID 415873 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSURER | TYPE OF INSURANCE  | ADDL. INSUR. W/O | POLICY NUMBER | POLICY EFF. (MM/DD/YYYY) | POLICY EXP. (MM/DD/YYYY) | LIMITS   |              |
|---------|--|------------------|---------------|--------------------------|--------------------------|--|--------------|
|         |  |                  |               |                          |                          | AMOUNT   | OTHER        |
| A       | GENERAL LIABILITY<br>COMMERCIAL GENERAL LIABILITY<br>CLAIMS MADE OCCUR   |                  |               |                          |                          | EACH OCCURRENCE DAMAGE TO THIRD PERSONS (Per occurrence) | \$           |
|         | GENL AGGREGATE LIMIT APPLIES PER:<br>POLICY PRO LOC  |                  |               |                          |                          | MED EXP (Any one person)                                 | \$           |
|         | AUTOMOBILE LIABILITY<br>ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS NON-OWNED AUTOS<br>HIRED AUTOS  |                  |               |                          |                          | PERSONAL & ADV INJURY                                    | \$           |
|         | UMBRELLA LIAB EXCESS LIAB<br>DED RETENTION   |                  |               |                          |                          | GENERAL AGGREGATE  | \$           |
|         | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANY PROPRIETOR/PARTNER/EXECUTIVE/OFFICER/MEMBER EXCLUDED? (Mandatory in CA)<br>If yes, describe under DESCRIPTION OF OPERATIONS below |                  |               |                          |                          | PRODUCTS - COMP/OP AGG                                   | \$           |
|         |  |                  |               |                          |                          | COMBINED SINGLE LIMIT (Per accident)                     | \$           |
|         |  |                  |               |                          |                          | BODILY INJURY (Per person)                               | \$           |
|         |  |                  |               |                          |                          | BODILY INJURY (Per accident)                             | \$           |
|         |  |                  |               |                          |                          | PROPERTY DAMAGE (Per occurrence)                         | \$           |
|         |  |                  |               |                          |                          | EACH OCCURRENCE  | \$           |
|         |  |                  |               |                          |                          | AGGREGATE  | \$           |
|         |  |                  |               |                          |                          | WC STATUTORY LIMITS OTHER                                | \$           |
|         |  |                  |               |                          |                          | E.L. EACH ACCIDENT                                       | \$           |
|         |  |                  |               |                          |                          | E.L. DISEASE - EA EMPLOYEE                               | \$           |
|         |  |                  |               |                          |                          | E.L. DISEASE - POLICY LIMIT                              | \$           |
| A       | Professional Liability   |                  | PH9D893743    | 1/17/2014                | 1/17/2015                |  | \$ 1,000,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

### CERTIFICATE HOLDER

Inyo County Clerk/Recorder  
168 N. Edwards St.  
Independence CA 93526

### CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE  
*[Signature]*

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## ASSIGNMENT AND NOVATION AGREEMENT

THIS ASSIGNMENT AND NOVATION AGREEMENT (this "Assignment") is made as of March 28, 2017, in Independence California, by and between AtPac, Inc ("Assignor") and South Tech Systems, Inc. ("Assignee"), and County of Inyo, a municipal corporation (the "County").

### RECITALS

WHEREAS, Assignor is a party to the Agreement (as defined below); and

WHEREAS, Assignor desires to assign the Agreement, and Assignee desires to assume the Agreement, each on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained in this Assignment, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. **Definitions.** The following definitions shall apply to this Assignment:

(a) **Agreement.** The term "Agreement" shall mean the July 1, 2016, Agreement between AtPac, Inc and County of Inyo, a municipal corporation ("County") for software and related services provided to the County Clerk Recorder. The term "Agreement" shall include any amendments or modifications set forth in Appendix A, attached hereto and made a part hereof.

(b) **Effective Date.** "Effective Date" shall mean the date of this Assignment.

(c) **Other Terms.** Terms used and not defined in this Assignment shall have the meanings assigned to such terms in the Agreement.

2. **The parties agree to the following facts:**

(a) The County, by and through the County Clerk Recorder, has entered into the Agreement with Assignor as defined above and attached as Appendix A and incorporated in this Assignment by reference.

(b) As of March 1, 2017, the Assignor has transferred to the Assignee all the operating assets of the Assignor by virtue of an Agreement of Merger between the Assignor and Assignee.

(c) The Assignee has acquired such assets of the Assignor by virtue of the above transfer.

(d) The Assignee has assumed all obligations and liabilities of the Assignor under the Agreement by virtue of the above transfer.

(e) The Assignee is in a position to fully perform all obligations that may exist under the Agreement.

(f) It is consistent with the County's interest to recognize the Assignee as the successor party to the Agreement.

(g) Evidence of the above transfer has been filed with the County.

(h) A letter dated March 10, 2017 signed by Officers of AtPac and SouthTech System companies that certifies Assignor has sold to SouthTech Systems, Inc. the Agreement and the operating assets of Assignor and the rights to all of Assignor's proprietary software and assigned of the agreement with County of Santa Clara, to the effect Assignee.

**3. In consideration of these facts, the parties agree that by this Assignment:**

(a) The Assignor confirms the transfer to the Assignee, and waives any claims and rights against the County that it now has or may have in the future in connection with the Agreement.

(b) The Assignee agrees to be bound by and to perform the Agreement in accordance with the conditions contained in the Agreement. The Assignee also assumes all obligations and liabilities of, and all claims against, the Assignor under the Agreement as if the Assignee were the original party to the Agreement.

(c) The Assignee ratifies all previous actions taken by the Assignor with respect to the Agreement, with the same force and effect as if the action has been taken by the Assignee.

(d) The County recognizes the Assignee as the Assignor's successor in interest in and to the Agreement. The Assignee by this Assignment becomes entitled to all rights, titles, and interests of the Assignor in and to the Agreement as if the Assignee were the original party to the Agreement. Following the Effective Date of this Assignment, the term "Contractor," as used in the Agreement, shall refer to the Assignee.

(e) Except as expressly provided in this Assignment, nothing in it shall be construed as a waiver of any rights of the County against the Assignor.

(f) All payments and reimbursements previously made by County to the Assignor, and all other previous actions taken by County under the Agreement, shall be considered to have discharged those parts of County's obligations under the Agreement. All payments and reimbursements made by County after the date of this Assignment in the name of or to the Assignor shall have the same force and effect as if made to the Assignee, and shall constitute a complete discharge of County's obligations under the Agreement, to the extent of the amounts paid or reimbursed.

(g) The Assignor and the Assignee agree that County is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer of this Assignment, other than those that County in the absence of this transfer or Assignment would have been obligated to pay or reimburse under the terms of the Agreement.

(h) The Assignor guarantees payment of all liabilities and the performance of all obligations that the Assignee:

(1) Assumes under this Assignment; or

(2) May undertake in the future should this Agreement be modified under their terms and conditions. The Assignor waives notice of, and consents to, any such future modifications.

(i) The Agreement shall remain in full force and effect, except as modified by this Assignment. Each party has executed this Assignment as of the day and year first above written.

4. **Governing Law.** This Assignment shall be governed by the laws of the State of California, without regard to its conflict of laws principles.
5. **Headings.** All section headings and captions contained in this Assignment are for reference only and shall not be considered in construing this Assignment.
6. **Entire Agreement.** This Assignment sets forth the entire agreement between Assignor and Assignee relating to the Agreement and supersedes all other oral or written provisions.
7. **Further Assurances.** From and after the date of this Assignment, Assignor and Assignee agree to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the conveyance contemplated by this Assignment or as may be required by County.
8. **Insurance Certificates.** For this Assignment and Novation to be effective, Assignee shall provide to County insurance certificates and endorsements for the identical type and amount of coverage currently required under the Agreement.
9. **Severability.** Should the application of any provision of this Assignment to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Assignment shall not be affected or impaired thereby and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of Assignor, Assignee and County.
10. **Successors; Third-Party Beneficiaries.** Subject to the terms of the Agreement, this Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Nothing in this Assignment, whether express or implied, shall be construed to give any person or entity (other than County and the parties hereto and their respective successors and assigns) any legal or equitable right, remedy or claim under or in respect of this Assignment or any covenants, conditions or provisions contained herein.
11. **Notices.** All notices, consents, directions, approvals, instructions, requests and other communications regarding this Assignment or the Agreement shall be in writing, shall be addressed to the person and address set forth below and shall be (a) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (b) hand delivered or (c) sent via facsimile (if a facsimile number is provided below). All communications sent in accordance with this Section shall become effective on the date of receipt. From time to time Assignor, Assignee or County may designate a new address for purposes of this Section by notice to the other signatories to this Assignment.

If to Assignor:

Linda Maclam, President  
13300 New Airport Road, Suite 101  
Auburn, CA 95602  
(530) 913-3340.  
[lkimaclam@aol.com](mailto:lkimaclam@aol.com)

If to Assignee:


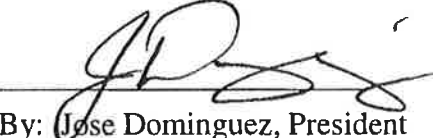
Jose Dominguez, President  
SouthTech Systems, Inc  
4181 Flatrock Drive, Suite 300  
Riverside, CA 92505  
(951) 354-6104  
[jose.dominquez@southtechsystems.com](mailto:jose.dominquez@southtechsystems.com)

If to County:

Inyo County  
Kammi Foote, Clerk Recorder/Registrar  
168 N. Edwards St  
Independence, CA 93526  
(760) 878-0220  
[kfoote@inyocounty.us](mailto:kfoote@inyocounty.us)

12. **Consent of County.** Each of Assignor and Assignee acknowledges that the prior written consent of County to this Assignment is required under the terms of the Agreement. County shall be a third-party beneficiary of this Assignment and shall have the right to enforce this Assignment.

IN WITNESS WHEREOF, Assignor and Assignee have each duly executed this Assignment as of the date first referenced above.

| ASSIGNOR   | ASSIGNEE  |
|--|---|
| AtPac, Inc.<br>13300 New Airport Road, Suite 101<br>Auburn, CA 95602   | South Tech Systems, Inc<br>4181 Flatrock Drive, Suite 300<br>Riverside, CA 92505                                    |
| <br>By: Linda Maclam, President | <br>By: Jose Dominguez, President |

Subject to Section 12 of this Assignment, County hereby consents to the assignment and novation described in Sections 2 and 3 of this Assignment.

**COUNTY**

**Recommended by:**

**Approved:**

\_\_\_\_\_  
Kammi Foote  
Clerk Recorder/Registrar

\_\_\_\_\_  
Insert Name  
Title

Approved as to Form:

INSERT NAME  
County Attorney

By \_\_\_\_\_  
Name  
Deputy County Attorney

Appendix A: Agreement  
Appendix B: Merger Documents

IN WITNESS WHEREOF, Assignor and Assignee have each duly executed this Assignment as of the date first referenced above.

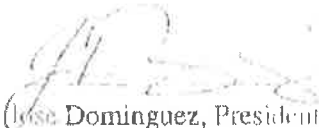
**ASSIGNOR**

AtPac, Inc.  
13300 New Airport Road, Suite 101  
Auburn, CA 95602

By: Linda Maclam, President

**ASSIGNEE**

South Tech Systems, Inc  
4181 Flatrock Drive, Suite 300  
Riverside, CA 92505

By:  Jose Dominguez, President


Subject to Section 12 of this Assignment, County hereby consents to the assignment and novation described in Sections 2 and 3 of this Assignment.

**COUNTY**

**Recommended by:**

  
Kammi Foote  
Clerk Recorder/Registrar

**Approved:**

  
Insert Name: Mark Tillemans  
Title: Board Chairperson

Approved as to Form:

INSERT NAME  
County Attorney

By   
Name  
Deputy County Attorney

Appendix A: Agreement  
Appendix B: Merger Documents



**APPENDIX A**

**Agreement**

## END USER LICENSE AGREEMENT

This End User License Agreement (this "**Agreement**") is entered into as of 7/1/2016 (the "**Effective Date**") by and between

County of Inyo, State of California  
Inyo County Clerk- Recorder

as  
Licensee

and

AtPac  
13300 New Airport Road, Suite 101  
Auburn, CA 95602  
Attention Linda Maclam  
Telephone-(530) 887-2249  
Facsimile-(530) 887-2259

as  
Licensor

### RECITALS

Whereas, it is the desire of the Licensee to: (i) acquire a software system license (the "**License**") from Licensor; and (ii) to provide the maintenance (the "**Services**"), with the continuing maintenance and license support as described in the County of Inyo Contract for Services dated 3/21/2000 (the "**Contract**"); and

Whereas, it is the desire of Licensor to provide the License and Services to Licensee according to the terms and conditions set forth in this Agreement; and

Whereas, it is the understanding of the parties that Licensor is providing, for a fee, the License and Services in combination with the other products to meet the stated needs of the Licensee.

### AGREEMENT

Now therefore, in consideration of the mutual covenants, terms, and conditions set forth herein, the adequacy of which consideration is hereby accepted and acknowledged, the parties mutually agree as follows:

**1. Definitions.** This Agreement incorporates by reference the standard definitions of the computer industry established by trade usage or custom to the extent such standard definitions do not contradict the definitions provided in this Agreement.

## **2. License.**

**2.1 Grant of Rights.** Licensor hereby grants Licensee a non-transferable and non-exclusive license to use the Package (as defined below), provided Licensee complies with the terms and conditions set forth below.

**2.2 Payment.** Licensee shall pay to Licensor a fee for the License rights with other products and obligations defined in this Agreement. All fees for this License and other products and services are described in Exhibit A of this Agreement.

**2.3 Package.** This License shall apply to the Licensor's functional description of the software products and services listed in Exhibit A of this Agreement, in any form or medium, and all associated or related documentation and materials whether supplied as part of the license or as part of a bid or other proposal document (collectively the "**Package**").

**2.4 License.** Copies of the Package created or transferred pursuant to this Agreement are licensed, not sold, and Licensee receives no title to or ownership of any copy of the Package itself. Furthermore, Licensee receives no rights to the Package other than those specifically granted in this Section 2. Without limiting the generality of the foregoing, Licensee will not: (i) modify, create derivative works from, distribute, publicly display, publicly perform, or sublicense the Package; (ii) use the Package for service bureau or time-sharing purposes or in any other way allow third parties to exploit the Package; or (iii) reverse engineer, decompile, disassemble, or otherwise attempt to derive any of the Package's source code.

**2.5 Package Use.** The Package may only be used, on and in connection with central processing unit(s) ("**System**") identified in Exhibit A, or as they may be from time-to-time moved with the Licensee's operations. Identification of the central processing unit(s) is included in Exhibit A. Unless otherwise identified in this Agreement or its attachments or exhibits, a separate license and license fee is required for each computer system upon which the Package will be used.

## **3. Confidentiality.**

**3.1 Confidential Information.** Licensee acknowledges that in the course of this Agreement, Licensee may have access to and/or be in possession of Confidential Information (as defined below) of the Licensor. "**Confidential Information**" shall mean Licensor's information regarded by Licensor as confidential, including without limitation: (i) information relating to Licensor's employee, vendor, client or customer information but not including the Licensee's information; (ii) sales and marketing material and methodologies; (iii) financial or business affairs; (iv) the Package, (including without limitation, all software programs, scripts, macros, documentation, user manuals, help files, and other materials) supplied by Licensor to Licensee; and (v) any other intellectual property, processes, patents, trade secrets, proprietary products or materials of Licensor.

Licensee acknowledges that the Confidential Information is subject to the proprietary rights of Licensor, is a trade secret of Licensor, and is protected by civil and criminal law. Licensee will hold the Confidential Information in strict confidence and in no less a manner than it holds its

own confidential information and will not release or disclose any Confidential Information to third parties unless so required by law or court order. At the option of Licensor, the Licensee will have its employees, agents, officers, and, or sub-contractors execute non-disclosure agreements for the protection of Licensor's Confidential Information.

In the event Licensee is required to disclose any relevant public records under the California Public Records Act (Cal. Gov. Code §6250 et seq.), the Licensee will inform Licensor of such event, but is not obligated to do so prior to disclosing any relevant public records. Licensor will not obstruct Licensee from disclosing any relevant public records.

**3.2 Notice Of Rights.** Licensee shall reproduce and include the entire notice of proprietary rights of Licensor on all copies of the Package in any form, in whole or in part. Said copies shall only be made as expressly provided by this Agreement.

**3.3 Notice Of Unauthorized Use.** Licensee shall notify Licensor immediately of known or suspected unauthorized use, access, or possession of the Package or any part thereof.

#### **4. Reproduction.**

**4.1 Copies.** Except as otherwise agreed to in writing by Licensor, neither the Package nor any other documents provided to the Licensee per this Agreement may be copied or reproduced by Licensee. Additional copies of user documentation may be obtained from Licensor. Documentation shall only be given to employees, for internal use, subject to all the terms and conditions of this Agreement. Notwithstanding the foregoing, any licensed programs which are provided by Licensor to Licensee under this Agreement in machine readable form may be copied, in whole or in part, in printed machine readable form in sufficient number for use by the Licensee with the designated central processing unit, for backup purposes, or archive purposes, provided however, that no more than three (3) printed copies will be under any license at any one time without the prior written consent of Licensor.

**4.2 Records and Audit.** The Licensee agrees to maintain appropriate records of the number and locations of copies of the Package. The original, and any copies of the Package, in whole or in part, which are made by the Licensee shall be the property of Licensor. This does not imply that Licensor owns the media on which the Package is recorded. Licensee agrees to make its facilities available upon service of written notice as defined under Section 8.3 below for inspection and audit at the cost of Licensor for determination of the number of copies and, or license locations. Licensee will cooperate with the audit, including by providing access to any books, computers, records, or other information that relate or may relate to use of the Package. Such audit will not unreasonably interfere with Licensee's business activities. In the event that an audit reveals unauthorized use of the Package, Licensee will reimburse Licensor for the reasonable cost of the audit, in addition to such other rights and remedies Licensor may have.

#### **5. Term and Termination.**

**5.1 Term.** The term of this Agreement is as set forth in Exhibit A.

**5.2 Termination for Cause.** Failure to comply with any provisions of this Agreement shall be cause for default and termination. The non-breaching party may terminate this Agreement for material breach by written notice, effective in thirty (30) days after service of notice unless the breaching party first cures such breach. Service is as defined under Section 8.3 below.

**5.3 Duty Upon Termination.** Upon termination or expiration of this Agreement: (i) any and all fees owed by Licensee to Licensor shall become immediately due and payable; (ii) Licensee will: (a) return the Package to Licensor and all materials of a confidential and/or proprietary nature, as well as any and all copies of the same, and all property (tangible or intangible) belonging to Licensor; or (b) will certify to Licensor in writing through the best efforts of Licensee, and to the best of Licensee's knowledge, the original and all copies, in whole or in part, in any form, of the Package received under the terms of this Agreement or made in connection with this Agreement have been destroyed, except that, upon prior written authorization from Licensor, the Licensee may retain a copy for archive purposes.

## **6. Warranty.**

**6.1 Authority.** Each party signing this Agreement represents and warrants that, as of the Effective Date, it has full power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement. Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

**6.2** EXCEPT AS SET FORTH IN THIS SECTION 6.3, THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THE PACKAGE AND/OR EACH OF THE COMPONENT PARTS. LICENSOR MAKES NO WARRANTY, WHETHER EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY FITNESS FOR A PARTICULAR PURPOSE OTHER THAN AS DESIGNED.

LICENSOR DOES NOT WARRANT THAT THE PACKAGE WILL PERFORM WITHOUT ERROR OR THAT IT WILL RUN WITHOUT IMMATERIAL INTERRUPTION. LICENSOR PROVIDES NO WARRANTY REGARDING, AND WILL HAVE NO RESPONSIBILITY FOR, ANY CLAIM ARISING OUT OF: (I) A MODIFICATION OF THE PACKAGE MADE BY ANYONE OTHER THAN LICENSOR, UNLESS LICENSOR APPROVES SUCH MODIFICATION IN WRITING; (II) IF THE PACKAGE HAS BEEN SUBJECT TO ABUSE, MISUSE, ACCIDENT, ALTERATION, NEGLIGENCE, OR UNAUTHORIZED REPAIR OR INSTALLATION; OR (III) USE OF THE PACKAGE IN COMBINATION WITH ANY OPERATING SYSTEM NOT AUTHORIZED IN THE DOCUMENTATION OR SPECIFICATIONS OF THE PACKAGE, OR WITH HARDWARE OR SOFTWARE SPECIFICALLY FORBIDDEN BY THE DOCUMENTATION OR SPECIFICATIONS.

**7. Limitation of Liability.** IN NO EVENT WILL LICENSOR BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES.

THE LIABILITIES LIMITED BY THIS SECTION 7 APPLY: (A) TO LIABILITY FOR NEGLIGENCE; (B) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE BUT NOT INCLUDING STRICT PRODUCT

LIABILITY; (C) EVEN IF LICENSOR IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (D) EVEN IF LICENSEE'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.

If applicable law limits the application of the provision of this Section 7, Licensor's liability will be limited to the maximum extent permissible.

## **8. General.**

**8.1 Entire Agreement.** This Agreement, and any related attachments, electronic licenses, electronic notices, or exhibits hereto, constitute the entire agreement between the parties with respect to the subject matter; all prior or contemporaneous negotiations, agreements, representations, statements and undertakings with respect to this subject matter are hereby superseded. This Agreement may not be modified except by a writing signed by the Licensor and Licensee. Neither party has relied upon any such prior or contemporaneous communications.

**8.2 Liens.** Licensee shall keep each and every item to which Licensor retains title free and clear of all claims, liens and encumbrances except those of Licensor, and any act of Licensee, voluntary or involuntary, purporting to create a claim of law or encumbrance on such an item shall be void.

**8.3 Notice.** All notices, requests, demands and other communications called for or contemplated in this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered, or five (5) calendar days after being mailed (the date of the mailing shall count as the first day) by United States certified or registered mail, postage prepaid, addressed to the appropriate party at the first above mentioned address or such other address as the parties may designate by written notice in the manner described above.

**8.4 Assignment.** This Agreement and any of the licensed materials, products, and any and all related materials to which it applies may not be assigned, sub-licensed or otherwise transferred by the Licensee without the Licensor's express written consent. Any unauthorized attempt by the Licensee to assign any of its rights, duties, or obligations of this Agreement, or any of the Licensor's Package or materials to which this Agreement applies are void.

**8.5 Amendment.** This Agreement may not be modified except: (i) by authorized representatives of each party; and (ii) in a written amendment signed by both parties.

**8.6 Taxes.** Licensee is responsible for the payment of any and all taxes or other governmental charges resulting from this license and, or use of the Package, including but not limited to sales taxes, excise taxes, permit fees, governmental license fees, and other such governmental charges associated with the license of the Licensor's materials.

**8.7 Delays.** Licensor shall not be liable for any damages or penalty for delay in delivery or performance on its part, when such results from cause beyond the control of Licensor, including but not limited to delays in transportation.

**8.8 Arbitration.** The parties hereby agree that any controversy between the parties to this Agreement involving the construction or application of any term, condition, or promise contained in this Agreement, or with respect to any breach or alleged breach of any obligation, duty, responsibility or covenant contained in this Agreement, may be submitted to arbitration, upon written notice of one party served on the other party, and such arbitration shall be governed by the provisions of the California Arbitration Act, as set forth in the California Code of Civil Procedure.

**8.9 Attorney's Fees.** If any legal claim or arbitration is brought or commenced by either party to this Agreement against the other for the enforcement of this Agreement or because of an alleged breach or default under this Agreement, the prevailing party shall be entitled to recovery of reasonable attorney's fees and other cost in such action in addition to all other relief to which said party may be entitled.

**8.10 Injunctive Relief.** If the Licensee attempts to use, copy, license or convey the items supplied by the Licensor under the terms and conditions of this Agreement, in a manner contrary to this Agreement or the terms of any collateral agreement, or in derogation of the Licensor's proprietary rights, whether these rights are explicitly stated in this Agreement or are determined by law, Licensor shall have, in addition to any other remedies available to it, the right to injunctive relief enjoining such action. The parties agree that a party that violates or threatens to violate this Agreement may cause irreparable injury to the other party, and such irreparable injury entitles the other party to seek injunctive relief in addition to all legal remedies. The prevailing party shall be entitled to recover the cost of enforcing the understanding and agreements as reflected herein, including, without limitation, any attorney's fees and costs incurred.

**8.11 Waiver.** No rights shall be waived, and no breach excused, unless an authorized representative of the waiving or consenting party gives notice in an explicit written waiver. Any such waiver or consent does not constitute waiver or consent with respect to any other act or omission.

**8.12 Governing Law and Jurisdiction.** This Agreement shall be governed by the laws of the State of California, without reference to such state's principles of conflicts of law. The parties consent to the person and exclusive jurisdiction of the Superior Court of Inyo County, California.

**8.13 Severability.** If any part of this Agreement is found to be illegal or unenforceable, that part alone shall be deemed stricken; the remainder of the Agreement will still be in full force and effect.

**8.14 Independent Contractors.** The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other and neither may bind the other in any way.

**8.15 Conflicts among Attachments.** In the event of any conflict between the terms of the main body of this Agreement and those of the Contract or any attachment, the terms of the main body of this Agreement will govern.

**8.16 Counterparts.** This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.

**8.17 Construction.** The parties agree that the terms of this Agreement resulted from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship.

**8.18 Headings.** The headings in the sections of this Agreement are inserted for convenience only and shall not constitute a part hereof or affect the meaning or interpretation hereof.

**8.19 No Third-party Beneficiaries.** This Agreement is solely for the benefit of the Licensee and Licensor and shall create no rights of any nature in any person not a party hereto.

**8.20 Survival.** Section(s) 3 (Confidentiality). 5.4 (Duty Upon Termination). 6 (Warranty). 7 (Limitation of Liability). 8 (General), and any payment obligations covered by this Agreement shall survive any termination or expiration of this Agreement.

**8.21 Funding Limitation.** The ability of Licensee 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, Licensee has the option to cancel, reduce, or modify this Agreement, or any of its terms within ten (10) days of its notifying Licensor of the cancellation, reduction, or modification of available funding. Such notification is not subject to the requirements of Section 8.3 (Notice). Any reduction or modification of this Agreement made pursuant to this provision must comply with the requirements of Section 8.5 (Amendment).



IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date 7/1/2016.

Licensors: AtPac

*Linda Maclam*

Name: **Linda Maclam**

Title: CFO

Dated: August 12, 2016

Licensee: County of Inyo, State of California

*Mark Tiller*

Honorable

Chair, Board of Supervisors

Dated: 1/10/17

Attest: *[Signature]*

Clerk of the Board of Supervisors

Dated: 1/10/17

EXHIBIT A  
TO  
END USER LICENSE AGREEMENT

This is an identified exhibit to the End User License Agreement ("Agreement") by and between  
Licensee: County of Inyo, State of California

Licensor:

AtPac  
13300 New Airport Road, Suite 101  
Auburn, CA 95602  
Attention Linda Maclam  
Telephone-(530) 887-2249  
Facsimile-(530) 887-2259

1. Term.

The term of the Agreement shall be Five (5) calendar years from the Effective Date of the Agreement unless otherwise terminated by the terms of the Agreement or mutual written agreement of the parties and shall automatically renew in successive two year increments after the initial term subject to the Licensee's funding limitation set forth under Section 8.24 to this Agreement unless otherwise specifically terminated.

2. Fees. Annual Fee(s).

The initial License Fee and Service fees are due and payable in one (1) installment from the date the Package is installed, and annually thereafter for the term of this license.

| Annual Maintenance                                    | Fees        | Fee Ext.    |
|---|-------------|-------------|
| CRIis TM License, Maintenance and Support Fees        | \$10,382.40 | \$10,382.40 |
| Day-Forward Redaction                                 | \$927.00    | \$927.00    |
| Cyberscience License and Support                      | \$712.76    | \$712.76    |
| Official Records and Fictitious Business Name Hosting | \$206.00    | \$206.00    |
| Travel and Per Diem (Reference other Services)        | Cost+ 18%   | Cost+ 18%   |
| On-Site Training (Per Hour)                           | \$110.00    | \$110.00    |
| Analysis/Consulting                                   | \$185.00    | \$185.00    |
| Conversion  | \$135.00    | \$135.00    |

**Product & Service Fees.**

Annual fees may be adjusted upward at the beginning of any biennial period, and shall not increase more than 3% in any biennial period.

The above fees exclude any applicable state taxes, local permit fees, or other fees that may be assessed against the Licensor and if assessed will be charged to the Licensee as a pass through cost.

**Maintenance, Support, Service Fees.**

Unless otherwise specified these fees are part of the Annual Fees.

**File Conversion, File Recovery, Implementation, Training, and Other Fees.**

File conversion, implementation, installation, training, and other fees are provided on an invoiced basis. These fee amounts shall be identified in the License Service Orders, which shall be made a part of the Agreement. License Service Order Invoices are due and payable when presented, unless otherwise stated on the Licensor's invoice.

**Other Services, Materials.**

The hourly fee for services not otherwise defined is one hundred fifty-five dollars (\$155.00) per man hour. Materials are invoiced at cost plus eighteen percent (18%). Per Diem rates are as set forth under the applicable General Services Administration. All fees are exclusive of any and all sales taxes, business license, and permit fees. Other services, work or products may be added to this Agreement by the execution of a License Service Order that identifies the work, products or services to be provided or performed and all of the associated fees and costs therewith.

**3. Computer Serial Number & Identification.**

CRiis™ is licensed to run on the computer central processing unit(s) with a serial number(s) of located at \_\_\_\_\_

The number of available user ports/nodes on the CPU/Network is eight (8) concurrent users.

**4. Products & Services Functional Descriptions.**

For the below-identified included modules, Licensor provides the following services:

**Normal business hours** are from 8:00AM to 5:00 PM Pacific Standard Time. Electronic problem reporting is available 24 hours a day 7 days a week using the Internet application HDA.

**Telephonic** response to initial problem or procedural call from Licensee shall be within one (1) hour of notification to Licensor office or Licensor on-call personnel.

**Internet** problem and procedural support from Licensor personnel shall be provided to Licensee identified computer(s).

**Electronic** problem reporting may be through the Internet application software module HDA. Licensor and Licensee personnel shall coordinate problem escalation from initial telephone and electronic support to on-site support. Fees for on-site support shall be determined prior to the dispatch of Licensor personnel and agreed to by authorized representatives of both parties. Response shall be by technically qualified personnel trained in the remediation of Software problems. Licensor will make good faith effort to repair any defects critical to the normal operation of the software and will escalate efforts to most senior personnel within the second day of notification. Escalation of problems that cannot be fixed within eight business hours by

electronic support shall become an on-site call upon request of the Licensee. If the problem is the result of an application software defect there is no charge for the on-site service. Failures that are related to user, network, infrastructure, environment, or other errors on the Licensee's part will be invoiced at the then current on-site rates. If the problem is a combination of errors on the part of both parties, the Licensor will only invoice for the errors caused on the Licensee's part to the extent such errors can be separated and attributable to the Licensee.

- **Maintenance** includes maintenance updates and upgrades of application software. Also included in maintenance is installation, support or error-correction services associated with application software.

- **Revisions and Releases** of the application software will be coordinated between Licensor and Licensee personnel. The procedure for such revisions and releases as they occur from time-to-time shall be for the initial implementation in the identified "test" system with implementation into the "production" system as agreed to by the parties.

- **Setup** includes the preparation and setup of hardware and peripheral equipment necessary for implementation of the application software. Additional hardware, not directly associated with the application software, may be setup at a billable rate, and shall be agreed upon by authorized representatives of both parties. See Exhibit A, Section 2, Fees.

**Support** will be provided during Normal Business Hours, as defined above. Requests for support may be made via telephone or electronically (e-mail). AtPac does not provide support services outside of Normal Business Hours, unless it agrees otherwise. Support services provided outside of Normal Business Hours may be charged for on a time and materials basis.

- o **Error correction** shall be provided as follows:

- An "error" for these purposes is any material defect in the software which has an adverse effect on its use or operation.

- If an apparent error in the software occurs, Customer must notify AtPac as soon as reasonably possible to do so. Notification may be by telephone or internet (email).

- AtPac will use any reasonable means to correct errors. AtPac does not have to attend on-site, unless on-site is the only reasonable means of correcting the error.

- o **Not covered under Support**

AtPac does not have to provide Support Services (either telephone advice or Error correction) in relation to queries or Errors arising because of any of the following:

- Misuse of the Software (which includes any use of the Software that is not in accordance with the relevant Software License);

- Use of the Software with an operating system or on equipment for which it was not intended or designed;

- Defects in any hardware, equipment or firmware;
- Defects in any Software other than the Software to which this Agreement relates;
- The use of the Software with or on any equipment or operating system not approved by AtPac;
- The use of the Software with or in relation to any other Software not approved by AtPac;
- Use of the Software by anyone who has not been properly trained.
- **Training** shall be provided, for the identified fees set forth at Section 2 of this Exhibit, at the Licensor training facilities or at a Licensee site, as agreed to by Licensor and Licensee, from time-to-time.
- **Custom programming and consulting services** shall be provided for the Licensee, for the fees indicated, and as agreed to by the Licensor and Licensee, in writing, from time-to-time.

**CRIIS™** application software modules, materials and services included with this License:

Cashiering System

Vital Records

Real Property Records

License Services

Installed Application Software and Patches

Internet Support

800 Telephone Support

Application Software Revisions Only Including mandated changes.

Operating System updates and patches as coordinated by Licensor and Licensee

**Other Modules.**

Other modules may become available from time-to-time that augment or add to the functions of the Package. These modules (e.g. recording, cashiering, indexing, imaging, OCR, full text retrieval, document management, Internet payments, credit card payments, and other electronic interfaces etc.) are identified as add-on modules and are added at an additional fee at the time of implementation.

**APPENDIX B**

**Asset Transfer and Assignment Agreement Verification**

Letter from Parties Certifying to the Assignment of Agreements

**APPENDIX B**

**Asset Transfer and Assignment Agreement Verification**

Letter from Parties Certifying to the Assignment of Agreements

**ASSET TRANSFER AND CONTRACT ASSIGNMENT  
AGREEMENT**

**among**

**SouthTech Systems, Inc.,**

**AtPac, Inc.;**

**and**

**Linda Maclam**

**dated as of**

**March 1, 2017**



## ASSET TRANSFER AND CONTRACT ASSIGNMENT AGREEMENT

This Asset Transfer and Contract Assignment Agreement (this "**Agreement**"), dated as of March 1, 2017, is entered into by and among SouthTech Systems, Inc., a California corporation ("**Buyer**"), AtPac, a California corporation (the "**Company**"), and Linda Maclam, an individual ("**Maclam**"). Collectively the Company and Maclam, are hereinafter sometimes referred to as the "**Sellers**".

### RECITALS:

WHEREAS, the Company is engaged in the business of business of providing software solutions and services to state and local governments with a focus on preservation and automation of land records through its recording, indexing, cashiering, registration and archival software products (the "**Business**");

WHEREAS, Maclam owns ninety-nine (99%) percent of the shares of the capital stock Company;

WHEREAS, the Sellers wish to transfer certain assets of the Business listed on Schedule 2.01 hereto (the "Transferred Assets") and assign to Buyer all of the contracts of the Company listed on Schedule 2.01(a) hereto (the "Assigned Contracts"), and Buyer wishes to receive and acquire the Transferred Assets and assume from Sellers, all of the Assigned Contracts, of the Business, subject to the terms and conditions set forth herein;


NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

4. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule that would cause the application of laws of any jurisdiction other than those of the State of California.
5. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.
6. Further Assurances. Each of the parties hereto shall execute and deliver, at the reasonable request of the other party hereto, such additional documents, instruments, conveyances and assurances and take such further actions as such other party may reasonably request to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

IN WITNESS WHEREOF, the parties have executed this Assignment and Assumption Agreement to be effective as of the date first above written.

**Buyer**

SouthTech Systems, Inc.

By   
Name: Jose Dominguez  
Title: President

**The Company**

AtPac,, Inc.

By   
Name: Linda Maclam  
Title: CFO/CEO

## Bill of Sale

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, AtPac, Inc., a California corporation (the "**Company**"), does hereby grant, bargain, transfer, sell, assign, convey and deliver to SouthTech Systems, Inc., ("**Buyer**"), all of its right, title and interest in and to the Tangible Personal Property, as such term is defined in that certain Asset Transfer and Contract Assignment Agreement dated as of March 1, 2017 (the "**Agreement**"), by and between the Company, Buyer and the other parties thereto, to have and to hold the same unto Buyer, its successors and assigns, forever.


Buyer acknowledges that the Company make no representation or warranty with respect to the assets being conveyed hereby except as specifically set forth in the Agreement.

The Company for itself, its successors and assigns, hereby covenants and agrees that, at any time and from time to time upon the written request of Buyer, the Company will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably required by Buyer in order to assign, transfer, set over, convey, assure and confirm unto and vest in Buyer, its successors and assigns, title to the assets sold, conveyed and transferred by this Bill of Sale.

IN WITNESS WHEREOF, The Company has duly executed this Bill of Sale as of March 1, 2017.

AtPac, Inc.

By



Name: Linda Maclam

Title: CFO/CEO

phone: (951) 354-6104 • fax: (951) 354-6107

web: [www.southtechsystems.com](http://www.southtechsystems.com)

4181 Flat Rock Drive, Suite 300  
Riverside, California 92505

March 10, 2017

Inyo County  
Kammi Foote, Clerk Recorder/Registrar  
168 N. Edwards St  
Independence, CA 93526

Subject: Notice of Purchase of AtPac and Request for Transfer of Service Agreement

Dear Kammi:

This letter is to notify your department that SouthTech Systems has purchased AtPac corporation's assets including all software application source code, trademarks, equipment and rights to existing software licenses and service agreements. This sale and transfer was effective March 1, 2017.

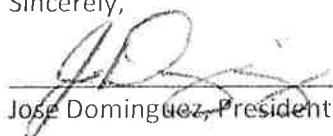
We request your acknowledgement and approval for the transfer of your current agreement to SouthTech Systems. There is no change in pricing, scope of work, technical support and other services which AtPac currently provides to your department. The AtPac employees have been retained by SouthTech and procedures have been established for a smooth transition. We have designated Frederick Garcia as our General Manager of the Northern California office. SouthTech Systems has signed a new lease for our current AtPac office space and staff from both companies will provide services to our combined clients.

SouthTech has extensive experience with California County Recorders, Clerks, Assessors, Clerks of the Board and Election Officials. We also have a large number of California Cities and State Agencies as clients. We have completed technical reviews of AtPac software products as part of the purchase process and feel confident we can continue to provide software support service with no disruptions.

Based on telephone calls to your office, we were informed that a three-party agreement was needed to transfer the AtPac service agreement to SouthTech Systems. We have provided a draft agreement provided for your review and approval. The agreement requires a date and vendor numbers be added. Please assign our company a vendor ID number and return the enclosed form. We have also enclosed SouthTech Certificate of Insurance and W-9 form. All future invoices for licenses and services will come from SouthTech Systems.

The SouthTech System owners and employees are very enthusiastic about assuming responsibility for your software and technical support. Please call me if you have any questions or need any additional information to complete the agreement transfer.

Sincerely,



Jose Dominguez, President



13300 New Airport Road, Suite 101  
Auburn, CA 95602  
800-845-7518  
www.egovinc.com

March 10, 2017

Inyo County  
Kammi Foote, Clerk Recorder/Registrar  
168 N. Edwards St  
Independence, CA 93526

Subject: Notice of Sale of Company and Transfer of Service Agreement

Dear Kammi,

This letter is to notify your department that AtPac has sold the corporation's assets and assigned all software licenses and service current agreements to SouthTech Systems, Inc. This sale and transfer was effective March 1, 2017.

We request your acknowledgement and approval for the transfer of your current agreement to SouthTech Systems. There is no change in pricing, scope of work, technical support and other services which AtPac provides to your department. The selection of SouthTech was made due to their extensive experience with California County Recorders, Clerks, Assessors, Clerks of the Board and Election Officials. The AtPac employees have been retained by SouthTech and procedures have been established for a smooth transition. SouthTech Systems has signed a new lease for our current AtPac office space and staff from both companies will provide services to our combined clients.

Enclosed is the request from SouthTech Systems to assign them a vendor number. All future invoices will come from SouthTech Systems. The company is owned by Jose Dominguez and Grant Gyulnazaryan. I am confident they will continue to serve your department in a highly effective manner and have software upgrades and conversion services for your future consideration that will enhance your systems capabilities, staff productivity and services to your customers.

AtPac has a long tradition of serving California County Clerks, Recorders and Assessors. It has been a pleasure to work with you. I am looking forward to my retirement and feeling very comfortable in the new joint team's abilities to continue to serve you in the future.

Sincerely,

Linda Maclam, Owner/CFO

Copy: Jose Dominguez, President SouthTech Systems



# County of Inyo



## Environmental Health

### CONSENT - ACTION REQUIRED

**MEETING:** July 7, 2020

**FROM:** Walt Kruse

**SUBJECT:** LEA Resolution

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**RECOMMENDED ACTION:**

Request Board approve Resolution No. 2020-29, titled, "A Resolution of the Board of Supervisors, County of Inyo, State of California Authorizing the Submittal of the Local Enforcement Agency Grant Application," and authorize the Chairperson to sign.

**SUMMARY/JUSTIFICATION:**

The Inyo County Environmental Health Department is designated by the CalRecycle as the Local Enforcement Agency (LEA) for regulated solid waste handling facilities. The CalRecycle has previously awarded up to approximately \$17,800.00 annually to the Environmental Health Department to fund the inspections and regulatory activities associated with the solid waste regulatory program within Inyo County. This five-year resolution will replace Inyo County Resolution No. 2010-16, which was adopted for the same purpose on April 13, 2010 and will expire on June 30, 2015.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Revert back to annual resolutions. Do not pass the resolution causing forfeiture of this funding for the solid waste regulatory program

**OTHER AGENCY INVOLVEMENT:**

California Department of Resources, Recycling and Recovery, and the Office of Inyo County Integrated Waste Management

**FINANCING:**

California Department of Resources, Recycling and Recovery, and the Office of Inyo County Integrated Waste Management

**ATTACHMENTS:**

1. LEA Resolution 2020

**APPROVALS:**

Monica Tinlin

Darcy Ellis

Monica Tinlin

Marshall Rudolph

Amy Shepherd

Walt Kruse

Created/Initiated - 6/18/2020

Approved - 6/22/2020

Approved - 6/23/2020

Approved - 6/23/2020

Approved - 6/23/2020

Final Approval - 6/24/2020

Resolution No. \_\_\_\_\_

**A RESOLUTION OF THE  
BOARD OF SUPERVISORS, COUNTY OF INYO, STATE OF CALIFORNIA  
AUTHORIZING THE SUBMITTAL OF THE LOCAL ENFORCEMENT AGENCY  
GRANT APPLICATION**

**Whereas**, the Inyo County Board of Supervisors, acting pursuant to its authority under Public Resources Code section 43202, has designated the Inyo County Department of Environmental Health as the Local Enforcement Agency for purposes of implementing and enforcing State laws pertaining to solid waste in the County; and

**Whereas**, the State legislature, via the Public Resources Code section 43230 has required the California Department of Resources, Recycling and Recovery to make grants available to local enforcement agencies to assist them in the conducting of a program of permitting and inspecting solid waste facilities; and

**Whereas**, it would be beneficial to the County to receive grant funds from the State of California pursuant to Public Resources Code 43230 to partially defray the costs incurred by the County in fulfilling the mandates of State law regarding permitting and inspection of solid waste facilities in the County; and

**Whereas**, funds have been established pursuant to Public Resources Code Section 43230, and are available from the California Department of Resources, Recycling and Recovery Account for grants to Local Enforcement Agencies to support solid waste facilities permit and inspections;

**Now, therefore, be it resolved** that the Inyo County Board of Supervisors authorizes the submittal of grant applications to the California Department of Resources, Recycling and Recovery for Local Enforcement Agency Grants for the period of July 1, 2020 through June 30, 2025;

**Be it further resolved** that the Director of the Inyo County Department of Environmental Health, or his/her designee is hereby authorized and empowered to execute in the name of the County of Inyo all necessary applications, contracts, agreements, payment requests and amendments for the purposes of securing grant funds and to implement and carry out the purposes specified in the grant application.

**Passed and Adopted** by the Inyo County Board of Supervisors this 7th day of July , 2020, by the following vote of the Board of Supervisors:



**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

*Attest: Clint Quilter*

*Clerk of the Board*

---

*Matt Kingsley*

*Chairperson, Inyo County Board of Supervisors*

By: \_\_\_\_\_

*Darcy Ellis, Assistant*



# County of Inyo



## Probation

### CONSENT - ACTION REQUIRED

**MEETING:** July 7, 2020

**FROM:** Jeffrey Thomson

**SUBJECT:** Request Board approve Amendment No. 1 to the contract between the County of Inyo and Inyo Council for the Arts to extend the term end date

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**RECOMMENDED ACTION:**

Request Board approve Amendment No. 1 to the contract between the County of Inyo and Inyo Council for the Arts of Bishop, CA, to extend the term end date from August 31, 2020 to December 31, 2020, and authorize the Chairperson to sign, contingent upon all appropriate signatures being obtained.

**SUMMARY/JUSTIFICATION:**

The Probation Department has had a great opportunity to partner with the Inyo Council for the Arts (ICA) to provide an after-school music and arts program to youth throughout Inyo County. The program is administered by ICA, with collaboration and financial support from the Inyo County Probation Department (ICPD). Based on the evidence that arts-based programs serving at-risk populations can be therapeutic in themselves, the program generally focuses on improving academic achievement by providing passionate teaching artists who specialize in working with youth, a safe and comfortable studio space, and thoughtful and engaging lesson plans. Due to the COVID-19 Pandemic, ICA has had to temporarily postpone their programs and will not be able to complete the contract obligations by August 31, 2020. An extension in time is being requested in order to complete the contract. Both parties wish to extend the term end date from August 31, 2020 to December 31, 2020.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

N/A

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

The Board could choose not to approve the contract with Inyo Council for the Arts, however this is not recommended as funds have been identified and these types of after-school programs are a great benefit to our area youth.

**OTHER AGENCY INVOLVEMENT:**

N/A

**FINANCING:**

This contract is expended out of the Juvenile Institutions Budget 023100, Professional Services Object Code 5265 and funded from YOBG grant monies.

**ATTACHMENTS:**

1. FY 19-20 ICA Contract
2. FY 19-20 ICA Contract Amendment #1

**APPROVALS:**

|                  |                               |
|------------------|-------------------------------|
| Krystal Phillips | Created/Initiated - 6/15/2020 |
| Darcy Ellis      | Approved - 6/18/2020          |
| Krystal Phillips | Approved - 6/18/2020          |
| Marshall Rudolph | Approved - 6/18/2020          |
| Amy Shepherd     | Approved - 6/18/2020          |
| Sue Dishion      | Approved - 6/26/2020          |
| Aaron Holmberg   | Approved - 6/30/2020          |
| Krystal Phillips | Approved - 6/30/2020          |
| Jeffrey Thomson  | Final Approval - 6/30/2020    |

**AGREEMENT BETWEEN COUNTY OF INYO**  
**AND INYO COUNCIL FOR THE ARTS**  
**FOR THE PROVISION OF GRANT IN SUPPORT OF PROGRAM SERVICES**

**INTRODUCTION**

WHEREAS, the County of Inyo (hereinafter referred to as "County") may have the need for the grant in support of program services of Inyo Council for the Arts of Inyo County (hereinafter referred to as "Contractor"), and in consideration of the mutual promises, covenants, terms, and conditions hereinafter contained, the parties hereby agree as follows:

**TERMS AND CONDITIONS**

**1. SCOPE OF WORK.**

The Contractor shall furnish to the 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 L. 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, 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 15, 2020 to August 31, 2020 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 Sixteen thousand two hundred and no/100 Dollars

(\$ 16,200.00) (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 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 ensure 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 or as otherwise may be required. 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.sam.gov>.

**6. OFFICE SPACE, SUPPLIES, EQUIPMENT, ET CETERA.**

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. INSURANCE.**

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

**9. 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 Contractor is to be considered an employee of County. 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.

**10. DEFENSE AND INDEMNIFICATION.**

Contractor shall hold harmless, defend and indemnify County and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work hereunder or its failure to comply with any of its obligations contained in the agreement, except such loss or damages which was caused by the sole negligence or willful misconduct of the County.

**11. 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.

**12. 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.

**13. 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.

**14. 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.

**15. 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.

**16. WAIVER OF DEFAULT.**

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided in paragraph twenty-two (22) below.

**17. CONFIDENTIALITY.**

Contractor further 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. Any disclosure of confidential information by Contractor without the County's written consent is solely and exclusively the legal responsibility of Contractor in all respects.

Notwithstanding anything in the Agreement to the contrary, names of persons receiving public social services are confidential and are to be protected from unauthorized disclosure in accordance with Title 45, Code of Federal Regulations Section 205.50, the Health Insurance Portability and Accountability Act of 1996, and Sections 10850 and 14100.2 of the Welfare and Institutions Code, and regulations adopted pursuant thereto. For the purpose of this Agreement, all information, records, and data elements pertaining to beneficiaries shall be protected by the provider from unauthorized disclosure.

**18. CONFLICTS.**

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

**19. POST AGREEMENT COVENANT.**

Contractor agrees not to use any confidential, protected, or privileged information which is gained from the 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.



**20. SEVERABILITY.**

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

**21. FUNDING LIMITATION.**

The ability of County to enter this Agreement is based upon available funding from various sources. In the event that such funding fails, is reduced, or is modified, from one or more sources, County has the option to cancel, reduce, or modify this Agreement, or any of its terms within ten (10) days of its notifying 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-two (22) (Amendment).

**22. 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.

**23. 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                          |                |
| <u>Inyo County Probation Department</u> | Department     |
| <u>P.O. Box T</u>                       | Address        |
| <u>Independence, CA 93526</u>           | City and State |

|                                  |                |
|----------------------------------|----------------|
| Contractor:                      |                |
| <u>Inyo Council for the Arts</u> | Name           |
| <u>137 South Main Street</u>     | Address        |
| <u>Bishop, CA 93514</u>          | City and State |

**24. 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 INYO COUNCIL FOR THE ARTS**  
FOR THE PROVISION OF GRANT IN SUPPORT OF PROGRAM **SERVICES**


IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEALS  
THIS 7th DAY OF January, 2020

**COUNTY OF INYO**

By:   
Signature  
Matt Kingsley  
Print or Type Name

Dated: 1-7-2020

**CONTRACTOR**

By:   
Signature  
LYNN COOPER  
Print or Type Name

Dated: 8-19-19

APPROVED AS TO FORM AND LEGALITY:

County Counsel

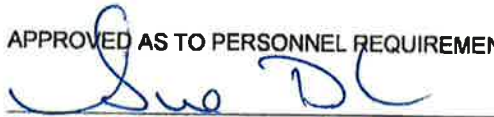


APPROVED AS TO ACCOUNTING FORM:



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 INYO COUNCIL FOR THE ARTS  
FOR THE PROVISION OF GRANT IN SUPPORT OF PROGRAM **SERVICES****

**TERM:**

**FROM:** January 15, 2020 **TO:** August 31, 2020

**SCOPE OF WORK:**

Exemplary teaching artists from across Inyo County will provide comprehensive, standards-based, fine art, after school classes for Inyo County students. The classes will be offered to all county students, with a focus on at-risk and justice-involved youth. The program will be administered by Inyo Council for the Arts (ICA), with collaboration and financial support from the Inyo County Probation Department (ICPD). Based on the evidence that arts-based programs serving at-risk populations can be therapeutic in themselves, our program will generally focus on improving outcomes such as prosocial behaviors, resilience, problem-solving skills, self-regulation, and academic achievement by providing passionate teaching artists who specialize in working with youth, a safe and comfortable studio space, and thoughtful and engaging lesson plans.

Students will acquire an understanding of the elements and principles of art. Each unit will teach specialized skills, language, and cultural relevance. We will be offering classes that are rarely, if ever, available in our county, giving students opportunities for artistic and personal growth. Our rural location means we enjoy a low student to teacher ratio, allowing assessment of each student's knowledge, talents, and struggles. Teaching artists will mentor each student and provide positive feedback and support.

In a safe, supportive environment, students will enjoy the additional developmental benefits of confidence, patience, collaboration, and personal growth. When the pressure of external factors are eliminated, youth can relax and be confident in ways they may otherwise struggle with, letting them get in touch with what makes them unique. We hope to see this translate into incredible art and a more self-aware, confident, and thoughtful youth.

TOTAL FUNDED COSTS \$ 16,200.00

**ATTACHMENT B**

**AGREEMENT BETWEEN COUNTY OF INYO  
AND INYO COUNCIL FOR THE ARTS  
FOR THE PROVISION OF GRANT IN SUPPORT OF PROGRAM SERVICES**

**TERM:**

**FROM:** January 15, 2020      **TO:** August 31, 2020

**SCHEDULE OF FEES:**

**1. Funded Activities/Service (Grant-in-Support):**

**Funded Costs:**

**a.**

- Teaching artists, including payroll taxes and work comp      \$10,000.00
- Materials      \$1,500.00
- Mileage      \$900.00
- Administrative costs - hiring/scheduling/coordination payroll      \$3,800.00

**b. List of Activities:**

After school art and music classes

**TOTAL FUNDED COSTS \$ 16,200.00**

**ATTACHMENT C**

**AGREEMENT BETWEEN COUNTY OF INYO  
AND INYO COUNCIL FOR THE ARTS  
FOR THE PROVISION OF GRANT IN SUPPORT OF PROGRAM **SERVICES****

**TERM:**

**FROM:** January 15, 2020      **TO:** August 31, 2020

**SEE ATTACHED INSURANCE PROVISIONS**

**Specifications 1**  
**Insurance Requirements for Most Contracts**  
**(Not for Professional Services or Construction Contracts)**

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

**MINIMUM SCOPE AND LIMIT OF INSURANCE**

Coverage shall be at least as broad as:

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

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

**Other Insurance Provisions**

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

***Additional Insured Status***

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

### ***Primary Coverage***

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

### ***Notice of Cancellation***

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

### ***Waiver of Subrogation***

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

### ***Deductibles and Self-Insured Retentions***

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

### ***Acceptability of Insurers***

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

### ***Verification of Coverage***

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

### ***Special Risks or Circumstances***

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

**AMENDMENT NUMBER ONE (1) TO  
AGREEMENT BETWEEN THE COUNTY OF INYO AND  
INYO COUNCIL FOR THE ARTS  
FOR THE PROVISION OF INDEPENDENT CONTRACTOR SERVICES**

WHEREAS, the County of Inyo (hereinafter referred to as "County") and INYO COUNCIL FOR THE ARTS \_\_\_\_\_, of Bishop, California (hereinafter referred to as "Contractor"), have entered into an Agreement for the Provision of Independent Contractor Services dated January 7, 2020 \_\_\_\_\_, on County of Inyo Standard Contract No. 116 \_\_\_\_\_, for the term from January 15, 2020 \_\_\_\_\_ to August 31, 2020 \_\_\_\_\_

WHEREAS, County and Contractor do desire and consent to amend such Agreement as set forth below;

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

County and Contractor hereby amend such Agreement as follows:

WHEREAS, both parties agree to amend the agreement and extend the contract term from August 31, 2020 to December 31, 2020 with the same Scope of Work (Attachment A to the original contract), Schedule of Fees (Attachment B to the original contract) and the not to exceed amount of \$16,200.

The effective date of this Amendment to the Agreement is August 31, 2020

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



AMENDMENT NUMBER ONE (1) TO  
AGREEMENT BETWEEN THE COUNTY OF INYO AND  
INYO COUNCIL FOR THE ARTS  
FOR THE PROVISION OF INDEPENDENT CONTRACTOR SERVICES

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

**COUNTY OF INYO**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

**CONTRACTOR**

By: Lynn Cooper  
Signature

Lynn Cooper  
Type or Print

Dated: 06-15-2020

APPROVED AS TO FORM AND LEGALITY:

Grace Chudla  
County Counsel

APPROVED AS TO ACCOUNTING FORM:

Christie Martindale  
County Auditor

APPROVED AS TO PERSONNEL REQUIREMENTS:

Sue Dishon By: Monica Tull  
Personnel Services

APPROVED AS TO RISK ASSESSMENT:

Caron Johnson  
County Risk Manager



# County of Inyo



## Public Works

### CONSENT - ACTION REQUIRED

**MEETING:** July 7, 2020

**FROM:** Trevor Taylor

**SUBJECT:** Resolution to Accept Offer of Dedication for Rocking W Drive

---

**RECOMMENDED ACTION:**

Request Board approve Resolution No. 2020-30, titled, "A Resolution of the Board of Supervisors, County of Inyo, State of California, Adopting Rocking W Drive into the Inyo County Maintained Mileage," and authorize the Chairperson to sign.

**SUMMARY/JUSTIFICATION:**

This resolution provides for formal acceptance of the offer of dedication for Rocking W Drive in Bishop. This road has been treated as a County road since the completion of the Bishop Plaza development in the late 1980's. The language of the resolution provides further clarification.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

N/A

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

The Board could choose not to approve the resolution. This is not recommended as acceptance of the offer of dedication for Rocking W Drive should be approved to allow the County to continue maintaining this road as a part of our maintained mileage system.

**OTHER AGENCY INVOLVEMENT:**

N/A

**FINANCING:**

Roads that are a part of the County's maintained mileage system bring in revenue from gas taxes to aid in maintenance. Although Rocking W Drive has been included in the County's maintained mileage submittals to the State, its inclusion was not appropriate without a resolution formally accepting the offer of dedication. Approval of this resolution serves to correct the County's documentation.

**ATTACHMENTS:**

1. Resolution - Rocking W Drive
2. Exhibit A - Notice of Decision

3. Exhibit B - Tract No. 188

**APPROVALS:**

|                  |                              |
|------------------|------------------------------|
| Trevor Taylor    | Created/Initiated - 6/8/2020 |
| Darcy Ellis      | Approved - 6/8/2020          |
| Trevor Taylor    | Approved - 6/9/2020          |
| Breanne Nelums   | Approved - 6/9/2020          |
| Chris Cash       | Approved - 6/22/2020         |
| Marshall Rudolph | Approved - 6/22/2020         |
| Amy Shepherd     | Approved - 6/23/2020         |
| Michael Errante  | Final Approval - 6/23/2020   |

**RESOLUTION NO. 2020 - \_\_\_\_\_**

**A RESOLUTION OF THE BOARD OF SUPERVISORS,  
COUNTY OF INYO, STATE OF CALIFORNIA,  
ADOPTING ROCKING W DRIVE INTO THE INYO COUNTY MAINTAINED  
MILEAGE**

**WHEREAS**, Rocking W Drive in the Bishop area was installed in the late 1980s as part of the development of the Bishop Plaza Project (now commonly known as the Rite Aid shopping center);

**WHEREAS**, at the time of its installation, it was the intent of all parties that Rocking W Drive be accepted into the Inyo County Maintained Mileage, as evidenced by subdivision (j) of the Inyo County Planning Department's February 26, 1987 Notice of Decision on Crumpler & Kreuger Inc.'s application to construct the Bishop Plaza (attached hereto as Exhibit A);

**WHEREAS**, Crumpler & Krueger also filed a subdivision map with the Inyo County Recorder showing Rocking W Drive as street (attached hereto as Exhibit B), which constitutes an implicit offer of dedication of the road to Inyo County;

**WHEREAS**, since its construction, the Inyo County Road Department has treated Rocking W Drive as a County road by performing maintenance on the road; and

**WHEREAS**, despite these events, during a recent review of Road Department records, it was discovered that there appears to be no formal action taken by the Board of Supervisors to accept Rocking W Drive into the Inyo County Maintained Mileage.

**NOW THEREFORE BE IT RESOLVED:**

1. That Rocking W Drive was offered for acceptance into the Inyo County Maintained Mileage by Crumpler & Kreuger on or about May 28, 1989 via the recordation of a subdivision map showing Rocking W Drive.
2. That Inyo County intends to accept Crumpler & Kreuger's offer of Rocking W Drive.
3. That pursuant to Cal. Streets & Highways Code § 941(b), the Inyo County Board of Supervisors hereby accepts Rocking W Drive into the Inyo County maintained mileage.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by the following vote:

AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_  
ABSENT: \_\_\_\_\_

---

MATT KINGSLEY, Chairperson  
Inyo County Board of Supervisors

ATTEST: Clint Quilter  
Clerk of the Board

By: \_\_\_\_\_  
Darcy Ellis, Assistant  
Assistant Clerk of the Board



Roger DeHart  
~~TED HILTON, A.I.C.P.~~  
Planning Director

## PLANNING DEPARTMENT

DRAWER L • INDEPENDENCE • CALIFORNIA 93526

(619) 878-2411 (Ext. 2263)

County of  
**INYO**

February 26, 1987

*The Planning steps from  
1987-*

Crumpler & Kruger, Inc.  
11557 W. Olympic Blvd.  
Los Angeles, CA 90064

### NOTICE OF DECISION

On February 24, 1987 the Inyo County Board of Supervisors considered all six (6) applications relative to the Bishop Plaza Project. The Board adopted the Final EIR and certified that the provisions of the California Environmental Quality Act had been satisfied. A Notice of Determination was filed with the County Clerk and a copy sent to the Office of Planning and Research in Sacramento.

The Board approved by resolution General Plan Amendments #83-10 & 11 and adopted an ordinance adopted Zone Reclassification #83-23. The Board also approved Tentative Map #188 (waiving the requirements for sidewalks along the south side of Bar L Lane and the east side of Rocking W Drive extension), Road Abandonment #83-2 and Zone Variance #83-4 subject to the following conditions:

- ✓ TM #188
- (a) A Final Map shall be prepared and filed for recordation within two years from the date of approval of the Tentative Map unless, prior to that date, a request for a time extension is submitted to and approved by and Planning Commission.
  - (b) A preliminary soils report shall be prepared as required by Government Code Section 66490.
  - (c) A complete sewer collection system shall be constructed from approved plans. Said system will connect into the existing central sewer system of the Eastern Sierra Community Services District. The central collection system shall be constructed to Eastern Sierra Community Services District specifications. The main sewer lines will then be dedicated to and maintained by the District.
  - (d) The sewer system shall be designed by a qualified engineer and installed by a properly licensed contractor. All plans, specifications, permits and inspections must be approved by the District. All sewer permits will be issued by the District per their fee schedule.

- (e) The proposed water system will be required to meet the approval of the County Health Department, as well as the Department of Public Works. The water system shall be constructed from approved plans and meet the minimum design and construction standards specified in the State of California Public Utilities Commission General Order No. 103 and State Water Works Standards. The location and type of the fire hydrants within the water system shall meet the approval of the Bishop Rural Fire Protection District.
- (f) The water system shall be annexed to the Meadow Creek Mutual Water Company. A revised Domestic Water Supply Permit shall be obtained prior to recordation of the Final Map. The water system shall also be physically connected to the Owens Valley Water Company (Lazy A Estates) water system with a valve to allow linking of the systems in case of emergency.
- (g) The subdivision streets and realignments shall be constructed from approved plans to Inyo County Standard Specifications with concrete curbs, gutters, sidewalks and cross gutters except where waived. Concrete curbs shall be constructed per County Standard No. 115. Paving shall consist of three (3) inches of plant mix or RMAS. Thickness and type of base material shall be determined by tests, but in no case be less than six (6) inches. Base shall extend beneath the curbs and sidewalks. In addition, road construction shall consist of engineering fabric or 1 foot of shale under the base if determined by the Inyo County Public Works Department.
- (h) Street and grading plans shall be submitted to and approved by the Public Works Department prior to construction.
- (i) The following road abandonments shall be made:
  - (1) At the SE corner of Bar L Lane and Barlow Lane.
  - (2) At the NW corner of Bar L Lane and Rocking W Drive.
  - (3) On Lazy A Drive between Bar L Lane and State Highway 395.

- (j) An offer-of-dedication for the proposed re-alignment of Rocking W Drive shall be made.
- (k) Lazy A Drive shall not be closed to thru traffic until the Rocking W Drive extension is completed and accepted by the County.
- (l) The Rocking W Drive extension shall be striped and provided with left-turn lanes opposite the proposed entrances to the Bishop Plaza. Stop signs shall be installed at the intersections of southbound Rocking W Drive with Highway 395 and eastbound Bar L Lane with Rocking W Drive. A left-turn lane shall be provided at the intersection with Highway 395. A crosswalk shall be painted across Bar L Lane on the west side of Rocking W Drive.
- (m) Prior to recording of the Final Map, the subdivider shall deposit with the Inyo County Road Department a sum of \$25,000 to be utilized only for future traffic signal(s) at the intersection(s) of Highway 395 and Rocking W Drive and/or Barlow Lane.
- (n) Subdivider shall install standard W2 "Reverse Turn" signs and W6-15 "15 MPH advisory speed" plates on both approaches to the "S" curve in Rocking W Drive near Bar L Lane.
- (o) Curbs, gutters and sidewalks shall be installed within the Tentative Map boundaries except where waived (see 3).
- (p) Curbs, gutters and sidewalks shall be replaced along lots 77 and 78 of Lazy A Estates where Rocking W Drive is relocated and new right-of-way alignments are established.
- (q) Subdivider shall install a section of sidewalk on the south side of Lot 132 of Lazy A Estates.
- (r) Handicap ramps shall be provided as depicted on the Tentative Map, as well as at the NE corner of Highway 395 and the Rocking W Drive extension.



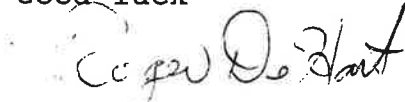
- (s) The proposed irrigation ditch along the east side of the Rocking W Drive extension shall be placed underground if located within the right-of-way. Otherwise, easements shall be provided on the Final Map. Connection to the existing irrigation ditch shall be subject to approval of the Bishop Creek Water Association.
- (t) A minimum 10 foot wide landscape buffer shall be installed along the south side of Bar L Lane and east side of Barlow Lane. A landscaping plan, including landscaping of the parking area on Lots 1 and 2 shall be submitted to and approved by the Inyo County Planning Director prior to installation. Said landscaping shall be installed within six (6) months after the recording of the Final Map. The six month time limit can be extended by the Planning Director if shown due cause. Landscaping shall be of adequate type and size to provide a buffer for litter control.
- (u) All utilities up to each lot, including but not limited to electrical, communications and cable television, shall be placed underground or installation guaranteed.
- (v) All required easements by Southern California Edison and Continental Telephone Company shall be shown and dedicated on the Final Map.
- (w) All required easements for sewer purposes shall be shown on the Final Map and offered for dedication.
- (x) Encroachment permits for all access drives from Highway 395 and for all work done within the Highway 395 right-of-way shall be obtained.
- (y) An agreement shall be made with the Bishop Joint Union School District for the improvement of a school bus assembly area for children on the site.

RA #83-2      After the completion and acceptance of the Rocking W Drive extension the Board will adopt resolutions abandoning portions of Bar L Lane at it's intersection with W Rocking Drive and Barlow Lane and that portion of Lazy A Drive between Highway 395 and Bar L Lane.

VAR #83-4      Zone Variance #83-4 is for a 13 foot front yard setback for the residence as shown on Map #8.

It has been a pleasure working with you on this project but we wish it didn't have to be for three and a half years.

Good luck



Roger De Hart  
Planning Director

cc: Subdivision Committee - J. Clay  
  J. Gooch  
  D. Oldenburg



SD 30430  
BR 4 Pg. 30 1 of 4

SHEET 1 OF 4

# TRACT N° 188

IN THE UNINCORPORATED TERRITORY OF  
THE COUNTY OF INYO, STATE OF CALIFORNIA,  
BEING A SUBDIVISION OF A PORTION OF THE  
SOUTHWEST QUARTER OF SECTION 36, TOWN-  
SHIP 6 SOUTH, RANGE 32 EAST, N.D.M.

Document No. [redacted]  
Filed this [redacted] day of [redacted]  
1987, at [redacted] m. in Book [redacted]  
Page [redacted] of Maps at the  
request of Bishop Plaza Company  
a California partnership  
Beverly J. Harry  
Inyo County Recorder  
By J. L. [redacted]  
Deputy

I hereby certify that I am a Registered Civil Engineer of the State of California; that this map, consisting of four sheets, correctly represents a true and complete survey made under my supervision on January 30, 1984; that the monuments of the character and locations shown hereon will be in place within twenty four months from the filing date of this map; that said monuments are sufficient to enable the survey to be readily retraced and that tie notes to all centerline monuments shown as "to be set" will be on file in the office of the County Surveyor within twenty-four months from the filing date shown hereon.



Gordon C. Holmes  
Gordon C. Holmes RCE 10467  
Exp. 12-31-'88

We hereby certify that we are the owners of or are interested in, the land included within the subdivision shown on this map within the colored border lines and we consent to the preparation and filing of said map and subdivision. We hereby dedicate to the public use all streets, highways and other public ways shown on said map. We hereby grant and dedicate to the Meadowcreek Mutual Water District the well site shown hereon as "Lot A" together with the adjacent 20' access easement.

TRUST SERVICES OF AMERICA, INC, a California Corporation, as successor trustee to Title Insurance and Trust Company, as successor trustee to Ann Moffett, as trustee of the Lazy A Trust dated June 27, 1978.

[Signature] Vice President  
Russell S. Lange Assistant Secretary

State of California }  
County of Los Angeles } s.s.

On this 28<sup>th</sup> day of May, 1987, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Brian T. Kennedy known to me to be the Vice President, and Russell S. Lange known to me to be the Assistant Secretary of Trust Services of America, the corporation that executed the within instrument, and known to me to be the persons who executed the within instrument on behalf of the corporation herein named, and acknowledge to me that such corporation executed the same as trustee.

Witness my Hand and Official Seal.



Lori L. Orcutt  
Notary Public.

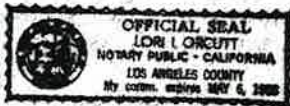
Jerry S. Crumpler  
JERRY S. CRUMPLER  
General partner  
Bishop Plaza Co.

Theodore M. Kruger  
THEODORE M. KRUGER  
General partner  
Bishop Plaza Co.

State of California }  
County of Los Angeles } s.s.

On this 28<sup>th</sup> day of May, 1987, before me, the undersigned, a Notary Public in and for said County and State, personally appeared JERRY S. CRUMPLER AND THEODORE M. KRUGER known to me to be general partners of Bishop Plaza Company, the California partnership that executed the within instrument and known to me to be the persons who executed the within instrument on behalf of the partnership herein named and acknowledged to me that such partnership executed the same.

Witness my Hand and Official Seal.



Lori L. Orcutt  
Notary Public

Safeway Stores 23, INC., a Delaware Corporation

Title [redacted] Title [redacted]  
State of [redacted]  
County of [redacted]

On this [redacted] day of [redacted] 1987, before me, the undersigned, a Notary Public, in and for said County and State, personally appeared [redacted] and [redacted] known to me to be the [redacted] of Safeway Stores 23, INC., the corporation that executed the within instrument and known to me to be the persons who executed the within instrument on behalf of the corporation herein named, and acknowledged to me that such corporation executed the same.

Witness my Hand and Official Seal:



[Signature]  
Notary Public

TRUST SERVICES OF AMERICA, INC, a California corporation as executor to the estate of Ann Moffett.

[Signature] Vice President  
Russell S. Lange Assistant Secretary

State of California }  
County of Los Angeles } s.s.

On this 28<sup>th</sup> day of May, 1987, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Brian T. Kennedy known to me to be the Vice President, and Russell S. Lange known to me to be the Assistant Secretary of Trust Services of America, the corporation that executed the within instrument, and known to me to be persons who executed the within instrument on behalf of the corporation herein named, and acknowledge to me that such corporation executed the same as executor.

Witness my Hand and Official Seal:



Lori L. Orcutt  
Notary Public

INYO LUMBER, RETAIL DIVISION, INC., a California Corporation

[Signature] [Signature]

State of California }  
County of Los Angeles } s.s.

On this [redacted] day of [redacted] 1987, before me, the undersigned, a Notary Public in and for said County and State, personally appeared [redacted] and [redacted] known to me to be the [redacted] and [redacted] known to me to be the [redacted] of INYO LUMBER, RETAIL DIVISION INC., the corporation that executed the within instrument and known to me to be the persons who executed the within instrument on behalf of the corporation herein named, and acknowledged to me that corporation executed the same.

Witness my hand and official seal



[Signature]  
Notary Public



|             |        |
|-------------|--------|
| SD          | 30431  |
| BR 4 Pg. 31 | 2 of 4 |



# TRACT N° 188

IN THE UNINCORPORATED TERRITORY OF  
 THE COUNTY OF INYO, STATE OF CALIFORNIA,  
 BEING A SUBDIVISION OF A PORTION OF THE  
 SOUTHWEST QUARTER OF SECTION 36, TOWN-  
 SHIP 6 SOUTH, RANGE 32 EAST, M. D. M.

I hereby certify that I have examined  
 this map; that it conforms substantially  
 to the tentative map and all approved  
 alterations thereof; that all provisions  
 of applicable state laws and local  
 ordinances have been complied with  
 and that I am satisfied that this map  
 is technically correct

  
 Date

  
 County Surveyor

On Motion of Supervisor  duly seconded and carried, it is ordered  
 that Tract No 188 is hereby approved; that the  
 cash deposit filed in the office of this Board  
 as security for the payment of taxes is  
 hereby approved in the sum of  which  
 is hereby fixed as the required  
 amount of said cash deposit.  
 And that all highways and other public  
 ways herein offered for dedication are  
 rejected on behalf of the public.  
 I hereby certify that the foregoing order  
 was adopted by the Board of Supervisors  
 at a meeting held June 1987.

  
 Clerk of Board of  
 Supervisors, County  
 of Inyo

I hereby accept and approve the  
 easements granted to Contel of  
 California as shown hereon by the noted  
 owner of this property

Dated 

  
 Representative  
 for Contel



|              |        |
|--------------|--------|
| SD           | 30432  |
| BK. 4 Pg. 32 | 3 of 4 |

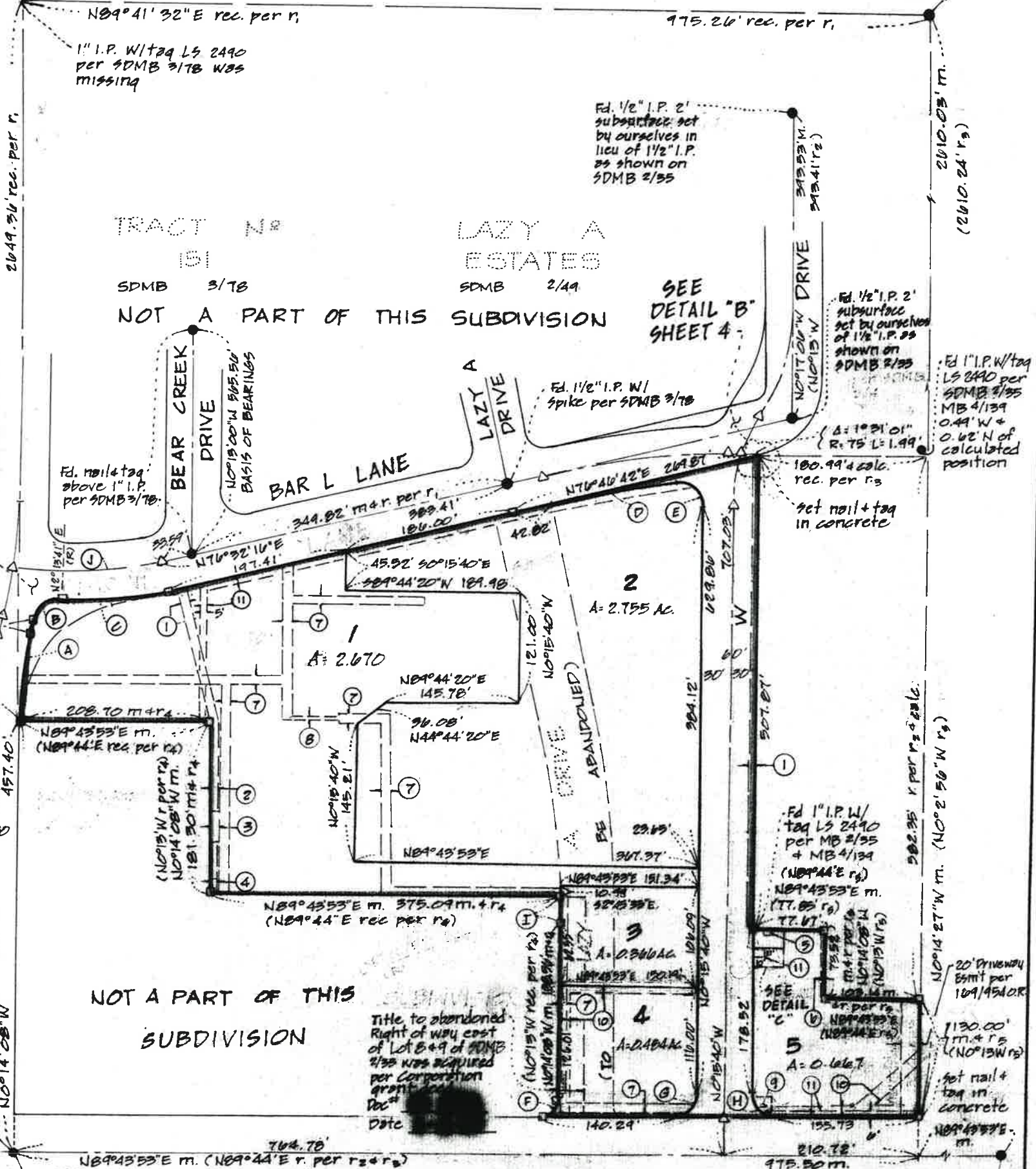
SCALE 1" = 80

SHEET 3 OF 4

# TRACT N° 188

IN THE UNINCORPORATED TERRITORY OF THE COUNTY OF INYO, STATE OF CALIFORNIA BEING A SUBDIVISION OF A PORTION OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 6 SOUTH, RANGE 32 EAST M.D.M.

Fd. 1" I.P. W/taq LS 2490 per SDMB 3/55 M.B. 4/139



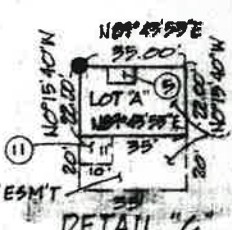
Fd. Co. Surveyor's Brass Cap Mk'd  
 T. U. S. 535 536 PER CS. MAP NO 9  
 32 31  
 T. T. S. 1972 LS 3402

1/4 COR. SEC 36, T6S, R32E  
 Fd. Co. Surveyor Brass Cap, CAM\*9

**NOTES:**

- △ Indicates a spike & tin set in AC permit over 1" I.P. set & subsurface
- Indicates a found point as noted
- Indicates set a 2" I.P. W/taq RCE 10467
- r<sub>1</sub> Indicates record per SDMB 3/76-80
- r<sub>2</sub> Indicates record per SDMB 2/48-49
- r<sub>3</sub> Indicates record per M.B. 4/139
- r<sub>4</sub> Indicates record per SDMB 2/53-55
- r<sub>5</sub> Indicates record per MB 4/48 cfr. calculated from record

LOT "A" AND 20' ACCESS ESMT DEDICATED HEREON TO MEADOWCREEK MUTUAL WATER DISTRICT



| NR | EASEMENT TYPE                  | CR      |
|----|--------------------------------|---------|
| 1  | 10' SANITARY SEWER ESMT        | 104/223 |
| 2  | 8' SANITARY SEWER ESMT         | 104/223 |
| 3  | 12' SANITARY SEWER ESMT        | 230/75  |
| 4  | 10'x20' SANITARY SEWER ESMT    | 104/223 |
| 5  | 10'x5' WATER & SEWER ESMT      | 101/103 |
| 6  | 5' PRIVATE WATER & SEWER ESMT  | 101/103 |
| 7  | 10' WATER ESMT (M.M.W.D.)      |         |
| 8  | 4' WATER ESMT                  |         |
| 9  | 16' WATER ESMT                 |         |
| 10 | 10' IRRIGATION ESMT (C.R.W.A.) |         |
| 11 | CONTELA EDISON ESMT            |         |

| NR | DELTA     | RADIUS  | LENGTH  | TANGENT |
|----|-----------|---------|---------|---------|
| A  | 11°30'00" | 470'    | 77.07'  | 48.71'  |
| B  | 80°37'51" | 25'     | 99.18'  | 21.21'  |
| C  | 15°41'27" | 430'    | 117.76' | 54.25'  |
| D  | 9°25'56"  | 840'    | 150.25' | 64.30'  |
| E  | 49°31'42" | 25'     | 48.01'  | 24.54'  |
| F  | 8°56'01"  | 15'     | 23.55'  | 14.44'  |
| G  | 8°54'55"  | 25'     | 34.27'  | 25.00'  |
| H  | 40°00'27" | 25'     | 34.27'  | 25.00'  |
| I  | 2°31'27"  | 704.17' | 38.56'  | 18.28'  |
| J  | 22°35'38" | 400'    | 150.56' | 74.30'  |

A 1" iron pipe w/taq RCE 10467 was set on all interior lot corners

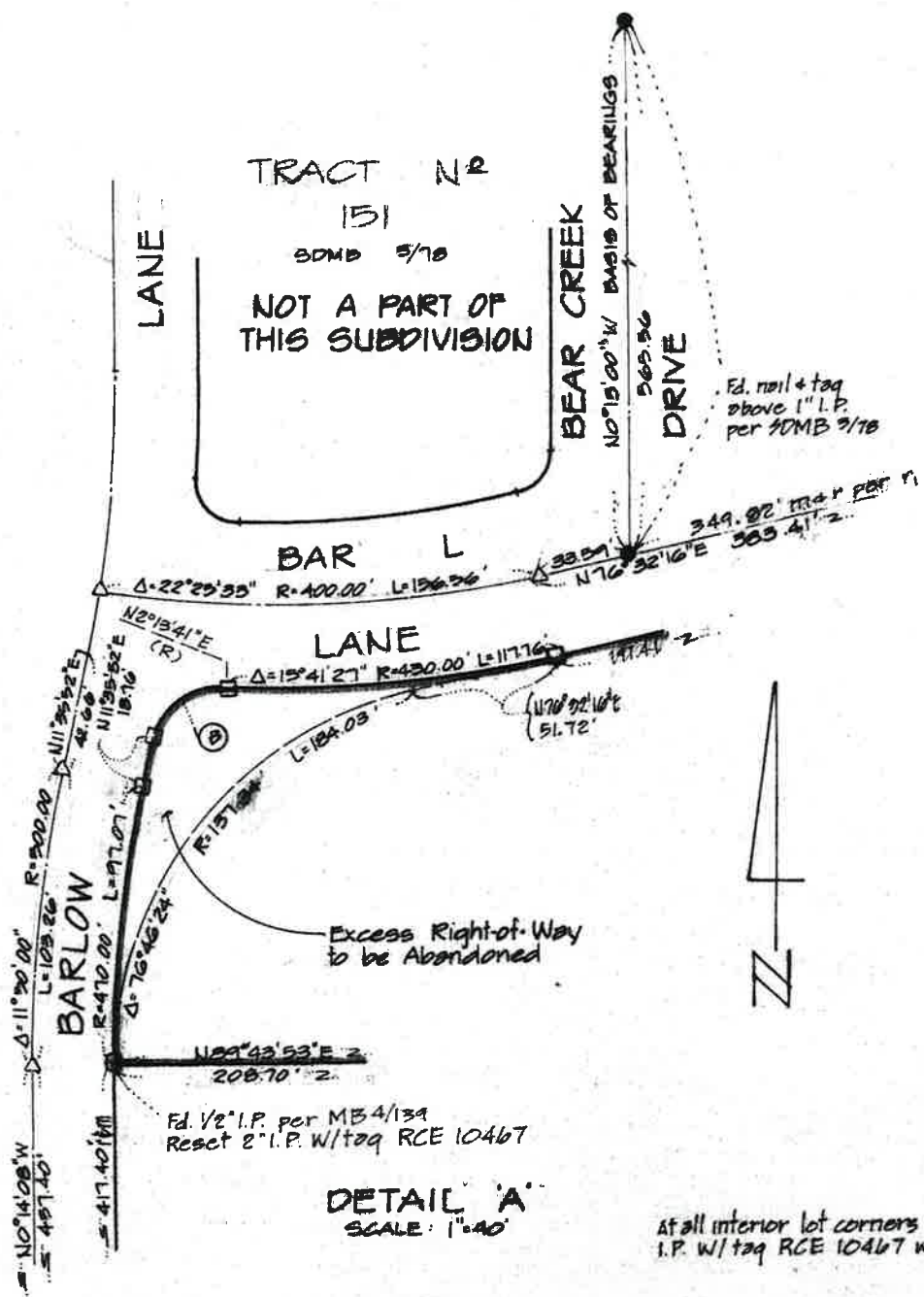
\* REFERS TO BISHOP CREEK WATER ASSOCIATION \* REFERS TO MEADOWCREEK MUTUAL WATER DISTRICT

BOOK PAGE



# TRACT N° 188

IN THE UNINCORPORATED TERRITORY OF THE COUNTY OF INYO, STATE OF CALIFORNIA, BEING A SUBDIVISION OF A PORTION OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 6 SOUTH, RANGE 32 EAST, M. D. M.

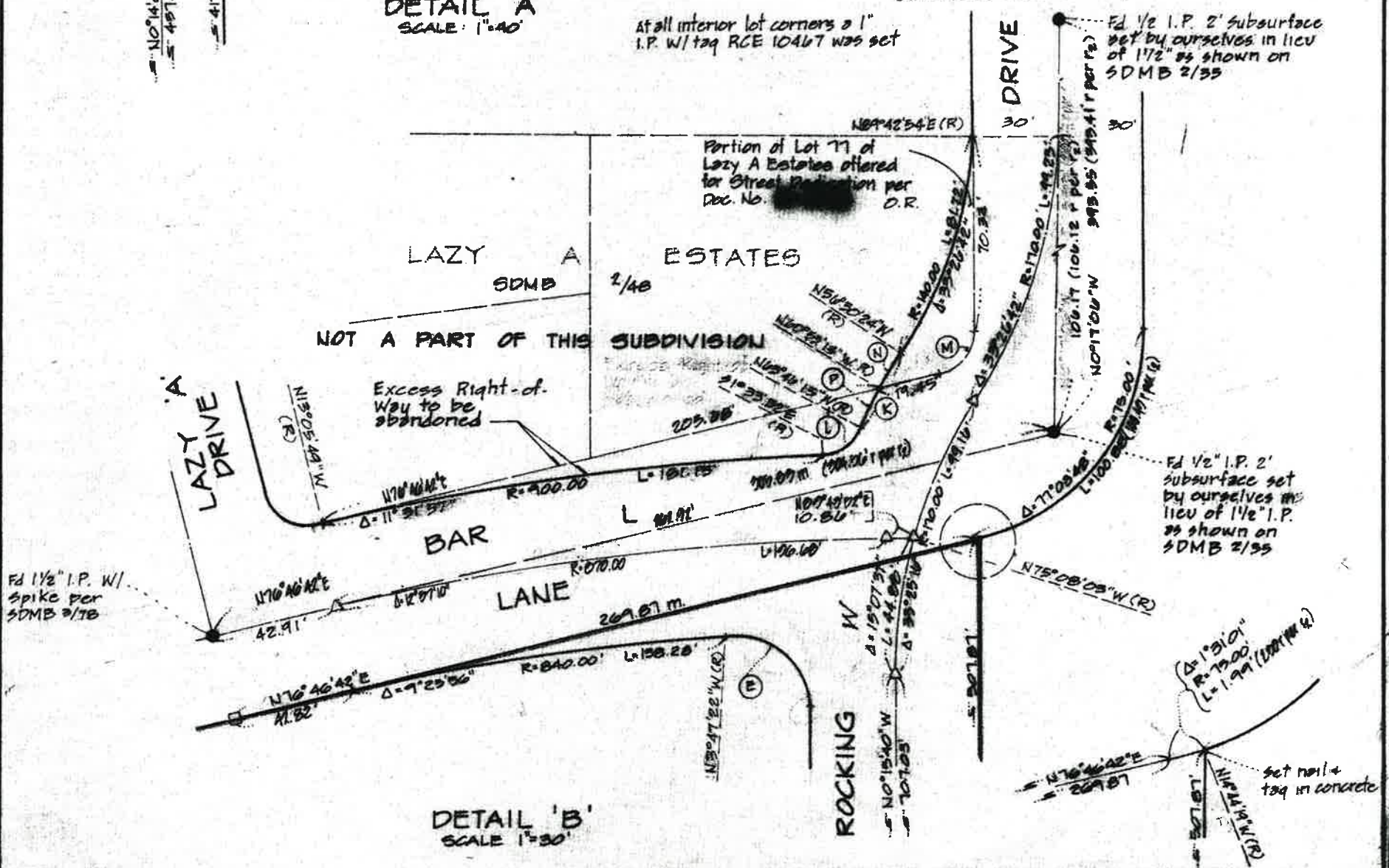


| CURVE DATA TABULATION |           |         |         |         |
|-----------------------|-----------|---------|---------|---------|
| N°                    | DELTA     | RADIUS  | LENGTH  | TANGENT |
| A                     | 11°30'00" | 470.00' | 47.07'  | 48.71'  |
| B                     | 80°57'51" | 25.00'  | 35.16'  | 21.21'  |
| C                     | 15°41'27" | 430.00' | 117.76' | 69.25'  |
| D                     | 9°25'36"  | 840.00' | 138.28' | 69.80'  |
| E                     | 95°21'42" | 25.00'  | 40.81'  | 26.57'  |
| F                     | 89°59'01" | 15.00'  | 23.55'  | 14.99'  |
| G                     | 89°59'35" | 25.00'  | 39.27'  | 25.00'  |
| H                     | 90°00'27" | 25.00'  | 39.27'  | 25.00'  |
| I                     | 2°21'27"  | 759.17' | 82.36'  | 16.25'  |
| J                     | 22°25'35" | 400.00' | 136.36' | 74.50'  |
| K                     | 87°22'22" | 200.00' | 31.57'  | 15.82'  |
| L                     | 48°12'23" | 15.00'  | 12.81'  | 9.41'   |
| M                     | 77°05'46" | 15'     | 20.18'  | 11.95'  |
| N                     | 4°04'55"  | 200'    | 14.24'  | 7.12'   |
| P                     | 4°51'01"  | 200'    | 16.43'  | 8.47'   |

The record bearing of N0°15'00"W of the centerline of Bear Creek Drive as shown on S.D.M.B. 2/78 was used as the basis of bearings shown on this map.

NOTES:

- Indicates a found point as noted
- Indicates set a 2" I.P. w/tag RCE 10467
- △ Indicates a spike & pin set in A.C. pavement over a 1" I.P. set 4' subsurface.
- ‡ Indicates record per SDMB 2/78
- ‡ Indicates record per SDMB 4/134
- r<sub>1</sub> Indicates record per MB 4/134
- r<sub>2</sub> Indicates record per SDMB 2/35-35
- r<sub>3</sub> Indicates record per MB 9/48
- (R) Indicates radial bearing





# County of Inyo



## Public Works

### CONSENT - ACTION REQUIRED

**MEETING:** July 7, 2020

**FROM:**

**SUBJECT:** North Round Valley Bridge Construction Management Contract

---

**RECOMMENDED ACTION:**

Request Board approve the contract between Inyo County and Fountainhead Consulting Services of Anaheim, CA for the performance of construction management services for the North Round Valley Bridge Construction Project in an amount not to exceed \$339,928.37 for the period of July 7, 2020 through December 31, 2021, and authorize the Chairperson to sign, contingent upon all appropriate signatures being obtained.

**SUMMARY/JUSTIFICATION:**

North Round Valley Bridge is a complex project that requires an on-site construction manager who can perform inspections that Public Works does not have the expertise or capacity to fulfill. Fountainhead construction will perform the work described in the attached 'Scope of Work' including but not limited to: contractor management, budget and schedule tracking, inspection of work, structural representation, biological monitoring, and source material inspection.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

North Round Valley Bridge was washed out during the runoff of 2017 for which a state(2017-11) and county emergency were declared. The washout occurred behind the abutments, resulting in a need for a significantly larger bridge (span increase of 40 feet). Public Works is preparing to go to bid for the construction contract and has secured a Construction Management firm (Fountainhead Consulting Corporation) to perform on-site inspections, monitoring, and contractor management.

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

The board could choose not to approve the contract, however this would prevent the project from moving forward.

**OTHER AGENCY INVOLVEMENT:**

The State of California Office of Emergency Services is funding this project at a reimbursement rate of 75%.

**FINANCING:**

The cost of the contract will be paid through budget unit 034600 (Road Budget), object code 5717 (Construction Inspection). This project is reimbursable at a rate of 75% by the California Office of Emergency Services (DSR 3602).

**ATTACHMENTS:**

1. Fountainhead CM Contract - IB Signed

**APPROVALS:**

|                  |                               |
|------------------|-------------------------------|
| Jacob Trauscht   | Created/Initiated - 6/29/2020 |
| Darcy Ellis      | Approved - 6/30/2020          |
| Marshall Rudolph | Approved - 6/30/2020          |
| Amy Shepherd     | Approved - 6/30/2020          |
| Aaron Holmberg   | Approved - 6/30/2020          |
| Michael Errante  | Final Approval - 6/30/2020    |



**AGREEMENT BETWEEN COUNTY OF INYO**

**AND** Fountainhead Consulting Corporation

**FOR THE PROVISION OF** Construction Management **SERVICES**

**INTRODUCTION**

WHEREAS, the County of Inyo (hereinafter referred to as "County") has the need for the Construction Management services of Fountainhead Consulting Corporation (hereinafter referred to as "Consultant"), and in consideration of the mutual promises, covenants, terms, and conditions hereinafter contained, the parties hereby agree as follows:

**TERMS AND CONDITIONS**

**1. SCOPE OF WORK.**

The Consultant shall furnish to the County, upon its request, those services and work set forth in Attachment A, attached hereto and by reference incorporated herein. Requests by the County to the Consultant to perform under this Agreement will be made by the Director of Public Works,  
Michael Errante. Requests to the Consultant for work or services to be performed under this Agreement will be based upon the County's need for such services. The County makes no guarantee or warranty, of any nature, that any minimum level or amount of services or work will be requested of the Consultant by the County under this Agreement. County by this Agreement incurs no obligation or requirement to request from Consultant the performance of any services or work at all, even if County should have some need for such services or work during the term of this Agreement.

Services and work provided by the Consultant at the County's request under this Agreement will be performed in a manner consistent with the requirements and standards established by applicable federal, state, and County laws, ordinances, regulations, and resolutions. Such laws, ordinances, regulations, and resolutions include, but are not limited to, those which are referred to in this Agreement and, as applicable, as set forth, in Attachment E, attached hereto and incorporated herein.

**2. TERM.**

The term of this Agreement shall be from July 7th, 2020 to December 31th, 2021 unless sooner terminated as provided below. In addition, County shall have two options to extend the Agreement for additional one-year periods as follows:

- A. From \_\_\_\_\_ through \_\_\_\_\_
- B. From \_\_\_\_\_ through \_\_\_\_\_

County shall exercise such options by giving written notice to Contractor at least thirty (30) days before the expiration of the Agreement, or an extension thereof.

The notice shall specify the period of the options being exercised. The option to extend shall be upon the same terms and conditions stated in this Agreement.

**3. CONSIDERATION.**

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

B. Travel and per diem. County shall reimburse Consultant for the travel expenses and per diem which Consultant incurs in providing services and work requested by County under this Agreement.

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

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

D. Limit upon amount payable under Agreement. The total sum of all payments made by the County to Contractor for services and work performed under this Agreement shall not exceed \$ 339,928.37 (initial term) \$ \_\_\_\_\_ (option 1) and \$ \_\_\_\_\_ (option 2) for a total of \$ 339,928.37 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. Consultant shall submit to the County, once a month, an itemized statement of all hours spent by Consultant in performing services and work described in Attachment A, which were done at the County's request. This statement will be submitted to the County not later than the fifth (5th) day of the month. The statement to be submitted will cover the period from the first (1st) day of the preceding month through and including the last day of the preceding month. This statement will identify the date on which the hours were worked and describe the nature of the work which was performed on each day. Consultant's statement to the County will also include an itemization of any travel or per diem expenses, which have been approved in advance by County, incurred by Consultant during that period. The itemized statement for travel expenses and per diem will include receipts for lodging, meals, and other incidental expenses in accordance with the County's accounting procedures and rules. Upon timely receipt of the statement by the fifth (5th) day of the month, County shall make payment to Consultant on the last day of the month.

F. Federal and State taxes.

- (1) Except as provided in subparagraph (2) below, County will not withhold any federal or state income taxes or social security from any payments made by County to Consultant under the terms and conditions of this Agreement.
- (2) County will withhold California State income taxes from payments made under this Agreement to non-California resident independent Consultant's when it is anticipated that total annual payments to Consultant under this Agreement will exceed one thousand four hundred ninety nine dollars (\$1,499.00).
- (3) Except as set forth above, County has no obligation to withhold any taxes or payments from sums paid by County to Consultant under this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Consultant. County has no responsibility or liability for payment of Consultant's taxes or assessments.
- (4) The total amounts paid by County to Consultant, and taxes withheld from payments to non-California residents, if any, will be reported annually to the Internal Revenue Service and the California State Franchise Tax Board. To

facilitate this reporting, Consultant shall complete and submit to the County an Internal Revenue Service (IRS) Form W-9 upon executing this Agreement.

#### **4. WORK SCHEDULE.**

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

#### **5. REQUIRED LICENSES, CERTIFICATES, AND PERMITS.**

A. Any licenses, certificates, or permits required by the federal, state, county, or municipal governments for Consultant to provide the services and work described in Attachment A must be procured by Consultant and be valid at the time Consultant enters into this Agreement or as otherwise may be required. Further, during the term of this Agreement, Consultant must maintain such licenses, certificates, and permits in full force and effect. Licenses, certificates, and permits may include, but are not limited to, driver's licenses, professional licenses or certificates, and business licenses. Such licenses, certificates, and permits will be procured and maintained in force by Consultant at no expense to the County. Consultant will provide County, upon execution of this Agreement, with evidence of current and valid licenses, certificates and permits which are required to perform the services identified in Attachment A. Where there is a dispute between Consultant and County as to what licenses, certificates, and permits are required to perform the services identified in Attachment A, County reserves the right to make such determinations for purposes of this Agreement.

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

#### **6. OFFICE SPACE, SUPPLIES, EQUIPMENT, ETC.**

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

#### **7. COUNTY PROPERTY.**

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

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

of this Agreement remain, the sole and exclusive property of the County. At the termination of the Agreement, Consultant will convey possession and title to all such properties to County.

## **8. INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES.**

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

## **9. STATUS OF CONSULTANT.**

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

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

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

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

## **10. DEFENSE AND INDEMNIFICATION.**

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

Consultant shall hold harmless, defend, and indemnify County and its officers, officials, employees, and volunteers from and against all claims, damages, losses, and expenses including attorney fees arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of the Consultant, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, except where caused by the **active negligence**, sole negligence, or willful misconduct of the County.

Consultant's obligation to defend, indemnify, and hold the County, its agents, officers, and employees harmless under the provisions of this paragraph is not limited to, or restricted by, any requirement in this Agreement for Consultant to procure and maintain a policy of insurance. If the Consultant maintains higher limits than the minimum required on the Insurance attachment to this Agreement, the County requires and shall be entitled to coverage for the higher limits maintained by the Consultant.

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

**11. RECORDS AND AUDIT.**

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

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

**12. NONDISCRIMINATION.**

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

**13. CANCELLATION.**

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

**14. ASSIGNMENT.**

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

**15. DEFAULT.**

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

**16. WAIVER OF DEFAULT.**

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided in paragraph twenty-two (22) below.

**17. CONFIDENTIALITY.**

Consultant further agrees to comply with the various provisions of the federal, state, and county laws, regulations, and ordinances providing that information and records kept, maintained, or accessible by Consultant in the course of providing services and work under this Agreement, shall be privileged, restricted, or confidential. Consultant agrees to keep confidential all such information and records. Disclosure of such confidential, privileged, or protected information shall be made by Consultant only with the express written consent of the County. Any disclosure of confidential information by Consultant without the County's written consent is solely and exclusively the legal responsibility of Consultant in all respects.

Notwithstanding anything in the Agreement to the contrary, names of persons receiving public social services are confidential and are to be protected from unauthorized disclosure in accordance with Title 45, Code of Federal Regulations Section 205.50, the Health Insurance Portability and Accountability Act of 1996, and Sections 10850 and 14100.2 of the Welfare and Institutions Code, and regulations adopted pursuant thereto. For the purpose of this Agreement, all information, records, and data elements pertaining to beneficiaries shall be protected by the provider from unauthorized disclosure.

**18. CONFLICTS.**

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

**19. POST AGREEMENT COVENANT.**

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

**20. SEVERABILITY.**

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

**21. FUNDING LIMITATION.**

The ability of County to enter this Agreement is based upon available funding from various sources. In the event that such funding fails, is reduced, or is modified, from one or more sources, County has the option to cancel, reduce, or modify this Agreement, or any of its terms within ten (10) days of its notifying Consultant of the cancellation, reduction, or modification of available funding. Any reduction or modification of this Agreement made pursuant to this provision must comply with the requirements of paragraph twenty-two (22) (Amendment).

**22. 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.

**23. NOTICE.**

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

**County of Inyo:**

|                  |                |
|------------------|----------------|
| Public Works     | Department     |
| P.O. Drawer Q    | Address        |
| Independence, CA | City and State |

**Consultant:**

|                                     |                |
|-------------------------------------|----------------|
| Fountainhead Consulting Corporation | Name           |
| 2400 E. Katella, Suite 800          | Address        |
| Anaheim, CA 92806                   | City and State |

**24. 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** Fountainhead Consulting Corporation

**FOR THE PROVISION OF** Construction Management **SERVICES**

IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEALS THIS  
7th DAY OF July, 2020.

**COUNTY OF INYO**

By: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Print or Type Name

Dated: \_\_\_\_\_

**CONSULTANT**

By: Ivan Benavidez  
Signature  
Ivan Benavidez  
Print or Type Name

Dated: 6/30/2020

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** Fountainhead Consulting Corporation

**FOR THE PROVISION OF** Construction Management **SERVICES**

**TERM:**

**FROM:** July 7th, 2020 **TO:** December 31, 2021

**SCOPE OF WORK:**

business relationship with the construction contractor(s) who are working on the projects that are assigned for material Quality Assurance services through task orders on the contract.

Similar to the disclosures regarding contractors, all firms are also required to disclose throughout the term of the awarded contract, any Design Engineering services including claim services, Lead Project Management services and Construction Engineering Services provided to all other clients on any local project listed in this Scope of Work.

In addition to the disclosures, the Consultant shall also provide possible mitigation efforts, if any, to eliminate or avoid any actual or perceived conflicts of interest.

The Consultant shall ensure that there is no conflict before providing services to any construction contractor on any of the agency's projects' listed in this Scope of Work. The submitted documentation will be used for determining potential conflicts of interest.

If a Consultant discovers a conflict during the execution of an assigned task order, the Consultant must immediately notify the Contract Manager regarding the conflicts of interest. The Contract Manager may terminate the Task Order involving the conflict of interest and may obtain the conflicted services in any way allowed by law. Failure by the Consultant to notify the Contract Manager may be grounds for termination of the contract.

Some examples of conflict of interest are the following:

- Certified Materials Tester(s) or Plant Inspector(s) from the same company that performs Quality Control for the Contractor and Quality Assurance for the County on the same project.
- Providing services to construction contractor's subcontractors, fabricators, equipment installer, material suppliers and other firms associated with the projects listed in the Contract can be a potential conflict of interest when such contractor teams are identified.

### **Scope of Work**

The scope of work defined below is based on the County's current understanding of the work to be performed. The consultant shall review the design documents and environmental permits to identify any components not explicitly or implicitly included in this SOW.

#### **Phase I – Pre-Construction**

- Review RE Files provided by MGE Engineering, make or request any changes necessary
- Review plans for constructability, advise the County and design engineer
- Review contractors proposed schedule, advise the County and design engineer on potential issues
- Pre-Construction/Kick-off meeting – Attend and Participate in a Pre-construction meeting
- Verify all permits are acquired and present at site
  - Review all permit requirements
- Produce Construction oversight Plan
  - Include construction oversight schedule, to be updated weekly in coordination with contractor
  - Identify inspection and material testing requirements, frequencies, personnel required (i.e. material tester, structural inspector, bio monitor), and schedule (to be included in the construction oversight schedule)

#### **Phase II – Construction**

- Schedule, lead, and attend weekly (or as needed) construction progress meetings
  - Provide minutes and action items, to be sent to stake-holders
- Review contractor supplied critical path management schedule, update on weekly or as-needed basis

- Process Progress Payments
  - Prepare monthly quantity estimates, check against contractor invoice statements, make recommendations to the County regarding payment
- Negotiate and prepare contract change orders, in conjunction with design engineer if needed
- Provide and coordinate with additional required personnel, including but not limited to:
  - Structural representative
  - Material Tester
  - Biological monitor
- Submittals & RFIs
  - Review submittals and RFIs, including responses from design engineer, and incorporate any changes that effect required inspections/testing
  - Coordinate with design engineer regarding submittal/RFI responses, and potential changes to inspections/testing based on responses
- Provide full-time inspection services
  - Produce daily RE diaries, including but not limited to:
    - Track Contractor days
    - Track Contractor working hours including employee names
    - Subs on site
    - Major equipment on site and status
    - Description of work completed and task completion status (estimated % of total)
    - Weather
    - Catalog of stop-work and causes
    - Any QA/QC work performed including any test/inspection results, pass/fail status of test/inspection, and any comments that are important for explaining observed results
  - Keep record of all as-built changes for inclusion into the final project as-built drawings
  - Track quantities of materials used/installed
  - Ensure and document compliance with all environmental permits
  - Collect, review, and compile contractor labor compliance documents
  - Inspect construction staking to assure compliance to relevant standards
- Provide sub-contractor to perform quality control material testing services, review results for compliance with construction contract specifications.
  - Notify contractor of any failing tests
  - Provide material tester with weekly schedule up-dates and projections of coming testing requirements for following week
  - Verify material tests are performed in compliance with the County QAP
- Provide structural inspection when required
- Provide a on-site biological monitor to fulfill requirements of all environmental permits
- Public Outreach
  - Provide information to County Project manager to be distributed to public via mailings, website, or other media

### **Phase III – Post-Construction**

- Project Closeout Tasks (Following substantial completion of work)
  - Perform site walk and create a punchlist of items to be completed by contractor (or deducted from final payment)
  - Ensure sign-off from outside agencies confirming that restoration has been completed as far as practicable
  - Generate a final quantity estimate, review final contractor payment and provide recommendations regarding payment to the County
- Generate Final Project Report to include:
  - Summary and results of all QA/QC activities (inspections, material test results, etc)
  - Incorporate submittal and RFI logs (provided by design engineer)
  - Summary of monthly progress reports

- Daily Reports
- Catalog of all as-built changes
- Summary/catalog of environmental monitoring compliance

## **APPENDIX A – PROPOSAL REQUIREMENTS**

These guidelines are provided for standardizing the preparation and submission of Proposal/Proposals by all responding Consultants. The intent of these guidelines is to assist Consultants in preparation of their proposals, to simplify the review process, and to help assure consistency in format and content.

Proposals shall contain the following information in the order listed:

### **1. Introductory Letter**

The introductory (or transmittal) letter shall be addressed to:

Jacob Trauscht  
Inyo County Public Works  
PO Drawer Q  
Independence, CA 93526

The letter shall be on Consultant letterhead and include the Consultant's contact name, mailing address, telephone number, facsimile number, and email address. The letter will address the Consultant's understanding of the services being requested and any other pertinent information the Consultant believes should be included. All addendums received must be acknowledged in the transmittal letter.

The letter shall be wet-signed in blue ink by the individual authorized to bind the Consultant to the proposal.

### **2. Executive Summary**

### **3. Consultant Information, Qualifications & Experience**

The County will only consider submittals from Consultants that demonstrate they have successfully completed comparable projects. These projects must illustrate the quality, type, and past performance of the project team. Submittals shall include a detailed description of a minimum of three (3) projects within the past five (5) years which include the following information:

1. Contracting agency
2. Contracting agency Project Manager
3. Contracting agency contact information
4. Contract amount
5. Funding source
6. Date of contract
7. Date of completion
8. Consultant Project Manager and contact information
9. Project Objective
10. Project Description
11. Project Outcome

### **4. Organization and Approach**

**ATTACHMENT B**

**AGREEMENT BETWEEN COUNTY OF INYO**

**AND** Fountainhead Consulting Corporation

**FOR THE PROVISION OF** Construction Management **SERVICES**

**TERM:**

**FROM:** July 7th, 2020 **TO:** December 31, 2021

**SCHEDULE OF FEES:**

This contract shall allow the Director of Public Works to add to or modify the approved job classification list as necessary to account for personnel changes. The Director of Public Works may only approve changes to the Schedule of Fees that are not associated with an increase to the contract Not-to-Exceed amount.

**EXHIBIT 10-H1 COST PROPOSAL** Page 1 of 3

**COST-PLUS-FIXED FEE OR LUMP SUM OR FIRM FIXED PRICE CONTRACTS**

(DESIGN, ENGINEERING AND ENVIRONMENTAL STUDIES)

Note: Mark-ups are Not Allowed

Prime Consultant     Subconsultant     2<sup>nd</sup> Tier Subconsultant

Consultant Fountainhead Consulting Corporation

Project No. 48C0044                      Contract No. 156                      Date 06/26/2020

**DIRECT LABOR**

| Classification/Title          | Name                | Hours  | Actual Hourly Rate | Total        |
|-------------------------------|---------------------|--------|--------------------|--------------|
| Project Manager/Resident Eng. | Ivan Benavidez      | 224.00 | \$ 81.00           | \$ 18,144.00 |
| Structures Representative     | Javid Sharifi       | 616.00 | \$ 78.00           | \$ 48,048.00 |
| Inspector/Office Engineer     | Salvador Valdovinos | 880.00 | \$ 60.90           | \$ 53,592.00 |
|                               |                     |        |                    | \$ 0.00      |

**LABOR COSTS**

- a) Subtotal Direct Labor Costs \$ 119,784.00
- b) Anticipated Salary Increases (see page 2 for calculation) \_\_\_\_\_
- c) **TOTAL DIRECT LABOR COSTS [(a) + (b)]** \$ 119,784.00

**INDIRECT COSTS**

- d) Fringe Benefits (Rate: 0.00% )                      e) Total Fringe Benefits [(c) x (d)] \$ 0.00
- f) Overhead (Rate: 0.00% )                                      g) Overhead [(c) x (f)] \$ 0.00
- h) General and Administrative (Rate: 104.00% )                      i) Gen & Admin [(c) x (h)] \$ 124,575.36
- j) **TOTAL INDIRECT COSTS [(e) + (g) + (i)]** \$ 124,575.36

**FIXED FEE**

- k) **TOTAL FIXED FEE [(c) + (j) x fixed fee 5.00% ]** \$ 12,217.97

**l) CONSULTANT'S OTHER DIRECT COSTS (ODC) – ITEMIZE (Add additional pages if necessary)**

| Description of Item           | Quantity | Unit | Unit Cost | Total   |
|-------------------------------|----------|------|-----------|---------|
| Mileage Costs                 |          |      |           | \$ 0.00 |
| Equipment Rental and Supplies |          |      |           | \$ 0.00 |
| Permit Fees                   |          |      |           | \$ 0.00 |
| Plan Sheets                   |          |      |           | \$ 0.00 |
| Test                          |          |      |           | \$ 0.00 |

**l) TOTAL OTHER DIRECT COSTS** \$ 0.00

**m) SUBCONSULTANTS' COSTS (Add additional pages if necessary)**

|  |              |
|--|--------------|
| Subconsultant 1: <u>ZT Consulting</u>                | \$ 42,863.04 |
| Subconsultant 2: <u>Earthspectives</u>               | \$ 8,436.00  |
| Subconsultant 3: <u>Jericho Systems</u>              | \$ 18,500.00 |
| Subconsultant 4: <u>Sierra Geotechnical Services</u> | \$ 13,552.00 |

**m) TOTAL SUBCONSULTANTS' COSTS** \$ 83,351.04

**n) TOTAL OTHER DIRECT COSTS INCLUDING SUBCONSULTANTS [(l)+(m)]** \$ 83,351.04

**TOTAL COST [(c) + (j) + (k) + (n)]** \$ 339,928.37

NOTES:

- Key personnel **must** be marked with an asterisk (\*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (\*\*). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
- The cost proposal format shall not be amended. Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans.
- Anticipated salary increases calculation (page 2) must accompany.

**EXHIBIT 10-H1 COST PROPOSAL** Page 2 of 3  
**COST-PLUS-FIXED FEE OR LUMP SUM OR FIRM FIXED PRICE CONTRACTS**  
(CALCULATIONS FOR ANTICIPATED SALARY INCREASES)

**1. Calculate Average Hourly Rate for 1st year of the contract (Direct Labor Subtotal divided by total hours)**

|  |                                  |   |                       |                                |
|--|----------------------------------|---|-----------------------|--------------------------------|
| Direct Labor<br><u>Subtotal</u> per Cost<br>Proposal | Total Hours per<br>Cost Proposal | = | Avg<br>Hourly<br>Rate | 5 Year<br>Contract<br>Duration |
| \$250,000.00   | 500                              |   | \$50.00               | Year 1 Avg<br>Hourly Rate      |

**2. Calculate hourly rate for all years (Increase the Average Hourly Rate for a year by proposed escalation %)**

|        |                 |   |                     |   |         |                        |
|--------|-----------------|---|---------------------|---|---------|------------------------|
|        | Avg Hourly Rate |   | Proposed Escalation |   |         |                        |
| Year 1 | \$50.00         | + | 2%                  | = | \$51.00 | Year 2 Avg Hourly Rate |
| Year 2 | \$51.00         | + | 2%                  | = | \$52.02 | Year 3 Avg Hourly Rate |
| Year 3 | \$52.02         | + | 2%                  | = | \$53.06 | Year 4 Avg Hourly Rate |
| Year 4 | \$53.06         | + | 2%                  | = | \$54.12 | Year 5 Avg Hourly Rate |

**3. Calculate estimated hours per year (Multiply estimate % each year by total hours)**

|        |                                    |   |                                  |   |                         |                        |
|--------|------------------------------------|---|----------------------------------|---|-------------------------|------------------------|
|        | Estimated % Completed<br>Each Year |   | Total Hours per Cost<br>Proposal |   | Total Hours per<br>Year |                        |
| Year 1 | 20.0%                              | * | 5000                             | = | 1000                    | Estimated Hours Year 1 |
| Year 2 | 40.0%                              | * | 5000                             | = | 2000                    | Estimated Hours Year 2 |
| Year 3 | 15.0%                              | * | 5000                             | = | 750                     | Estimated Hours Year 3 |
| Year 4 | 15.0%                              | * | 5000                             | = | 750                     | Estimated Hours Year 4 |
| Year 5 | 10.0%                              | * | 5000                             | = | 500                     | Estimated Hours Year 5 |
| Total  | 100%                               |   | Total                            | = | 5000                    |                        |

**4. Calculate Total Costs including Escalation (Multiply Average Hourly Rate by the number of hours)**

|        |   |   |                                       |   |                  |                        |
|--------|---|---|---------------------------------------|---|------------------|------------------------|
|        | Avg Hourly Rate<br>(calculated above)           |   | Estimated hours<br>(calculated above) |   | Cost per<br>Year |                        |
| Year 1 | \$50.00   | * | 1000                                  | = | \$50,000.00      | Estimated Hours Year 1 |
| Year 2 | \$51.00   | * | 2000                                  | = | \$102,000.00     | Estimated Hours Year 2 |
| Year 3 | \$52.02   | * | 750                                   | = | \$39,015.00      | Estimated Hours Year 3 |
| Year 4 | \$53.06   | * | 750                                   | = | \$39,795.30      | Estimated Hours Year 4 |
| Year 5 | \$54.12   | * | 500                                   | = | \$27,060.80      | Estimated Hours Year 5 |
|        | Total Direct Labor Cost with Escalation         |   |                                       | = | \$257,871.10     |                        |
|        | Direct Labor Subtotal before Escalation         |   |                                       | = | \$250,000.00     |                        |
|        | Estimated total of Direct Labor Salary Increase |   |                                       | = | \$7,871.10       | Transfer to Page 1     |

**NOTES:**

1. This is not the only way to estimate salary increases. Other methods will be accepted if they clearly indicate the % increase, the # of years of the contract, and a breakdown of the labor to be performed each year.
2. An estimation that is based on direct labor multiplied by salary increase % multiplied by the # of years is not acceptable.  
(i.e. \$250,000 x 2% x 5 yrs = \$25,000 is not an acceptable methodology)
3. This assumes that one year will be worked at the rate on the cost proposal before salary increases are granted.
4. Calculations for anticipated salary escalation must be provided.

EXHIBIT 10-H1 COST PROPOSAL Page 3 of 3

**Certification of Direct Costs:**

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. [Title 23 United States Code Section 112](#) - Letting of Contracts
4. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
5. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
6. [48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board](#) (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement. Local governments are responsible for applying only cognizant agency approved or Caltrans accepted Indirect Cost Rate(s).

**Prime Consultant or Subconsultant Certifying:**

Name: Ivan Benavidez Jr Title \*: Project Manager / Resident Engineer

Signature : Ivan Benavidez Jr. Digitally signed by Ivan Benavidez Jr.  
Date: 2020.06.26 16:37:41 -07'00' Date of Certification (mm/dd/yyyy): 06/26/2020

Email: ibenavidez@fountainheadcorp.com Phone Number: 909.512.2815

Address: 2400 E. Katella Ave, Ste 800, Anaheim Ca 92806

\*An individual executive or financial officer of the consultant’s or subconsultant’s organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

Project Management, Construction Management and Material Quality Assurance Testing Services.





## SGS SCHEDULE OF FEES

### SERVICES

| <b><u>Professional</u></b>           | <b>Code</b> | <b>Rate</b> |
|--------------------------------------|-------------|-------------|
| Principal Engineer/Geologist         | PEG         | \$155       |
| Senior Engineer/Geologist            | SEG         | \$135       |
| Project Engineer/Geologist           | PG          | \$120       |
| Staff Engineer/Geologist             | STEG        | \$100       |
| Environmental Geologist              | EG          | \$135       |
| Senior Registered Hydrogeologist     | SRH         | \$205       |
| Groundwater Geologist                | SGG         | \$135       |
| Expert Witness/Deposition (4-hr min) | EW          | \$255       |

| <b><u>Field Technical</u></b>        | <b>Code</b> | <b>Rate</b> |
|--------------------------------------|-------------|-------------|
| Certified Welding Inspector          | CWI         | \$125       |
| Structural Welding Inspector         | SWI         | \$115       |
| Certified Concrete/Masonry Inspector | CCI         | \$115       |
| Structural Bolting Inspector         | SBI         | \$115       |
| Structural Steel Inspector           | SSI         | \$115       |
| Reinforcing Steel Inspector          | RSI         | \$105       |
| Epoxy/Grout Dowel Inspector          | EDI         | \$105       |
| Field Engineer/Geologist             | FEG         | \$100       |
| Field Groundwater Geologist          | FGG         | \$110       |
| Senior Field Technician              | SFT         | \$90        |
| Field Technician                     | FT          | \$85        |
| Source Inspector                     | SI          | \$90        |
| Ultrasonic Weld Testing              | UST         | \$155       |
| Magnetic Particle Testing            | MPT         | \$155       |

| <b><u>Field Technical (Prevailing Wage)</u></b> | <b>Code</b> | <b>Rate</b> |
|---|-------------|-------------|
| Certified Welding Inspector                     | CWIP        | \$165       |
| Structural Welding Inspector                    | SWIP        | \$155       |
| Certified Concrete/Masonry Inspector            | CCIP        | \$155       |
| Structural Bolting Inspector                    | SBIP        | \$155       |
| Structural Steel Inspector                      | SSIP        | \$155       |
| Reinforcing Steel Inspector                     | RSIP        | \$140       |
| Epoxy/Grout Dowel Inspector                     | EDIP        | \$140       |
| Field Engineer/Geologist                        | FEGP        | \$140       |
| Field Groundwater Geologist                     | FGGP        | \$145       |
| Senior Field Technician                         | SFTP        | \$120       |
| Field Technician                                | FTP         | \$115       |
| Source Inspector                                | SIP         | \$120       |
| Ultrasonic Weld Testing                         | USTP        | \$205       |
| Magnetic Particle Testing                       | MPTP        | \$205       |



## SGS SCHEDULE OF FEES

| <b><u>Office and Laboratory Technical</u></b> | <b>Code</b> | <b>Rate</b> |
|---|-------------|-------------|
| Project Coordination                          | PC          | \$85        |
| Laboratory Technician                         | LT          | \$90        |
| Office Supplies/Clerical                      | OS          | \$65        |
| Outside Services                              |             | 115%        |
| Job Supplies/Reproduction/Postage             |             | 115%        |

| <b><u>Equipment Rental</u></b> | <b>Code</b> | <b>Rate</b> |
|--------------------------------|-------------|-------------|
| Rebar Locator                  | RL          | 115%        |
| Ultrasonic Weld Tester         | UWT         | 115%        |
| Magnetic Weld tester           | MWT         | 115%        |
| Diamond Coring Rig             | DCR         | \$80        |
| Torque Wrench/Skidmore         | TWS         | \$80        |
| Water Quality Probe            | WQP         | \$50        |
| Water Level Sounder            | WLS         | \$25        |

| <b><u>Vehicle, Travel, and Per Diem</u></b> | <b>Code</b> | <b>Rate</b> |
|---|-------------|-------------|
| Mileage                                     | MI          | \$.70/mi    |
| Travel Time (200-mile max)                  | TT          | \$85        |
| Room and Board                              | RB          | 115%        |
| Meals                                       | M           | \$40        |

### **LABORATORY TESTING**

| <b><u>Soils and Aggregates</u></b> | <b>Code</b> | <b>Test Method</b> | <b>Rate</b> |
|------------------------------------|-------------|--------------------|-------------|
| Proctor (Standard Effort-4")       | SDC4        | ASTM D698          | \$225       |
| Proctor (Modified Effort-4")       | MDC4        | ASTM D1557         | \$230       |
| Proctor (Modified Effort-6")       | MDC6        | ASTM D1557         | \$250       |
| Proctor (Rock Correction)          | RC          | ASTM D4718         | \$160       |
| Proctor (Check Point)              | CKPT        | ASTM D1557         | \$55        |
| Wet Density (Caltrans Tube)        | CCT         | CT 216             | \$225       |
| Durability Index                   | DI          | ASTM D3744/CT 229  | \$225       |
| Hydrometer                         | HY          | ASTM D422          | \$215       |
| Plasticity Index                   | PI          | CT 204             | \$305       |
| Liquid Limit                       | LL          | ASTM D4318         | \$165       |
| Plastic Limit                      | PL          | ASTM D4318         | \$165       |
| R-Value (CA/NV Untreated)          | RV          | ASTM D2844/CT 301  | 115%        |
| Sand Equivalent                    | SE          | ASTM D2419/CT 217  | \$115       |
| Sieve Analysis                     | SA          | ASTM C136/CT 202   | \$115       |
| Sieve Analysis with 200 Wash       | SAW         | ASTM C117          | \$145       |
| Specific Gravity (Coarse)          | SGC         | ASTM C127/CT 206   | \$135       |
| Specific Gravity (Fine)            | SGF         | ASTM C128/CT 207   | \$135       |



## SGS SCHEDULE OF FEES

|                             |     |                   |       |
|-----------------------------|-----|-------------------|-------|
| Cleanness Value             | CV  | CT 227            | \$105 |
| Fractured/Crushed Particles | FP  | ASTM D5821/CT 205 | \$155 |
| Unit Weight                 | UWA | CT 212            | \$105 |

| <b><u>Shear and Consolidation</u></b> | <b>Code</b> | <b>Test Method</b> | <b>Rate</b> |
|---------------------------------------|-------------|--------------------|-------------|
| Direct Shear (Undisturbed, 3-Point)   | UST         | ASTM D3080         | \$215       |
| Direct Shear (Remolded, 3-Point)      | RST         | ASTM D3080         | \$235       |
| Consolidation (8-Point)               | CON         | ASTM D2435         | \$355       |
| Additional Points                     |             |                    | \$55        |

| <b><u>Concrete</u></b>           | <b>Code</b> | <b>Test Method</b> | <b>Rate</b> |
|----------------------------------|-------------|--------------------|-------------|
| Compressive Test Cylinder        | CCT         | ASTM C39           | \$43        |
| Compressive Test Grout Sample    | CTGS        | ASTM C39           | \$43        |
| Compressive Test Grout Prism     | CTGP        | ASTM C39           | \$65        |
| Compressive Test Mortar Cylinder | CTMC        | ASTM C39           | \$43        |
| Compressive Test Shotcrete Core  | CTSC        | ASTM C39           | \$43        |
| Oven Dry Density                 | ODD         | ASTM C567          | \$125       |
| Equilibrium Density              | EDD         | ASTM C567          | Request     |

| <b><u>Asphalt and Pavement</u></b>       | <b>Code</b> | <b>Test Method</b> | <b>Rate</b> |
|--|-------------|--------------------|-------------|
| Asphalt Extraction by Ignition           | IGN         | CT 382             | \$250       |
| Aggregate Gradation of Extracted Sample  | GES         | CT 202             | \$115       |
| Moisture Content of Asphalt              | MCA         | CT 370             | \$105       |
| Specific Gravity of Asphalt Core         | SGAC        | CT 308             | \$60        |
| Theoretical Max Specific Gravity/Density | RICE        | CT 309             | \$165       |
| Stabilometer Test                        | HVEEM       | CT 366             | 115%        |



47 1st Street, Suite 1  
 Redlands, CA 92373-4601  
 (909) 915-5900

## Rate Sheet

**Personnel Category Rates :** Charges will be made at the Category rates set forth for the time spent on project management, consultation or meetings related to the project, field work, report preparation and review, travel time to and from the job site, etc.

| Position Title                | Assigned hourly rate for the duration of the contract |
|-------------------------------|---|
| Principal In Charge           | \$157.00  |
| Senior Regulatory Specialist  | \$157.00  |
| Program Manager               | \$157.00  |
| Senior Ecologist              | \$140.00  |
| CEQA/NEPA Specialist          | \$140.00  |
| Environmental Project Manager | \$140.00  |
| Environmental Site Manager    | \$140.00  |
| Public Outreach Specialist    | \$140.00  |
| Senior Biologist              | \$140.00  |
| FAA Licensed UAV Pilot        | \$135.00  |
| Biologist                     | \$128.00  |
| Field Biologist               | \$110.00  |
| CADD/GIS Specialist           | \$110.00  |
| Project Analyst               | \$105.00  |
| General Construction Monitor  | \$105.00  |
| Administrative                | \$ 65.00  |

### Expenses Billed At Cost:

Travel (non-automobile)  
 Lodging  
 Auto and Truck Rentals  
 Specialty Equipment and Rentals  
 Delivery Services  
 Printing (Blueprints, Photo Services, Color Copies  
 Specialty Supplies)

### Other Direct Cost:

Auto Mileage (at current IRS rate)  
 Agency Permit Fees (At Cost)  
 Subconsultants – Cost Plus 3%



19 Shanna Circle  
Crowley Lake, CA 93546

**Prevailing Wage  
Pricelist 2020**

| <b>Categories</b>             | <b>Hourly Rate</b> |
|-------------------------------|--------------------|
| Survey crew (Prevailing Wage) | \$260              |
| Calculation time              | \$100              |
| Project Coordination          | \$100              |
| Boundary Map Research         | \$100              |
| Drafting                      | \$100              |
|                               |                    |



**ZTC Hourly Rate 2020**

| Type of Service                                  | Title                   | Qualification                    | Hourly Rate             |
|--|-------------------------|----------------------------------|-------------------------|
| <b>Project Management</b>                        | PM                      | PE                               | \$210                   |
| <b>Engineering Service</b>                       | Senior Quality Engineer | PE / CQA                         | \$184.80                |
|  | Quality Engineer        | PE                               | \$115.50                |
|  | Assistant Engineer      | EIT                              | \$80.85                 |
| <b>QA Source Inspection Services</b>             | QA Inspector            | CWI, PCI II/III, ASNT NDT UT/MT  | \$109.15 <sup>1,2</sup> |
| <b>QA Field Inspection Services (Prevailing)</b> | QA Inspector            | CWI, PCI II./III, ASNT NDT UT/MT | Per DIR requirements    |

<sup>1</sup> Minimum four hours charge for inspection services

<sup>2</sup> Overtime rate applies after 8 hours on the job on the weekdays and any hours worked on Saturday, Sunday, and Holidays.

**Other Direct Cost\*\*\***

| Item                            | Quantity              | Approx. Unit Cost      | Total Amount |
|---------------------------------|-----------------------|------------------------|--------------|
| Millage                         | TBD (Federal Rate)    | \$ 0.575 / mile        | TBD          |
| Travel in-State                 | TBD (Caltrans Policy) | Approx. \$600 / Trip   | TBD          |
| Travel Out-of-State             | TBD (Caltrans Policy) | Approx. \$1,200 / Trip | TBD          |
| Bearing Pad / Elastomer Testing | TBD (ZTC Sub ***)     | \$1,500 / Unit         | TBD          |
| Epoxy Coating Testing           | TBD (ZTC Sub ***)     | \$150 / Per Sample     | TBD          |
| Strand Testing                  | TBD (ZTC Sub ***)     | \$180/ Per Test        | TBD          |
| Anchor Bolt Testing             | TBD (ZTC Sub ***)     | \$350 / Per Set        | TBD          |
| Hoop Testing / Couplers (<#11)  | TBD (ZTC Sub ***)     | \$160 / Per Sample     | TBD          |
| High Strength Bolts             | TBD (ZTC Sub ***)     | \$155 / per bolt set   | TBD          |
| Prestressing Components         | TBD (ZTC Sub ***)     | \$125 / per sample     | TBD          |

\*\*\* This approximate cost. All the sub invoices are pass through. ZTC does not markup the subs invoices.

**ATTACHMENT C**

**AGREEMENT BETWEEN COUNTY OF INYO**

**AND** Fountainhead Consulting Corporation

**FOR THE PROVISION OF** Construction Management **SERVICES**

**TERM:**

**FROM:** July 7th, 2020 **TO:** December 31, 2021

**SCHEDULE OF TRAVEL AND PER DIEM PAYMENT:**

**ATTACHMENT D**

**AGREEMENT BETWEEN COUNTY OF INYO**  
**AND** Fountainhead Consulting Corporation  
**FOR THE PROVISION OF** Construction Management **SERVICES**

**TERM:**

**FROM:** July 7th, 2020      **TO:** December 31, 2021

**SEE ATTACHED INSURANCE PROVISIONS**



## Attachment D: Insurance Requirements for Professional Services

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

### MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

**Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence, \$2,000,000 general aggregate.

Additional Insured Status. Inyo County, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Vendor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

**Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

**Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. May be waived with signed letter on contractor's letterhead certifying that contractor has no employees.

**Professional Liability (Errors and Omissions):** appropriate to the Contractor's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

**Cyber Liability Insurance,** with limits not less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate. Cyber liability requirement may be waived if contractor will not be receiving/storing/transmitting personally identifiable information (PII) or personal medical information (PMI). Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by contractor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, Inyo County requires and shall be entitled to the broader coverage and/or the higher

## **Attachment D: Insurance Requirements for Professional Services**

limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to Inyo County.

### **OTHER INSURANCE PROVISIONS**

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

#### **Primary Coverage**

For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance primary coverage at least as broad as ISO CG 20 01 04 13 as respects Inyo County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by Inyo County, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

#### **Notice of Cancellation**

Each insurance policy required above shall state that coverage shall not be canceled, except with notice to Inyo County.

#### **Waiver of Subrogation**

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

#### **Self-Insured Retentions**

Self-insured retentions must be declared to and approved by Inyo County. Inyo County may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Inyo County.

#### **Acceptability of Insurers**

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to Inyo County.

#### **Claims Made Policies**

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

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

## **Attachment D: Insurance Requirements for Professional Services**

### **Verification of Coverage**

Contractor shall furnish Inyo County with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to Inyo County before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. Inyo County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

### **Subcontractors**

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that Inyo County is an additional insured on insurance required from subcontractors.

### **Special Risks or Circumstances**

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

-end-



# County of Inyo



## Public Works

### CONSENT - ACTION REQUIRED

**MEETING:** July 7, 2020

**FROM:** Breanne Nelums

**SUBJECT:** Approve increase in blanket purchase order purchasing authority.

---

**RECOMMENDED ACTION:**

Request Board authorize an increase of Public Works' Fiscal Year 2019-2020 purchasing authority with Britt's Diesel of Bishop, CA by \$15,000 to a total not-to-exceed amount of \$80,000, Quinn Company by \$20,000 to a total not-to-exceed amount of \$40,000 and Western Nevada Supply by \$20,000 to a total not-to-exceed amount of \$50,000 for the purchase of auto and building repair items.

**SUMMARY/JUSTIFICATION:**

Public Works is a large department operating off nearly (30) budgets. According to Inyo County Purchasing and Contracting Policy and Procedure Manual Section II. Departmental Responsibilities G. Blanket Purchase Orders, "With the additional delegation of purchase authority to Department Heads, it is anticipated that repetitive purchases may still be most appropriately handled by establishing blanket purchase orders with specific vendors. 2.) When the same vendor is used repetitively for similar service, the requesting department may be required to initiate a blanket purchase order. Such requests may be initiated by the Purchasing Agent or the Auditor as the regular use is monitored." And Section VII Special Instructions, G. Consolidation of Departmental Requests, "Departments shall make every effort to consolidate similar goods and supplies into a single purchase requisition. In addition, the purchasing division/department may periodically issue a schedule of planned procurement solicitations for specific common products or materials. Department requests should be consolidated and submitted in accordance with these schedules. Goods and supplies shall be ordered in and consistent with future needs and available storage space." In an effort to be compliant with this policy and proactive in our spending efforts, Public Works is requesting Board approval of the above blanket purchase orders. We make every effort to keep our business local and distributed throughout the Owens Valley, we purchase from vendors in both the North and South County when we can.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

On August 6, 2019 your board approved blanket purchase orders for multiple vendors. Britt's Diesel, Quinn Company and Western Nevada Supply were on the list of vendors.

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Your board could choose not to approve the increases for these vendor blanket purchase orders, however, that is not recommended as parts and supplies have already been purchased.

**OTHER AGENCY INVOLVEMENT:**

Auditor's Office  
County Counsel

**FINANCING:**

These invoices will be paid from multiple budgets, and object codes within our department budget authority. There is sufficient budget split between all Public Works divisions to make these payments.

**ATTACHMENTS:**

**APPROVALS:**

|                  |                               |
|------------------|-------------------------------|
| Breanne Nelums   | Created/Initiated - 6/18/2020 |
| Darcy Ellis      | Approved - 6/22/2020          |
| Breanne Nelums   | Approved - 6/22/2020          |
| Michael Errante  | Approved - 6/22/2020          |
| Marshall Rudolph | Approved - 6/22/2020          |
| Amy Shepherd     | Approved - 6/23/2020          |
| Michael Errante  | Final Approval - 6/23/2020    |



# County of Inyo



## Public Works

### CONSENT - ACTION REQUIRED

**MEETING:** July 7, 2020

**FROM:** Breanne Nelums

**SUBJECT:** Approve blanket purchase order spending authority for Public Works for the 20/21 fiscal year.

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**RECOMMENDED ACTION:**

Request Board authorize issuance of blanket purchase orders for Fiscal Year 2020-2021 in the following amounts payable to the following vendors, for vehicle and building repair items for Public Works, totaling \$490,000: Britt's Diesel, \$70,000; Silverstate International, \$30,000; Bishop Welding, \$20,000; High Country Building & Lumber, \$30,000; Mission Linen, \$40,000; Coastline Equipment, \$40,000; Snow Survey Associates, \$20,000; Quinn Company, \$30,000; Environmental Concepts, \$40,000; Dave Auto Parts, \$50,000; Western Nevada Supply, \$50,000; Steve's Auto & Truck Parts, \$40,000, and High Desert Trucking School, \$30,000.

**SUMMARY/JUSTIFICATION:**

Public Works is a large department operating off nearly (30) budgets. According to Inyo County Purchasing and Contracting Policy and Procedure Manual Section II. Departmental Responsibilities G. Blanket Purchase Orders, "With the additional delegation of purchase authority to Department Heads, it is anticipated that repetitive purchases may still be most appropriately handled by establishing blanket purchase orders with specific vendors. 2.) When the same vendor is used repetitively for similar service, the requesting department may be required to initiate a blanket purchase order. Such requests may be initiated by the Purchasing Agent or the Auditor as the regular use is monitored." And Section VII Special Instructions, G. Consolidation of Departmental Requests, "Departments shall make every effort to consolidate similar goods and supplies into a single purchase requisition. In addition, the purchasing division/department may periodically issue a schedule of planned procurement solicitations for specific common products or materials. Department requests should be consolidated and submitted in accordance with these schedules. Goods and supplies shall be ordered in and consistent with future needs and available storage space." In an effort to be compliant with this policy and proactive in our spending efforts, Public Works is requesting Board approval of the above blanket purchase orders. We make every effort to keep our business local and distributed throughout the Owens Valley, we purchase from vendors in both the North and South County when we can.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Your Board could choose not to authorize the Department Purchasing Authority increase or approve the blanket purchase orders. This is not recommended, as some of the items have been purchased and the others may need to be purchased for an emergency.

**OTHER AGENCY INVOLVEMENT:**

County Counsel  
Auditor's Office

**FINANCING:**

These invoices will be paid from multiple budgets, and object codes within our department budget authority. There is sufficient budget split between all Public Works divisions to make these payments.

**ATTACHMENTS:**

**APPROVALS:**

|                  |                               |
|------------------|-------------------------------|
| Breanne Nelums   | Created/Initiated - 6/18/2020 |
| Darcy Ellis      | Approved - 6/23/2020          |
| Breanne Nelums   | Approved - 6/23/2020          |
| Michael Errante  | Approved - 6/23/2020          |
| Marshall Rudolph | Approved - 6/23/2020          |
| Amy Shepherd     | Approved - 6/23/2020          |
| Michael Errante  | Final Approval - 6/23/2020    |



# County of Inyo



## Public Works

### CONSENT - ACTION REQUIRED

**MEETING:** July 7, 2020

**FROM:**

**SUBJECT:** CDFW Permit and Mitigation Bank Fees for the Walker Creek Road Bridge Project.

---

**RECOMMENDED ACTION:**

Request Board: A) authorize Public Works personnel to sign the California Department of Fish and Wildlife's Incidental Take Permit for the Walker Creek Road Bridge Project; and B) authorize a purchase order in an amount not to exceed \$39,100, payable to West Mojave Conservation Bank-Natural Resources Group, Inc. of West Sacramento, CA for the mitigation credits required by the permit.

**SUMMARY/JUSTIFICATION:**

The Walker Creek Road Bridge Replacement Project (Project) will replace the bridge on Walker Creek Road over the Los Angeles Aqueduct. The existing bridge, which is functionally obsolete, will be left in place and relinquished to the LA Department of Water and Power. The project requires the realignment of approximately 1,500 feet of approach roadway.

The California Department of Fish and Wildlife (CDFW) has determined that the Project has the potential to impact two species of concern, the Mojave desert tortoise (MDT) and the Mohave ground squirrel (MGS). The County is required to obtain an Incidental Take Permit from CDFW before beginning construction. This permit will allow the biological construction monitor to relocate the special status species if one is found on site during construction. Without the permit the construction would be halted if either species were found at the site, potentially costing the County for construction delays. The permit also protects the County if a MDT or MGS was accidentally injured or killed during construction.

One requirement of the ITP is that the County mitigate for 4.6 acres of MDT/MGS habitat permanently lost due to the Project. The purchase of mitigation bank credits will fulfill this requirement of the permit, and terminates the County's liability as a project proponent of habitat mitigation, therefore relieving Inyo County of environmental engineering expenses, construction and development costs, and contingent liabilities of guaranteeing the success of an onsite mitigation project.

There are two CDFW approved mitigation banks with credits available. Public Works requested quotes from each and received the following:

West Mojave Conservation Bank (via Natural Resources Group Inc) - \$39,100  
Black Mountain Conservation Bank (via Wildlands) - \$62,700

The Project is funded by the Federal Highway Administration, through the Highway Bridge Program, and is 100%



reimbursable. This mitigation cost is an eligible for reimbursement.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

The board could choose not to authorize Public Works to sign the incidental take permit and purchase the required mitigation projects, however this would prevent the Walker Creek Road Bridge replacement project from moving forward.

**OTHER AGENCY INVOLVEMENT:**

California Department of Fish and Wildlife is issuing the Incidental Take Permit.  
Caltrans/FWHA for project funding and oversight

**FINANCING:**

This has been budgeted in FY19/20, State Funded Road - 034601, object code Walker Creek - 5736. This is a 100% reimbursable project.

**ATTACHMENTS:**

1. CDFW ITP Permit - Walker Creek
2. Natural Resources Group-Agreement
3. Walker Creek Quote - Wildlands
4. Walker Creek Quote - Natural Resources

**APPROVALS:**

|                  |                               |
|------------------|-------------------------------|
| Jacob Trauscht   | Created/Initiated - 6/23/2020 |
| Jacob Trauscht   | Approved - 6/23/2020          |
| Darcy Ellis      | Approved - 6/24/2020          |
| Ashley Helms     | Approved - 6/26/2020          |
| Breanne Nelums   | Approved - 6/29/2020          |
| Michael Errante  | Approved - 6/29/2020          |
| Marshall Rudolph | Approved - 6/30/2020          |
| Amy Shepherd     | Approved - 6/30/2020          |
| Michael Errante  | Final Approval - 6/30/2020    |



California Department of Fish and Wildlife  
Inland Deserts Region  
3602 INLAND EMPIRE BOULEVARD, SUITE C-220  
ONTARIO, CA 91764

California Endangered Species Act  
Incidental Take Permit No. 2081-2019-027-06

**WALKER CREEK ROAD BRIDGE REPLACEMENT PROJECT**

**Authority:** This California Endangered Species Act (CESA) incidental take permit (ITP) is issued by the California Department of Fish and Wildlife (CDFW) pursuant to Fish and Game Code section 2081, subdivisions (b) and (c), and California Code of Regulations, Title 14, section 783.0 et seq. CESA prohibits the take<sup>1</sup> of any species of wildlife designated by the California Fish and Game Commission as an endangered, threatened, or candidate species.<sup>2</sup> CDFW may authorize the take of any such species by permit if the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c) are met. (See Cal. Code Regs., tit. 14, § 783.4).

|                           |  |
|---------------------------|--|
| <b>Permittee:</b>         | <b>Inyo County Public Works Department</b>                       |
| <b>Principal Officer:</b> | <b>Ashley Helms, Associate Engineer</b>                          |
| <b>Contact Person:</b>    | <b>Ashley Helms</b>  |
| <b>Mailing Address:</b>   | <b>168 N. Edwards<br/>PO Drawer Q<br/>Independence, CA 93526</b> |

**Effective Date and Expiration Date of this ITP:**

This ITP shall be executed in duplicate original form and shall become effective once a duplicate original is acknowledged by signature of the Permittee on the last page of this ITP and returned to CDFW's Habitat Conservation Planning Branch at the address listed in the Notices section of this ITP. Unless renewed by CDFW, this ITP's authorization to take the Covered Species shall expire on **December 31, 2024**.

Notwithstanding the expiration date on the take authorization provided by this ITP, Permittee's obligations pursuant to this ITP do not end until CDFW accepts as complete the Permittee's Final Mitigation Report required by Condition of Approval 5.7 of this ITP.

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<sup>1</sup>Pursuant to Fish and Game Code section 86, "'take' means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." (See also *Environmental Protection Information Center v. California Department of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 507 [for purposes of incidental take permitting under Fish and Game Code section 2081, subdivision (b), "'take' ... means to catch, capture or kill".])

<sup>2</sup>The definition of an endangered, threatened, and candidate species for purposes of CESA are found in Fish and Game Code sections 2062, 2067, and 2068, respectively.

### **Project Location:**

The Walker Creek Road Bridge Replacement Project (Project) is located on Walker Creek Road in Inyo County within the unincorporated community of Olancho, California. Walker Creek Road is a narrow, unpaved road on the eastern side of the Sierra Nevada Mountains; the bridge spans the Los Angeles Aqueduct (LAA), approximately 0.5 mile west of the intersection of Walker Creek Road with U.S. Highway 395. The existing bridge is located in the Olancho USGS quadrangle in the NW ¼, NW ¼, NW ¼ of Section 29; NE ¼, NE ¼, NE ¼ of Section 30, and SW ¼, SW ¼, SW ¼ of Section 20, Township 19 south, Range 37 east, of the Mount Diablo Baseline and Meridian.

### **Project Description:**

The proposed Project involves construction of a new bridge and the realignment of Walker Creek Road as it approaches the new bridge in either direction. The new bridge would be located approximately 375 feet southeast of the existing bridge. The existing bridge would be left in place and closed to public vehicle traffic after the new bridge and realigned roadway approaches are constructed. The Project is needed to improve bridge functionality and public safety. The purpose of the Project is to replace the old bridge with a new bridge that is structurally sound, meets modern structural and safety codes, and provides adequate vehicle access between U.S. Highway 395 and destinations west of the LAA.

### New Bridge

A pre-cast, pre-stressed, voided concrete slab bridge with a composite cast-in-place concrete deck would be installed to completely span the LAA. The bridge foundation would be constructed on either side of the LAA using spread footings and concrete abutments. Wingwalls would be installed on both sides of the concrete abutments on either side of the LAA. The deck of the bridge would be 60 feet long and made of concrete. The bridge would be 32 feet wide, including a 28-foot roadway width. A bridge railing with chain-link fencing would be mounted on the bridge deck to restrict access to the LAA over the sides of the bridge. Approach and transition railing would be installed on the southwest bridge approach, and attenuators would be installed on the northeast and southwest approaches.

Excavations for installation of the abutments are expected to be five feet deep, 20 feet wide, and 40 feet long as measured from the top of the excavation. Bridge slabs would be placed using a crane, which would be staged adjacent to the new road alignment on the northeast side of the LAA. The concrete deck would be constructed on top of the bridge slabs using cast-in-place concrete delivered to the site in ready mix trucks.

### Roadway Realignment

The bridge would cross the LAA at roughly a 90-degree angle. Approximately 600 feet of Walker Creek Road on the southwest side, and 1,000 feet of road on the northeast side of the bridge would be realigned. Pipe culverts would be constructed underneath the new roadway approaches on either side of the LAA. The new alignments would transition into the

existing road alignments. The approaches would be 28 feet wide, including two 10-foot wide lanes and two four-foot wide shoulders. The roadway approach lanes and shoulders would be paved and striped for approximately 100 feet on the northeast side and 140 feet on the southwest side of the LAA. The paved portion of the roadway would be surfaced with hot-mix asphalt.

Certified noxious weed-free fill material would be imported to create the grade for the roadway approaches to the bridge. Fill slopes would be constructed at an approximate 2:1 gradient. The alignment for the new roadway would be graded using bulldozers, scrapers, and motor graders.

The existing Los Angeles Department of Water and Power (LADWP) patrol roads on the northeast and southwest sides of the LAA would be realigned to accommodate the proposed bridge abutment and terminal rail system. The LADWP patrol roads would fit within the existing 125-foot LADWP right-of-way on the northeast and southwest sides. Access to the patrol roads would be restricted with chain-link fencing. The existing LADWP fencing on the northeast side would be replaced.

The abandoned road segments would be restored to match the natural appearance of the adjacent land. The majority of the existing road segments on LADWP property and within the LADWP easement would not be restored and would continue to be used by LADWP. The road segments outside of the LADWP right-of-way would be ripped and recontoured using a bulldozer or grader and then reseeded with certified weed-free native seed. Any rocks or boulders that are unearthed during ripping would be allowed to remain in place to provide a more natural appearance.

#### Closure of Existing Bridge

The existing bridge would be left in place and ownership relinquished to LADWP. The bridge would be closed to public traffic and it would serve as an overchute structure for overflow waters from Walker Creek. An existing cattleguard located approximately 20 feet away from the existing bridge on the southwest approach would be filled in and the chain link fence that borders the LADWP patrol road would be extended to restrict access to the existing bridge.

#### Construction Phases

The existing bridge and roadway alignment would remain open during project construction, which would occur in three phases:

1. Construct new bridge south of the existing bridge
2. Construct the realigned segments of Walker Creek Road
3. Close the existing bridge and restore abandoned road segments

#### Personnel, Equipment, and Construction Schedule

A maximum crew size of 12 workers would be required for the Project.



The type of equipment required for the Project would include, but not be limited to the following: a crane, flatbed trucks, front-end loader, personal trucks and vehicles, jackhammers, water truck, excavators, concrete trucks, bulldozer, motorgrader, chainsaws, weed trimmers, power/hand tools, hot-mix asphalt transfer trucks, hot-mix asphalt spreader and roller, and dump trucks.

Project construction would likely be performed in the summer of 2020. Construction of the proposed bridge would take approximately 16 weeks, and roadway realignment would take approximate three to four weeks, for a total of 20 weeks (five months). Work would occur during daylight hours, five days a week.

**Covered Species Subject to Take Authorization Provided by this ITP:**

This ITP covers the following species:

| Name   | CESA Status             |
|--|-------------------------|
| 1. Mohave ground squirrel ( <i>Xerospermophilus mohavensis</i> ) | Threatened <sup>3</sup> |
| 2. Desert tortoise ( <i>Gopherus agassizii</i> )                 | Threatened <sup>4</sup> |

These species and only these species are the "Covered Species" for the purposes of this ITP.

**Impacts of the Taking on Covered Species:**

Project activities and their resulting impacts are expected to result in the incidental take of individuals of the Covered Species. The activities described above expected to result in incidental take of individuals of the Covered Species include vegetation clearing, operation of construction vehicles, staging, bridge installation and road realignment (Covered Activities).

Incidental take of individuals of the Covered Species in the form of mortality ("kill") may occur as a result of Covered Activities such as collapsing burrows by hand prior to mechanical vegetation removal or clearing and grubbing; vehicle strikes and crushing of burrows during vegetation removal by construction equipment; construction equipment and vehicles driving within the Project limits; walking through the Project Area and unintentionally collapsing burrows, resulting in crushing or suffocation; entombment of individuals from deposition of stockpiled material or spoils over occupied burrows; and accidental crushing by construction equipment. Incidental take of individuals of the Covered Species may also occur from the Covered Activities in the form of pursue, catch, capture, or attempt to do so of the Covered Species from capture or entrapment in holes, trenches or equipment; uncovering Covered Species through the excavation of burrows; by corralling the Covered Species into a confined

<sup>3</sup>See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(6)(A).

<sup>4</sup>See *Id.*, subd. (b)(4)(A).

area when barrier fencing is constructed; and by relocation of Covered Species when required by this ITP. The areas where authorized take of the Covered Species is expected to occur include area of new bridge construction, realigned approach roads, LADWP patrol road, areas for vehicle and equipment movement, segment of abandoned road to be restored, and staging areas (collectively, the Project Area).

The Project is expected to cause the permanent loss of 1.52 acres of habitat for the Covered Species. Impacts of the authorized taking also include adverse impacts to the Covered Species related to temporal losses, increased habitat fragmentation and edge effects, and the Project's incremental contribution to cumulative impacts (indirect impacts). These impacts include stress resulting from noise and vibrations, trapping, capture and relocation, and long-term effects due to increased pollution, displacement from preferred habitat, increased competition for food and space, disturbance to burrows, removal and/or damage of vegetation, and increased vulnerability to predation.

**Incidental Take Authorization of Covered Species:**

This ITP authorizes incidental take of the Covered Species and only the Covered Species. With respect to incidental take of the Covered Species, CDFW authorizes the Permittee, its employees, contractors, and agents to take Covered Species incidentally in carrying out the Covered Activities, subject to the limitations described in this section and the Conditions of Approval identified below. This ITP does not authorize take of Covered Species from activities outside the scope of the Covered Activities, take of Covered Species outside of the Project Area, take of Covered Species resulting from violation of this ITP, or intentional take of Covered Species except for capture and relocation of Covered Species as authorized by this ITP.

**Conditions of Approval:**

Unless specified otherwise, the following measures apply to all Covered Activities within the Project Area, including areas used for vehicular ingress and egress, staging and parking, and noise and vibration generating activities that may/will cause take. CDFW's issuance of this ITP and Permittee's authorization to take the Covered Species are subject to Permittee's compliance with and implementation of the following Conditions of Approval:

- 1. Legal Compliance:** Permittee shall comply with all applicable federal, state, and local laws in existence on the effective date of this ITP or adopted thereafter.
- 2. CEQA Compliance:** Permittee shall implement and adhere to the mitigation measures related to the Covered Species in the Biological Resources section of the Mitigated Negative Declaration and Initial Study (SCH No. 2018111016) adopted by Inyo County on February 27, 2019 as lead agency for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).

Incidental Take Permit  
No. 2081-2019-027-06  
INYO COUNTY PUBLIC WORKS DEPARTMENT  
WALKER CREEK ROAD BRIDGE REPLACEMENT PROJECT

**3. ITP Time Frame Compliance:** Permittee shall fully implement and adhere to the conditions of this ITP within the time frames set forth below and as set forth in the Mitigation Monitoring and Reporting Program (MMRP), which is included as Attachment 1 to this ITP.

**4. General Provisions:**

- 4.1. Designated Representative. Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing at least 30 days before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.
- 4.2. Biological Monitor(s). Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a Biological Monitor(s) at least 30 days prior to starting Covered Activities or with change of personnel. Permittee shall ensure that the Biological Monitor(s) is knowledgeable and experienced in the biology, natural history, collecting and handling of the Covered Species. The Biological Monitor(s) shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Biological Monitor(s), in advance in writing before starting Covered Activities, and shall also obtain approval in advance in writing if the Biological Monitor(s) must be changed.
- 4.3. Authorized Biologist. Permittee shall at least 30 days prior to starting Covered Activities or with change of personnel submit to CDFW in writing the name, qualifications, business address, and contact information for a biologist(s) who, in addition to meeting the qualifications to be Biological Monitor(s) identified in Condition 4.2 above, possesses a valid Memorandum of Understanding (MOU) with CDFW for handling the Covered Species. Only Authorized Biologist(s) shall be allowed to excavate burrows, handle, and relocate Covered Species.
- 4.4. Designated Representative and Authorized Biologist/Biological Monitor Authority. Only an Authorized Biologist(s) with an MOU with CDFW is authorized to excavate burrows, handle, and relocate Covered Species. To ensure compliance with the Conditions of Approval of this ITP, the Designated Representative, Authorized Biologist(s), and/or Biological Monitor(s) shall have authority to immediately stop any activity that does not comply with this ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species.

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WALKER CREEK ROAD BRIDGE REPLACEMENT PROJECT

- 4.5. Education Program. Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Representative, Biological Monitor(s), or Authorized Biologist(s) that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures.
- 4.6. Construction Monitoring Notebook. The Biological Monitor(s) and/or Authorized Biologist(s) shall maintain a construction-monitoring notebook on-site throughout the construction period, which shall include a copy of this ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction-monitoring notebook is available for review at the Project site upon request by CDFW.
- 4.7. Trash Abatement. Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed at least once a week to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.
- 4.8. Dust Control. Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Biological Monitor(s) and/or Authorized Biologist(s). Permittee shall keep the amount of water used to the minimum amount needed and shall not allow water to form puddles.
- 4.9. Erosion Control Materials. Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as monofilament netting (erosion control matting) or similar material, in potential Covered Species' habitat.
- 4.10. Delineation of Property Boundaries. Before starting Covered Activities, Permittee shall clearly delineate the boundaries of the Project Area with fencing, stakes, or



flags. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged areas. Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities in that area.

- 4.11. Delineation of Habitat. Permittee shall clearly delineate habitat of the Covered Species within the Project Area with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species' habitat.
- 4.12. Project Access. Project-related personnel shall access the Project Area using existing routes, or routes identified in the Project Description and shall not cross Covered Species' habitat outside of or en route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. Permittee shall ensure that vehicle speeds do not exceed 20 miles per hour to avoid Covered Species on or traversing the roads. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to this ITP, if, among other reasons, additional take of Covered Species will occur as a result of the Project modification.
- 4.13. Staging Areas. Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless provided for as described in Condition of Approval 4.12 of this ITP.
- 4.14. Hazardous Waste. Permittee shall immediately stop and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall exclude the storage and handling of hazardous materials from the Project Area and shall properly contain and dispose of any unused or leftover hazardous products off-site.
- 4.15. CDFW Access. Permittee shall provide CDFW staff with reasonable access to the Project and mitigation lands under Permittee's control and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.
- 4.16. Refuse Removal. Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all temporary fill and construction

refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.

- 4.17. Firearms and Dogs. Permittee shall prohibit firearms and domestic dogs (except service dogs) from the Project Site and site access routes during Covered Activities, except those in the possession of authorized security personnel or local, state, or federal law enforcement officials.

## 5. Monitoring, Notification and Reporting Provisions:

- 5.1. Notification Before Commencement. The Designated Representative shall notify CDFW's Regional Representative Rose Banks in writing ([Rose.Banks@wildlife.ca.gov](mailto:Rose.Banks@wildlife.ca.gov)) and as described in the Notices section of this ITP at least 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.
- 5.2. Notification of Non-compliance. The Designated Representative shall immediately notify CDFW's Regional Representative Rose Banks at (760) 873-4412 and in writing ([Rose.Banks@wildlife.ca.gov](mailto:Rose.Banks@wildlife.ca.gov)) and as described in the Notices section of this ITP if he/she determines that the Permittee is not in compliance with any Condition of Approval of this ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in this ITP and/or the MMRP. The Designated Representative shall report any non-compliance with this ITP to CDFW within 24 hours.
- 5.3. Compliance Monitoring. The Biological Monitor(s) and/or Authorized Biologist(s) shall be on-site during all initial ground-disturbing activities. If no covered species are found once ground-disturbing activities are completed, the Biological Monitor(s) and/or Authorized Biologist(s) shall conduct weekly site visits, and shall be on-call to resolve any biological resource issues that arise during construction. The Biological Monitor(s) and/or Authorized Biologist(s) shall conduct compliance inspections to (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of this ITP; (4) check all exclusion zones; and (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area. During initial ground-disturbing activities, the Designated Representative, Biological Monitor(s) or Authorized Biologist(s) shall prepare daily written observation and inspection records summarizing oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP. The Biological Monitor(s) or Authorized Biologist(s) shall conduct

compliance inspections a minimum of twice a day (once during the onset of the day's work and one at the conclusion of that day's work), and once a week during periods of inactivity and after area disturbances are completed.

- 5.4. Monthly Compliance Report. The Designated Representative, Biological Monitor(s), or Authorized Biologist(s) shall compile the observation and inspection records identified in Condition of Approval 5.3 into a Monthly Compliance Report and submit it by the 15<sup>th</sup> of each month to CDFW along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Monthly Compliance Reports shall be submitted to the CDFW offices listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative and Headquarters CESA Program. At the time of this ITP's approval, the CDFW Regional Representative is Rose Banks (Rose.Banks@wildlife.ca.gov) and Headquarters CESA Program email is CESA@wildlife.ca.gov. CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.
- 5.5. Annual Status Report. Permittee shall provide CDFW with an Annual Status Report (ASR) no later than January 31 of every year beginning with issuance of this ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Monthly Compliance Reports for that year identified in Condition of Approval 5.4; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of the Covered Species; (6) an accounting of the number of acres subject to both temporary and permanent disturbance, and (7) information about other Project impacts on the Covered Species.
- 5.6. CNDDDB Observations. The Biological Monitor(s) or Authorized Biologist(s) shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Biological Monitor(s) and/or Authorized Biologist(s) shall include copies of the submitted forms with the next Monthly Compliance Report or ASR, whichever is submitted first relative to the observation.
- 5.7. Final Mitigation Report. No later than 60 days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report. The

Incidental Take Permit  
No. 2081-2019-027-06  
INYO COUNTY PUBLIC WORKS DEPARTMENT  
WALKER CREEK ROAD BRIDGE REPLACEMENT PROJECT



Designated Representative shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.

5.8. Notification of Take or Injury. Permittee shall immediately notify the Biological Monitor(s) and/or Authorized Biologist(s) if a Covered Species is taken or injured by a Project-related activity, or if a Covered Species is otherwise found dead or injured within the vicinity of the Project. The Biological Monitor(s), Authorized Biologist(s) or Designated Representative shall provide initial notification to CDFW within 24 hours of take or injury by calling the Bishop Field Office at (760) 873-4412 and by notifying via email the CDFW Regional Representative Rose Banks ([Rose.Banks@wildlife.ca.gov](mailto:Rose.Banks@wildlife.ca.gov)) and as described in the Notices section of this ITP. The initial notification to CDFW shall include information regarding the location, species, and number of animals taken or injured and the ITP Number. Following initial notification, Permittee shall send CDFW a written report within two calendar days of take or injury. The report shall include the date and time of the finding or incident, location of the animal or carcass, and if possible, provide a photograph, explanation as to cause of take or injury, and any other pertinent information.

## 6. Take Minimization Measures:

The following requirements are intended to ensure the minimization of incidental take of Covered Species in the Project Area during Covered Activities. Permittee shall implement and adhere to the following conditions to minimize take of Covered Species:

### Mojave ground squirrel

6.1. Preconstruction Surveys. No more than 14 days prior to initiating ground-or vegetation-disturbing Project activities, the Project Area shall be surveyed for Covered Species by the Biological Monitor(s) and/or Authorized Biologist(s) using protocols approved by CDFW. If a Covered Species is found, a follow-up survey shall be conducted no more than 48 hours in advance of initiating ground- or vegetation-disturbing Project activities. During these surveys, all burrows of Covered Species that may be affected by Project activities shall be prominently flagged by the Biological Monitor(s) or Authorized Biologist(s) and avoided to the maximum possible

extent during Project activities. Permittee shall include the survey results in the Monthly Compliance Report and in the ASR.

6.2. Burrow Excavation. The Authorized Biologist(s) shall fully excavate by hand all burrows OR scope each burrow within the Project Area that are suspected or known to be occupied by the Covered Species. The Authorized Biologist(s) shall allow Covered Species encountered in the excavated burrows during their *active period* (March 15-July 15) to escape out of harm's way. During the Covered Species' *dormant period* (approximately September 1 through January 31), the Authorized Biologist(s) shall collect and immediately relocate Covered Species to an artificial burrow at a protected off-site location approved in advance by CDFW's Regional Representative. The Covered Species may only be relocated by the Authorized Biologist(s). The Authorized Biologist(s) shall prepare relocation burrows in the following manner: (1) dig a hole of at least two feet deep; (2) install a nine-inch diameter non-collapsible plastic container, which shall be connected to a three-inch diameter non-collapsible pipe that runs to the ground surface at a 45-degree angle; (3) the Authorized Biologist(s) shall place the Covered Species in the artificial burrow and lightly plug the burrow mouth with soil in a manner that is similar to a natural Covered Species burrow.

### Desert Tortoise

6.3. Pre-Construction surveys. No more than 30 days prior to start of Covered Activities, the Biological Monitor(s) or Authorized Biologist(s) shall conduct pre-construction surveys for Covered Species. These surveys shall cover 100 percent of the Project Area with a 50-foot buffer zone. The Biological Monitor(s) or Authorized Biologist(s) shall follow the survey methodology in the most recent United States Fish and Wildlife Service (USFWS) Desert Tortoise Field Manual. The Biological Monitor(s) and /or Authorized Biologist(s) shall flag all potential burrows within this area. If the Covered Species is active above-ground, a final survey for the Covered Species shall occur no more than 48 hours before the onset of surface-disturbing activities. Within 30 days of performing the pre-construction surveys, the Biological Monitor(s) or Authorized Biologist(s) shall submit a report to CDFW documenting results (following the most current USFWS guidance document).

6.4. Excavating Burrows. Only the Authorized Biologist(s) may excavate burrows and handle the Covered Species and their eggs. During pre-construction clearance surveys the Authorized Biologist(s) shall excavate all burrows by hand that cannot be avoided within the area to be impacted as a result of the Project, including burrows not recently used that are considered by the Authorized Biologist(s) at the time of the survey to be potentially suitable for the Covered Species. Potentially suitable burrows shall be excavated and then blocked, collapsed, or fenced by the Authorized

Biologist(s) at the time of the survey to prevent re-entry by the Covered Species. Burrows shall only be collapsed where Covered Activities will directly impact the burrow. Otherwise, burrows shall be left intact, and the entrance temporarily blocked to prevent re-entry using methods determined to be appropriate by the Authorized Biologist(s). The Authorized Biologist(s) shall excavate potentially suitable burrows in accordance with the handling protocol outline in Chapter 7-Guidelines for Handling Desert Tortoises (USFWS 2009).

- 6.5. Desert Tortoise Fencing. Permittee shall install temporary desert tortoise exclusion fencing around any active construction area, lay down area, and storage area prior to ground disturbing activities. The Biological Monitor(s) and/or Authorized Biologist(s) shall direct the fence installation. The Biological Monitor(s) and/or Authorized Biologist(s) shall inspect the temporary exclusionary fencing each morning prior to the start of construction and at the end of the day after work has ceased for any gaps/breaches or required repairs. If the fence is compromised, repairs shall be completed immediately before construction continues.
- 6.6. Clearance Survey and Burrow Collapse. Twenty-four hours prior to start of ground disturbance activities, the Biological Monitor(s) and/or Authorized Biologist(s) shall resurvey the Project Area and access routes for Covered Species and their burrows. The Biological Monitor(s) and/or Authorized Biologist(s) shall inspect all the burrows within the Project Area for habitation prior to collapsing them in accordance with this ITP. If handling of a Covered Species is required, the Designated Representative shall contact the Authorized Biologist(s). Only an Authorized Biologist shall be allowed to excavate burrows, handle, and relocate Covered Species.
- 6.7. Desert Tortoise Handling. In the event that individuals of the Covered Species or their eggs must be handled and/or relocated, the Authorized Biologist(s) shall follow all procedures/guidelines in the USFWS Field Manual, including, but not limited to, procedures to avoid transmission of diseases and parasites, guidelines for addressing temperature extremes, data collection requirements, and general measures to protect the well-being of the Covered Species. All instances of handling and relocation shall be documented and provided to CDFW as specified in Condition of Approval 6.14.
- 6.8. Vehicle Inspection. Workers shall inspect for Covered Species under vehicles and equipment before the vehicles and equipment are moved. If a Covered Species is present, the worker shall contact the Biological Monitor(s) and/or Authorized Biologist(s) and wait for the Covered Species to move unimpeded to a safe location OR the Authorized Biologist(s) shall relocate the Covered Species as described in Condition of Approval 6.7 and 6.10 of this ITP before moving vehicles and equipment.
- 6.9. Covered Species Observations. All personnel on the Project site shall immediately



report all encounters with the Covered Species to the Biological Monitor(s) and/or Authorized Biologist(s). If a Covered Species is identified during Project activities, the Permittee shall immediately stop all work in the area and contact the Biological Monitor(s) and/or Authorized Biologist(s). The Biological Monitor(s) and/or Authorized Biologist shall allow the Covered Species to escape unimpeded, or relocate the Covered Species as described in this ITP or Chapter 7-Guidelines for Handling Desert Tortoises (USFWS 2009). Permittee shall not resume work until the Authorized Biologist has relocated the animal or allowed it to move outside of the Project Area on its own. The Designated Representative shall immediately, or no later than noon on the next business day, notify CDFW of any Covered Species Observations. Notification to CDFW shall be to Rose Banks via telephone (760) 873-4412 and email (Rose.Banks@wildlife.ca.gov), followed by a written report. Notification and the written report shall include the date, location, and circumstances of the observation, the name(s) of the Authorized Biologist(s) that relocated the individual, and the location (including GPS coordinates) where the individual was moved.

6.10. Relocation of Desert Tortoise. To the maximum extent practicable, disturbance to and relocation of Covered Species shall be avoided. If any Covered Species are found to be at risk of harm as a result of Covered Activities, the individual(s) shall be moved out of harm's way by an Authorized Biologist and released no more than 1000 feet from the point of collection for adults and 300 feet for juveniles. Covered Species shall not be relocated to adjacent private property unless the Permittee obtains written permission from the property owner. Covered Species found above ground shall be allowed reasonable time to move out of harm's way on their own accord, and if relocated by the Authorized Biologist(s), the Covered Species shall be released above ground in suitable habitat and conditions. Covered Species found in burrows, especially during the species' less active period, shall be avoided to the extent practicable, as determined by the Authorized Biologist(s). If a Covered Species or eggs are found during burrow excavation, the Authorized Biologist(s) shall relocate them to an unoccupied burrow of similar size. If no such burrow is available for relocating, the Authorized Biologist(s) shall construct an artificial burrow similar in size, depth and orientation as the original burrow, and monitor them until Covered Activities in the area are complete. The Authorized Biologist(s) shall follow all excavation, capture, handling, identification, data collection, relocation, and burrow construction procedures described in the USFWS Field Manual to protect the health and well-being of desert tortoise. The Authorized Biologist(s) shall follow all protocols for the construction of the artificial burrows found in the Chapter 7-Guidelines for Handling Desert Tortoises (USFWS 2009). The Authorized Biologist(s) shall document any relocation efforts and provide a report to CDFW as specified in Condition of Approval 6.14.

6.11. Ambient Air Temperature. The Authorized Biologist(s) shall ensure that Covered

Species are not captured, moved, transported, released, or purposefully caused to leave their burrow for any reason when the ambient air temperature is above 95 degrees Fahrenheit (35 degrees Celsius). The Authorized Biologist(s) shall ensure that no Covered Species is captured if the ambient air temperature is anticipated to exceed 95 degrees Fahrenheit before handling or processing can be completed. If the ambient air temperature exceeds 95 degrees Fahrenheit during handling or processing, the Authorized Biologist(s) shall ensure the Covered Species is kept in a shaded environment with a temperature that does not exceed 95 degrees Fahrenheit, and that the individual is not released until ambient air temperature declines to below 95 degrees Fahrenheit. Covered Species moved during inactive periods shall be monitored by the Authorized Biologist(s) for at least two days after placement in the new burrows to ensure their safety. During relocation, the Authorized Biologist(s) may hold a captured Covered Species overnight and move them the following morning within these temperature constraints.

- 6.12. Desert Tortoise Rehydration. If a Covered Species voids its bladder as a result of being handled, the Authorized Biologist(s) shall rehydrate the individual(s). The Authorized Biologist(s) shall rehydrate the Covered Species at the location where the individual(s) was captured, or the location where the individual(s) is or will be relocated. The Authorized Biologist(s) shall rehydrate the Covered Species by placing it in a tub with a clean plastic disposable liner. The Authorized Biologist(s) shall add water to the lined tub while ensuring that the water level is not higher than the lower jaw of the Covered Species. The Authorized Biologist(s) shall rehydrate each Covered Species individually for a minimum of 10 to 20 minutes. The Authorized Biologist(s) shall place the lined tub in a quiet protected area during rehydration. After each Covered Species is rehydrated the water shall be emptied and a new plastic disposable liner placed in the tub.
- 6.13. Fatally Injured or Killed Desert Tortoise. Permittee shall submit Covered Species fatally injured or killed by the Project Activities for necropsy, according to *Protocol for Salvaging Injured, Recently Dead, Ill, and Dying Wild, Free-Roaming Desert Tortoises* (2007) (Attachment 4), at the expense of the Permittee.
- 6.14. Record of Handling. The Authorized Biologist(s) shall maintain a record of all Covered Species handled. This information shall include the following for each tortoise: (1) the locations (narrative and maps, including whether the individual(s) was found above ground or in a burrow) and dates of observation; (2) the general condition and health, including injuries, state of healing, and whether the desert tortoise voided its bladder; (3) the location moved from and location moved to (using GPS technology), including information on any burrow (natural or artificial) utilized; (4) diagnostic markings (i.e., identification numbers or marked lateral scutes); (5) ambient temperature when handled and released; (6) whether any eggs were discovered and



relocated; (7) digital photographs of any Covered Species or eggs handled; and (8) results of any ongoing monitoring. The Authorized Biologist(s) shall provide CDFW a written summary via email to Rose Banks ([Rose.Banks@wildlife.ca.gov](mailto:Rose.Banks@wildlife.ca.gov)) and as described in the Notices section of this ITP of the handling/relocation event, including the information listed above, within 24 hours of the event. This information shall also be recorded in the daily observation and inspection records for inclusion in the Monthly Compliance and ASR as directed in Conditions 5.4 and 5.5 above.

**Other Minimization Measures:**

- 6.15. Trench Inspection. The Biological Monitor(s) and/or Authorized Biologist(s) shall inspect all open holes and trenches within the Project Area at the beginning, middle, and end of each day for trapped animals. To prevent inadvertent entrapment of Covered Species or any other animals, the Authorized Biologist(s) shall oversee the covering of all excavated, steep-walled holes or trenches more than two feet deep, or of any depth if they contain water or other material, at the close of each working day by plywood or other barrier materials such that animals are unable to enter and become entrapped. Permittee shall provide escape ramps in holes greater than two feet deep that do not hold water or other material, to allow animals to escape. Before holes or trenches are filled, the Biological Monitor(s) and/or Authorized Biologist(s) shall thoroughly inspect them for trapped animals. If any worker discovers that Covered Species have become trapped, they shall halt Project-related activities and notify the Authorized Biologist(s) immediately. Project workers, Biological Monitor(s), and the Authorized Biologist(s) shall allow the Covered Species to escape out of harm's way unimpeded if possible, or the Authorized Biologist(s) shall move the Covered Species out of harm's way before allowing work to continue.
- 6.16. Covered Species Injury. If a Covered Species is injured as a result of Covered Activities, the Authorized Biologist(s) shall immediately take it to a CDFW approved wildlife rehabilitation or veterinary facility. Permittee shall identify the facility before starting Covered Activities. Permittee shall bear any costs associated with the care or treatment of such injured Covered Species. The Permittee shall notify CDFW of the injury to the Covered Species immediately within 24 hours of the incident by telephone (760) 873-4412 and e-mail ([Rose.Banks@wildlife.ca.gov](mailto:Rose.Banks@wildlife.ca.gov)) followed by a written incident report as described in Condition 5.8. Notification shall include the name of the facility where the animal was taken.
- 6.17. Vehicular Traffic Restrictions. Permittee shall restrict Project-related vehicle traffic to established roads and the delineated Project Area; cross-country (off-road) vehicle travel is prohibited and signs shall be posted to this effect during covered activities. Vehicle speeds shall be posted not to exceed 20 mph in order to see, identify, and avoid Covered Species on or traversing the Project Area and roads. If a Covered

Species is encountered, drivers shall stop, wait for the Covered Species to move off the road, and immediately notify the Biological Monitor(s) and/or Authorized Biologist(s) of the Covered Species location. If handling of a Covered Species is required, the Biological Monitor shall notify the Authorized Biologist(s) and shall halt Project-related activities in that area until the situation has been addressed.

**7. Habitat Management Land Acquisition:**

CDFW has determined that permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking on the Covered Species that will result with implementation of the Covered Activities. This determination is based on factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the acreage required to provide for adequate compensation.

To meet this requirement, the Permittee shall either purchase 4.56 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank (Condition of Approval 7.2) OR shall provide for both the permanent protection and management of 4.56 acres of Habitat Management (HM) lands pursuant to Condition of Approval 7.3 below and the calculation and deposit of the management funds pursuant to Condition of Approval 7.4 below. Permanent protection and funding for perpetual management of compensatory habitat must be completed before starting Covered Activities, or within 18 months of the effective date of this ITP if Security is provided pursuant to Condition of Approval 8 below for all uncompleted obligations.

**7.1. Cost Estimates.** CDFW has estimated the cost of acquisition, protection, and perpetual management of the HM lands as follows:

- 7.1.1. Land acquisition costs for HM lands identified in Condition of Approval 7.3 below, estimated at \$1,500/acre for 4.56 acres: **\$6,840**. Land acquisitions costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirements;
- 7.1.2. Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 7.3.5 below, estimated at **\$1,368**;
- 7.1.3. Interim management period funding as described in Condition of Approval 7.3.6 below, estimated at **\$1,368**;
- 7.1.4. Long-term management funding as described in Condition of Approval 7.4 below, estimated at \$1,500/acre for 4.56 acres: **\$6,840**. Long-term management funding is estimated initially for the purpose of providing Security

to ensure implementation of HM lands management, plus the ten percent contingency fee as described in Condition 7.4.2.2.1 (**\$684**) for a total of **\$7,524**.

7.1.5. Related transaction fees including but not limited to account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW as described in Condition of Approval 7.5, estimated at **\$3,000**.

7.2. Covered Species Credits. Permittee shall purchase 4.56 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank prior to initiating Covered Activities, or no later than 18 months from the issuance of this ITP if Security is provided pursuant to Condition of Approval 8 below.

OR:

7.3. Habitat Acquisition and Protection. To provide for the acquisition and perpetual protection and management of the HM lands, the Permittee shall:

7.3.1. Fee Title/Conservation Easement. Transfer fee title to the HM lands to CDFW pursuant to terms approved in writing by CDFW. Alternatively, CDFW, in its sole discretion, may authorize a governmental entity, special district, non-profit organization, for-profit entity, person, or another entity to hold title to and manage the property provided that the district, organization, entity, or person meets the requirements of Government Code sections 65965-65968, as amended. If CDFW does not hold fee title to the HM lands, CDFW shall act as grantee for a conservation easement over the HM lands or shall, in its sole discretion, approve a non-profit entity, public agency, or Native American tribe to act as grantee for a conservation easement over the HM lands provided that the entity, agency, or tribe meets the requirements of Civil Code section 815.3. If CDFW does not hold the conservation easement, CDFW shall be expressly named in the conservation easement as a third-party beneficiary. The Permittee shall obtain CDFW written approval of any conservation easement before its execution or recordation. No conservation easement shall be approved by CDFW unless it complies with Government Code sections 65965-65968, as amended and includes provisions expressly addressing Government Code sections 65966(j) and 65967(e);

7.3.2. HM Lands Approval. Obtain CDFW written approval of the HM lands before acquisition and/or transfer of the land by submitting, at least three months before acquisition and/or transfer of the HM lands, a formal Proposed Lands for Acquisition Form (see Attachment 2B) identifying the land to be purchased or



property interest conveyed to an approved entity as mitigation for the Project's impacts on Covered Species;

- 7.3.3. HM Lands Documentation. Provide a recent preliminary title report, initial hazardous materials survey report, and other necessary documents (see Attachment 2A). All documents conveying the HM lands and all conditions of title are subject to the approval of CDFW, and if applicable, the Wildlife Conservation Board and the Department of General Services;
- 7.3.4. Land Manager. Designate both an interim and long-term land manager approved by CDFW. The interim and long-term land managers may, but need not, be the same. The interim and/or long-term land managers may be the landowner or another party. Documents related to land management shall identify both the interim and long-term land managers. Permittee shall notify CDFW of any subsequent changes in the land manager within 30 days of the change. If CDFW will hold fee title to the mitigation land, CDFW will also act as both the interim and long-term land manager unless otherwise specified.
- 7.3.5. Start-up Activities. Provide for the implementation of start-up activities, including the initial site protection and enhancement of HM lands, once the HM lands have been approved by CDFW. Start-up activities include, at a minimum: (1) preparing a final management plan for CDFW approval (see <https://www.wildlife.ca.gov/Conservation/Planning/Banking/Templates>) (2) conducting a baseline biological assessment and land survey report within four months of recording or transfer; (3) developing and transferring Geographic Information Systems (GIS) data if applicable; (4) establishing initial fencing; (5) conducting litter removal; (6) conducting initial habitat restoration or enhancement, if applicable; and (7) installing signage;
- 7.3.6. Interim Management (Initial and Capital). Provide for the interim management of the HM lands. The Permittee shall ensure that the interim land manager implements the interim management of the HM lands as described in the final management plan and conservation easement approved by CDFW. The interim management period shall be a minimum of three years from the date of HM land acquisition and protection and full funding of the Endowment and includes expected management following start-up activities. Interim management period activities described in the final management plan shall include fence repair, continuing trash removal, site monitoring, and vegetation and invasive species management. Permittee shall either (1) provide a security to CDFW for the minimum of three years of interim management that the land owner, Permittee, or land manager agrees to manage and pay for at their own expense, (2) establish an escrow account with written instructions approved in advance in

writing by CDFW to pay the land manager annually in advance, or (3) establish a short-term enhancement account with CDFW or a CDFW-approved entity for payment to the land manager.

- 7.4. Endowment Fund. If the Permittee will permanently protect and perpetually manage compensatory habitat as described in Condition of Approval 7.3, the Permittee shall ensure that the HM lands are perpetually managed, maintained, and monitored by the long-term land manager as described in this ITP, the conservation easement, and the final management plan approved by CDFW. After obtaining CDFW approval of the HM lands, Permittee shall provide long-term management funding for the perpetual management of the HM lands by establishing a long-term management fund (Endowment). The Endowment is a sum of money, held in a CDFW-approved fund that provides funds for the perpetual management, maintenance, monitoring, and other activities on the HM lands consistent with the management plan(s) required by Condition of Approval 7.3.5. Endowment as used in this ITP shall refer to the endowment deposit and all interest, dividends, other earnings, additions and appreciation thereon. The Endowment shall be governed by this ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

After the interim management period, Permittee shall ensure that the designated long-term land manager implements the management and monitoring of the HM lands according to the final management plan. The long-term land manager shall be obligated to manage and monitor the HM lands in perpetuity to preserve their conservation values in accordance with this ITP, the conservation easement, and the final management plan. Such activities shall be funded through the Endowment.

- 7.4.1. Identify an Endowment Manager. The Endowment shall be held by the Endowment Manager, which shall be either CDFW or another entity qualified pursuant to Government Code sections 65965-65968, as amended. Permittee shall submit to CDFW a written proposal that includes: (i) the name of the proposed Endowment Manager; (ii) whether the proposed Endowment Manager is a governmental entity, special district, nonprofit organization, community foundation, or congressionally chartered foundation; (iii) whether the proposed Endowment Manager holds the property or an interest in the property for conservation purposes as required by Government Code section 65968(b)(1) or, in the alternative, the basis for finding that the Project qualifies for an exception pursuant to Government Code section 65968(b)(2); and (iv) a copy of the proposed Endowment Manager's certification pursuant to Government Code section 65968(e). Within 30 days of CDFW's receipt of Permittee's written proposal, CDFW shall inform Permittee in writing if it determines the proposal does not satisfy the requirements of Fish and Game Code section 2081(b)(4)

and, if so, shall provide Permittee with a written explanation of the reasons for its determination. If CDFW does not provide Permittee with a written determination within the 30-day period, the proposal shall be deemed consistent with Section 2081(b)(4).

- 7.4.2. Calculate the Endowment Funds Deposit. After obtaining CDFW written approval of the HM lands, long-term management plan, and Endowment Manager, Permittee shall prepare a Property Analysis Record (PAR) or PAR-equivalent analysis (hereinafter "PAR") to calculate the amount of funding necessary to ensure the long-term management of the HM lands (Endowment Deposit Amount). The Permittee shall submit to CDFW for review and approval the results of the PAR before transferring funds to the Endowment Manager.
- 7.4.2.1. Capitalization Rate and Fees. Permittee shall obtain the capitalization rate from the selected Endowment Manager for use in calculating the PAR and adjust for any additional administrative, periodic, or annual fees.
- 7.4.2.2. Endowment Buffers/Assumptions. Permittee shall include in PAR assumptions the following buffers for endowment establishment and use that will substantially ensure long-term viability and security of the Endowment:
- 7.4.2.2.1. 10 Percent Contingency. A 10 percent contingency shall be added to each endowment calculation to hedge against underestimation of the fund, unanticipated expenditures, inflation, or catastrophic events.
- 7.4.2.2.2. Three Years Delayed Spending. The endowment shall be established assuming spending will not occur for the first three years after full funding.
- 7.4.2.2.3. Non-annualized Expenses. For all large capital expenses to occur periodically but not annually such as fence replacement or well replacement, payments shall be withheld from the annual disbursement until the year of anticipated need or upon request to Endowment Manager and CDFW.
- 7.4.3. Transfer Long-term Endowment Funds. Permittee shall transfer the long-term endowment funds to the Endowment Manager upon CDFW approval of the Endowment Deposit Amount identified above. The approved Endowment Manager may pool the Endowment with other endowments for the operation, management, and protection of HM lands for local populations of the Covered Species but shall maintain separate accounting for each Endowment. The

Endowment Manager shall, at all times, hold and manage the Endowment in compliance with this ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

- 7.5. Reimburse CDFW. Permittee shall reimburse CDFW for all reasonable expenses incurred by CDFW such as transaction fees, account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW.

**8. Performance Security:**

The Permittee may proceed with Covered Activities only after the Permittee has ensured funding (Security) to complete any activity required by Condition of Approval 7 that has not been completed before Covered Activities begin. Permittee shall provide Security as follows:

- 8.1. Security Amount. The Security shall be in the amount of **\$20,100**. This amount is based on the cost estimates identified in Condition of Approval 7.1 above.
- 8.2. Security Form. The Security shall be in the form of an irrevocable letter of credit (see Attachment 3) or another form of Security approved in advance in writing by CDFW's Office of the General Counsel.
- 8.3. Security Timeline. The Security shall be provided to CDFW before Covered Activities begin or within 30 days after the effective date of this ITP, whichever occurs first.
- 8.4. Security Holder. The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.
- 8.5. Security Transmittal. If CDFW holds the Security, Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (see Attachment 4) or by way of an approved instrument such as escrow, irrevocable letter of credit, or other.
- 8.6. Security Drawing. The Security shall allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that the Permittee has failed to comply with the Conditions of Approval of this ITP.
- 8.7. Security Release. The Security (or any portion of the Security then remaining) shall be released to the Permittee after CDFW has conducted an on-site inspection and received confirmation that all secured requirements have been satisfied, as evidenced by:

- Written documentation of the acquisition of the HM lands;
- Copies of all executed and recorded conservation easements;
- Written confirmation from the approved Endowment Manager of its receipt of the full Endowment; and
- Timely submission of all required reports.

Even if Security is provided, the Permittee must complete the required acquisition, protection and transfer of all HM lands and record any required conservation easements no later than 18 months from the effective date of this ITP. CDFW may require the Permittee to provide additional HM lands and/or additional funding to ensure the impacts of the taking are minimized and fully mitigated, as required by law, if the Permittee does not complete these requirements within the specified timeframe.

**Amendment:**

This ITP may be amended as provided by California Code of Regulations, Title 14, section 783.6, subdivision (c), and other applicable law. This ITP may be amended without the concurrence of the Permittee as required by law, including if CDFW determines that continued implementation of the Project as authorized under this ITP would jeopardize the continued existence of the Covered Species or where Project changes or changed biological conditions necessitate an ITP amendment to ensure that all Project-related impacts of the taking to the Covered Species are minimized and fully mitigated.

**Stop-Work Order:**

CDFW may issue Permittee a written stop-work order requiring Permittee to suspend any Covered Activity for an initial period of up to 25 days to prevent or remedy a violation of this ITP, including but not limited to the failure to comply with reporting or monitoring obligations, or to prevent the unauthorized take of any CESA endangered, threatened, or candidate species. Permittee shall stop work immediately as directed by CDFW upon receipt of any such stop-work order. Upon written notice to Permittee, CDFW may extend any stop-work order issued to Permittee for a period not to exceed 25 additional days. Suspension and revocation of this ITP shall be governed by California Code of Regulations, Title 14, section 783.7, and any other applicable law. Neither the Biological Monitor(s)/Authorized Biologist(s) nor CDFW shall be liable for any costs incurred in complying with stop-work orders.

**Compliance with Other Laws:**

This ITP sets forth CDFW's requirements for the Permittee to implement the Project pursuant to CESA. This ITP does not necessarily create an entitlement to proceed with the Project. Permittee is responsible for complying with all other applicable federal, state, and local law.

**Notices:**

The Permittee shall deliver a fully executed duplicate original ITP by registered first class mail or overnight delivery to the following address:

\_\_\_\_\_  
Incidental Take Permit  
No. 2081-2019-027-06  
INYO COUNTY PUBLIC WORKS DEPARTMENT  
WALKER CREEK ROAD BRIDGE REPLACEMENT PROJECT



Habitat Conservation Planning Branch  
California Department of Fish and Wildlife  
Attention: CESA Permitting Program  
Post Office Box 944209  
Sacramento, CA 94244-2090

Written notices, reports and other communications relating to this ITP shall be delivered to CDFW by registered first class mail at the following address, or at addresses CDFW may subsequently provide the Permittee. Notices, reports, and other communications shall reference the Project name, Permittee, and ITP Number (2081-2019-0027-06) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Leslie MacNair, Regional Manager  
California Department of Fish and Wildlife  
3602 Inland Empire Boulevard, Suite C-220  
Ontario, CA 91764  
Telephone (909) 484-0167  
Fax (909) 941-7364

and a copy to:

Habitat Conservation Planning Branch  
California Department of Fish and Wildlife  
Attention: CESA Permitting Program  
Post Office Box 944209  
Sacramento, CA 94244-2090

Unless Permittee is notified otherwise, CDFW's Regional Representative for purposes of addressing issues that arise during implementation of this ITP is:

Rose Banks, Environmental Scientist  
California Department of Fish and Wildlife  
797 North Main Street, Suite 220  
Telephone (760) 873-4412  
Fax (760) 782-1284

Incidental Take Permit  
No. 2081-2019-027-06  
INYO COUNTY PUBLIC WORKS DEPARTMENT  
WALKER CREEK ROAD BRIDGE REPLACEMENT PROJECT

**Compliance with California Environmental Quality Act:**

CDFW's issuance of this ITP is subject to CEQA. CDFW is a responsible agency pursuant to CEQA with respect to this ITP because of prior environmental review of the Project by the lead agency, Inyo County. (See generally Pub. Resources Code, §§ 21067, 21069.) The lead agency's prior environmental review of the Project is set forth in the Walker Creek Road Bridge Replacement Project Mitigated Negative Declaration (MND), (SCH No.: 2018111016, dated November 2018, that Inyo County adopted on February 27, 2019. At the time the lead agency adopted the MND and approved the Project it also adopted various mitigation measures for the Covered Species as conditions of Project approval.

This ITP, along with CDFW's related CEQA findings, which are available as a separate document, provide evidence of CDFW's consideration of the lead agency's MND for the Project and the environmental effects related to issuance of this ITP (CEQA Guidelines, § 15096, subd. (f)). CDFW finds that issuance of this ITP will not result in any previously undisclosed potentially significant effects on the environment or a substantial increase in the severity of any potentially significant environmental effects previously disclosed by the lead agency. Furthermore, to the extent the potential for such effects exists, CDFW finds adherence to and implementation of the Conditions of Project Approval adopted by the lead agency, and that adherence to and implementation of the Conditions of Approval imposed by CDFW through the issuance of this ITP, will avoid or reduce to below a level of significance any such potential effects. CDFW consequently finds that issuance of this ITP will not result in any significant, adverse impacts on the environment.

**Findings Pursuant to CESA:**

These findings are intended to document CDFW's compliance with the specific findings requirements set forth in CESA and related regulations. (Fish & G. Code § 2081, subs. (b)-(c); Cal. Code Regs., tit. 14, §§ 783.4, subds, (a)-(b), 783.5, subd. (c)(2).)

CDFW finds based on substantial evidence in the ITP application, Walker Creek Road Bridge Replacement MND, consultations, and the administrative record of proceedings, that issuance of this ITP complies and is consistent with the criteria governing the issuance of ITPs pursuant to CESA:

- (1) Take of Covered Species as defined in this ITP will be incidental to the otherwise lawful activities covered under this ITP;
- (2) Impacts of the taking on Covered Species will be minimized and fully mitigated through the implementation of measures required by this ITP and as described in the MMRP. Measures include: (1) permanent habitat protection; (2) establishment of avoidance zones; (3) worker education; and (4) Monthly Compliance Reports. CDFW evaluated factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's

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estimate of the acreage required to provide for adequate compensation. Based on this evaluation, CDFW determined that the protection and management in perpetuity of 4.56 acres of compensatory habitat that is contiguous with other protected Covered Species habitat and/or is of higher quality than the habitat being destroyed by the Project, along with the minimization, monitoring, reporting, and funding requirements of this ITP minimizes and fully mitigates the impacts of the taking caused by the Project;

- (3) The take avoidance and mitigation measures required pursuant to the conditions of this ITP and its attachments are roughly proportional in extent to the impacts of the taking authorized by this ITP;
- (4) The measures required by this ITP maintain Permittee's objectives to the greatest extent possible;
- (5) All required measures are capable of successful implementation;
- (6) This ITP is consistent with any regulations adopted pursuant to Fish and Game Code sections 2112 and 2114;
- (7) Permittee has ensured adequate funding to implement the measures required by this ITP as well as for monitoring compliance with, and the effectiveness of, those measures for the Project; and
- (8) Issuance of this ITP will not jeopardize the continued existence of the Covered Species based on the best scientific and other information reasonably available, and this finding includes consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (1) known population trends; (2) known threats to the species; and (3) reasonably foreseeable impacts on the species from other related projects and activities. Moreover, CDFW's finding is based, in part, on CDFW's express authority to amend the terms and conditions of this ITP without concurrence of the Permittee as necessary to avoid jeopardy and as required by law.

**Attachments:**

|                   |   |
|-------------------|---|
| ATTACHMENT 1      | Mitigation Monitoring and Reporting Program                             |
| ATTACHMENT 2A, 2B | Habitat Management Lands Checklist; Proposed Lands for Acquisition Form |
| ATTACHMENT 3      | Letter of Credit Form   |
| ATTACHMENT 4      | Mitigation Payment Transmittal Form                                     |
| ATTACHMENT 5      | Desert Tortoise Salvage Protocol  |

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WALKER CREEK ROAD BRIDGE REPLACEMENT PROJECT

**ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

on 6/17/2020

DocuSigned by:  
*Leslie MacNair*

AF-EAC2ED7258498...  
Leslie MacNair, Regional Manager  
INLAND DESERTS REGION

**ACKNOWLEDGMENT**

The undersigned: (1) warrants that he or she is acting as a duly authorized representative of the Permittee, (2) acknowledges receipt of this ITP, and (3) agrees on behalf of the Permittee to comply with all terms and conditions

By: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: Ashley Helms Title: \_\_\_\_\_

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INYO COUNTY PUBLIC WORKS DEPARTMENT  
WALKER CREEK ROAD BRIDGE REPLACEMENT PROJECT

**Attachment 1**

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)  
CALIFORNIA ENDANGERED SPECIES ACT**

**INCIDENTAL TAKE PERMIT NO. 2081-2019-027-06**

**PERMITTEE: Inyo County Public Works Department**

**PROJECT: Walker Creek Road Bridge Replacement Project**

**PURPOSE OF THE MMRP**

The purpose of the MMRP is to ensure that the impact minimization and mitigation measures required by the Department of Fish and Wildlife (CDFW) for the above-referenced Project are properly implemented, and thereby to ensure compliance with section 2081(b) of the Fish and Game Code and section 21081.6 of the Public Resources Code. A table summarizing the mitigation measures required by CDFW is attached. This table is a tool for use in monitoring and reporting on implementation of mitigation measures, but the descriptions in the table do not supersede the mitigation measures set forth in the California Incidental Take Permit (ITP) and in attachments to the ITP, and the omission of a permit requirement from the attached table does not relieve the Permittee of the obligation to ensure the requirement is performed.

**OBLIGATIONS OF PERMITTEE**

Mitigation measures must be implemented within the time periods indicated in the table that appears below. Permittee has the primary responsibility for monitoring compliance with all mitigation measures and for reporting to CDFW on the progress in implementing those measures. These monitoring and reporting requirements are set forth in the ITP itself and are summarized at the front of the attached table.

**VERIFICATION OF COMPLIANCE, EFFECTIVENESS**

CDFW may, at its sole discretion, verify compliance with any mitigation measure or independently assess the effectiveness of any mitigation measure.

## **TABLE OF MITIGATION MEASURES**

The following items are identified for each mitigation measure: Mitigation Measure, Source, Implementation Schedule, Responsible Party, and Status/Date/Initials. The Mitigation Measure column summarizes the mitigation requirements of the ITP. The Source column identifies the ITP condition that sets forth the mitigation measure. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing the mitigation measure. The Status/Date/Initials column shall be completed by the Permittee during preparation of each Status Report and the Final Mitigation Report, and must identify the implementation status of each mitigation measure, the date that status was determined, and the initials of the person determining the status.

|   | Mitigation Measure  | Source              | Implementation Schedule   | Responsible Party | Status / Date / Initials |
|---|---|---------------------|---|-------------------|--------------------------|
| <b>BEFORE DISTURBING SOIL OR VEGETATION</b> |   |                     |   |                   |                          |
| 1   | Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with the ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of the ITP.  | ITP Condition # 4.1 | Before commencing ground- or vegetation-disturbing activities/<br>Entire Project  | Permittee         |                          |
| 2   | Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a Biological Monitor(s) at least 30 days prior to starting Covered Activities or with change of personnel. Permittee shall ensure that the Biological Monitor(s) is knowledgeable and experienced in the biology, natural history, collecting and handling of the Covered Species. The Biological Monitor(s) shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Biological Monitor(s) in advance in writing before starting Covered Activities, and shall also obtain approval in advance in writing if the Biological Monitor(s) must be changed.   | ITP Condition # 4.2 | Before commencing ground- or vegetation-disturbing activities/<br>Entire Project  | Permittee         |                          |
| 3   | Permittee shall at least 30 days prior to starting Covered Activities or with change of personnel submit to CDFW in writing the name, qualifications, business address, and contact information for a biologist(s) who, in addition to meeting the qualifications to be Biological Monitor(s) identified in Condition 6.2 above, possesses a valid Memorandum of Understanding (MOU) with CDFW for handling the Covered Species. Only Authorized Biologist(s) shall be allowed to excavate burrows, handle, and relocate Covered Species.   | ITP Condition # 4.3 | Before commencing ground- or vegetation-disturbing activities                     | Permittee         |                          |
| 4   | Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Representative, Biological Monitor(s), or Authorized Biologist(s) that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in the ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures. | ITP Condition # 4.5 | Before commencing ground- or vegetation-disturbing activities /<br>Entire Project | Permittee         |                          |
| 5   | Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed at least once a week to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.   | ITP Condition # 4.7 | Before commencing ground- or vegetation-disturbing activities /<br>Entire Project | Permittee         |                          |

|    | <b>Mitigation Measure</b>  | <b>Source</b>        | <b>Implementation Schedule</b>   | <b>Responsible Party</b> | <b>Status / Date / Initials</b> |
|----|--|----------------------|--|--------------------------|---------------------------------|
| 6  | Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Biological Monitor(s) and/or Authorized Biologist(s). Permittee shall keep the amount of water used to the minimum amount needed, and shall not allow water to form puddles.   | ITP Condition # 4.8  | Before commencing ground- or vegetation-disturbing activities/<br>Entire Project   | Permittee                |                                 |
| 7  | Before starting Covered Activities, Permittee shall clearly delineate the boundaries of the Project Area with fencing, stakes, or flags. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged areas. Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities in that area.  | ITP Condition # 4.10 | Before commencing ground- or vegetation-disturbing activities /<br>Entire Project  | Permittee                |                                 |
| 8  | Permittee shall clearly delineate habitat of the Covered Species within the Project Area with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species' habitat.  | ITP Condition # 4.11 | Before commencing ground- or vegetation-disturbing activities /<br>Entire Project  | Permittee                |                                 |
| 9  | The Designated Representative shall notify CDFW's Regional Representative Rose Banks in writing (Rose.Banks@wildlife.ca.gov) and as described in the Notices section of this ITP at least 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.  | ITP Condition # 5.1  | Before commencing ground- or vegetation-disturbing activities  | Permittee                |                                 |
| 10 | Permittee shall either purchase 4.56 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank (Condition of Approval 7.2) OR shall provide for both the permanent protection and management of 4.56 acres of Habitat Management (HM) lands pursuant to Condition of Approval 7.3 below and the calculation and deposit of the management funds pursuant to Condition of Approval 7.4 below. Permanent protection and funding for perpetual management of compensatory habitat must be completed before starting Covered Activities, or within 18 months of the effective date of the ITP if Security is provided pursuant to Condition of Approval 8 below for all uncompleted obligations. | ITP Condition # 7    | Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided) | Permittee                |                                 |



|    | <b>Mitigation Measure</b>   | <b>Source</b>         | <b>Implementation Schedule</b>   | <b>Responsible Party</b> | <b>Status / Date / Initials</b> |
|----|---|-----------------------|--|--------------------------|---------------------------------|
| 11 | <p>CDFW has estimated the cost of acquisition, protection, and perpetual management of the HM lands as follows:</p> <ul style="list-style-type: none"> <li>i) Land acquisition costs for HM lands identified in Condition of Approval 7.3 below, estimated at \$1,500/acre for 4.56 acres: <b>\$6,840</b>. Land acquisitions costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirements;</li> <li>ii) Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 7.3.5 below, estimated at <b>\$1,368</b>;</li> <li>iii) Interim management period funding as described in Condition of Approval 7.3.6 below, estimated at <b>\$1,368</b>;</li> <li>iv) Long-term management funding as described in Condition of Approval 7.4 below, estimated at \$1,500/acre for 4.56 acres: \$6,840. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management, plus the ten percent contingency fee as described in Condition 7.4.2.2.1 (\$684) for a total of <b>\$7524</b>.</li> <li>v) Related transaction fees including but not limited to account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW as described in Condition of Approval 7.5, estimated at <b>\$3,000</b>.</li> </ul> | ITP Condition # 7.1   | Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided) | Permittee                |                                 |
| 12 | <p>Permittee shall purchase 4.56 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank prior to initiating Covered Activities, or no later than 18 months from the issuance of the ITP if Security is provided pursuant to Condition of Approval 8 below.</p> <p>OR:</p>  | ITP Condition # 7.2   | Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided) | Permittee                |                                 |
| 13 | <p>To provide for the acquisition and protection of the HM lands, the Permittee shall transfer fee title to the HM lands to CDFW pursuant to terms approved by CDFW. Alternatively, CDFW, in its sole discretion, may authorize a governmental entity, special district, non-profit organization, for-profit entity, person, or another entity to hold title to and manage the property provided that the district, organization, entity, or person meets the requirements of Government Code sections 65965-65968, as amended. If CDFW does not hold fee title to the HM lands, CDFW shall act as grantee for a conservation easement over the HM lands or shall, in its sole discretion, approve a non-profit entity, public agency, or Native American tribe to act as grantee for a conservation easement over the HM lands provided that the entity, agency, or tribe meets the requirements of Civil Code section 815.3. If CDFW does not hold the conservation easement, CDFW shall be expressly named in the conservation easement as a third-party beneficiary. The Permittee shall obtain CDFW written approval of any conservation easement before its execution or recordation. No conservation easement shall be approved by CDFW unless it complies with Government Code sections 65965-65968, as amended and includes provisions expressly addressing Government Code sections 65966(j) and 65967(e).</p>  | ITP Condition # 7.3.1 | Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided) | Permittee                |                                 |

|    | <b>Mitigation Measure</b>   | <b>Source</b>         | <b>Implementation Schedule</b>   | <b>Responsible Party</b> | <b>Status / Date / Initials</b> |
|----|---|-----------------------|--|--------------------------|---------------------------------|
| 14 | Permittee shall obtain CDFW approval of the HM lands before acquisition and/or transfer of the land by submitting, at least three months before acquisition and/or transfer of the HM lands, a formal Proposed Lands for Acquisition Form (see Attachment 2B) identifying the land to be purchased or property interest conveyed to an approved entity as mitigation for the Project's impacts on Covered Species.  | ITP Condition # 7.3.2 | Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided) | Permittee                |                                 |
| 15 | Permittee shall provide a recent preliminary title report, initial hazardous materials survey report, and other necessary documents (see Attachment 2A). All documents conveying the HM lands and all conditions of title are subject to the approval of CDFW, and if applicable, the Wildlife Conservation Board and the Department of General Services.   | ITP Condition # 7.3.3 | Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided) | Permittee                |                                 |
| 16 | Permittee shall designate both an interim and long-term land manager approved by CDFW. The interim and long-term land managers may, but need not, be the same. The interim and/or long-term land managers may be the landowner or another party. Documents related to land management shall identify both the interim and long-term land managers. Permittee shall notify CDFW of any subsequent changes in the land manager within 30 days of the change. If CDFW will hold fee title to the mitigation land, CDFW will also act as both the interim and long-term land manager unless otherwise specified   | ITP Condition # 7.3.4 | Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided) | Permittee                |                                 |
| 17 | Permittee shall provide for the implementation of start-up activities, including the initial site protection and enhancement of HM lands, once the HM lands have been approved by CDFW. Start-up activities include, at a minimum: (1) preparing a final management plan for CDFW approval (see <a href="https://www.wildlife.ca.gov/Conservation/Planning/Banking/Templates">https://www.wildlife.ca.gov/Conservation/Planning/Banking/Templates</a> ) (2) conducting a baseline biological assessment and land survey report within four months of recording or transfer; (3) developing and transferring Geographic Information Systems (GIS) data if applicable; (4) establishing initial fencing; (5) conducting litter removal; (6) conducting initial habitat restoration or enhancement, if applicable; and (7) installing signage.   | ITP Condition # 7.3.5 | Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided) | Permittee                |                                 |
| 18 | Permittee shall provide for the interim management of the HM lands. The Permittee shall ensure that the interim land manager implements the interim management of the HM lands as described in the final management plan and conservation easement approved by CDFW. The interim management period shall be a minimum of three years from the date of HM land acquisition and protection and full funding of the Endowment and includes expected management following start-up activities. Interim management period activities described in the final management plan shall include fence repair, continuing trash removal, site monitoring, and vegetation and invasive species management. Permittee shall either (1) provide a security to CDFW for the minimum of three years of interim management that the land owner, Permittee, or land manager agrees to manage and pay for at their own expense, (2) establish an escrow account with written instructions approved in advance in writing by CDFW to pay the land manager annually in advance, or (3) establish a short-term enhancement account with CDFW or a CDFW-approved entity for payment to the land manager | ITP Condition # 7.3.6 | Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided) | Permittee                |                                 |

|    | <b>Mitigation Measure</b>   | <b>Source</b>            | <b>Implementation Schedule</b>   | <b>Responsible Party</b> | <b>Status / Date / Initials</b> |
|----|---|--------------------------|--|--------------------------|---------------------------------|
| 19 | If the Permittee will permanently protect and perpetually manage compensatory habitat as described in Condition of Approval 7.3, the Permittee shall ensure that the HM lands are perpetually managed, maintained, and monitored by the long-term land manager as described in the ITP, the conservation easement, and the final management plan approved by CDFW. After obtaining CDFW approval of the HM lands, Permittee shall provide long-term management funding for the perpetual management of the HM lands by establishing a long-term management fund (Endowment). The Endowment is a sum of money, held in a CDFW-approved fund that provides funds for the perpetual management, maintenance, monitoring, and other activities on the HM lands consistent with the management plan(s) required by Condition of Approval 7.3.5. Endowment as used in the ITP shall refer to the endowment deposit and all interest, dividends, other earnings, additions and appreciation thereon. The Endowment shall be governed by the ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.  | ITP Condition # 7.4      | Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided) | Permittee                |                                 |
| 20 | The Endowment shall be held by the Endowment Manager, which shall be either CDFW or another entity qualified pursuant to Government Code sections 65965-65968, as amended. Permittee shall submit to CDFW a written proposal that includes: (i) the name of the proposed Endowment Manager; (ii) whether the proposed Endowment Manager is a governmental entity, special district, nonprofit organization, community foundation, or congressionally chartered foundation; (iii) whether the proposed Endowment Manager holds the property or an interest in the property for conservation purposes as required by Government Code section 65968(b)(1) or, in the alternative, the basis for finding that the Project qualifies for an exception pursuant to Government Code section 65968(b)(2); and (iv) a copy of the proposed Endowment Manager's certification pursuant to Government Code section 65968(e). Within 30 days of CDFW's receipt of Permittee's written proposal, CDFW shall inform Permittee in writing if it determines the proposal does not satisfy the requirements of Fish and Game Code section 2081(b)(4) and, if so, shall provide Permittee with a written explanation of the reasons for its determination. If CDFW does not provide Permittee with a written determination within the 30-day period, the proposal shall be deemed consistent with Section 2081(b)(4). | ITP Conditions # 7.4.1   | Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided) | Permittee                |                                 |
| 21 | After obtaining CDFW written approval of the HM lands, long-term management plan, and Endowment Manager, Permittee shall prepare a Property Analysis Record (PAR) or PAR-equivalent analysis (hereinafter "PAR") to calculate the amount of funding necessary to ensure the long-term management of the HM lands (Endowment Deposit Amount). The Permittee shall submit to CDFW for review and approval the results of the PAR before transferring funds to the Endowment Manager.  | ITP Conditions # 7.4.2   | Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided) | Permittee                |                                 |
| 22 | Permittee shall obtain the capitalization rate from the selected Endowment Fund Manager for use in calculating the PAR and adjust for any additional administrative, periodic, or annual fees.  | ITP Conditions # 7.4.2.1 | Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided) | Permittee                |                                 |

|    | <b>Mitigation Measure</b>   | <b>Source</b>            | <b>Implementation Schedule</b>   | <b>Responsible Party</b> | <b>Status / Date / Initials</b> |
|----|---|--------------------------|--|--------------------------|---------------------------------|
| 23 | <p>Permittee shall include in PAR assumptions the following buffers for endowment establishment and use that will substantially ensure long-term viability and security of the Endowment Fund:</p> <ul style="list-style-type: none"> <li>• A 10 percent contingency shall be added to each endowment calculation to hedge against underestimation of the fund, unanticipated expenditures, inflation, or catastrophic events.</li> <li>• The endowment shall be established assuming spending will not occur for the first three years after full funding.</li> <li>• For all large capital expenses to occur periodically but not annually such as fence replacement or well replacement, payments shall be withheld from the annual disbursement until the year of anticipated need or upon request to Endowment Fund Manager and CDFW.</li> </ul> | ITP Conditions # 7.4.2.2 | Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided) | Permittee                |                                 |
| 24 | <p>Permittee shall transfer the long-term endowment funds to the Endowment Manager upon CDFW approval of the Endowment Deposit Amount identified above. The approved Endowment Manager may pool the Endowment with other endowments for the operation, management, and protection of HM lands for local populations of the Covered Species but shall maintain separate accounting for each Endowment. The Endowment Manager shall, at all times, hold and manage the Endowment in compliance with the ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.</p>   | ITP Conditions # 7.4.3   | Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided) | Permittee                |                                 |
| 25 | <p>Permittee shall reimburse CDFW for all reasonable expenses incurred by CDFW such as transaction fees, account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM Lands to CDFW.</p>  | ITP Conditions # 7.5     | Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided) | Permittee                |                                 |

|    | <b>Mitigation Measure</b>   | <b>Source</b>     | <b>Implementation Schedule</b>   | <b>Responsible Party</b> | <b>Status / Date / Initials</b> |
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| 26 | <p>The Permittee may proceed with Covered Activities only after the Permittee has ensured funding (Security) to complete any activity required by Condition of Approval 7 that has not been completed before Covered Activities begin. Permittee shall provide Security as follows:</p> <ul style="list-style-type: none"> <li>b) <u>Security Amount</u>. The Security shall be in the amount of <b>\$20,100</b>. This amount is based on the cost estimates identified in Condition 7.1 above;</li> <li>c) <u>Security Form</u>. The Security shall be in the form of an irrevocable letter of credit (see Attachment 3) or another form of Security approved in advance in writing by CDFW's Office of the General Counsel;</li> <li>d) <u>Security Timeline</u>. The Security shall be provided to CDFW before Covered Activities begin or within 30 days after the effective date of the ITP, whichever occurs first;</li> <li>e) <u>Security Holder</u>. The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW;</li> <li>f) <u>Security Transmittal</u>. If CDFW holds the Security, Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (see Attachment 4) or by way of an approved instrument such as escrow, irrevocable letter of credit, or other;</li> <li>g) <u>Security Drawing</u>. The Security shall allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that the Permittee has failed to comply with the Conditions of Approval of the ITP;</li> <li>h) <u>Security Release</u>. The Security (or any portion of the Security then remaining) shall be released to the Permittee after CDFW has conducted an on-site inspection and received confirmation that all secured requirements have been satisfied, as evidenced by: <ul style="list-style-type: none"> <li>• Written documentation of the acquisition of the HM lands;</li> <li>• Copies of all executed and recorded conservation easements;</li> <li>• Written confirmation from the approved Endowment Manager of its receipt of the full Endowment; and</li> <li>• Timely submission of all required reports</li> </ul> </li> </ul> <p>Even if Security is provided, the Permittee must complete the required acquisition, protection and transfer of all HM lands and record any required conservation easements no later than 18 months from the effective date of the ITP. CDFW may require the Permittee to provide additional HM lands and/or additional funding to ensure the impacts of the taking are minimized and fully mitigated, as required by law, if the Permittee does not complete these requirements within the specified timeframe.</p> | ITP Condition # 8 | Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided) | Permittee                |                                 |

**DURING CONSTRUCTION**

|    | <b>Mitigation Measure</b>   | <b>Source</b>       | <b>Implementation Schedule</b> | <b>Responsible Party</b> | <b>Status / Date / Initials</b> |
|----|---|---------------------|--------------------------------|--------------------------|---------------------------------|
| 27 | The Biological Monitor(s) and/or Authorized Biologist(s) shall be on-site during all initial ground-disturbing activities. If no covered species are found once ground-disturbing activities are completed, the Biological Monitor(s) and/or Authorized Biologist(s) shall conduct weekly site visits, and shall be on-call to resolve any biological resource issues that arise during construction. The Biological Monitor(s) and/or Authorized Biologist(s) shall conduct compliance inspections to (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of the ITP; (4) check all exclusion zones; and (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area. During initial ground-disturbing activities, the Designated Representative, Biological Monitor(s) or Authorized Biologist(s) shall prepare daily written observation and inspection records summarizing oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by the ITP. The Biological Monitor(s) or Authorized Biologist(s) shall conduct compliance inspections a minimum of twice a day (once during the onset of the day's work and one at the conclusion of that day's work), and once a week during periods of inactivity and after area disturbances are completed. | ITP Condition # 5.3 | Entire Project                 | Permittee                |                                 |
| 28 | Monthly Compliance Report: The Designated Representative, Biological Monitor(s), or Authorized Biologist(s) shall compile the observation and inspection records identified in Condition of Approval 5.3 into a Monthly Compliance Report and submit it by the 15 <sup>th</sup> of each month to CDFW along with a copy of this MMRP table with notes showing the current implementation status of each mitigation measure. Monthly Compliance Reports shall be submitted to the CDFW offices listed in the Notices section of the ITP and via e-mail to CDFW's Regional Representative and Headquarters CESA Program. At the time of the ITP's approval, the CDFW Regional Representative is Rose Banks (Rose.Banks@wildlife.ca.gov) and Headquarters CESA Program email is CESA@wildlife.ca.gov. CDFW may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.   | ITP Condition # 5.4 | Entire Project                 | Permittee                |                                 |
| 29 | Annual Status Report: Permittee shall provide CDFW with an Annual Status Report (ASR) no later than January 31 of every year beginning with issuance of the ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Monthly Compliance Reports for that year identified in Condition of Approval 5.4; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in this MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of the Covered Species; (6) an accounting of the number of acres subject to both temporary and permanent disturbance, and (7) information about other Project impacts on the Covered Species.   | ITP Condition # 5.5 | Entire Project                 | Permittee                |                                 |
| 30 | The Biological Monitor(s) or Authorized Biologist(s) shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Biological Monitor(s) and/or Authorized Biologist(s) shall include copies of the submitted forms with the next Monthly Compliance Report or ASR, whichever is submitted first relative to the observation.  | ITP Condition # 5.6 | Entire Project                 | Permittee                |                                 |

|    | <b>Mitigation Measure</b>   | <b>Source</b>        | <b>Implementation Schedule</b> | <b>Responsible Party</b> | <b>Status / Date / Initials</b> |
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| 31 | The Designated Representative shall immediately notify CDFW's Regional Representative Rose Banks at (760) 873-4412 and in writing ( <a href="mailto:Rose.Banks@wildlife.ca.gov">Rose.Banks@wildlife.ca.gov</a> ) and as described in the Notices section of this ITP if he/she determines that the Permittee is not in compliance with any Condition of Approval of the ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in the ITP and/or this MMRP. The Designated Representative shall report any non-compliance with the ITP to CDFW within 24 hours.  | ITP Condition # 5.2  | Entire Project                 | Permittee                |                                 |
| 32 | The Biological Monitor(s) and/or Authorized Biologist(s) shall maintain a construction-monitoring notebook on-site throughout the construction period, which shall include a copy of the ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction-monitoring notebook is available for review at the Project site upon request by CDFW.  | ITP Condition # 4.6  | Entire Project                 | Permittee                |                                 |
| 33 | Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as mono-filament netting (erosion control matting) or similar material, in potential Covered Species' habitat.   | ITP Condition # 4.9  | Entire Project                 | Permittee                |                                 |
| 34 | Permittee shall prohibit firearms and domestic dogs from the Project Area and site access routes during Covered Activities, except those in the possession of authorized security personnel or local, State, or federal law enforcement officials.  | ITP Condition # 4.17 | Entire Project                 | Permittee                |                                 |
| 35 | Project-related personnel shall access the Project Area using existing routes, or routes identified in the Project Description and shall not cross Covered Species' habitat outside of or en route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. Permittee shall ensure that vehicle speeds do not exceed 20 miles per hour to avoid Covered Species on or traversing the roads. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to the ITP, if, among other reasons, additional take of Covered Species will occur as a result of the Project modification. | ITP Condition # 4.12 | Entire Project                 | Permittee                |                                 |
| 36 | Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless specifically provided for in Condition 4.12 of the ITP.  | ITP Condition # 4.13 | Entire Project                 | Permittee                |                                 |
| 37 | Permittee shall immediately stop and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall exclude the storage and handling of hazardous materials from the Project Area and shall properly contain and dispose of any unused or leftover hazardous products off-site.   | ITP Condition # 4.14 | Entire Project                 | Permittee                |                                 |
| 38 | Permittee shall provide CDFW staff with reasonable access to the Project and mitigation lands under Permittee's control, and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in the ITP.  | ITP Condition # 4.15 | Entire Project                 | Permittee                |                                 |

|    | Mitigation Measure  | Source              | Implementation Schedule | Responsible Party | Status / Date / Initials |
|----|---|---------------------|-------------------------|-------------------|--------------------------|
| 39 | No more than 14 days prior to initiating ground-or vegetation-disturbing Project activities, the Project Area shall be surveyed for Covered Species by the Biological Monitor(s) and/or Authorized Biologist(s) using protocols approved by CDFW. If a Covered Species is found, a follow-up survey shall be conducted no more than 48 hours in advance of initiating ground- or vegetation-disturbing Project activities. During these surveys, all burrows of Covered Species that may be affected by Project activities shall be prominently flagged by the Biological Monitor(s) or Authorized Biologist(s) and avoided to the maximum possible extent during Project activities. Permittee shall include the survey results in the Monthly Compliance Report and in the ASR.   | ITP Condition # 6.1 | Entire Project          | Permittee         |                          |
| 40 | The Authorized Biologist(s) shall fully excavate by hand all burrows OR scope each burrow within the Project Area that are suspected or known to be occupied by the Covered Species. The Authorized Biologist(s) shall allow Covered Species encountered in the excavated burrows during their <i>active period</i> (March 15-July 15) to escape out of harm's way. During the Covered Species' <i>dormant period</i> (approximately September 1 through January 31), the Authorized Biologist(s) shall collect and immediately relocate Covered Species to an artificial burrow at a protected off-site location approved in advance by CDFW's Regional Representative. The Covered Species may only be relocated by the Authorized Biologist(s). The Authorized Biologist(s) shall prepare relocation burrows in the following manner: (1) dig a hole of at least two feet deep; (2) install a nine-inch diameter non-collapsible plastic container, which shall be connected to a three-inch diameter non-collapsible pipe that runs to the ground surface at a 45-degree angle; (3) the Authorized Biologist(s) shall place the Covered Species in the artificial burrow and lightly plug the burrow mouth with soil in a manner that is similar to a natural Covered Species burrow. | ITP Condition # 6.2 | Entire Project          | Permittee         |                          |
| 41 | No more than 30 days prior to start of Covered Activities, the Biological Monitor(s) or Authorized Biologist(s) shall conduct pre-construction surveys for Covered Species. These surveys shall cover 100 percent of the Project Area with a 50-foot buffer zone. The Biological Monitor(s) or Authorized Biologist(s) shall follow the survey methodology in the most recent United States Fish and Wildlife Service (USFWS) Desert Tortoise Field Manual. The Biological Monitor(s) and /or Authorized Biologist(s) shall flag all potential burrows within this area. If the Covered Species is active above-ground, a final survey for the Covered Species shall occur no more than 48 hours before the onset of surface-disturbing activities. Within 30 days of performing the pre-construction surveys, the Biological Monitor(s) or Authorized Biologist(s) shall submit a report to CDFW documenting results (following the most current USFWS guidance document).   | ITP Condition # 6.3 | Entire Project          | Permittee         |                          |
| 42 | Only the Authorized Biologist(s) may excavate burrows and handle the Covered Species and their eggs. During pre-construction clearance surveys the Authorized Biologist(s) shall excavate all burrows by hand that cannot be avoided within the area to be impacted as a result of the Project, including burrows not recently used that are considered by the Authorized Biologist(s) at the time of the survey to be potentially suitable for the Covered Species. Potentially suitable burrows shall be excavated and then blocked, collapsed, or fenced by the Authorized Biologist(s) at the time of the survey to prevent re-entry by the Covered Species. Burrows shall only be collapsed where Covered Activities will directly impact the burrow. Otherwise, burrows shall be left intact, and the entrance temporarily blocked to prevent re-entry using methods determined to be appropriate by the Authorized Biologist(s). The Authorized Biologist(s) shall excavate potentially suitable burrows in accordance with the handling protocol outline in Chapter 7-Guidelines for Handling Desert Tortoises (USFWS 2009).  | ITP Condition # 6.4 | Entire Project          | Permittee         |                          |



|    | <b>Mitigation Measure</b>  | <b>Source</b>       | <b>Implementation Schedule</b> | <b>Responsible Party</b> | <b>Status / Date / Initials</b> |
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| 43 | Permittee shall install temporary desert tortoise exclusion fencing around any active construction area, lay down area, and storage area prior to ground disturbing activities. The Biological Monitor(s) and/or Authorized Biologist(s) shall direct the fence installation. The Biological Monitor(s) and/or Authorized Biologist(s) shall inspect the temporary exclusionary fencing each morning prior to the start of construction and at the end of the day after work has ceased for any gaps/breaches or required repairs. If the fence is compromised, repairs shall be completed immediately before construction continues.  | ITP Condition # 6.5 | Entire Project                 | Permittee                |                                 |
| 44 | Twenty-four hours prior to start of ground disturbance activities, the Biological Monitor(s) and/or Authorized Biologist(s) shall resurvey the Project Area and access routes for Covered Species and their burrows. The Biological Monitor(s) and/or Authorized Biologist(s) shall inspect all the burrows within the Project Area for habitation prior to collapsing them in accordance with the ITP. If handling of a Covered Species is required, the Designated Representative shall contact the Authorized Biologist(s). Only an Authorized Biologist shall be allowed to excavate burrows, handle, and relocate Covered Species.  | ITP Condition # 6.6 | Entire Project                 | Permittee                |                                 |
| 45 | In the event that individuals of the Covered Species or their eggs must be handled and/or relocated, the Authorized Biologist(s) shall follow all procedures/guidelines in the USFWS Field Manual, including, but not limited to, procedures to avoid transmission of diseases and parasites, guidelines for addressing temperature extremes, data collection requirements, and general measures to protect the well-being of the Covered Species. All instances of handling and relocation shall be documented and provided to CDFW as specified in Condition of Approval 6.15.   | ITP Condition # 6.7 | Entire Project                 | Permittee                |                                 |
| 46 | Workers shall inspect for Covered Species under vehicles and equipment before the vehicles and equipment are moved. If a Covered Species is present, the worker shall contact the Biological Monitor(s) and/or Authorized Biologist(s) and wait for the Covered Species to move unimpeded to a safe location OR the Authorized Biologist(s) shall relocate the Covered Species as described in Condition of Approval 6.6 and 6.10 of the ITP before moving vehicles and equipment.   | ITP Condition #6.8  | Entire Project                 | Permittee                |                                 |
| 47 | All personnel on the Project site shall immediately report all encounters with the Covered Species to the Biological Monitor(s) and/or Authorized Biologist(s). If a Covered Species is identified during Project activities, the Permittee shall immediately stop all work in the area and contact the Biological Monitor(s) and/or Authorized Biologist(s). The Biological Monitor(s) and/or Authorized Biologist shall allow the Covered Species to escape unimpeded, or relocate the Covered Species as described in the ITP or Chapter 7-Guidelines for Handling Desert Tortoises (USFWS 2009). Permittee shall not resume work until the Authorized Biologist has relocated the animal or allowed it to move outside of the Project Area on its own. The Designated Representative shall immediately, or no later than noon on the next business day, notify CDFW of any Covered Species Observations. Notification to CDFW shall be to Rose Banks via telephone (760) 873-4412 and email (Rose.Banks@wildlife.ca.gov), followed by a written report. Notification and the written report shall include the date, location, and circumstances of the observation, the name(s) of the Authorized Biologist(s) that relocated the individual, and the location (including GPS coordinates) where the individual was moved. | ITP Condition # 6.9 | Entire Project                 | Permittee                |                                 |

|    | <b>Mitigation Measure</b>   | <b>Source</b>        | <b>Implementation Schedule</b> | <b>Responsible Party</b> | <b>Status / Date / Initials</b> |
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| 48 | To the maximum extent practicable, disturbance to and relocation of Covered Species shall be avoided. If any Covered Species are found to be at risk of harm as a result of Covered Activities, the individual(s) shall be moved out of harm's way by an Authorized Biologist and released no more than 1000 feet from the point of collection for adults and 300 feet for juveniles. Covered Species shall not be relocated to adjacent private property unless the Permittee obtains written permission from the property owner. Covered Species found above ground shall be allowed reasonable time to move out of harm's way on their own accord, and if relocated by the Authorized Biologist(s), the Covered Species shall be released above ground in suitable habitat and conditions. Covered Species found in burrows, especially during the species' less active period, shall be avoided to the extent practicable, as determined by the Authorized Biologist(s). If a Covered Species or eggs are found during burrow excavation, the Authorized Biologist(s) shall relocate them to an unoccupied burrow of similar size. If no such burrow is available for relocating, the Authorized Biologist(s) shall construct an artificial burrow similar in size, depth and orientation as the original burrow, and monitor them until Covered Activities in the area are complete. The Authorized Biologist(s) shall follow all excavation, capture, handling, identification, data collection, relocation, and burrow construction procedures described in the USFWS Field Manual to protect the health and well-being of desert tortoise. The Authorized Biologist(s) shall follow all protocols for the construction of the artificial burrows found in the Chapter 7-Guidelines for Handling Desert Tortoises (USFWS 2009). The Authorized Biologist(s) shall document any relocation efforts and provide a report to CDFW as specified in Condition of Approval 6.16. | ITP Condition # 6.10 | Entire Project                 | Permittee                |                                 |
| 49 | The Authorized Biologist(s) shall ensure that Covered Species are not captured, moved, transported, released, or purposefully caused to leave their burrow for any reason when the ambient air temperature is above 95 degrees Fahrenheit (35 degrees Celsius). The Authorized Biologist(s) shall ensure that no Covered Species is captured if the ambient air temperature is anticipated to exceed 95 degrees Fahrenheit before handling or processing can be completed. If the ambient air temperature exceeds 95 degrees Fahrenheit during handling or processing, the Authorized Biologist(s) shall ensure the Covered Species is kept in a shaded environment with a temperature that does not exceed 95 degrees Fahrenheit, and that the individual is not released until ambient air temperature declines to below 95 degrees Fahrenheit. Covered Species moved during inactive periods shall be monitored by the Authorized Biologist(s) for at least two days after placement in the new burrows to ensure their safety. During relocation, the Authorized Biologist(s) may hold a captured Covered Species overnight and move them the following morning within these temperature constraints.   | ITP Condition # 6.11 | Entire Project                 | Permittee                |                                 |
| 50 | If a Covered Species voids its bladder as a result of being handled, the Authorized Biologist(s) shall rehydrate the individual(s). The Authorized Biologist(s) shall rehydrate the Covered Species at the location where the individual(s) was captured, or the location where the individual(s) is or will be relocated. The Authorized Biologist(s) shall rehydrate the Covered Species by placing it in a tub with a clean plastic disposable liner. The Authorized Biologist(s) shall add water to the lined tub while ensuring that the water level is not higher than the lower jaw of the Covered Species. The Authorized Biologist(s) shall rehydrate each Covered Species individually for a minimum of 10 to 20 minutes. The Authorized Biologist(s) shall place the lined tub in a quiet protected area during rehydration. After each Covered Species is rehydrated the water shall be emptied and a new plastic disposable liner placed in the tub..  | ITP Condition # 6.12 | Entire Project                 | Permittee                |                                 |

|    | <b>Mitigation Measure</b>  | <b>Source</b>        | <b>Implementation Schedule</b> | <b>Responsible Party</b> | <b>Status / Date / Initials</b> |
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| 51 | Permittee shall submit Covered Species fatally injured or killed by the Project Activities for necropsy, according to Protocol for Salvaging Injured, Recently Dead, Ill, and Dying Wild, Free-Roaming Desert Tortoises (2007) (Attachment 4), at the expense of the Permittee.  | ITP Condition # 6.13 | Entire Project                 | Permittee                |                                 |
| 52 | The Authorized Biologist(s) shall maintain a record of all Covered Species handled. This information shall include the following for each tortoise: (1) the locations (narrative and maps, including whether the individual(s) was found above ground or in a burrow) and dates of observation; (2) the general condition and health, including injuries, state of healing, and whether the desert tortoise voided its bladder; (3) the location moved from and location moved to (using GPS technology), including information on any burrow (natural or artificial) utilized; (4) diagnostic markings (i.e., identification numbers or marked lateral scutes); (5) ambient temperature when handled and released; (6) whether any eggs were discovered and relocated; (7) digital photographs of any Covered Species or eggs handled; and (8) results of any ongoing monitoring. The Authorized Biologist(s) shall provide CDFW a written summary via email to Rose Banks (Rose.Banks@wildlife.ca.gov) of the handling/relocation event, including the information listed above, within 24 hours of the event. This information shall also be recorded in the daily observation and inspection records for inclusion in the Monthly Compliance and ASR as directed in Conditions 5.4 and 5.5 above..   | ITP Condition # 6.14 | Entire Project                 | Permittee                |                                 |
| 53 | The Biological Monitor(s) and/or Authorized Biologist(s) shall inspect all open holes and trenches within the Project Area at the beginning, middle, and end of each day for trapped animals. To prevent inadvertent entrapment of Covered Species or any other animals, the Authorized Biologist(s) shall oversee the covering of all excavated, steep-walled holes or trenches more than two feet deep, or of any depth if they contain water or other material, at the close of each working day by plywood or other barrier materials such that animals are unable to enter and become entrapped. Permittee shall provide escape ramps in holes greater than two feet deep that do not hold water or other material, to allow animals to escape. Before holes or trenches are filled, the Biological Monitor(s) and/or Authorized Biologist(s) shall thoroughly inspect them for trapped animals. If any worker discovers that Covered Species have become trapped, they shall halt Project-related activities and notify the Authorized Biologist(s) immediately. Project workers, Biological Monitor(s), and the Authorized Biologist(s) shall allow the Covered Species to escape out of harm's way unimpeded if possible, or the Authorized Biologist(s) shall move the Covered Species out of harm's way before allowing work to continue | ITP Condition # 6.15 | Entire Project                 | Permittee                |                                 |
| 54 | If a Covered Species is injured as a result of Covered Activities, the Authorized Biologist(s) shall immediately take it to a CDFW approved wildlife rehabilitation or veterinary facility. Permittee shall identify the facility before starting Covered Activities. Permittee shall bear any costs associated with the care or treatment of such injured Covered Species. The Permittee shall notify CDFW of the injury to the Covered Species immediately within 24 hours of the incident by telephone (760) 873-4412 and e-mail (Rose.Banks@wildlife.ca.gov) followed by a written incident report as described in Condition 5.8. Notification shall include the name of the facility where the animal was taken.  | ITP Condition # 6.16 | Entire Project                 | Permittee                |                                 |

|                          | <b>Mitigation Measure</b>  | <b>Source</b>        | <b>Implementation Schedule</b>                       | <b>Responsible Party</b> | <b>Status / Date / Initials</b> |
|--------------------------|--|----------------------|--|--------------------------|---------------------------------|
| 55                       | Permittee shall restrict Project-related vehicle traffic to established roads and the delineated Project Area; cross-country (off-road) vehicle travel is prohibited and signs shall be posted to this effect during covered activities. Vehicle speeds shall be posted not to exceed 20 mph in order to see, identify, and avoid Covered Species on or traversing the Project Area and roads. If a Covered Species is encountered, drivers shall stop, wait for the Covered Species to move off the road, and immediately notify the Biological Monitor(s) and/or Authorized Biologist(s) of the Covered Species location. If handling of a Covered Species is required, the Biological Monitor shall notify the Authorized Biologist(s) and shall halt Project-related activities in that area until the situation has been addressed..  | ITP Condition # 6.17 | Entire Project                                       | Permittee                |                                 |
| 56                       | Permittee shall immediately notify the Biological Monitor(s) and/or Authorized Biologist(s) if a Covered Species is taken or injured by a Project-related activity, or if a Covered Species is otherwise found dead or injured within the vicinity of the Project. The Biological Monitor(s), Authorized Biologist(s) or Designated Representative shall provide initial notification to CDFW within 24 hours of take or injury by calling the Bishop Field Office at (760) 873-4412 and by notifying via email the CDFW Regional Representative Rose Banks ( <a href="mailto:Rose.Banks@wildlife.ca.gov">Rose.Banks@wildlife.ca.gov</a> ) and as described in the Notices section of this ITP. The initial notification to CDFW shall include information regarding the location, species, and number of animals taken or injured and the ITP Number. Following initial notification, Permittee shall send CDFW a written report within two calendar days of take or injury. The report shall include the date and time of the finding or incident, location of the animal or carcass, and if possible, provide a photograph, explanation as to cause of take or injury, and any other pertinent information. | ITP Condition # 5.8  | Entire Project                                       | Permittee                |                                 |
| 57                       | To ensure compliance with the Conditions of Approval of the ITP, the Designated Representative, Authorized Biologist(s), and/or Biological Monitor(s) shall have authority to immediately stop any activity that does not comply with the ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species.  | ITP Condition # 4.4  | Entire Project                                       | Permittee                |                                 |
| <b>POST-CONSTRUCTION</b> |  |                      |  |                          |                                 |
| 58                       | Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all temporary fill and construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.  | ITP Condition # 4.16 | Post-construction                                    | Permittee                |                                 |
| 59                       | No later than 60 days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Representative shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports and all ASRs; (2) a copy of the table in this MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of the ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.  | ITP Condition # 5.7  | Post-construction and after completion of mitigation | Permittee                |                                 |

ATTACHMENT 2A  
DEPARTMENT OF FISH AND WILDLIFE  
HABITAT MANAGEMENT LAND ACQUISITION PACKAGE CHECKLIST FOR PROJECT APPLICANTS

The following checklist is provided to inform you of what documents are necessary to expedite the Department of Fish and Wildlife (CDFW) processing of your Habitat Management Land acquisition proposal. Any land acquisition processing requests which are incomplete when received, will be returned. The Region contact will review and approve the document package and forward it to the Habitat Conservation Planning Branch Senior Land Agent with a request to process the land acquisition for formal acceptance.

To: \_\_\_\_\_  
Regional Manager, Region Name

From: \_\_\_\_\_  
Project Applicant

Phone: \_\_\_\_\_

Tracking #: \_\_\_\_\_  
CDFW assigned permit or agreement #

Project Name: \_\_\_\_\_

Enclosed is the complete package for the  Conservation Easement OR  Grant Deed

Documents in this package include:

Fully executed, approved as to form Conservation Easement Deed or Grant Deed with legal description stamped by a licensed surveyor. Date executed: \_\_\_\_\_

Proposed Lands for Acquisition Form (PLFAF)

Phase I Environmental Site Assessment Report Date on report: \_\_\_\_\_  
(An existing report may be used, but it must be less than two years old.)

Preliminary Title Report(s) for subject property is enclosed and has been reviewed for Encumbrances, including severed mineral estates, and other easements. The title report must be less than six months old when final processing is conducted.

Included are additional documents:

document(s) to support title exceptions

document(s) to explain title encumbrances

a plot or map of easements/encumbrances on the property

Policy of Title Insurance (an existing title policy is not acceptable)

County Assessor Parcel Map(s) for subject property

Site Location Map (Site location with property boundaries outline on a USGS 1:24,000 scale topo)

Final Permit or Agreement (or other appropriate instrument)

Type of agreement:  Bank Agreement  Mitigation Agreement

Permit \_\_\_\_\_ Other: \_\_\_\_\_  
(write in type of permit)

Final Management Plan (if required prior to finalizing permit or agreement or if this package is for a Grant Deed)

Biological Resources Report

Draft Summary of Transactions  hard copy  electronic copy (both are required)



CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
PROPOSED LANDS FOR ACQUISITION FORM ("PLFAF")

Date: \_\_\_\_\_

TO: Regional Representative  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Facsimile:

FROM: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Applicant proposes that the following parcel(s) of land be considered for approval by the California Department of Fish and Wildlife as suitable for purposes of habitat management lands to compensate the adverse environmental impacts of the Project:

| <u>Section(s)</u> | <u>Township</u> | <u>Range</u> | <u>County</u> | <u>Acres</u> |
|-------------------|-----------------|--------------|---------------|--------------|
| _____             | _____           | _____        | _____         | _____        |

Current Legal Owner(s), of the surface and mineral estates, include Assessor's Parcel Number(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

General Description of Location of Parcel(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Land Value: \$

For Region Use Only

APPROVED \_\_\_ By: \_\_\_\_\_ DATE: \_\_\_\_\_  
Regional Manager's Signature

REJECTED \_\_\_ Region: \_\_\_\_\_

Explanation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IRREVOCABLE STANDBY LETTER OF CREDIT  
NO. [**Number issued by financial institution**]

---

Issue Date: [**date**]

Beneficiary:

Department of Fish and Wildlife  
Post Office Box 944209  
Sacramento, CA 94244-2090  
Attn: HCPB Mitigation Account Coordinator

Amount: U.S. \$[**dollar number**] [(**dollar amount**)]

Expiry: [**Date**] at our counters

Dear Sirs:

1. At the request and on the instruction of our customer, [**name of applicant**] (“Applicant”), we, [**Name of financial institution**] (“Issuer”), hereby establish in favor of the beneficiary, the California Department of Fish and Wildlife (“CDFW”), this irrevocable standby letter of credit (“Credit”) in the principal sum of U.S. \$[**dollar number**] [(**dollar amount**)] (“Principal Sum”).
2. We are informed this Credit is and has been established for the benefit of the CDFW pursuant to the terms of the incidental take permit for the [**name of project**] issued by the CDFW to the Applicant on [**date**] (No. [**number**]) (“Permit”).
3. We are further informed that pursuant to the Permit, the Applicant has agreed to complete certain mitigation requirements, as set forth in Conditions [**numbers**] in the Permit (“Mitigation Requirements”).
4. We are finally informed that this Credit is intended by the CDFW and the Applicant to serve as a security device for the performance by the Applicant of the Mitigation Requirements.
5. The CDFW shall be entitled to draw upon this Credit only by presentation of a duly executed Certificate for Drawing (“Certificate”) in the same form as Attachment A, which is attached hereto, at our office located at [**name and address of financial institution**].
6. The Certificate shall be completed and signed by an “Authorized Representative” of the CDFW as defined in paragraph 12 below. Presentation by the CDFW of a

completed Certificate may be made in person or by registered mail, return receipt requested, or by overnight courier.

7. Upon presentation of a duly executed Certificate as above provided, payment shall be made to the CDFW, or to the account of the CDFW, in immediately available funds, as the CDFW shall specify.
8. If a demand for payment does not conform to the terms and conditions of this Credit, we shall give the CDFW prompt notice that the demand for payment was not effected in accordance with the terms and conditions of this Credit, state the reasons therefore, and await further instruction.
9. Upon being notified that the demand for payment was not effected in conformity with the Credit, the CDFW may correct any such non-conforming demand for payment under the terms and conditions stated herein.
10. All drawings under this Credit shall be paid with our funds. Each drawing honored by us hereunder shall reduce, *pro tanto*, the Principal Sum. By paying to the CDFW an amount demanded in accordance herewith, we make no representations as to the correctness of the amount demanded.
11. This Credit will be cancelled upon receipt by us of Certificate of Cancellation, which: (i) shall be in the form of Attachment B, which is attached hereto, and (ii) shall be completed and signed by an Authorized Representative of the CDFW, as defined in paragraph 12 below.
12. An "Authorized Representative" shall mean either the Director of the Department of Fish and Wildlife, the General Counsel of the Department of Fish and Wildlife, or a Regional Manager of the Department of Fish and Wildlife.
13. This Credit shall be automatically extended without amendment for additional periods of one year from the present or any future expiration date hereof, unless at least sixty (60) days prior to any such date, we notify the CDFW in writing by registered mail, return receipt requested, or by overnight courier that we elect not to consider this Credit extended for any such period.
14. Communications with respect to this Credit shall be in writing and addressed to us at [**name and address of financial institution**], specifically referring upon such writing to this credit by number. The address for notices with respect to this Credit shall be: (i) for the CDFW: Department of Fish and Wildlife, Habitat Conservation Planning Branch, 1416 Ninth Street, 12th Floor, Sacramento, California 95814-2090 Attn: HCPB Mitigation Account Coordinator; and (ii) for the Applicant: [**name and address of applicant**].
15. This Credit may not be transferred.



16. This Credit is subject to the International Standby Practices 1998 (“ISP 98”). As to matters not covered by the ISP 98 and to the extent not inconsistent with the ISP 98, this credit shall be governed by and construed in accordance with the Uniform Commercial Code, Article 5 of the State of California.
17. This Credit shall, if not canceled, expire on [**expiration date**], or any extended expiration date.
18. We hereby agree with the CDFW that documents presented in compliance with the terms of this Credit will be duly honored upon presentation, as specified herein.
19. This Credit sets forth in full the terms of our undertaking. Such undertaking shall not in any way be modified, amended or amplified by reference to any document or instrument referred to herein or in which this Credit is referred to or to which this Credit relates and any such reference shall not be deemed to incorporate herein by reference any document or instrument.

**[Name of financial institution]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTACHMENT A

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [**Number issued by financial institution**]  
CERTIFICATE FOR DRAWING

To:

[**Name and address of financial institution**]

Re: Incidental Take Permit No. [**permit number**]

The undersigned, a duly Authorized Representative of the Department of Fish and Wildlife ("CDFW"), as defined in paragraph 12 in the above-referenced Irrevocable Standby Letter of Credit ("Credit"), hereby certifies to the Issuer that:

1. [**Insert one of the following statements:** "In the opinion of the CDFW, the Applicant has failed to complete the Mitigation Requirements referenced in paragraph 3 of the Credit." **or** "As set forth in paragraph 13, the Issuer has informed the CDFW that the Credit will not be extended and the Applicant has not provided the CDFW with an equivalent security approved by the CDFW to replace the Credit."]
2. The undersigned is authorized under the terms of the Credit to present this Certificate as the sole means of demanding payment on the Credit.
3. The CDFW is therefore making a drawing under the Credit in amount of U.S. \$\_\_\_\_\_.
4. The amount demanded does not exceed the Principal Sum of the Credit.

Therefore, the CDFW has executed and delivered this Certificate as of the \_\_\_\_day of \_\_\_\_\_, \_\_\_\_\_.

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

BY: \_\_\_\_\_

[**Insert one of the following:** "DIRECTOR" **or** "GENERAL COUNSEL" **or** "REGIONAL MANAGER, [**NAME OF REGIONAL OFFICE**"]

ATTACHMENT B

IRREVOCABLE LETTER OF CREDIT NO. [**Number issued by financial institution**]  
CERTIFICATE FOR CANCELLATION

To:

[**Name of financial institution and address**]

Re: Incidental Take Permit No. [**permit number**]

The undersigned, a duly Authorized Representative of the California Department of Fish and Wildlife ("CDFW"), as defined in the paragraph 12 in the above-referenced Irrevocable Standby Letter of Credit ("Credit"), hereby certifies to the Issuer that:

1. [**Insert one of the following statements:** "The Applicant has presented documentary evidence of full compliance with the Mitigation Requirements referenced in paragraph 3 of the Credit." **or** "The natural expiration of this Credit has occurred."]
2. The CDFW therefore requests the cancellation of the Credit.

Therefore, the CDFW has executed and delivered this Certificate for Cancellation as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

BY: \_\_\_\_\_

[**Insert one of the following:** "DIRECTOR" **or** "GENERAL COUNSEL" **or** "REGIONAL MANAGER, [**NAME OF REGIONAL OFFICE**"]

State of California - Department of Fish and Wildlife  
**MITIGATION PAYMENT TRANSMITTAL FORM**  
 DFW 1057 (NEW 07/28/17)

**Project Applicant Instructions:** Please fill out and attach this form to payment. For conservation banks, also attach the Bill(s) of Sale for credits sold. One form may be used for multiple transactions, **BUT YOU MUST USE A SEPARATE FORM FOR EACH CHECK YOU TRANSMIT.** Make sure to include Project Name, Project Tracking Number, and ASB Mitigation Tracking Number (if available) on the attached payment type.

|   |   |
|---|---|
| <p><b>1. DATE:</b> _____</p><br><p><b>TO:</b> _____<br/>                 Regional Manager</p> <p>_____</p> <p>Region Office Address</p> | <p><b>2. FROM:</b> _____<br/>                 Name</p> <p>_____</p> <p>Mailing Address</p> <p>_____</p> <p>City, State, Zip</p> <p>_____</p> <p>Telephone Number/FAX Number</p> |
| <p><b>3. RE:</b> _____<br/>                 Project Name as appears on permit/agreement</p>   |   |

**4. AGREEMENT/ACCOUNT INFORMATION:** (check the applicable type)

2081 Permit   
  Conservation Bank   
  2835 NCCP   
  1802 Agreement   
  1600 Agreement   
  Other \_\_\_\_\_

\_\_\_\_\_

Project Tracking Number

**5. PAYMENT TYPE** (One check per form only): The following funds are being remitted in connection with the above referenced project:

Check information:

Total \$ \_\_\_\_\_ Check No. \_\_\_\_\_

Account No. \_\_\_\_\_ Bank Routing No. \_\_\_\_\_

a. Endowment: for Long-Term Management Subtotal \$ \_\_\_\_\_

b. Habitat Enhancement Subtotal \$ \_\_\_\_\_

c. Security:

1. Cash Refundable Security Deposit Subtotal \$ \_\_\_\_\_

2. Letter of Credit Subtotal \$ \_\_\_\_\_

1. Financial Institution: \_\_\_\_\_

2. Letter of Credit Number: \_\_\_\_\_

3. Date of Expiration: \_\_\_\_\_

| <b>ACCOUNTING OFFICE USE ONLY</b>                 |                |
|---|----------------|
| Description                                       | FI\$Cal Coding |
| Speedchart<br>(Project, Program, Reference, Fund) |                |
| Reporting Structure                               |                |
| Category  |                |
| Date Established: _____ By: _____                 |                |

Attachment 5  
2081-2019-027-06

**PROTOCOL – AUGUST 2007**  
**Original: 2001; Revised August 2007**

**SALVAGING INJURED, RECENTLY DEAD, ILL, AND DYING  
WILD, FREE-ROAMING DESERT TORTOISES (*GOPHERUS AGASSIZII*)**

prepared by Kristin H. Berry for

Federal Fish and Wildlife Permit TE006556-11 and as amended

Salvage of injured, recently dead, ill, and dying desert tortoises is a very important part of recovery programs for threatened and endangered species. Salvaged desert tortoises can provide a wealth of information about such subjects as health, disease, presence of heavy metals and other toxicants, and causes of mortality in populations. When tortoises are salvaged because they are injured (e.g., by a vehicle, fire, or domestic dogs), they may be appropriate for use as control or healthy individuals in comparisons with ill and diseased tortoises. Such tortoises, if sufficient in number, may reduce the need to take healthy animals from the wild for research purposes.

By far the most valuable specimens are tortoises taken while still alive or within a few hours of death and necropsied within 24-72 hours by a licensed clinical veterinary research pathologist with expertise in desert tortoises. The reason is that much more can be learned from a tortoise with very fresh tissues that can be processed for histological and other types of laboratory work. Once a tortoise is frozen, then level of detail that can be obtained from frozen tissues is considerably reduced. One desert tortoise research program involves necropsy of tortoises and the U.S. Geological Survey has a contract with pathologists with expertise in desert tortoises.

The following protocol deals only with wild desert tortoises, not captives. It is divided into four parts: (1) determination of the status of the tortoise; (2) collection of critical data in the field; (3) instructions on handling the tortoises; and (4) disposition of the tortoise after it has been removed from the field. Several parts of the protocol require contact with Dr. Berry, the Project Leader and Principal Investigator, and whose address and phone numbers are listed at the end.

**ACTION 1. DETERMINE THE STATUS OF THE TORTOISE.** The tortoise must have tissues that are sufficiently fresh for laboratory analysis. If the tortoise has died and the organ systems are putrefying (decaying), then the remains are not appropriate for salvage, except for analysis of scute and bone. Decaying remains are not part of this protocol.

1. Tortoise is recently dead (e.g., death is occurring, has just occurred, or death occurred within a few hours). Critical questions to ask include: how fresh are the remains? Are the soft tissues decaying (smelling of putrefaction)? If the remains are fresh (don't smell, are soft, death has recently occurred), then the tortoise should be salvaged and immediately put

Attachment 5  
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on ice, then frozen. GO TO ACTION 2.

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2. Tortoise is injured. Most of the injured tortoises observed in the last 10 years are from vehicle encounters, have been in fires, or attacked by domestic dogs. Some are fatally injured and in the process of dying. The shell is fractured in more than one place and/or soft tissues are exposed in the pleural or abdominal cavities. If the tortoise has been injured and the wound infested with maggots, it should be salvaged. Salvage is the appropriate action for all tortoises in these categories. GO TO ACTION 2.

In other cases, the injury does not appear to be severe and the ACTION is unclear. Tortoises have survived attacks by coyotes and loss of one or more limbs and still functioned well in the wild. Tortoises have received cracked shells from vehicles and depression fractures, probably from being stepped on by a cow or run over by an off-road vehicle while in a burrow. Some of these tortoises heal and survive. The key issue is severity, whether flies and thence maggots get into the wounds, and if infection occurs. ACTION: If in doubt, call Dr. Berry to discuss what action to take. If the tortoise is removed from the wild and taken to a veterinarian, it may not be possible to return it to the wild. Once the tortoise is removed, it is essentially dead in terms of a wild population. The key questions to ask are: will it be better to put this animal into captivity and hope that it can be effectively treated? or would it be better to include this animal in a research program?

3. Tortoise is ill and/or debilitated and/or dying. This category is related to disease, starvation, dehydration, debilitation, etc. The following are some criteria for salvage:

- tortoise is lethargic, cannot pull tightly within shell or only can do so briefly or periodically;
- tortoise is severely debilitated and relatively non-responsive, lies with legs outstretched and does not raise head, rests it on gular or plastron;
- tortoise is light in weight for size, exhibits loss of muscle mass, shows no interest in food or water;
- tortoise has signs of severe upper respiratory disease (purulent discharge from nares and/or eyes; signs of recent purulent discharge from nares);
- tortoise has lesions in the mouth, potentially from herpes virus;
- tortoise has moderate to severe shell disease on plastron, carapace, or both and/or limbs; bone may be exposed in small or large areas;
- tortoise is covered with mold or fungi and exhibits other signs listed above
- tortoise has a combination of some of the above;
- tortoise exhibits abnormal behavior for season, time of year, sex, and age in combination with some of the above; and/or
- tortoise is paralyzed, partially paralyzed, has prolapsed organs protruding from the cloaca.

If in doubt, the observer can keep track of such tortoises or hold them in a clean box until

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reaching Dr. Berry on the telephone to discuss action.



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**ACTION 2. COLLECTION OF CRITICAL DATA IN THE FIELD.**

For all salvaged tortoises, whether live or dead, the following information is critical.

- X Collector: Name, agency, full address, email address, telephone numbers, and fax number.
- X Time of collection: time of day, state whether in daylight or Pacific Standard Time
- X General Location: The exact location is essential for follow up studies. The following types of locality information are very helpful: township, range, and quarter section; GPS data in latitude and longitude or UTM's (NAD 83); elevation; general location with place name, e.g., Cima Dome, Ivanpah Valley; highway or road name and number; miles to nearest road junction or town; highway marker number. Must include county and state.
- X Specific Location: examples include in east-bound lane of I-40 at mile marker\_\_\_; in mouth of burrow in creosote bush scrub habitat, middle of dirt road leading to Rainbow Basin
- X Possible/probable cause of injury, illness, or death

Not essential but desirable:

- X Vegetation Type
- X Photographs of tortoise in place and any evidence related to cause of death or scavenging
- X Collector=s list of actions taken, e.g., time salvaged, time put on ice or frozen, location of frozen animal with data attached (e.g., in freezer at National Park Service office in Barstow), agencies and people contacted.
- X Approximate size of tortoise: measure or estimate length in millimeters or inches straight line distance from the edge of the shell where the head emerges to the posterior shell where the tail is.
- X Sex of tortoise

Make 5 copies of the data and place:

- (1) with the desert tortoise (in a ziplock bag);
- (2) provide an additional copy for Dr. Berry at time of transfer of the tortoise;
- (3) email or mail one set to the local USFWS Field Office and another set to Roy Averill-Murray, Desert Tortoise Recovery Coordinator, USFWS, Desert Tortoise Recovery Office, 1340 Financial Blvd, #234, Reno, NV 89502, (775) 861-6362, Roy\_Averill-Murray@fws.gov;
- (4) fax, email, or mail one set to Ms. Rebecca Jones, CDFG, 36431 41<sup>st</sup> Street East, Palmdale, CA 93552, (661) 285-5867, dfgpalm@adelphia.net; and
- (5) retain one set for the collector=s records.

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**ACTION 3. INSTRUCTIONS ON HANDLING THE TORTOISE.**

1. Tortoise is recently dead. Place in sturdy plastic bag, preferably a heavy-duty ziplock bag and immediately place on crushed or other ice. Freeze; making certain to include a COPY of the DATA with the tortoise. Place the data in a smaller ziplock bag within the larger ziplock bag to avoid getting data sheets wet or damp. GO TO ACTION 4.

2. Tortoise is injured. If the tortoise is severely injured, place in a box and take to the nearest veterinarian to be euthanized. Call Dr. Berry as soon as possible after the decision is made to salvage. Dr. Berry will try to ensure that once the tortoise is dead, it can be shipped on wet ice (NOT DRY ICE) via FEDEX for immediate necropsy. If such arrangements cannot be made rapidly, then the tortoise will have to be frozen. Dr. Berry may make arrangements for the Collector to directly ship the tortoise to the pathologist via FEDEX or may take the tortoise herself for shipment. Once the tortoise is dead, it should be placed in a ziplock or other heavy plastic bag and sealed with the data sheet enclosed. GO TO ACTION 4.

If the tortoise is injured and is unlikely to recover sufficiently on its own to survive in the wild and if discussions with Dr. Berry result in salvage, then the tortoise may need to either be euthanized or shipped immediately for necropsy. Since Dr. Berry must personally ship each live tortoise herself via air freight, she must be contacted, and arrangements made for her to take the tortoise. Place tortoise in clean cardboard box on newspapers and keep cool and out of the sun. GO TO ACTION 4.

3. Tortoise is ill and/or debilitated and/or dying. Dr. Berry and the Collector will discuss arrangements for transferring the tortoise to her for air freight shipment for necropsy. For some of these tortoises, there is flexibility in terms of days, possibly weeks; for others time is of the essence. Place tortoise in clean cardboard box on newspapers and keep cool and out of the sun. GO TO ACTION 4.

**ACTION 4. DISPOSITION OF THE TORTOISE OR TORTOISE REMAINS AFTER REMOVAL FROM THE FIELD.**

1. Tortoise is dead or has been euthanized, is frozen. These remains can be held for weeks or months, until they can be transferred to Dr. Berry. She may either pick them up or make arrangements to have them delivered to her.

2. Tortoise is dead, has been placed on wet ice (not dry ice) and must be shipped. TIME IS VERY CRITICAL FOR THIS GROUP OF TORTOISES. If, for example, the tortoise is on ice and it is Friday afternoon, shipment via FEDEX to the pathologist may be impossible before the tissues decay. Management of such animals is on a case-by-case basis and

Attachment 5  
2081-2019-027-06

depends on: availability of a appropriate pathologist to immediately conduct a necropsy, shipping constraints, weekends and holidays. Contact Dr. Berry for discussion and decision. If all else fails, the tortoise can be frozen.

3. Tortoise is live, must be transferred immediately to Dr. Berry for air freight shipment. Contact Dr. Berry to set up the transfer.

Attachment 5  
2081-2019-027-06

OTHER IMPORTANT ACTIONS:

1. Tortoise is collected by employee or contractor for a county, state, or federal agency. A letter on agency letterhead, transferring the tortoise to Dr. Berry, is highly desirable.
2. Contact with USFWS, is highly desirable and should be undertaken. The individual handling desert tortoises (by local Field Office) needs to be kept informed of all decisions. In addition, the Desert Tortoise Recovery Coordinator for the USFWS (Roy Averill-Murray), should be contacted at (775) 861-6362.
3. Contact with the California Department of Fish and Game representative is highly desirable and should be undertaken. Rebecca Jones is the contact person (661-285-5867).

PHONE NUMBERS AND ADDRESSES FOR:

Dr. Kristin H. Berry  
U.S. Geological Survey, Western Ecological Research Center  
Box Springs Field Station  
22835 Calle San Juan de Los Lagos  
Moreno Valley, CA 92553  
951-697-5361  
email: kristin\_berry@usgs.gov

Dr. Berry is in the field for days at a time in spring, late summer, and early fall. She retrieves all phone messages from the 951-697-5361 number on an almost daily basis and that is the most reliable number.



June 12, 2020

Jake Trauscht  
Inyo County Public Works  
168 N. Edwards  
PO Drawer Q  
Independence, CA 93526  
[jtrauscht@inyocounty.us](mailto:jtrauscht@inyocounty.us)  
*via e-mail*

RE: Conservation Credits for the Walker Creek Road Bridge Replacement Project

Mr. Trauscht,

Please find the executed Agreement for Sale of Conservation Credits for 4.6 acres of desert tortoise/Mohave ground squirrel Conservation Credits at the West Mojave Conservation Bank – Coso Preserve, enclosed. Please have an authorized signatory sign on Page 2 of the agreement and return the agreement, along with a check for the purchase price of the credits (\$39,100) to the address below.

Please make the check payable to: **Natural Resources Group, LLC**

Return mailing address: **Natural Resources Group, LLC**  
**3002 Beacon Blvd.**  
**West Sacramento, CA 95691**

Thank you for your purchase and please do not hesitate to contact me if you have any questions.

Sincerely,

Skip Moss  
559-804-9833  
[smoss@natural-resources-group.com](mailto:smoss@natural-resources-group.com)

**AGREEMENT FOR SALE OF CONSERVATION CREDITS  
Incidental Take Permit: 2081-2019-027-06**

This Agreement is entered into this 12<sup>th</sup> day of June, 2020, by and between the Natural Resources Group, LLC (Bank Owner) and the County of Inyo, Public Works Department (Project Applicant), jointly referred to as the "Parties," as follows:

**RECITALS**

A. The Bank Owner has developed the West Mojave Conservation Bank located in Kern and Inyo Counties, California; and

B. The Bank was approved by the California Department of Fish and Wildlife (CDFW) on May 25<sup>th</sup>, 2017, amended on August 22<sup>nd</sup>, 2019, and is currently in good standing with the agency; and

C. The Bank has received approval from the CDFW to offer desert tortoise preservation credits, Mohave ground squirrel preservation credits and Streambed preservation credits for sale as compensation for the loss of desert tortoise, Mohave ground squirrel, and Streambed habitat through the West Mojave Conservation Bank Conservation Bank Enabling Instrument, as amended (Bank Agreement); and

D. Project Applicant is seeking to implement the project described on Exhibit "A" attached hereto (Project), which will unavoidably and adversely impact desert tortoise, Mohave ground squirrel, and seeks to voluntarily compensate for the loss of that desert habitat by purchasing Conservation Credits from Bank; and

E. Project Applicant has been authorized by CDFW Incidental Take Permit: 2081-2019-027-06 to purchase from the Bank, 4.6 desert tortoise/Mohave ground squirrel habitat credits upon confirmation by the Bank Owner of credit availability/adequate balance of credits remaining for sale; and

F. Project Applicant desires to purchase from Bank and Bank desires to sell to Project Applicant 4.6 desert tortoise/Mohave ground squirrel habitat credits;

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1. Bank hereby sells to Project Applicant and Project Applicant hereby purchases from Bank 4.6 desert tortoise/Mohave ground squirrel habitat credits for the purchase price of \$39,100. The Bank will then deliver to Project Applicant an executed Bill of Sale in the manner and form as attached hereto and marked Exhibit "B". The purchase price for said credits shall be paid by cashier's check or, at the option of Bank, wire transfer of funds according to written instructions by Bank to Project Applicant.

2. The sale and transfer herein is not intended as a sale or transfer to Project Applicant of a security, license, lease, easement, or possessory or non-possessory interest in real property, nor the granting of any interest of the foregoing.

3. Project Applicant shall have no obligation whatsoever by reason of the purchase of the Conservation Credits, to support, pay for, monitor, report on, sustain, continue in perpetuity, or otherwise be obligated or liable for the success or continued expense or maintenance in perpetuity of the credits sold, or the Bank. Pursuant to the Bank Agreement and any amendments thereto, Bank shall monitor and

make reports to the appropriate agency or agencies on the status of any Conservation Credits sold to Project Applicant. Bank shall be fully and completely responsible for satisfying any and all conditions placed on the Bank or the Conservation Credits by all state or federal jurisdictional agencies.

4. The Conservation Credits sold and transferred to Project Applicant shall be non-transferable and non-assignable, and shall not be used as compensatory mitigation for any other Project or purpose, except as set forth herein.

5. Project Applicant must exercise his/her/its right to purchase the Conservation Credits within 30 days of the date of this Agreement. After the 30 day period this Agreement will be considered null and void.

6. Upon purchase of the credits specified in paragraph D above, the Bank shall submit to the parties listed in the Notices section of the Bank Agreement / Bank Enabling Instrument, copies of the: a) Agreement for Sale of Conservation Credits; b) Bill of Sale; c) Payment Receipt; and d) an updated ledger. The updated inventory / ledger must detail: i) Project Applicant; ii) Project Name; iii) Status (sale complete/sale not complete); iv) Credit Sale Date; v) Incidental Take Permit Number; vi) U.S. Army Corps of Engineers File Number (if applicable); vii) Total Number of Credits Authorized to Sell; viii) Total Number of Credits Sold to Date (inclusive); and ix) Balance of all Credits Available. The inventory / ledger should include all sales data from bank opening/establishment to the present.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

BANK:

*Natural Resources Group, LLC*

By: Richard C. Moss, CSO  
Natural Resources Group, LLC, by Natural Resource Group, Inc., its Manager,  
Richard C. Moss, CSO

Date: 06/12/2020

PROJECT APPLICANT:

*Inyo County Public Works Department*

By: \_\_\_\_\_ Date: \_\_\_\_\_

## Exhibit "A"

**DESCRIPTION OF PROJECT  
TO BE  
MITIGATED**

County of Inyo, Public Works Department – Walker Creek Road Bridge Replacement Project,  
Olancho, Inyo County, California

\*\*\*\*\*

The Walker Creek Road Bridge Replacement Project involves construction of a new bridge and the realignment of Walker Creek Road as it approaches the new bridge in either direction. The new bridge would be located approximately 375 feet southeast of the existing bridge. The existing bridge would be left in place and closed to public vehicle traffic after the new bridge and realigned roadway approaches are constructed.



Exhibit "B"

**BILL OF SALE**

Contract # WMCB 2020-002

In consideration of \$39,100, receipt of which is hereby acknowledged, Natural Resources Group, LLC does hereby bargain, sell and transfer to County of Inyo, Public Works Department (Project Applicant), 4.6 desert tortoise/Mohave ground squirrel credits in the West Mojave Conservation Bank – Coso Preserve, in Inyo County, California, developed, and approved by the California Department of Fish and Wildlife.

Natural Resources Group, LLC represents and warrants that it has good title to the credits, has good right to sell the same, and that they are free and clear of all claims, liens, or encumbrances.

Natural Resources Group, LLC covenants and agrees with the buyer to warrant and defend the sale of the credits hereinbefore described against all and every person and persons whomsoever lawfully claiming or to claim the same.

DATED: \_\_\_\_\_

Natural Resources Group, LLC

By: \_\_\_\_\_

Natural Resources Group, LLC, by Natural Resource Group, Inc., its Manager,  
Richard C. Moss, CSO



May 18, 2020

**Via Electronic Mail**

Jake Trauscht  
Inyo County Public Works Department  
168 N. Edwards  
PO Drawer Q  
Independence, CA 93526

**RE: Cost Proposal to Provide Covered Species Credits for the Walker Creek Road Bridge Replacement Project, Inyo County**

Dear Jake:

Thank you for the opportunity to provide a mitigation solution for Inyo County Public Works Department’s Walker Creek Road Bridge Replacement Project (“**Project**”). Wildlands has received California Department of Fish and Wildlife (“**CDFW**”) approval of the Black Mountain Conservation Bank (“**BMCB**”) located in the Mojave Desert. BMCB is approved to provide compensatory mitigation credits for certain covered species, including desert tortoise (“**DT**”) and Mohave ground squirrel (“**MGS**”), and Stream Habitat/Waters of the State. Credits are available now; please see the attached service area maps for your reference.

Wildlands is pleased to offer you the following cost proposal:

| <b>Bank Name</b>                 | <b>Credit Type</b> | <b>No. of Credits (Ac.)</b> | <b>Unit Cost</b> | <b>Total</b> |
|----------------------------------|--------------------|-----------------------------|------------------|--------------|
| Black Mountain Conservation Bank | MGS / DT           | 4.56                        | \$13,750         | \$62,700     |

As you may know, the primary benefit of purchasing bank credits from Wildlands is that it terminates your liability as a project proponent of habitat mitigation. By acquiring mitigation from the BMCB, Inyo County Public Works Department would be relieved of environmental engineering expenses, the construction and development costs, and the contingent liabilities of guaranteeing the success of an onsite or offsite mitigation project. Wildlands, as a bank developer, is fully responsible for all financial and performance

obligations of conservation credits purchased from our Black Mountain Conservation Bank.

Please do not hesitate to contact me if you have any questions. I look forward to working with you to provide a mitigation solution for the Project.

Very truly yours,



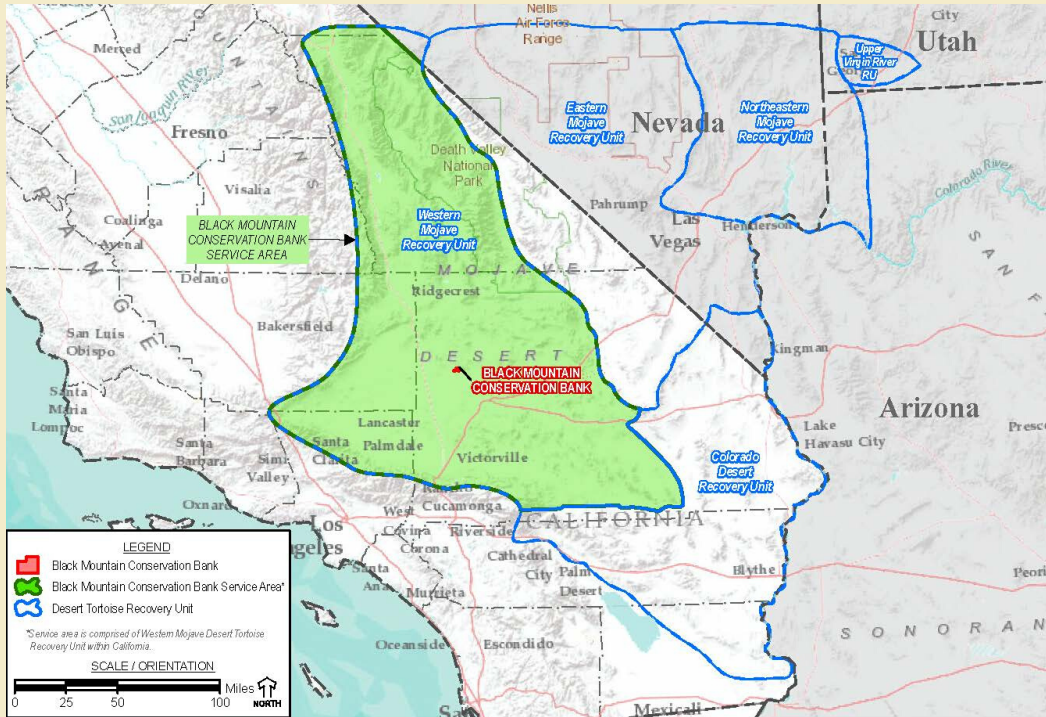
Julie Maddox  
Inside Sales Manager  
Wildlands

Attachment

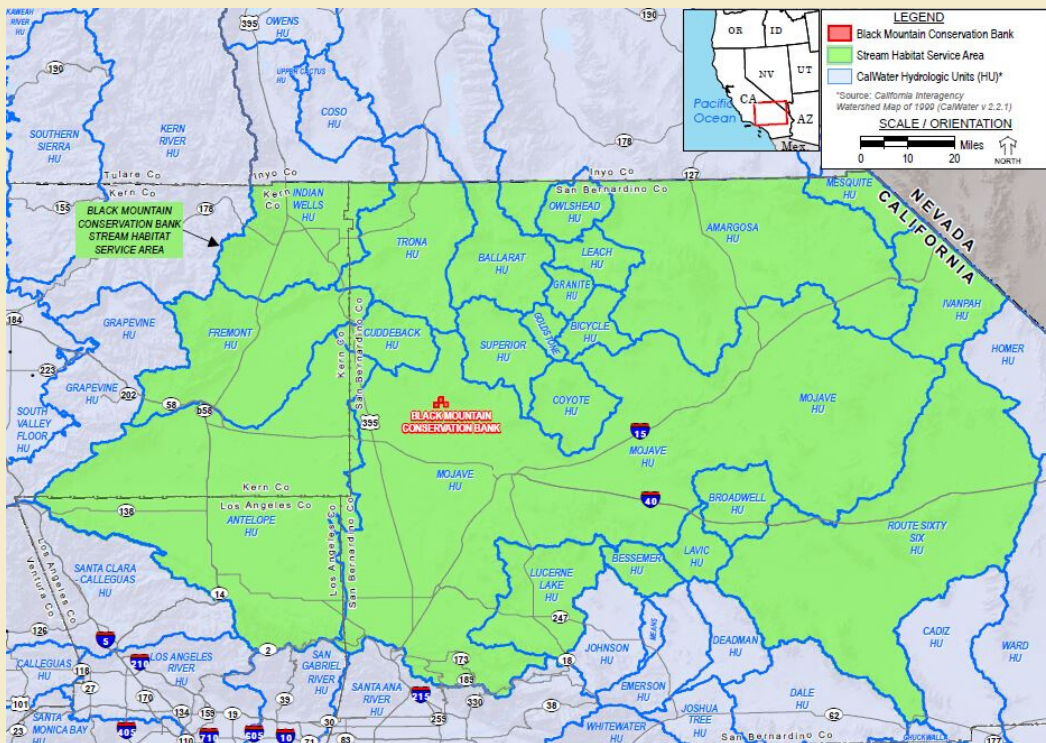


# WILDLANDS Black Mountain Conservation Bank

## Bank Location and Service Area

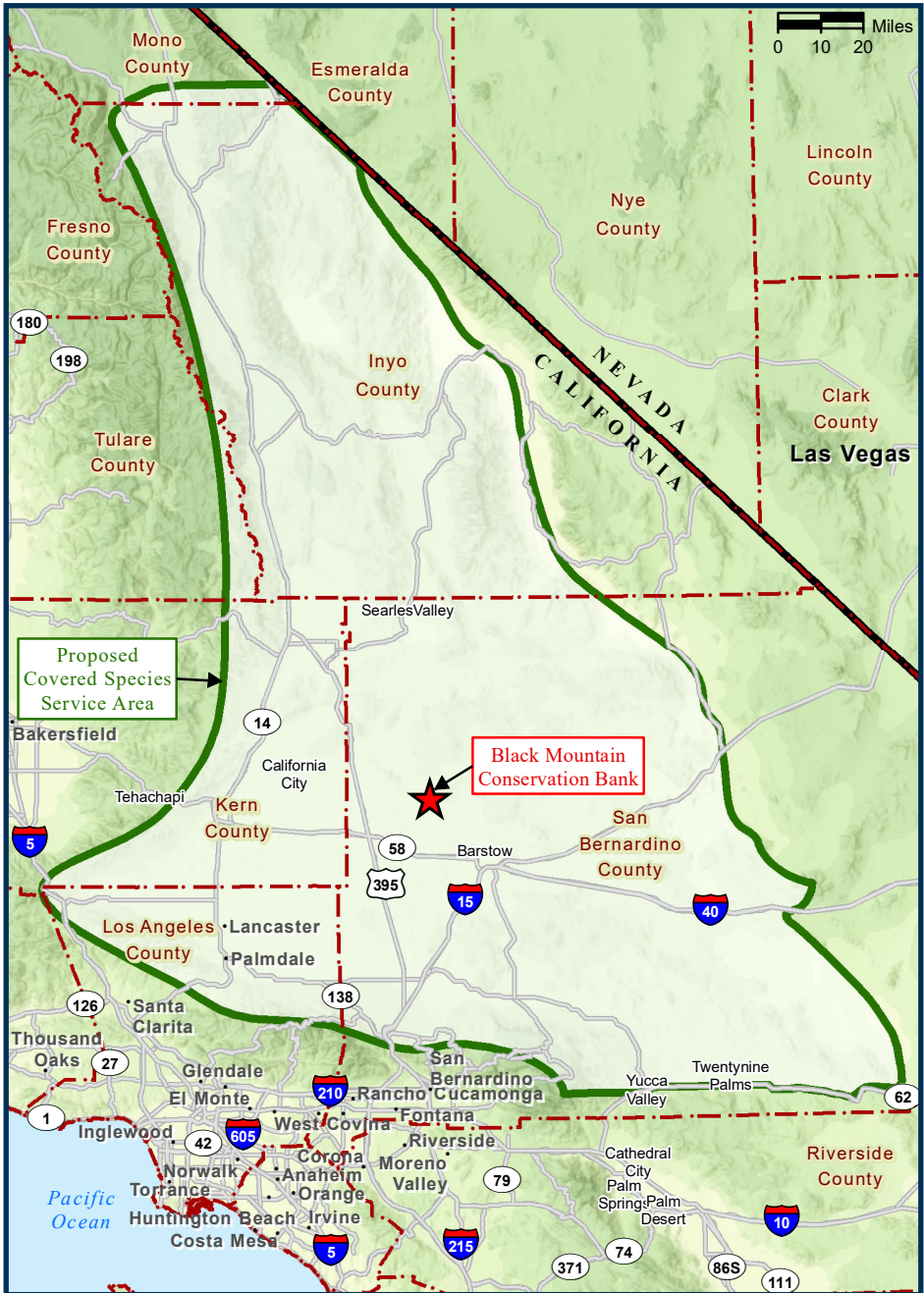


## Species/Habitat Service Area



## Waters Service Area









June 11, 2020

Jake Trauscht  
Inyo County Public Works  
168 N. Edwards  
PO Drawer Q  
Independence, CA 93526  
[jtrauscht@inyocounty.us](mailto:jtrauscht@inyocounty.us)  
*via e-mail*

RE: Conservation Credits for the Walker Creek Road Bridge Replacement Project

Mr. Trauscht,

Natural Resources Group is pleased to provide you with the following quote for Conservation Credits at the Coso Preserve of the West Mojave Conservation Bank, in Inyo County. These credits have been released, approved, and authorized by the California Department of Fish and Wildlife for desert tortoise and Mohave ground squirrel.

Natural Resources Group, will provide:

| <b>Location</b>                  | <b>Credits</b> | <b>Price per Credit</b> | <b>Total</b> |
|----------------------------------|----------------|-------------------------|--------------|
| WMCB Coso Preserve – Inyo County | 4.6            | \$8,500                 | \$39,100     |

This quote is valid for 30 days from the date of this letter, and the credits are available on a “first-come, first-served” basis. The West Mojave Conservation Bank currently has sufficient credit inventory available to fulfill the above listed quote.

Thank you for your interest in the West Mojave Conservation Bank and please do not hesitate to contact me if you have any questions.

Sincerely,

Skip Moss  
559-804-9833  
[smoss@natural-resources-group.com](mailto:smoss@natural-resources-group.com)





# County of Inyo



## Sheriff

### CONSENT - ACTION REQUIRED

**MEETING:** July 7, 2020

**FROM:** Office of the Sheriff

**SUBJECT:** Purchase order with California Department of Justice

---

**RECOMMENDED ACTION:**

Request Board: A) declare California Department of Justice a sole-source provider of fingerprint verification services; and B) authorize a purchase order in an amount not to exceed \$15,000, payable to California Department of Justice for livescan services, contingent upon the Board's adoption of the Fiscal Year 2020-2021 budget.

**SUMMARY/JUSTIFICATION:**

California Department of Justice is the only entity able to process and verify fingerprints. Some types of applicants/documents that need fingerprinting are: registrants, work permits, background checks, CCW (Carry Concealed Weapon) applicants and many other permits, certifications, and employment requirements as stated by law.

California Department of Justice meets Sole Source as outlined in the County Purchasing Policy:

III. PROCUREMENT OF MATERIALS, GOODS, SUPPLIES, VEHICLES, EQUIPMENT AND OTHER PERSONAL PROPERTY.

E. Exceptions to the Competitive Process/Sole Source

7. Personal property or services obtainable; a) From any other governmental agency and owned or provided by such other governmental agency

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

We anticipate in an influx of livescans once the County is re-opened after the COVID-19 restrictions are lifted.

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

The Board could choose not to authorize the Purchase Order. This is not recommended by staff. Fingerprint processing is necessary for many functions throughout the County. Employment, various permits, foster care, EMT certification, and many other permits and certifications needed throughout the County of Inyo.

**OTHER AGENCY INVOLVEMENT:**



Auditor  
Purchasing  
CA DOJ

**FINANCING:**

Budget for this service was included in the Sheriff General budget (022700), Object Code 5265 (Professional & Special Services) requested budget.

**ATTACHMENTS:**

**APPROVALS:**

|                   |                               |
|-------------------|-------------------------------|
| Riannah Reade     | Created/Initiated - 6/10/2020 |
| Darcy Ellis       | Approved - 6/11/2020          |
| Riannah Reade     | Approved - 6/11/2020          |
| Marshall Rudolph  | Approved - 6/11/2020          |
| Amy Shepherd      | Approved - 6/12/2020          |
| Jeffrey Hollowell | Final Approval - 6/12/2020    |



# County of Inyo



## Sheriff

### CONSENT - ACTION REQUIRED

**MEETING:** July 7, 2020

**FROM:** Office of the Sheriff

**SUBJECT:** Blanket Purchase Order for Office Depot

---

**RECOMMENDED ACTION:**

Request Board authorize issuance of a blanket purchase order in an amount not to exceed \$20,000, payable to Office Depot for the purchase of office supplies.

**SUMMARY/JUSTIFICATION:**

Through June 10, 2020, the Sheriff's Department expended \$18,368 with Office Depot for office supplies. Of this amount the Sheriff's Department purchased 24/7 chairs for Dispatch and the Jail. Administration, Lone Pine and Bishop Sub-stations, replaced worn and broken chairs. As well as office supplies across all Sheriff Office divisions. We feel that the requested \$20,000 will be sufficient to see us through until the end of FY 2020-2021.

*The issuance of this purchase order will not negate the requirement of getting verbal or written quotes for individual purchase in accordance with the County Purchasing Policy.*

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Your Board could choose not approve this request. Staff does not recommend this action. Office Depot offers government pricing discounts and 1-2 day delivery on most items.

**OTHER AGENCY INVOLVEMENT:**

Auditor  
Purchasing

**FINANCING:**

These invoices will be paid from multiple budgets, and object codes within our department budget authority. There is sufficient budget split between all Sheriff divisions to make these payments

**ATTACHMENTS:**

**APPROVALS:**

Riannah Reade

Darcy Ellis

Riannah Reade

Marshall Rudolph

Amy Shepherd

Jeffrey Hollowell

Created/Initiated - 6/10/2020

Approved - 6/10/2020

Approved - 6/10/2020

Approved - 6/11/2020

Approved - 6/11/2020

Final Approval - 6/11/2020



# County of Inyo



## Sheriff

### CONSENT - ACTION REQUIRED

**MEETING:** July 7, 2020

**FROM:** Office of the Sheriff

**SUBJECT:** Issuance of a blanket purchase order to Wye Road Feed

---

**RECOMMENDED ACTION:**

Request Board authorize issuance of a blanket purchase order in an amount not to exceed \$20,000, payable to Wye Road Feed of Bishop, CA for the purchase of animal supplies, feed and vaccines, contingent upon the Board's adoption of the Fiscal Year 2020-2021 budget.

**SUMMARY/JUSTIFICATION:**

As of June 11, 2020, Animal Services has expended \$14,457 with Wye Road Feed for animal food and supplies. We feel that the requested \$20,000 will be sufficient to see us through until the end of FY 20-21.

In accordance with County of Inyo Purchasing and Contracting Policy & Procedures Manual:

- I. CENTRALIZED PURCHASING--GENERAL PROVISIONS
- II. DEPARTMENTAL RESPONSIBILITIES AND INFORMATION
- C. Consolidation of Departmental Requests

1. Departments shall plan their annual requirements and make every effort to consolidate similar items into a single Blanket Purchase Order. In addition, the Purchasing Division will periodically issue a schedule of planned procurement solicitations of specific common products or materials; e.g., desks, chairs, computers, and copiers. Department requirements should be consolidated and submitted in accordance with these schedules.
2. Items shall be ordered in quantities sufficient for a reasonable period and consistent with future needs and available storage space.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

Currently, the animal shelter has very limited protected storage space for large purchases. We feel the blanket purchase will allow the department to order quantities that can be stored safely and continue to shop locally.

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Deny this request and direct staff to seek out non-local vendors for animal supplies.

**OTHER AGENCY INVOLVEMENT:**

Auditor

Purchasing

**FINANCING:**

Funding has been included in the FY 2020-2021 Board requested Animal Services budget (023900), General Operating (5311).

**ATTACHMENTS:**

**APPROVALS:**

|                   |                               |
|-------------------|-------------------------------|
| Riannah Reade     | Created/Initiated - 6/11/2020 |
| Darcy Ellis       | Approved - 6/11/2020          |
| Riannah Reade     | Approved - 6/11/2020          |
| Marshall Rudolph  | Approved - 6/11/2020          |
| Amy Shepherd      | Approved - 6/12/2020          |
| Jeffrey Hollowell | Final Approval - 6/12/2020    |



# County of Inyo



## Water Department

### DEPARTMENTAL - NO ACTION REQUIRED

**MEETING:** July 7, 2020

**FROM:** Aaron Steinwand

**SUBJECT:** Owens Valley Groundwater Authority Meeting – July 9, 2020

---

**RECOMMENDED ACTION:**

Request Board provide direction to the Owens Valley Groundwater Authority representatives in advance of the OVGA meeting scheduled for July 9, 2020.

**SUMMARY/JUSTIFICATION:**

At the upcoming OVGA meeting, the Board will elect the chairperson and vice-chairperson for 2020-21. In addition, the OVGA will consider approving an agreement for Associate Member status for the Meadowcreek Mutual Water Company. At the May meeting the OVGA Board voted to request Meadowcreek provide an annual contribution of \$11,327, which is half of the original regular funding member contribution. Regular funding members originally received 4 votes; an Associate Member would receive 2 votes.

The OVGA will consider approving the Guiding Principles for the stakeholder process and the Communications and Engagement Plan (CEP). Approval of the Guiding Principles was postponed during the March meeting and the draft CEP was presented at the May meeting. These documents will guide the stakeholder process tentatively scheduled to begin in the fall of 2020.

The consultant preparing the Groundwater Sustainability Plan (GSP) will present elements of the GSP which will constitute the majority of the meeting. OVGA staff will provide reports on current finances, the Indian Wells Valley Groundwater Authority, and the request for proposals for an OVGA website.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

N/A

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

N/A

**OTHER AGENCY INVOLVEMENT:**

City of Bishop, Mono County, Indian Creek-Westridge CSD, Eastern Sierra CSD, Big Pine CSD

**FINANCING:**

N/A

**ATTACHMENTS:**

1. OVGA Agenda Draft

**APPROVALS:**

Aaron Steinwand  
Darcy Ellis  
Aaron Steinwand  
Marshall Rudolph  
Amy Shepherd  
Aaron Steinwand

Created/Initiated - 6/12/2020  
Approved - 6/12/2020  
Approved - 6/12/2020  
Approved - 6/12/2020  
Approved - 6/12/2020  
Final Approval - 6/16/2020

## Owens Valley Groundwater Authority

July 9, 2020 2:00 PM

### Board of Directors Meeting Agenda

*All members of the public are encouraged to participate in the discussion of any items on the Agenda. Members of the public will be allowed to speak about each agenda item before the Board of Directors 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 Directors or the Owens Valley Groundwater Authority.*

*Public Notice: In Compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting please contact Laura Piper at (760) 878-0001. (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 alternative formatting of this agenda, please notify Laura Piper 72 hours prior to the meeting to enable the OVGA to make the agenda available in a reasonable alternative format. (Government Code Section 54954.2).*

**NOTICE TO THE PUBLIC:** In order to minimize the spread of the COVID-19 virus, Governor Newsom has issued Executive Orders that temporarily suspend certain requirements of the Brown Act. The Bishop City Council Chambers are closed to the public, and the Owens Valley Groundwater Authority will conduct this meeting exclusively online. Directors and staff will participate via videoconference accessible to the public at: **INSERT ZOOM HERE**

To join by phone, refer to the numbers and webinar ID at the bottom of the agenda. To provide public comment, at the appropriate agenda item during the meeting, press the raise your hand button in the Zoom window. Public comment also may be provided by emailing comments, limited to **250 words or less**, prior to the meeting or before the staff report for the item has ended. Efforts will be made to read your comment, but submittals longer than 250 words may not be read or may be summarized due to time limitations. All comments will be made a part of the record. Please submit a separate email for each item that you wish to comment upon to [lpiper@inyocounty.us](mailto:lpiper@inyocounty.us), and identify in the subject line of the email which agenda item the comment addresses.

**OPEN SESSION** (With the exception of timed items, all open-session items may be considered at any time and in any order during the meeting at the Board's discretion.)

1. Pledge of allegiance.
2. Public comment.
3. Introductions.
4. Election of OVGA Chairperson and Vice-Chairperson.
5. Approval of minutes from the May 14, 2020 OVGA Board meeting.
6. Board Member Reports.
7. OVGA staff reports
  - a. Report on Indian Wells Valley Groundwater Authority activities.
  - a. Financial Report.
  - b. Request for Proposals for OVGA website.
8. Consideration and possible approval of Associate status for Meadowcreek Mutual Water Co.
9. Approval of Communications and Engagement Plan Guiding Principles.
10. Consideration and possible approval of draft Communications and Engagement Plan.



11. Presentation from Daniel B. Stephens and Associates on elements of the Groundwater Sustainability Plan.
  12. Discussion regarding future agenda items.
  13. Set next meeting.
  14. Adjourn.
- 

Join the July 9, OVGA webinar via phone:

DRAFT



# County of Inyo



## Sheriff

### DEPARTMENTAL - ACTION REQUIRED

**MEETING:** July 7, 2020

**FROM:** Office of the Sheriff

**SUBJECT:** Idemia Identity & Security Sole Source and Maintenance Agreement for Livescan Machines

---

**RECOMMENDED ACTION:**

Request Board: A) declare Idemia Identity & Security of Bloomington, MN a sole-source provider of livescan machine maintenance; B) ratify and approve the agreement between the County of Inyo and Idemia Identity & Security of Bloomington, MN for the provision of annual livescan machine maintenance in an amount not to exceed \$12,000 for the period of July 1, 2020 through June 30, 2021, contingent upon the Board's approval of the Fiscal Year 2020-2021 Budget; and C) authorize the Chairperson to sign, contingent upon all appropriate signatures being obtained.

**SUMMARY/JUSTIFICATION:**

The RAN budget pays for the livescan machines located at the Jail, Administrative Building and the Bishop Police Department.

The software used in these fingerprint machines was developed by MorphoTrust and Idemia Identity & Security is the sole provider of maintenance for these fingerprint machines. MorphoTrust USA Inc. is a CMAS vendor (CMAS IT-70 #3-11-70-1090B)

In accordance with the County of Inyo Purchasing and Contracting Policy & Procedures Manual:

III. PROCUREMENT OF MATERIALS, GOODS, SUPPLIES, VEHICLES, EQUIPMENT AND OTHER PERSONAL PROPERTY.

E. Exceptions to the Competitive Process/Sole Source

3. Sole source procurement, defined as an award for commodity or service, which can only be purchased from one supplier, usually because of its specific technological requirements, availability or unique patented manufacture.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

The RAN budget exists in order to purchase, lease, operate and provide maintenance of automated fingerprint equipment and digital image photographic equipment used for the identification of individuals. The expenditures for the RAN budget are approved annually for the next fiscal year by the RAN/DNA Board comprised of Sheriff Hollowell, DA Tom Hardy, Probation Chief Thompson and Bishop Police Chief Stec.

Idemia Identity & Security (formally MorphoTrust USA Inc.) installed the Idemia Identity & Security Fingerprint

machines at the Jail Facility in December 2015 and October 2011. The Bishop PD machine was installed in March 2017. Each machines maintenance renewal date is based on the installation date. As a result, the annual request is an estimate based on prior years expenditures and trending increases that may occur year to year.

Jail: 1/1/XXXX-12/31/XXXX  
Records: 09/01/XXXX-08/31/XXXX  
Bishop Police Department: 03/01/XXXX-02/28/XXXX

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

The Board could choose to deny this request; however the proprietary software used in these fingerprint machines was developed by MorphoTrust and Idemia Identity & Security.

**OTHER AGENCY INVOLVEMENT:**

Auditor  
Purchasing  
Bishop Police Department  
RAN Board

**FINANCING:**

Funding is included in the FY 2020-2021 requested budget unit 056610 RAN, Object Code 5171 maintenance of equipment. Expenses paid from the RAN budget are reimbursed out of the Automated Fingerprint Trust (502705). No general funds.

**ATTACHMENTS:**

1. IDEMIA ANNUAL QUOTES\_001
2. IDEMIA TERMS CONDITION\_001

**APPROVALS:**

|                   |                               |
|-------------------|-------------------------------|
| Riannah Reade     | Created/Initiated - 6/11/2020 |
| Darcy Ellis       | Approved - 6/11/2020          |
| Riannah Reade     | Approved - 6/11/2020          |
| Marshall Rudolph  | Approved - 6/11/2020          |
| Amy Shepherd      | Approved - 6/12/2020          |
| Jeffrey Hollowell | Final Approval - 6/12/2020    |



**IDEMIA**  
augmented identity

**Idemia Identity & Security**

5705 W. Old Shakopee Road  
Suite 100  
Bloomington, MN 55437-3107  
USA  
Phone (800) 932-0890  
FAX (952) 932-7181

**MAINTENANCE AGREEMENT ADDENDUM  
QUOTATION**

QUOTE ID: 23682

QUOTE DATE: 10/25/19

CUSTOMER ID: BD-1264

PRICE LIST: CMAAS-IT-70

**COVERAGE**

START DATE: 01/01/20

END DATE: 12/31/20

**BILL TO:** INYO COUNTY SHERIFFS DEPARTMENT

PO BOX 5

INDEPENDENCE, CA 93526

United States

| COVERAGE TYPE | DESCRIPTION | SERIAL NUMBER | QTY | PRICE |
|---------------|-------------|---------------|-----|-------|
|---------------|-------------|---------------|-----|-------|

**EQUIPMENT LOCATION:** INYO COUNTY SHERIFFS DEPARTMENT - 550 S CLAY ST INDEPENDENCE, CA 93526

**5500-TPE-ED-M95** ANNUAL 9X5 MAINTENANCE

TPE-5500-ED

AEX495001090

1

\$1,968.00

**PRT-DUP-M95** ANNUAL 9/5 MAINTENANCE

TPE-PRT-DUP

54396-002

1

\$299.00

**EQUIPMENT LOCATION:**

**TP-NOREMOTE**

TP-NOREMOTE is a PER DAY Service Charge to offset additional Maintenance Expense Incurred due to the inability of the MorphoTrust USA Help Desk to perform Remote Diagnostic Troubleshooting of the System. If Remote Access is available via Dial-Up Modem, Secure ID, VPN, or other means please initial here \_\_\_\_\_ and provide the requested information below and disregard the TP-NOREMOTE charge.

Dial-In Modem: Access Telephone Number \_\_\_\_\_

Secure ID, VPN, Other: Contact Name \_\_\_\_\_ Telephone Number \_\_\_\_\_

Maintenance Agreement Renewal is contingent upon verification of Remote Access Functionality.

1

\$730.00

**TOTAL:**

**\$2,997.00**

PLEASE CHECK PREFERRED BILLING:  ANNUAL INVOICE    OR     QUARTERLY INVOICE    OR     MONTHLY INVOICE

NAME: DEBRA BLANCHARD  
TITLE: Maintenance Contract Admin  
PHONE: (952) 945-3302 Ext 5547  
FAX: (952) 852-8747  
EMAIL: DBlanchard@morphotrust.com

PO NUMBER: \_\_\_\_\_  
SIGNATURE BY: [Signature]  
NAME(Print) / DATE: Lauri Harner / 10/28/19  
TITLE: Acct Tech III  
PHONE / FAX: 760-878-0386  
EMAIL: lharner@brycecourthq.us

The terms and conditions of CMAS IT-70 #3-1-70-1090B maintenance services agreement are hereby incorporated into this Addendum by reference. Please sign and date this Maintenance Agreement Addendum. If a purchase order is required, please attach or include the purchase order number on this addendum. Some of the terms set out herein may differ from those in the buyer's purchase order and some may be new. Acceptance is conditional on the buyer's assent to the terms set out herein in lieu of those in the buyer's purchase order. Seller's failure to object to provisions contained in any communication from the buyer shall not be deemed a waiver of the provisions of this acceptance. Any changes in the terms contained herein must be specifically agreed to in writing by an officer of the seller before becoming binding on either seller or buyer.

**AN INVOICE WILL BE ISSUED UPON RECEIPT OF A SIGNED MAINTENANCE AGREEMENT ADDENDUM**



**Idemia Identity & Security**  
 5705 W. Old Shakopee Road  
 Suite 100  
 Bloomington, MN 55437-3107  
 USA  
 Phone (800) 932-0890  
 FAX (952) 932-7181

**MAINTENANCE AGREEMENT ADDENDUM  
 QUOTATION**

**QUOTE ID:** 21848  
**QUOTE DATE:** 06/21/19  
**CUSTOMER ID:** BD-1264  
**PRICE LIST:** SL-LAWENF

**BILL TO:** INYO COUNTY SHERIFFS DEPARTMENT  
 PO BOX S  
 INDEPENDENCE, CA 93526  
 United States

**START DATE:** 09/01/19  
**END DATE:** 08/31/20

| COVERAGE TYPE | DESCRIPTION | SERIAL NUMBER | QTY | PRICE |
|---------------|-------------|---------------|-----|-------|
|---------------|-------------|---------------|-----|-------|

|                            |  |                   |   |            |
|----------------------------|--|-------------------|---|------------|
| <b>EQUIPMENT LOCATION:</b> | INYO COUNTY SHERIFFS DEPARTMENT - 550 S CLAY ST INDEPENDENCE, CA 93526 |                   |   |            |
| <b>5500-TP-E-ED-M95</b>    | ANNUAL 9X5 MAINTENANCE   |                   |   |            |
| TPE-5600-ED                |  | AEY311001025      | 1 | \$2,170.00 |
| <b>HWOX-DIGCAP-M95</b>     | ANNUAL 9/5 MAINTENANCE   |                   |   |            |
| TPE-HWOX-DIGCAP            |  | AEY311001025<br>A | 1 | \$391.00   |

**EQUIPMENT LOCATION:**

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Dial-In Modem: Access Telephone Number \_\_\_\_\_  
 Secure ID, VPN, Other: Contact Name \_\_\_\_\_ Telephone Number \_\_\_\_\_  
 Maintenance Agreement Renewal is contingent upon verification of Remote Access Functionality.

TOTAL: 1 \$1,095.00  
**\$3,656.00**

PLEASE CHECK PREFERRED BILLING:  ANNUAL INVOICE OR  QUARTERLY INVOICE OR  MONTHLY INVOICE

NAME: DEBRA BLANCHARD  
TITLE: Maintenance Contract Admin  
PHONE: (952) 945-3302 Ext 5547  
FAX: (952) 852-8747  
EMAIL: DBlanchard@morphotrust.com

PO NUMBER: P43572  
SIGNATURE BY: [Signature]  
NAME(Print) / DATE: Lauri Homer  
TITLE: Acct Tech III  
PHONE / FAX: 760-878-0386  
EMAIL: lhomer@inycountry.us

The terms and conditions of MORPHOTRUST USA maintenance services agreement are hereby incorporated into this Addendum by reference. Please sign and date this Maintenance Agreement Addendum. If a purchase order is required, please attach or include the purchase order number on this addendum. Some of the terms set out herein may differ from those in the buyer's purchase order and some may be new. Acceptance is conditional on the buyer's assent to the terms set out herein in lieu of those in the buyer's purchase order. Seller's failure to object to provisions contained in any communication from the buyer shall not be deemed a waiver of the provisions of this acceptance. Any changes in the terms contained herein must be specifically agreed to in writing by an officer of the seller before becoming binding on either seller or buyer.

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**Idemia Identity & Security**  
 5705 W. Old Shakopee Road  
 Suite 100  
 Bloomington, MN 55437-3107  
 USA  
 Phone (800) 932-0890  
 FAX (952) 932-7181

**MAINTENANCE AGREEMENT ADDENDUM  
 QUOTATION**

**QUOTE ID:** 24457  
**QUOTE DATE:** 12/19/19  
**CUSTOMER ID:** BD-13843  
**PRICE LIST:** CMAS-JT-70

**BILL TO:** BISHOP POLICE DEPARTMENT  
 207 WEST LINE STREET

**COVERAGE**  
**START DATE:** 03/01/20  
**END DATE:** 02/28/21

BISHOP, CA 93514  
 United States

| COVERAGE TYPE | DESCRIPTION | SERIAL NUMBER | QTY | PRICE |
|---------------|-------------|---------------|-----|-------|
|---------------|-------------|---------------|-----|-------|

|                            |  |              |   |            |
|----------------------------|--|--------------|---|------------|
| <b>EQUIPMENT LOCATION:</b> | BISHOP POLICE DEPARTMENT - 207 WEST LINE STREET BISHOP, CA 93514 |              |   |            |
| <b>5600-TP-E-ED-M95</b>    | ANNUAL 9/5 MAINTENANCE   | AEY097001056 | 1 | \$2,938.00 |
| TP-E-5600-ED               |  |              |   |            |
| <b>PRT-DUP-M95</b>         | ANNUAL 9/5 MAINTENANCE   |              |   |            |
| TP-E-PRT-DUP               |  | 56418-002    | 1 | \$299.00   |

**EQUIPMENT LOCATION:**

TP-NOREMOTE is a PER DAY Service Charge to offset additional Maintenance Expense incurred due to the inability of the MorphoTrust USA Help Desk to perform Remote Diagnostic Troubleshooting of the System. If Remote Access is available via Dial-Up Modem, Secure ID, VPN, or other means please initial here \_\_\_\_\_ and provide the requested information below and disregard the TP-NOREMOTE charge.

Dial-In Modem: Access Telephone Number \_\_\_\_\_  
 Secure ID, VPN, Other: Contact Name \_\_\_\_\_ Telephone Number \_\_\_\_\_  
 Maintenance Agreement Renewal is contingent upon verification of Remote Access Functionality.

1 \$730.00  
**TOTAL: \$3,967.00**

Quote ID: 24457

*12/19/19 - emailed to Deb Blanchard*



PLEASE CHECK PREFERRED BILLING:  ANNUAL INVOICE OR  QUARTERLY INVOICE OR  MONTHLY INVOICE

NAME: DEBRA BLANCHARD  
TITLE: Maintenance Contract Admin  
PHONE: (952) 945-3302 Ext 5547  
FAX: (952) 852-8747  
EMAIL: DBlanchard@morphotrust.com

PO NUMBER: 99357a  
SIGNATURE BY: [Signature]  
NAME(Print) / DATE: Laura Heiner 12/19/19  
TITLE: Acct Tech III  
PHONE / FAX: 760-878-0386  
EMAIL: lheiner@inycocounty.us

The terms and conditions of CMAS IT-70 #3-11-70-1090B maintenance services agreement are hereby incorporated into this Addendum by reference. Please sign and date this Maintenance Agreement Addendum. If a purchase order is required, please attach or include the purchase order number on this addendum. Some of the terms set out herein may differ from those in the buyer's purchase order and some may be new. Acceptance is conditional on the buyer's assent to the terms set out herein in lieu of those in the buyer's purchase order. Seller's failure to object to provisions contained in any communication from the buyer shall not be deemed a waiver of the provisions of this acceptance. Any changes in the terms contained herein must be specifically agreed to in writing by an officer of the seller before becoming binding on either seller or buyer.

**AN INVOICE WILL BE ISSUED UPON RECEIPT OF A SIGNED MAINTENANCE AGREEMENT ADDENDUM**

# SYSTEM MAINTENANCE TERMS AND CONDITIONS

for use with

U.S. End User Customers

covering

Idemia® Live Scan Product Line

## I. GENERAL SCOPE OF COVERAGE

Subject to payment in full of the applicable maintenance fees for the system ("System") described in Idemia Identity & Security USA LLC's ("Idemia") current Maintenance Agreement Addendum ("Addendum") with customer ("Customer"), Idemia, or its authorized agents or subcontractors, shall provide the System maintenance services ("Services") set forth and in accordance with the terms herein (this "Agreement") and the Addendum. The terms of the Addendum are hereby incorporated into this Agreement by this reference.

## II. MAINTENANCE SERVICES

The Services provided by Idemia are those services selected by Customer from one or more of the following maintenance services programs:

A. Included With All Remedial Maintenance Services. *Included With All Remedial Maintenance Services* are as follows:

- Unlimited 24/7 telephone technical support for System hardware and software from the Idemia TouchCare Support Center via Idemia toll free telephone number.
- TouchCare Support Center managed problem escalation, as required, to Idemia's technical support staff to resolve unique problems.
- Idemia shall furnish all parts and components necessary for the service and maintenance of the System. Replacement parts shall be sent to the Customer. All replaced defective parts shall become Idemia's property. Idemia shall determine if a replacement part is necessary. Replacement parts and components may be new or refurbished. Unless otherwise agreed by Idemia, replacement parts and components needed at international destinations shall be shipped by Idemia to the Customer-specified United States destination, and the Customer shall arrange for shipment of the parts and components to the final international destination. In the event Idemia ships replacement parts and components to an international destination, the Customer shall be responsible for all shipping expenses, duties, tariffs, taxes, and all other delivery related charges.

- Idemia shall make available to Customer one copy (in electronic or other standard form) of each Update (defined herein) for those System components that are developed by Idemia and for which Idemia, in its sole discretion, elects to develop and generally make available to customers whose Systems are under warranty or under a current Idemia Maintenance Agreement Addendum. Customer shall provide Idemia with continuous network or dial-up access to the System (whether stand alone or connected to a central site), and Idemia shall deliver the Update via this remote means of delivery. In the event continuous network or dial-up access is not available for *24/7 Maintenance Services* and *9/5 Maintenance Services* Customers, then Idemia shall install the Update during any subsequently scheduled on-site visit by Idemia for service of the System. An "Update" means a new release of such System software components that are developed by Idemia which contain (i) bug fixes, corrections, or a work-around of previously identified errors with such software, or (ii) minor enhancements, improvements, or revisions with substantially similar (but not new) functionality to the original licensed System software.

B. 24/7 Maintenance Services. Idemia's *24/7 Maintenance Services* are as follows:

- Customer will receive a telephone response to service calls within one (1) hour from the time the Customer places a service call with Idemia's Help Desk.
- Idemia's Help Desk will attempt problem resolution via telephonic verbal and dial-in troubleshooting prior to dispatching a Idemia field service engineer to Customer's facility for on-site service.
- If on-site service is necessary, such service shall be provided 24/7, including holidays. Idemia shall use its best efforts to have a Idemia field service engineer at the Customer's facility within four (4) hours from the time the engineer is dispatched by Idemia's Help Desk for customers located within a 100 mile radius of an authorized Idemia's service location and within 24 hours for customers located outside such 100 mile radius.

- At no additional charge (provided Customer has granted Idemia with continuous network or dial-up access to the System, whether stand alone or connected to a central site), Idemia will provide Customer with up to four (4) Customer-requested type of transaction changes to existing type of transaction applications; **provided further, however, that any such type of transaction change does not, in the sole opinion of Idemia's Development Management Team, require a significant development or deployment effort.** Generally, a *significant development effort* is one that takes Idemia more than one full business day to develop, and a *significant deployment effort* is one that requires Idemia's deployment of one or more of its field service engineers to more than five (5) Customer locations or Idemia's field service engineer(s) collectively traveling a distance greater than 250 miles in order to complete the installations. In any such events, Idemia will provide such services on a time and materials basis and Idemia will provide Customer with a quote for developing and providing Customer with any such applications and changes. Table updates are treated as Updates and will be made available to Customer in accordance with Section II.A. of this Agreement.

C. 9/5 Maintenance Services. Idemia's 9/5 *Maintenance Services* are as follows:

- Customer will receive a telephone response to service calls within one (1) hour from the time Customer places a service call with Idemia's Help Desk.
- Idemia's Help Desk will attempt problem resolution via telephonic verbal and dial-in troubleshooting prior to dispatching a Idemia field service engineer to Customer's facility for on-site service.
- If on-site service is necessary, such service shall be provided nine (9) business hours (that is, 8:00 a.m. to 5:00 p.m.) per day, five business days per week. Idemia shall use its best efforts to have an Idemia's field service engineer at Customer's facility within eight (8) working hours from the time the engineer is dispatched by Idemia's Help Desk if Customer's facility is located within a 100 mile radius of an authorized Idemia's service location and within 24 hours if Customer's facility is located outside such 100 mile radius.
- Upon Idemia's acceptance of Customer's request for after hours service, Customer shall

pay for such after hours service on a time and materials basis at Idemia's then current rates.

- At no additional charge (provided Customer has granted Idemia with continuous network or dial-up access to the System, whether stand alone or connected to a central site), Idemia will provide Customer with up to four (4) Customer-requested type of transaction changes to existing type of transaction applications; **provided further, however, that any such type of transaction change does not, in the sole opinion of Idemia's Development Management Team, require a significant development or deployment effort.** Generally, a *significant development effort* is one that takes Idemia more than one full business day to develop, and a *significant deployment effort* is one that requires Idemia's deployment of one or more of its field service engineers to more than five (5) Customer locations or Idemia's field service engineer(s) collectively traveling a distance greater than 250 miles in order to complete the installations. In any such events, Idemia will provide such services on a time and materials basis and Idemia will provide Customer with a quote for developing and providing Customer with any such applications and changes. Table updates are treated as Updates and will be made available to Customer in accordance with Section II.A. of this Agreement.

D. Help Desk Maintenance Services. Idemia's *Help Desk Maintenance Services* are as follows:

- The Services do not include any Idemia on-site maintenance services. The Customer agrees to provide the on-site personnel to assist the Idemia Help Desk with troubleshooting, module replacement, and installation of Updates, as required.
- Customer shall maintain at least one (1) Idemia trained System manager on the Customer's System support staff during the term of such Services period contained in the applicable Addendum, and such Customer System manager shall be responsible for periodically backing-up System software in accordance with Idemia's periodic requirements. Unless otherwise agreed in writing by Idemia, the Customer shall be responsible for the installation of each Update.
- Customer will receive a telephone response to service calls within one (1) hour from the time the Customer places a service call with Idemia's Help Desk.

- Idemia shall furnish all parts and components necessary for the maintenance of the System. Idemia's shipment of a replacement part to Customer will be initiated promptly after the Idemia's Help Desk determines the need for such item. Replacement part orders initiated prior to 3:00 p.m. Central shall be shipped the same business day, where orders initiated after 3:00 p.m. Central shall be shipped the next business day. All shipments are made via next day priority air.
- If a defective part is required by Idemia to be returned to Idemia, the packaging material used in shipment of the replacement part must be reused to return the defective part. [Note: defective parts are not repaired and returned to Customer. Customer will be invoiced for any defective parts that are not returned to Idemia within two (2) weeks after receipt of the replacement part. Idemia is not responsible for any markings (i.e., asset tags) that Customer may place on System components. It is Customer's responsibility to remove such markings.]
- Upon Customer's request for Idemia on-site service, Idemia shall use its best efforts to have a Idemia field service engineer at the Customer's facility within 48 hours from the time the engineer is dispatched by Idemia's Help Desk. Customer shall pay for such on-site service on a time and travel basis at Idemia's then current rates and travel policies, respectively. Prior to dispatch of a Idemia engineer, Customer shall provide Idemia with a purchase order ("P.O."), complete Idemia's P.O. Waiver form, or provide Idemia with a valid credit card number.

E. Preventive Maintenance Services. Idemia's *Preventive Maintenance Services* are as follows:

- Preventive maintenance service calls consist of System cleaning, verification of calibration, and verification of proper System configuration and operation in accordance with Idemia's specifications for such System. Idemia and Customer will seek to agree upon the scheduling of the preventive maintenance service call promptly after commencement of the term of this Agreement and the commencement of any renewal term.
- Preventive maintenance service calls are only available in connection with Idemia's 24/7 Maintenance Services and Idemia's 9/5 Maintenance Services offerings. Preventive maintenance service calls are priced on a per

call basis in accordance with Idemia's then current published prices for such Services. Preventive Maintenance Services may not be available for certain System components.

### III. EXCLUSIONS FROM SERVICES

A. Exclusions. The Services do not include any of the following:

- System relocation.
- Additional training beyond that amount or level of training originally ordered by Customer.
- Maintenance support or troubleshooting for Customer provided communication networks.
- Maintenance required to the System or its parts arising out of misuse, abuse, negligence, attachment of unauthorized components (including software), or accessories or parts, use of sub-standard supplies, or other causes beyond Idemia's control.
- Maintenance required due to the System being modified, damaged, altered, moved or serviced by personnel other than Idemia's authorized service representatives, or if parts, accessories, or components not authorized by Idemia are fitted to the System.
- Maintenance required due to failures caused by Customer or Customer's software or other software, hardware or products not licensed by Idemia to Customer.
- Providing or installing updates or upgrades to any third party (i.e., Microsoft, Oracle, etc.) software.
- Providing consumable parts and components (i.e., platens, toner cartridges, etc.); such items are replaced at the Customer's expense.
- Maintenance required due to failures resulting from software viruses, worms, Trojans, and any other forms of destructive or interruptive means introduced into the System.
- Maintenance required due to failures caused by Customer facility issues such as inadequate power sources and protection or use of the System in environmental conditions outside of those conditions specified in Idemia's System documentation.

B. Availability of Additional Services. At Customer's request, Idemia may agree to perform the excluded services described immediately above in accordance with Idemia's then current rates. Other excluded services that may be agreed to be performed by Idemia shall require Idemia's receipt of a Customer P.O., Customer's completion of Idemia's P.O. Waiver form, or Customer providing Idemia with a valid credit card number before work by Idemia is commenced.

C. **Non-Registered System Components.** Any System components not registered in the Addendum for which Services are requested by Customer may be required to have a pre-maintenance inspection by Idemia before being added to the Addendum and this Agreement. This inspection will also be required if this Agreement has expired by more than thirty (30) days. Idemia's inspection will be billed at Idemia's current inspection rate plus travel expenses and parts (if any required).

D. **Third Party Hardware and Software.** Customer shall be solely responsible for obtaining from Idemia or an Idemia authorized or identified vendor, at Customer's sole expense: (i) all Idemia and third party software that may be required for use in connection with any Updates, major enhancements or new versions; and (ii) all hardware that may be required for the use of any Updates, major enhancements or new versions. Idemia will specify the hardware and third party software requirements for any Updates.

#### IV. SERVICE CALLS

Customer may contact Idemia's TouchCare Support Center by calling 1-888-HELP-IDX (888-435-7439). Service calls under this Agreement will be made at the installation address identified in the Addendum or as otherwise agreed to in writing.

#### V. TERM AND TERMINATION

This term of this Agreement shall commence upon Idemia's receipt of the annual maintenance fee reflected in the Addendum and shall continue for a period of one (1) year. This Agreement may be renewed for additional one (1) year terms upon the parties' mutual agreement and Customer's execution of an updated Addendum and Idemia's receipt of the applicable annual maintenance fee reflected in the updated Addendum. Either party may terminate this Agreement in the event of a material breach by the other party that remains uncured for a period of thirty (30) days from the date the non-breaching party provided the other with written notice of such breach.

#### VI. FEES FOR SERVICES

A. **Fees.** The initial fee for Services under this Agreement shall be the amount set forth in the Addendum. The annual maintenance fee during any renewal term will be Idemia's current rates in effect at the time of renewal. Customer agrees to pay the total of all charges for Services annually in advance within thirty (30) days of the date of Idemia's invoice for such charges. Customer understands that alterations,

attachments, specification changes, or use of sub-standard supplies that cause excessive service calls, may require an increase in Service fees during the term of this Agreement at the election of Idemia, and Customer agrees to promptly pay such charges when due.

B. **Failure to Pay Fees.** If Customer does not pay Idemia's fees for Services or parts as provided hereunder when due: (i) Idemia may suspend performance of its obligation to provide Services until the account is brought current; and (ii) Idemia may, at its discretion, provide the Services at current "non contract/per call" rates on a COD basis. Customer agrees to pay Idemia's costs and expenses of collection including the maximum attorneys' fee permitted by law (said fee not to exceed 25% of the amount due hereunder).

#### VII. LIMITED WARRANTY / DISCLAIMER / LIMITATION OF LIABILITY

Idemia shall provide the Services hereunder in a professional and workmanlike manner by duly qualified personnel. EXCEPT FOR THIS LIMITED WARRANTY, IDEMIA HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE IN REGARD TO THE SERVICES, SOFTWARE, AND ANY OTHER GOODS PROVIDED HEREUNDER. IN NO EVENT SHALL IDEMIA'S AGGREGATE LIABILITY TO CUSTOMER ARISING OUT OF, OR RELATED TO, THIS AGREEMENT, UNDER ANY CAUSE OF ACTION OR THEORY OF RECOVERY, EXCEED THE NET FEES FOR IDEMIA'S SERVICES ACTUALLY PAID BY CUSTOMER TO IDEMIA UNDER THE APPLICABLE ADDENDUM TO THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE THE CUSTOMER'S CAUSE OF ACTION AROSE. IN NO EVENT SHALL IDEMIA BE LIABLE TO CUSTOMER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR REVENUE; LOSS, INACCURACY, OR CORRUPTION OF DATA OR LOSS OR INTERRUPTION OF USE; OR FOR ANY MATTER BEYOND IDEMIA'S REASONABLY CONTROL, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NO ACTION, REGARDLESS OF FORM, MAY BE BROUGHT BY CUSTOMER MORE THAN TWO (2) YEARS AFTER THE DATE THE CAUSE OF ACTION AROSE.

## **VIII. LIMITED LICENSE TO UPDATES**

Idemia may deliver Idemia-developed Updates to Customer. The terms of Idemia's end user license for the Idemia's software delivered as part of the System shall govern Customer's use of the Updates.

## **IX. MISCELLANEOUS**

This Agreement shall be governed by and construed according to the laws of the Commonwealth of Massachusetts, excluding its conflict of laws provisions. This Agreement constitutes the entire agreement between the parties regarding the subject matter described herein and may not be modified except in writing signed by duly authorized representatives of Idemia and the Customer. This Agreement may not be assigned by Customer without the prior express written consent of Idemia.



# County of Inyo



## Environmental Health

### DEPARTMENTAL - ACTION REQUIRED

**MEETING:** July 7, 2020

**FROM:** Walt Kruse

**SUBJECT:** Agreement with Mono County to provide Environmental Health Certified Unified Program Agency (CUPA) services.

---

**RECOMMENDED ACTION:**

Request Board ratify and approve the contract between the County of Inyo (contractor) and the County of Mono (contractee) allowing the contractor to provide personnel services required by Mono County to operate their CUPA program for the period of July 1, 2020 through June 30, 2023, at the rate of \$88/hour, not to exceed \$100,000 in any Fiscal Year, and authorize the Chairperson to sign.

**SUMMARY/JUSTIFICATION:**

The Inyo County Department of Environmental Health Services has operated the CUPA (hazard materials) program since 2002. The Inyo County Department of Environmental Health and Mono County Environmental Health provide CUPA program regulatory services in their counties to protect the public from hazards associated with hazardous materials in designated facilities. Neither program has sufficient service need for a full-time position; therefore the two Departments have agreed to share one qualified person to fulfill these regulatory duties. The previous Agreement was for the time period of May 1, 2016 through June 30, 2019. Approval of this Agreement will allow the share of the CUPA manager with Mono County on an approximately 60/40 split.

The Agreement specifies that Mono County will reimburse Inyo County for the work performed at the rate set forth in the Inyo County Schedule of Fees, including travel time, and that Inyo County will provide written notice to Mono County of any change to the Schedule of Fees pertaining to the agreed upon services

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

To not enter into the Agreement would reduce the Department revenue for Fiscal Year 2020-2021 and result in a significant department expense increase.

**OTHER AGENCY INVOLVEMENT:**

Mono County

**FINANCING:**

Approval of this request would result in approximately forty percent reduction in one employee's salary and benefit costs, and any other costs associated with the employee per year. It appears that approval could generate over \$56,000.00 in Fiscal Year 2020-2021 revenue.

**ATTACHMENTS:**

1. Inyo County Environmental Health - Mono County Contract

**APPROVALS:**

|                    |                               |
|--------------------|-------------------------------|
| Denelle Carrington | Created/Initiated - 6/24/2020 |
| Darcy Ellis        | Approved - 6/24/2020          |
| Denelle Carrington | Approved - 6/24/2020          |
| Monica Tinlin      | Approved - 6/24/2020          |
| Marshall Rudolph   | Approved - 6/24/2020          |
| Amy Shepherd       | Approved - 6/24/2020          |
| Denelle Carrington | Final Approval - 6/25/2020    |



**AGREEMENT BETWEEN COUNTY OF MONO  
AND COUNTY OF INYO  
FOR THE PROVISION OF HAZARDOUS MATERIALS PROGRAM MANAGEMENT  
SERVICES**

**INTRODUCTION**

WHEREAS, the County of Mono (hereinafter referred to as "County") may have the need for the hazardous materials program management services of County , of Inyo (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**

Contractor shall furnish to County, upon its request, those services and work set forth in Attachment A, attached hereto and by reference incorporated herein. Requests by County to Contractor to perform under this Agreement will be made by the Director of Mono County Environmental Health, or an authorized representative thereof. Requests to Contractor for work or services to be performed under this Agreement will be based upon County 's need for such services. County makes no guarantee or warranty, of any nature, that any minimum level or amount of services or work will be requested of Contractor by County under this Agreement. By this Agreement, County 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 Contractor at County's request under this Agreement will be performed in a manner consistent with the requirements and standards established by applicable federal, state, and county laws, ordinances, and resolutions. Such laws, ordinances, regulations, and resolutions include, but are not limited to, those that are referred to in this Agreement.

This Agreement is subject to the following Exhibits (as noted) which are attached hereto, following all referenced Attachments, and incorporated by this reference. In the event of a conflict between the terms of an attached Exhibit and this Agreement, the terms of the Exhibit shall govern:

- Exhibit 1:** General Conditions (Construction)
- Exhibit 2:** Prevailing Wages
- Exhibit 3:** Bond Requirements
- Exhibit 4:** Invoicing, Payment, and Retention
- Exhibit 5:** Trenching Requirements
- Exhibit 6:** FHWA Requirements
- Exhibit 7:** CDBG Requirements
- Exhibit 8:** HIPAA Business Associate Agreement
- Exhibit 9:** Other \_\_\_\_\_

**2. TERM**

The term of this Agreement shall be from July 1, 2020, to June 30, 2023, unless sooner terminated as provided below.

### 3. CONSIDERATION

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

B. Travel and Per Diem. Contractor will not be paid or reimbursed for travel expenses or per diem that Contractor incurs in providing services and work requested by County under this Agreement, unless otherwise provided for in Attachment B.

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 County to Contractor for services and work performed under this Agreement shall not exceed \$300,000, not to exceed \$100,000 in any twelve-month period, plus (for public works) the amount of any change order(s) approved in accordance with authority delegated by the Board of Supervisors (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 that is in excess of the Contract Limit.

E. Billing and Payment. Contractor shall submit to County, on a quarterly basis, an itemized statement of all services and work described in Attachment A, which were done at County's request. The statement to be submitted will cover the period from the first (1st) day of the preceding quarter through and including the last day of the preceding quarter. Alternatively, Contractor may submit a single request for payment corresponding to a single incident of service or work performed at County's request. All statements submitted in request for payment shall identify the dates on which the services and work were performed and describe the nature of the services and work which were performed on each day. Invoicing shall be informative but concise regarding services and work performed during that billing period. Upon finding that Contractor has satisfactorily completed the work and performed the services as requested, County shall make payment to Contractor within 30 days of its receipt of the itemized statement. Should County determine the services or work have not been completed or performed as requested and/or should Contractor produce an incorrect statement, County shall withhold payment until the services and work are satisfactorily completed or performed and/or the statement is corrected and resubmitted.

If Exhibit 4 ("Invoicing, Payment, and Retention") is attached to this Agreement, then the language contained in 4 shall supersede and replace this Paragraph 3.E. in its entirety.

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 shall 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.

#### **4. WORK SCHEDULE**

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

#### **5. REQUIRED LICENSES, CERTIFICATES, AND PERMITS**

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

#### **6. OFFICE SPACE, SUPPLIES, EQUIPMENT, ETC**

County shall provide such office and file storage space and telephone service as is necessary for Contractor to provide the services in Attachment A to this Agreement.

#### **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, uniforms, vehicles, reference materials, furniture, appliances, etc. provided to Contractor by County pursuant to this Agreement is, and at the termination of this Agreement remains, 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, that 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, videotapes, 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 that 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 shall remain, the sole and exclusive property of 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 Workers' Compensation insurance coverage and Employer's Liability coverage for not less than One Million dollars (\$1,000,000.00) per occurrence for all employees engaged in services or operations under this Agreement. Any insurance policy limits in excess of the specified minimum limits and coverage shall be made available to County as an additional insured. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of County for all work performed by Contractor, its employees, agents, and subcontractors.

## 9. INSURANCE

A. Contractor shall procure and maintain, during the entire term of this Agreement or, if work or services do not begin as of the effective date of this Agreement, commencing at such other time as may be authorized in writing by County's Risk Manager, the following insurance (as noted) against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work and/or services hereunder and the results of that work and/or services by Contractor, its agents, representatives, employees, or subcontractors:

- General Liability. A policy of Comprehensive General Liability Insurance which covers all the work and services to be performed by Contractor under this Agreement, including operations, products and completed operations, property damage, bodily injury (including death) and personal and advertising injury. Such policy shall provide limits of not less than One Million dollars (\$1,000,000.00) per claim or occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project or the general aggregate limit shall be twice the required occurrence limit.
- Automobile/Aircraft/Watercraft Liability Insurance. A policy of Comprehensive Automobile/Aircraft/Watercraft Liability Insurance for bodily injury (including death) and property damage which provides total limits of not less than One Million dollars (\$1,000,000.00) per claim or occurrence applicable to all owned, non-owned and hired vehicles/aircraft/watercraft. If the services provided under this Agreement include the transportation of hazardous materials/wastes, then the Automobile Liability policy shall be endorsed to include Transportation Pollution Liability insurance covering materials/wastes to be transported by Contractor pursuant to this Agreement. Alternatively, such coverage may be provided in Contractor's Pollution Liability policy.
- Professional Errors and Omissions Liability Insurance. A policy of Professional Errors and Omissions Liability Insurance appropriate to Contractor's profession in an amount of not less than One Million dollars (\$1,000,000.00) per claim or occurrence or Two Million dollars (\$2,000,000.00) general aggregate. If coverage is written on a claims-made form then: (1) the "retro date" must be shown, and must be before the beginning of contract work; (2) insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the contract work; and (3) if coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a "retro date" prior to the contract effective

date, then Contractor must purchase “extended reporting” coverage for a minimum of five years after completion of contract work.

- Pollution Liability Insurance. A policy of Comprehensive Contractors Pollution Liability coverage applicable to the work being performed and covering Contractor’s liability for bodily injury (including death), property damage, and environmental damage resulting from “sudden accidental” or “gradual” pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall provide a limit no less than One Million dollars (\$1,000,000.00) per claim or occurrence or Two Million dollars (\$2,000,000.00) general aggregate. If the services provided involve lead-based paint or asbestos identification/remediation, the Pollution Liability policy shall not contain lead-based paint or asbestos exclusions.

B. Coverage and Provider Requirements. Insurance policies shall not exclude or except from coverage any of the services and work required to be performed by Contractor under this Agreement. The required polic(ies) of insurance shall be issued by an insurer authorized to sell such insurance by the State of California, and have at least a “Best’s” policyholder’s rating of “A” or “A+”. Prior to commencing any work under this agreement, Contractor shall provide County: (1) a certificate of insurance evidencing the coverage required; (2) an additional insured endorsement for general liability applying to County, its agents, officers and employees made on ISO form CG 20 10 11 85, or providing equivalent coverage; and (3) a notice of cancellation or change of coverage endorsement indicating that the policy will not be modified, terminated, or canceled without thirty (30) days written notice to County.

C. Primary Coverage. For any claim made related to this Agreement or work and/or services performed or provided pursuant to this Agreement, Contractor’s insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as with respect to County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be excess of Contractor’s insurance and shall not contribute with it.

D. Deductible, Self-Insured Retentions, and Excess Coverage. Any deductibles or self-insured retentions must be declared and approved by County. If possible, Contractor’s insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to County, its officials, officers, employees, and volunteers; or Contractor shall provide evidence satisfactory to County guaranteeing payment of losses and related investigations, claim administration, and defense expenses. Any insurance policy limits in excess of the specified minimum limits and coverage shall be made available to County as an additional insured.

E. Subcontractors. Contractor shall require and verify that all subcontractors maintain insurance (including Workers’ Compensation) meeting all the requirements stated herein and that County is an additional insured on insurance required of subcontractors.

## **10. STATUS OF CONTRACTOR**

All acts of Contractor, its agents, officers, and employees, relating to the performance of this Agreement, shall be performed as an independent contractor, and not as an agent, officer, or employee of County. Contractor, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of, or exercise any right or power vested in, County, except as expressly provided by law or set forth in Attachment A. No agent, officer, or employee of 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 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 employees of County.

## **11. DEFENSE AND INDEMNIFICATION**

Contractor shall defend with counsel acceptable to County, 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 County, its agents, officers, and employees harmless applies to any actual or alleged personal injury, death, damage or destruction to tangible or intangible property, including the loss of use. Contractor's obligation under this Paragraph 11 extends to any claim, damage, loss, liability, expense, or other costs that are caused in whole or in part by any act or omission of Contractor, its agents, employees, supplier, or anyone directly or indirectly employed by any of them, or anyone for whose acts or omissions any of them may be liable.

Contractor's obligation to defend, indemnify, and hold County, its agents, officers, and employees harmless under the provisions of this Paragraph 11 is not limited to, or restricted by, any requirement in this Agreement for Contractor to procure and maintain a policy of insurance and shall survive any termination or expiration of this Agreement.

## **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 12 by substitute photographs, micrographs, 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, that 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, religious creed, color, ancestry, national origin, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation. 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. TERMINATION**

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

Notwithstanding the foregoing, if this Agreement is subject to General Conditions (set forth as an Exhibit hereto), then termination shall be in accordance with the General Conditions and this Paragraph 14 shall not apply.

#### **15. ASSIGNMENT**

This is an agreement for the personal 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 moneys due or to become due under this Agreement without the prior written consent of County.

#### **16. DEFAULT**

If Contractor abandons the work, fails to proceed with the work or 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, then County may declare 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 a 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 23.

#### **18. CONFIDENTIALITY**

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

#### **19. CONFLICTS**

Contractor agrees that he/she has no interest, and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the work and services under this Agreement. Contractor agrees to complete and file a conflict-of-interest statement.

## **20. POST-AGREEMENT COVENANT**

Contractor agrees not to use any confidential, protected, or privileged information that is gained from 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 (2) 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 County, or who has been an adverse party in litigation with County, and concerning such, Contractor by virtue of this Agreement has gained access to 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, then 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 into 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 terminate, reduce, or modify this Agreement, or any of its terms within ten (10) days of notifying Contractor of the termination, reduction, or modification of available funding. Any reduction or modification of this Agreement effective pursuant to this provision must comply with the requirements of Paragraph 23.

## **23. AMENDMENT**

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

## **24. NOTICE**

Any notice, communication, amendments, additions or deletions to this Agreement, including change of address of any party during the term 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 or email (if included below) to the respective parties as follows:

County of Mono:  
Director of Environmental Health, County of Mono  
1290 Tavern Road  
PO Box 3329  
Mammoth Lakes, CA 93546  
Lmolina@mono.ca.gov



Contractor:  
Director of Environmental Health, Inyo County  
168 N. Edwards Street  
PO Box 427  
Independence, CA 93526  
wkruse@inyocounty.us

**25. COUNTERPARTS**

This Agreement may be executed in two (2) or more counterparts (including by electronic transmission), each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument.

**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 executed in writing by the parties hereto.

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

**COUNTY OF MONO**

**COUNTY OF INYO**

By: \_\_\_\_\_

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
Mono County Counsel

\_\_\_\_\_  
Inyo County Counsel

APPROVED BY RISK MANAGEMENT:

APPROVED BY RISK MANAGEMENT:

\_\_\_\_\_  
Mono Risk Manager

\_\_\_\_\_  
Inyo Risk Manager

## ATTACHMENT A

### AGREEMENT BETWEEN COUNTY OF MONO AND COUNTY OF INYO FOR THE PROVISION OF HAZARDOUS MATERIAL MANAGEMENT SERVICES

#### TERM:

**FROM: July 1, 2020 TO: June 30, 2023**

#### SCOPE OF WORK:

A. When performing the following services for and on behalf of Mono County, Employee will receive assignments from, and report directly to, the Mono County Director of Environmental Health acting through the Inyo County Environmental Health Director.

- Conduct inspections of all regulated hazardous materials facilities;
- Manage and maintain the CERS software program, including keeping all CERS facility information up to date, and the review and approval of all business plan submittals;
- Prepare all budgetary requirements of the CUPA programs;
- Oversee the CUPA permitting and invoicing obligations;
- Maintenance and submittal of all required reports to CalEPA;
- Development and implementation of CUPA enforcement program;
- Investigation of and creation and implementation of appropriate response to hazmat incidents and complaints;
- Coordinate with consultants and other agencies on clean-up proposals and environmental site assessments;
- Maintenance and cleanup of paper files (CUPA);
- Any other associated tasks that may arise and are deemed appropriate and necessary by Mono's Environmental Health Director for the implementation of CUPA requirements.

For the planning purposes of both Mono and Inyo Counties, it is assumed that Mono County will require Inyo County's services for approximately twenty (20) hours per week; or, half of the working hours of Inyo County's staff assigned to perform the work in the Agreement (the "Employee").

Services and work provided by Employee will be performed in a manner consistent with the requirements and standards established by applicable federal, state, and county laws, ordinances, and resolutions. Such laws, ordinances, regulations, and resolutions include, but are not limited to, those that are referred to in this Agreement.

The services provided by Inyo County to Mono County under this Agreement shall be

provided in a manner consistent with reaching Mono County's objectives of providing Certified Unified Program Agency (CUPA) services in and for Mono County and shall include taking regulatory action on outside entities and individuals within Mono County's jurisdiction on behalf of Mono County.

Office space and office supply needs for work performed for Mono County in accordance with Exhibit A will be furnished by Mono County.

Contractor will utilize a Mono County vehicle for work performed for Mono County in accordance with this Scope of Work.

**ATTACHMENT B**

**AGREEMENT BETWEEN COUNTY OF MONO  
AND COUNTY OF INYO  
FOR THE PROVISION OF HAZARDOUS MATERIALS MANAGEMENT SERVICES**

**TERM:**

**FROM: July 1, 2020 TO: June 30, 2023**

**SCHEDULE OF FEES:**

The total sum of all payments made by Mono to Inyo for services and work performed under this Agreement shall not exceed three-hundred thousand dollars (\$300,000), or one-hundred thousand dollars (\$100,000) in any fiscal year during which this Agreement is operative.

Mono County shall reimburse Inyo for the work performed by Inyo County's employee(s) assigned to fulfill the Scope of Work under this Agreement at the rate set forth in the Inyo County Schedule of Fees, which rate is currently set at eighty-eight dollars per hour (\$88.00 per hour) (Hourly Rate), including travel time. Inyo shall provide written notice to Mono County of any change in Hourly Rate set forth in the Inyo County Schedule of Fees.

Expenses for approved travel outside Mono County, and in accordance with the Mono County travel policy, to attend training or conferences associated with the Mono County CUPA program will be paid directly by Mono County.

Mono County shall reimburse Inyo County for all expenses for materials at Inyo's actual costs.

The Hourly Rate is understood to cover all salary and benefit costs of the employee(s) assigned to fulfill the Scope of Work under this Agreement, as well as Inyo County's costs for any management, technical and administrative personnel and any overhead costs.

See Attachment B1, incorporated herein by this reference (optional).



# County of Inyo



## Public Works

### DEPARTMENTAL - ACTION REQUIRED

**MEETING:** July 7, 2020

**FROM:** Chris Cash

**SUBJECT:** Proposed resolution authorizing emergency repair of Birchim Lane

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**RECOMMENDED ACTION:**

Request Board: A) approve Resolution No. 2020-31, titled, "A Resolution of the Board of Supervisors of the County of Inyo, State of California, Authorizing Emergency Pavement Repair and Construction on Birchim Lane," and authorize the Chairperson to sign (*4/5ths vote required*); and B) approve the Agreement between the County of Inyo and Qualcon Contractors, Inc. for the provision of emergency paving services in the amount not to exceed \$383,628.96 for the period of July 7, 2020 to August 7, 2020, and authorize the Chairperson to sign, contingent upon the appropriate signatures being obtained.

**SUMMARY/JUSTIFICATION:**

In the record runoff year of 2017 the south abutment of the North Round Valley Road bridge over Pine Creek washed out, requiring the closure of North Round Valley Road and shifting primary access to the community of 40 Acres to Birchim Lane. As Birchim Lane was in poor condition at this time, the County received Office of Emergency Services (OES) funding to contract out an overlay of Birchim Lane to improve road condition.

At the recommendation of the Road Department, Inyo County Public Works solicited bids to perform a cold mix overlay of Birchim Lane. This method was chosen in lieu of the more labor and preparation intensive hot mix application of asphalt. Under typical conditions, cold mix asphalt has been a more efficient, cost effective, and practical application for many of the rural roadways of Inyo County. The cold mix process has been used reliably for decades, continues to be in use, and is a viable maintenance option for the Inyo County Road Department and other similarly situated transportation agencies. The bids solicited for the cold mix overlay of Birchim Lane included the Road Department's historical cold mix specification and references to applicable Caltrans Standards.

The Public Works Department awarded the cold mix overlay contract to a competent and proven contractor that has successfully completed multiple projects for the County. Unfortunately the mix design for the cold mix asphalt had been modified in a way that led to an increased oil content. This increase in oil content has resulted in unacceptable bleeding of asphalt oil across the road surface. The change in mix design was not known at the time of the material purchase.

The bleeding of oil onto the road surface created a safety hazard and in an attempt to address the immediate hazard the Road Department has spread cinders, sand, and decomposed granite over the roadway to protect vehicles. This treatment may resolve bleeding over time, but it is not possible to determine with any certainty how long it would take for the road to reach an acceptable condition. Additionally, the current treatment to

mitigate the excess oil is creating a dust and drivability hazard.

Taking into account these impacts to the community of 40 Acres and the hazards posed by leaving Birchim Lane in its current state, a more expedient and definitive repair of Birchim Lane is justified. The Road Department has determined that the most time and cost-effective method of repair is milling of the cold mix asphalt down to the existing roadbed and repaving with Hot Mix Asphalt.

With limited contractor availability and the need to quickly remedy the hazardous condition of Birchim Lane, the Road Department recognized the apparent savings of capitalizing on a qualified contractor who is already present in the Owens Valley working on separate Inyo County projects. The Road Department is requesting approval of the resolution enabling the County to contract with Qualcon Contractors, Inc. of Minden, Nevada in an amount not to exceed \$383,628.96. This emergency contract is allowable under Public Contracting Code Section 20134(a) and 22050. Per Section 22050, your Board must find, by four-fifths vote, that the emergency situation that exists with respect to Birchim Lane will not permit a delay resulting from the time that it takes to solicit bids, and that the immediate repaving of Birchim Lane is necessary to respond to the emergency.

In this Contract, Qualcon Contractors, Inc. will provide the milling equipment and operator, the hot mix asphalt paver and crew, asphalt trucking, and a finished product of a 0.2 foot depth hot mix asphalt overlay compacted to County standards along the complete length (1.3 miles) of Birchim Lane. The Inyo County Road Department will provide the hauling of the sub-standard cold mix millings, the shouldering/backing of the new road, the application of pavement markings and the traffic control/signage for the project. This split in project functions will allow for some additional cost savings.

The Road Department will be evaluating the condition of the estimated 2500 tons of cold mix millings that are to be removed from Birchim Lane. Salvaging or processing this material so that it can be successfully used in another suitable location will be pursued by the Road Department.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

N/A

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

One alternative to this action would be a complete grind and reconstruct project. This is not recommended as going in this direction will be significantly costlier and more time consuming. Another alternative would be to continue applying a spreading of cinders and sand until the bleeding ceases. This is not recommended due to the uncertainties in duration this may take.

**OTHER AGENCY INVOLVEMENT:**

County Counsel  
Auditor

**FINANCING:**

The funding for this contract is available in the Road Budget 034600, Object Code 5719 - Birchim Lane.

**ATTACHMENTS:**

1. Resolution Birchim Lane Emergency Repair
2. Birchim Emergency Repair Contract Modified148

**APPROVALS:**

|                |                               |
|----------------|-------------------------------|
| Trevor Taylor  | Created/Initiated - 6/25/2020 |
| Darcy Ellis    | Approved - 6/25/2020          |
| Trevor Taylor  | Approved - 6/30/2020          |
| Breanne Nelums | Approved - 6/30/2020          |

Chris Cash  
Marshall Rudolph  
Trevor Taylor  
Amy Shepherd  
Michael Errante

Approved - 6/30/2020  
Approved - 6/30/2020  
Approved - 6/30/2020  
Approved - 6/30/2020  
Final Approval - 6/30/2020

**RESOLUTION NO. 2020-\_\_**

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE  
COUNTY OF INYO, STATE OF CALIFORNIA, AUTHORIZING  
EMERGENCY PAVEMENT REPAIR AND CONSTRUCTION ON BIRCHIM LANE**

*WHEREAS*, Birchim Lane currently serves as the primary access road for the community of 40 Acres due to the 2017 washout of the North Round Valley Road bridge spanning Pine Creek; and

*WHEREAS*, the condition of Birchim Lane has been found to be a serious ingress/egress issue for the community of 40 Acres and a clear hazard for the travelling public due to unacceptable bleeding of asphalt oil and a dust/debris hazard created by current efforts to mitigate oil bleeding with cinder and sand spreading; and

*WHEREAS*, restoration of Birchim Lane to an acceptable condition as a primary access road for the residents of 40 Acres is necessary to ensure adequate emergency response access and to prevent or mitigate the loss or impairment of life or property, and it is necessary to commence repair immediately; and

*WHEREAS*, under such circumstances, Section 20134(a) of the California Public Contract Code provides that the board of supervisors, by four-fifths vote, may proceed at once to repair the condition of Birchim Lane without adopting the plans, specifications, strain sheets or working details or, subject to Public Contract Code section 22050, giving notice for bids to let contracts.

*NOW, THEREFORE, BE IT RESOLVED* by the Inyo County Board of Supervisors as follows:

**SECTION ONE:** The Board finds that an emergency exists with respect to the ingress/egress issues created by the condition of Birchim Lane and that repairs to restore Birchim Lane to an adequate condition as a primary access road are necessary immediately to prevent or mitigate the loss or impairment of life or property and to allow for sufficient emergency access.





Darcy Ellis, Assistant

**AGREEMENT BETWEEN COUNTY OF INYO  
AND QUALCON CONTRACTORS, INC.  
FOR THE PROVISION OF EMERGENCY PAVEMENT CONSTRUCTION SERVICES**

**INTRODUCTION**

WHEREAS, the County of Inyo (hereinafter referred to as "County") has the need for the Emergency Pavement Construction services of Qualcon Contractors, Inc. of Minden, NV hereinafter referred to as "Contractor"), and in consideration of the mutual promises, covenants, terms, and conditions hereinafter contained, the parties hereby agree as follows:

**TERMS AND CONDITIONS**

**1. SCOPE OF WORK.**

The Contractor shall furnish to the County, those services and work set forth in Attachment **A**, attached hereto and by reference incorporated herein.

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

**2. TERM.**

The term of this Agreement shall be from July 7, 2020 to August 7, 2020 unless sooner terminated as provided below.

**3. CONSIDERATION.**

A. Compensation. County shall pay to Contractor the sum total of Three Hundred Eighty Three Thousand Six Hundred and Twenty Eight Dollars and Ninety Six cents (\$383,628.96) for performance of all of the services and completion of all of the work described in Attachment **A**. Contractor understands that this Agreement has been awarded without bidding under the emergency provisions of Public Contract Code Section 20134(a), a copy of which is attached to Attachment A and is incorporated herein by this reference. Pursuant to Section 20134(a), the County is only allowed to pay Contractor for the actual cost of the use of machinery and tools and of material, and labor and of workers' compensation insurance expended by him or her in doing the work, plus not more than 15 percent to cover all profits and administration. No more than the lowest current market prices shall be paid for materials whenever possible. Contractor covenants that the amount of consideration being charged to County under this contract will not exceed the amount authorized by Section 20134(a).

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

C. No Additional Consideration. Except as expressly provided in this Agreement, Contractor shall not be entitled to, nor receive, from 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 all services and work to be performed under this Agreement shall not exceed Three Hundred Ninety Thousand Dollars and Zero cents (\$390,000.00) (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, upon completion of all services and work set forth in Attachment **A**, an itemized statement of all services and work performed by Contractor pursuant to this Agreement. This statement will identify the date on which the services were performed and describe the nature of the services and work which was performed on each day. Upon 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 upon executing this Agreement.

#### **4. WORK SCHEDULE.**

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

#### **5. REQUIRED LICENSES, CERTIFICATES, AND PERMITS.**

A. Any licenses, certificates, or permits required by the federal, state, county, or municipal governments for contractor to provide the services and work described in Attachment **A** must be procured by Contractor and be valid at the time Contractor enters into this Agreement or as otherwise may be required. 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.sam.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 B 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 hold harmless, defend and indemnify County and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work hereunder or its failure to comply with any of its obligations contained in the agreement, except such loss or damages which was caused by the sole negligence or willful misconduct of the County.

**12. RECORDS AND AUDIT.**

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

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

**13. PREVAILING WAGE.**

Pursuant to **Section 1720 et seq. of the Labor Code**, Contractor agrees to comply with the Department of Industrial Relations regulations, to which this Contract is subject, the prevailing wage per diem rates in Inyo County have been determined by the Director of the State Department of Industrial Relations. These wage rates appear in the Department publication entitled "General Prevailing Wage Rates," in effect at the time the project is advertised. Future effective wage rates, which have been predetermined and are on file with the State Department of Industrial Relations are referenced but not printed in said publication. Such rates of wages are also on file with the State Department of Industrial Relations and the offices of the Public Works Department of the County of Inyo and are available to any interested party upon request. Contractor agrees to submit certified payroll to County and comply with the Department of Industrial Relations regulations in submitting the certified payroll.

**14. 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.

**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-three (23) below.

**18. CONFIDENTIALITY.**

Contractor further 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. Any disclosure of confidential information by Contractor without the County's written consent is solely and exclusively the legal responsibility of Contractor in all respects.

Notwithstanding anything in the Agreement to the contrary, names of persons receiving public social services are confidential and are to be protected from unauthorized disclosure in accordance with Title 45, Code of Federal Regulations Section 205.50, the Health Insurance Portability and Accountability Act of 1996, and Sections 10850 and 14100.2 of the Welfare and Institutions Code, and regulations adopted pursuant thereto. For the purpose of this Agreement, all information, records, and data elements pertaining to beneficiaries shall be protected by the provider from unauthorized disclosure.

**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-three (23) (Amendment).

**23. AMENDMENT.**

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

**24. NOTICE.**

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

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

Contractor:

Qualcon Contractors, Inc. \_\_\_\_\_ Name  
\_\_\_\_\_ Address  
\_\_\_\_\_ City and State

**24. 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 QUALCON CONTRACTORS, INC.  
FOR THE PROVISION OF EMERGENCY PAVEMENT CONSTRUCTION SERVICES**

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

**COUNTY OF INYO**

**CONTRACTOR**

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Type or Print Name

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
County Counsel

APPROVED AS TO ACCOUNTING FORM:

\_\_\_\_\_  
County Auditor

APPROVED AS TO PERSONNEL REQUIREMENTS:

\_\_\_\_\_  
Personnel Services

APPROVED AS TO INSURANCE REQUIREMENTS:

\_\_\_\_\_  
County Risk Manager

**ATTACHMENT A**

**AGREEMENT BETWEEN COUNTY OF INYO  
AND QUALCON CONTRACTORS, INC.  
FOR THE PROVISION OF EMERGENCY PAVEMENT CONSTRUCTION SERVICES**

**TERM:**

**FROM: JULY 7, 2020 TO: AUGUST 7, 2020**

**SCOPE OF WORK:**

Contractor to furnish all labor, material, and equipment required to complete the scope of work as follows:

Project Description – Grind and Pave (HMA) Birchim Lane (1.3 miles length at 23 feet wide typical)

Included in Contractor Scope: One Mobilization, Grinding (conventional cold planning of 0.2 feet depth of existing sub-standard cold mix asphalt), Trucking of HMA, Paving (HMA at 0.2 feet depth), and QC Testing of AC. Schedule to be mutually agreed upon but is anticipated to be two days of grinding (July 20-21) and two days of paving (July 22-23). Estimated cost: 157,872 Square Feet @ \$2.43/SF = \$383,628.96.

Excluded from Contractor scope of work: Permits, Trucking of Grindings, Shouldering, Removal of Dirt on Roadway, Striping, and Traffic Control

See attached Public Contract Code 20134. See attached quote from Qualcon Contractors, Inc.



June 30, 2020

Trevor Taylor  
Engineering Assistant  
Inyo County Public Works

RE: Birchim Lane

We propose to furnish all labor, material, and equipment required to complete the job described as: Grind and Pave Birchim Lane in Bishop, CA

Cold Mill 0.2' and Pave 0.2' on Birchim Lane. 1.3 Miles at 23' wide

**Estimated Cost: 157,872 SF @ \$2.43 = \$383,628.96**

Includes: One Mobilization, Grinding, Paving, and QC Testing on AC. Schedule to be mutually agreed upon

Excludes: Permits, Trucking of Grindings, Shouldering, Removal of Dirt on Roadway, Striping, and Traffic Control.

Payment due upon job completion. Based upon final measured quantities. All amounts are due and payable per above conditions. Overdue amounts subject to interest at 1½% per month which is annual percentage rate of Eighteen (18%) percent. Acceptor and Owner agrees to pay reasonable attorney's fees and court costs involved in collecting any past due accounts.

Qualcon Contractors Inc.  
General Engineering Contractor

By P. P. Hill

*(Red arrow pointing to the signature line)*  
This wording will be removed  
prior to County acceptance  
-Trevor Taylor

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

By \_\_\_\_\_

Note: The signing and returning of this document constitutes a contract binding upon all parties concerned.

**PUBLIC CONTRACT CODE - PCC**

**DIVISION 2. GENERAL PROVISIONS [1100 - 22355]** ( *Division 2 enacted by Stats. 1981, Ch. 306. )*

**PART 3. CONTRACTING BY LOCAL AGENCIES [20100 - 22178]** ( *Part 3 added by Stats. 1982, Ch. 465, Sec. 11. )*

**CHAPTER 1. Local Agency Public Construction Act [20100 - 20929]** ( *Chapter 1 added by Stats. 1982, Ch. 465, Sec. 11. )*

**ARTICLE 3.5. Counties [20120 - 20147]** ( *Heading of Article 3.5 amended by Stats. 1984, Ch. 1128, Sec. 8. )*

**20134.** (a) In cases of emergency, when repair or replacements are necessary to permit the continued conduct of county operations or services, the board of supervisors, by majority consent, may proceed at once to replace or repair any and all structures without adopting the plans, specifications, strain sheets, or working details or, subject to Chapter 2.5 (commencing with Section 22050), giving notice for bids to let contracts. If notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The work may be done by day labor under the direction of the board, by contract, or by a combination of the two. If the work is done wholly or in part by contract, the contractor shall be paid the actual cost of the use of machinery and tools and of material, and labor and of workers' compensation insurance expended by him or her in doing the work, plus not more than 15 percent to cover all profits and administration. No more than the lowest current market prices shall be paid for materials whenever possible.

(b) In a county of the first, second, third, or fourth class, which is under court order to relieve jail overcrowding or in which the sheriff certifies that the inmate capacity of the county jail system is exceeded by more than 20 percent and that the overpopulation is likely to continue and poses a threat to public safety, health, and welfare, the board of supervisors may contract for the construction or expansion of jail facilities without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board. If the board does not select the lowest bid, it shall make a finding stating the reasons that the lowest bid was not selected.

(c) In any county that has agreed to permit the transfer of prisoners or parole violators under Section 2910 or 2910.5 of the Penal Code or of wards under Section 1753.3 of the Welfare and Institutions Code, the board of supervisors may contract for the construction or expansion of the facilities to be used for that purpose without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the

Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board and the lowest bid is selected.

(d) Proposed construction or expansion of jail or return-to-custody facilities as authorized under subdivision (b) or (c) shall not commence in a county of the third class without the affirmative vote of a majority of the city council of the incorporated city within which the construction or expansion is proposed.

(e) The board of supervisors may waive the requirements of Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code for work performed pursuant to subdivision (b) or (c).

(f) If any county that is under court order to relieve overcrowding in a county juvenile facility, as defined by subdivision (c) of Section 4481 of the Penal Code or in which the chief probation officer certifies that the juvenile detention capacity of the county juvenile facilities is exceeded by more than 20 percent and that the overpopulation is likely to continue and poses a threat to public safety, health, and welfare, the board of supervisors may contract for the construction or expansion of county juvenile facilities without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board. If the board does not select the lowest bidder, it shall make a finding stating the reasons that the lowest bidder was not selected.

(g) In a county of the third class in which there are no available courtrooms to accommodate all authorized judicial positions or in which the board of supervisors certifies that there is a significant need to expeditiously construct new court and court support facilities, the board of supervisors may contract for the construction or expansion of court and court support facilities without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board and the lowest bid is selected. This subdivision shall remain in effect until December 31, 1994.

*(Amended by Stats. 2010, Ch. 697, Sec. 48. (SB 189) Effective January 1, 2011. Operative July 1, 2012, by Sec. 105 of Ch. 697.)*

**ATTACHMENT B**

**AGREEMENT BETWEEN COUNTY OF INYO  
AND QUALCON CONTRACTORS, INC.  
FOR THE PROVISION OF EMERGENCY PAVEMENT CONSTRUCTION SERVICES**

**TERM:**

**FROM: JULY 7, 2020 TO: AUGUST 7, 2020**

**SEE ATTACHED INSURANCE PROVISIONS**

## **Specifications 5**

### **Insurance Requirements for Construction Contracts**

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

#### **MINIMUM SCOPE AND LIMIT OF INSURANCE**

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01, including products and completed operations, with limits of no less than **\$2,000,000** per occurrence for bodily injury, personal injury, and property damage. 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), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **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.
4. **Builder's Risk** (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.
5. **Surety Bonds** as described below.
6. **Professional Liability** (if Design/Build), with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.
7. **Contractors' Pollution Legal Liability** and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

#### ***Deductibles and Self-Insured Retentions***

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

#### ***Other Insurance Provisions***

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

1. **The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds** on the CGL and automobile liability policies with respect to liability arising out of with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37 forms if later revisions used).
2. For any claims related to this project, the **Contractor's insurance coverage shall be primary** insurance as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the Entity.

#### ***Builder's Risk (Course of Construction) Insurance***

Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall **name the Entity as a loss payee** as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the Entity, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the Entity's site.

#### ***Claims Made Policies***

If any coverage required is written on a claims-made coverage form:

1. The retroactive date must be shown, and this date must be before the execution 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 contract 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, or start of work date, the Contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the Entity for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractors Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors



Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

### ***Acceptability of Insurers***

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

### ***Waiver of Subrogation***

**Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire** from Contractor by virtue of the payment of any loss. Contractor 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 Entity for all work performed by the Contractor, its employees, agents and subcontractors.

### ***Verification of Coverage***

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

### ***Subcontractors***

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

### ***Surety Bonds***

Contractor shall provide the following Surety Bonds:

1. Bid bond
2. Performance bond
3. Payment bond
4. Maintenance bond

The Payment Bond and the Performance Bond shall be in a sum equal to the contract price. If the Performance Bond provides for a one-year warranty a separate Maintenance Bond is not necessary. If the warranty period specified in the contract is for longer than one year a Maintenance Bond equal to 10% of the contract price is required. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

### ***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 circumstances.

ATTACHMENT 1

BIRCHIM LANE EMERGENCY REPAIR PROJECT

**FAITHFUL PERFORMANCE BOND**  
(100% OF CONTRACT AMOUNT)

KNOW ALL MEN BY THESE PRESENTS: That \_\_\_\_\_

\_\_\_\_\_ as Principal, hereinafter "Contractor,"  
(Name of Contractor)

and \_\_\_\_\_  
(Name of Corporate Surety)

as Corporate Surety, hereinafter called Surety, are held and firmly bound unto the County of Inyo as Obligee, hereinafter called County, in the amount of three hundred eighty three thousand six hundred twenty eight dollars and ninety six cents (\$383,628.96), for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assignees, jointly and severally, firmly by these presents.

WHEREAS, Contractor has, by written Contract, dated \_\_\_\_\_, 20\_\_\_\_, entered into an Contract with the County for the Construction of the Birchim Lane Emergency Repair PROJECT (hereinafter referred to as "Project"), to be constructed in accordance with the terms and conditions set forth in the Contract for the Project, which contract is by reference incorporated herein and is hereinafter referred to as the "Contract."

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the County.

Whenever Contractor shall be, and is declared by County to be, in default under the Contract, the County having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly either:

1. Complete the Contract in accordance with its terms and conditions; or,
2. Obtain a Bid or Bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible Bidder, or if the County elects, upon determination by the County and the Surety jointly of the lowest responsible Bidder, arrange for a Contract between such Bidder and County, and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The

term "balance of the Contract price", as used in this paragraph, shall mean the total amount payable by County to Contractor under the Contract and any amendments thereto, less the amount properly paid by County to Contractor.

Any suit under this Bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due, or the date on which any warranty or guarantee period expires, whichever is later.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the County named herein.

---o0o---

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
(Name of Corporate Surety)

By: \_\_\_\_\_  
(Signature)

(SEAL)

\_\_\_\_\_  
(Title of Authorized Person)

\_\_\_\_\_  
(Address for Notices to be Sent)

\_\_\_\_\_  
(Name of Contractor)

By: \_\_\_\_\_  
(Signature)

(SEAL)

\_\_\_\_\_  
(Title of Authorized Person)

\_\_\_\_\_  
(Address for Notices to be Sent)

**NOTE: THE SIGNATURES OF THE CONTRACTOR AND THE SURETY MUST EACH BE ACKNOWLEDGED BEFORE A NOTARY PUBLIC (OR OTHER OFFICER AUTHORIZED UNDER CALIFORNIA LAW) AND THE ACKNOWLEDGMENTS MUST BE ATTACHED TO THIS BOND.**

The Faithful Performance Bond must be executed by a corporate surety on this form. No substitutions will be accepted. If an attorney-in-fact signs for the surety, an acknowledged statement from the surety appointing and empowering the attorney-in-fact to execute such bonds in such amounts on behalf of the surety must accompany the Faithful Performance Bond.

**ADDRESS OF COUNTY FOR NOTICES TO BE SENT:**

County of Inyo  
224 North Edwards Street, P.O. Box N  
Independence, California 93526

**ATTACHMENT 2**

Birchim Lane Emergency Repair **PROJECT**

**LABOR AND MATERIALS PAYMENT BOND**  
(100% OF CONTRACT AMOUNT)

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_ as Principal, hereinafter "CONTRACTOR,"

and \_\_\_\_\_  
(Name of Corporate Surety)

as Corporate Surety, hereinafter called SURETY, are held and firmly bound unto the County of Inyo as Obligee, hereinafter called COUNTY, for the use and benefit of claimants as hereinafter defined in the amount of three hundred eighty three thousand six hundred twenty eight dollars and ninety six cents (\$383,628.96) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assignees, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written contract dated \_\_\_\_\_, 20 \_\_\_\_\_, entered into an Contract with the County for the construction of the Birchim Lane Emergency Repair PROJECT (hereinafter referred to as "PROJECT"), to be constructed in accordance with the terms and conditions set forth in the contract for the PROJECT, which contract is by reference incorporated herein, and is hereinafter referred to as the "CONTRACT."

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly make payment to all claimants as hereinafter defined, for all labor and materials used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise, it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Contractor, or with a Subcontractor of the Contractor, for labor, materials, or both, used or reasonably required for use in the performance of the Contract. Labor and materials is construed to include, but not limited to, that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
2. The above named Contractor and Surety hereby jointly agree with the County that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) calendar days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this Bond for the benefit of such claimant, prosecute the suit to final judgment for such

sum or sums as may be justly due claimant, and have execution thereon. The County shall not be liable for the payment of any costs or expenses of any such suit.

3. No suit or action shall be commenced hereunder by any claimant:

a) Unless claimant, other than one having a direct contract with the Contractor, shall have given written notice to any two of the following: the Contractor, the County, or the Surety above named, within ninety (90) calendar days after such claimant did or performed the last of the work or labor, or furnished the last of the material for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in any envelope addressed to the Contractor, County, or Surety, at the address below, or at any place where an office is regularly maintained for the transaction of their business. Such notice may also be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

b) After the expiration of one (1) year following the date on which County accepted the work done under the Contract. However, if any limitation embodied in this Bond is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

c) Other than in a State Court of competent jurisdiction in and for the County or other political subdivision of the state in which the Project, or any part thereof, is situated, and not elsewhere.

4. The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed or recorded against said Project, whether or not claim for the amount of such lien be presented under and against this Bond.

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Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
(Name of Contractor)

By: \_\_\_\_\_  
(Signature)

(SEAL)

\_\_\_\_\_  
(Title of Authorized Person)

\_\_\_\_\_  
(Address for Notices to be Sent)

\_\_\_\_\_  
(Name of Corporate Surety)

By: \_\_\_\_\_  
(Signature)

(SEAL)

\_\_\_\_\_  
(Title of Authorized Person)

\_\_\_\_\_  
(Address for Notices to be Sent)

**NOTE:**

**THE SIGNATURES OF THE CONTRACTOR AND THE SURETY MUST BE ACKNOWLEDGED BEFORE A NOTARY PUBLIC (OR OTHER OFFICER AUTHORIZED UNDER CALIFORNIA LAW).**

The Labor and Materials Payment Bond must be executed by a corporate surety on this form. No substitutions will be accepted. If an attorney-in-fact signs for the surety, an acknowledged statement from the surety appointing and empowering the attorney-in-fact to execute such bonds in such amounts on behalf of the surety, must accompany the Labor and Materials Payment Bond.

ADDRESS OF COUNTY FOR NOTICES TO BE SENT TO:

**County of Inyo  
224 N. Edwards, P.O. Box N  
Independence, California 93526**





# County of Inyo



## Probation

### CONSENT - ACTION REQUIRED

**MEETING:** July 7, 2020

**FROM:** Jeffrey Thomson

**SUBJECT:** Request Board ratify and approve Amendment No. 5 to the Agreement between the County of Inyo and Noble Software Group, LLC.

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**RECOMMENDED ACTION:**

Request Board ratify and approve Amendment No. 5 to the Agreement between the County of Inyo and Noble Software Group, LLC. of Redding, California, to extend the Agreement from July 1, 2020 to June 30, 2021 with the same cost \$5,719 for the annual hosting fee (up to 16 Users) and \$800 for quality assurance (IRR Site Access, 8 Users), remove Section 23- Limitation of Liability of the original Agreement, and add Section 22.5 to the Agreement - Inyo County, its officers, officials, employees, and volunteers are covered as additional insureds on the general liability policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations, contingent upon the Board's approval of the Fiscal Year 2020-2021 Budget, and authorize the Chairperson to sign, contingent upon all appropriate signatures being obtained.

**SUMMARY/JUSTIFICATION:**

Noble Software Group, LLC ("NOBLE") provides, administers, and hosts a web-based, non-exclusive licensed juvenile and adult Probation assessment and case planning software package. This Evidenced Based Practiced tool is used to determine the protective factors and risk needs of both adult and juvenile offenders with a respective automated case plan; Reentry and Jail Intake Tools; an evidence based Detention Release Tool for juvenile facilities. The Inyo County Probation Department has had an Agreement with Noble Software Group, LLC. using their software package since October 12, 2015. The assessments and case plans have recently been integrated with our case management system. Both parties would like to extend the Agreement from July 1, 2020 to June 30, 2021 and remove Section 23 from the original Agreement, and add Section 22.5 to the Agreement.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

N/A

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Reject the request to extend the Agreement and make changes to the original Agreement is not recommended because this will disrupt the current case plans and tools we currently utilize each day for adult and juvenile clients.

**OTHER AGENCY INVOLVEMENT:**

N/A

**FINANCING:**

Monies have been budgeted in both the Probation – General (023000) Budget and Juvenile Institutions Budget (023100) General Operating Object Code 5311.

**ATTACHMENTS:**

1. Original Agreement 10-12-15
2. Amendment 1 to Noble Contract to extend 1 Year 7-1-2016 thru 6-30-2017
3. Amendment 2 to Noble Contract to extend 1 Year FY17-18 SIGNED
4. Amendment 3 FY 18-19
5. Amendment 4 FY 19-20
6. Amendment 5 FY 20-21

**APPROVALS:**

|                  |                               |
|------------------|-------------------------------|
| Krystal Phillips | Created/Initiated - 6/15/2020 |
| Darcy Ellis      | Approved - 6/18/2020          |
| Krystal Phillips | Approved - 6/18/2020          |
| Marshall Rudolph | Approved - 6/18/2020          |
| Amy Shepherd     | Approved - 6/18/2020          |
| Sue Dishion      | Approved - 6/29/2020          |
| Aaron Holmberg   | Approved - 6/29/2020          |
| Krystal Phillips | Approved - 6/29/2020          |
| Jeffrey Thomson  | Final Approval - 6/30/2020    |

**SOFTWARE HOSTING AGREEMENT**  
**between**  
**NOBLE SOFTWARE GROUP, LLC**  
**and**  
**THE COUNTY OF INYO, PROBATION DEPARTMENT**

THIS SOFTWARE LICENSE AGREEMENT (this "Agreement") is made and entered into and effective October 12, 2015 by and between Noble Software Group, LLC, (hereinafter called "Noble"), and the Inyo County Board of Supervisors on behalf of the Probation Department, located at Independence, California (hereinafter called "County").

**RECITALS**

**WHEREAS**, County desires to obtain a non-exclusive license to use certain proprietary software and related documentation from Noble under the terms and conditions of this Agreement; and

**WHEREAS**, Noble desires to grant such license to County as a Hosting service under the terms and conditions of this Agreement and to perform additional services, including but not limited to installation, integration, testing, and training of the Noble software under the terms and conditions of subsequent Work Orders (defined below) issued under this Agreement;

**NOW THEREFORE**, in consideration of the mutual covenants contained in this Agreement, the parties hereby agree as follows:

1. **DEFINITIONS**

1.1 "Access" means the ability of County to operate accurately and effectively from all its respective work environments, Noble's Hosting Software Applications, and the System.

1.2 "Account Setup/Configuration" means the initial Access related setup of each of County employee's information into the web applications, and any other System Applications and System as defined herein.

1.3 "Agreement" means this Agreement including the following Exhibits:

Exhibit A Licensed Software

Exhibit B Third Party Materials

Exhibit C Schedule of Fees

Exhibit D Pricing

Exhibit E Model Work Order

which are incorporated herein for all purposes.

- 1.4 “Anonymized” means Data information that has been stripped of all identifying information that can tie it to a specific individual such that said information cannot thereafter be used to identify the individual.
- 1.5 “CMS” means County’s case management system.
- 1.6 “Customization” means modifications to the Software Applications to meet specific County needs.
- 1.7 “Data” means information initially in the possession of County identified herein or in any attachment hereto relating to probationers and other individuals within the criminal justice system that may include such elements as may or may not be deemed to be personal information.
- 1.8 “Documentation” means text materials which describe the design, function, operation and use of the Licensed Software and which are customarily delivered by Noble to licensees thereof.
- 1.9 “Hosting” means providing and maintaining the facility that stores the physical computer and network structure which (i) runs the Software Applications, (ii) stores and backs up the Data information, (iii) secures the Data information, and (iv) makes the application and stored Data information available to the County through an internet-connected personal computer interface.
- 1.10 “Hosting Site” means an internet-based website maintained by Noble for the purposes of delivering the Licensed Software to the County.
- 1.11 “Integration” means an optional process provided by Noble to County by which a computer-controlled interface is created between the Software Applications on the one hand, and existing County case management systems on the other, pursuant to which said process Data information is periodically transferred from one automated environment to another in a secure manner.
- 1.12 “Intellectual Property” means all intellectual property rights related to the assets or businesses of each respective party from which the asset or business originated from, including: patents; copyrights; trade names; trademarks; service marks; trade secrets; inventions; databases; names and logos; trade dress; technology; know-how; and, other proprietary information and licenses from third parties granting Noble the right to use any of the foregoing. The term “Intellectual Property” also includes: all computer applications, programs and other software, including without limitation, operating software, network software, firmware, middleware, and design software; all design tools, System Documentation and instructions; databases; product literature; artwork; design, development and manufacturing files; formulations and specifications; quality records and reports; and, other books, records, studies, surveys, reports, plans and documents. The term “Intellectual Property” **does not** include the Data information.

- 1.13 “Licensed Software”: The source and object code software identified in Exhibit A as Licensed Software, delivered solely by the Hosting Site.
- 1.14 “Maintenance” means all updates and modifications to any and all applications, underlying software, computer equipment, networks and operating systems, done on either a periodic or an emergency basis, that are needed to maintain the functionality, security and operational viability of the Software Applications and the System.
- 1.15 “Materials” means programs, program upgrades, source code, object code, executable code, website, functional systems, ideas, inventions, procedures, technology, research, marketing, memoranda, discs, diskettes, devices and information and documentation of the same.
- 1.16 “Quality Assurance” means the ability to assist with determining the accuracy and validity of the assessments created and completed by Staff, including a review of Data elements and training for Staff.
- 1.17 “Security” means a protection against the unauthorized use (including but not limited to unauthorized downloading, unauthorized viewing, unauthorized copying and unauthorized forwarding), loss, misuse and alteration of any County information under Noble’s control.
- 1.18 “Site” means the web address or URL, using either a name or IP address that denotes the location of the Hosting Application.
- 1.19 “Software Applications” means the enterprise and/or Hosting Application, including, but not limited to, all code, source code, database(s), database structure(s), designs, functions, features, interfaces, screens, graphs, graphical representations, formulas, algorithm(s), third-party tools, tool kits, files, folders, updates, propagations, patches, versions, and assessment instruments and questionnaires.
- 1.20 “Staff” means Inyo County personnel unless otherwise noted.
- 1.21 “System” means the entire environment in which the software operates, including but not limited to, all hardware and software that in any way affects the way in which the software operates, e.g., connectivity, speed, and reliability.
- 1.22 “Third Party Materials” mean those products specified as such in Exhibit B which will be procured by Noble from a third party for delivery to County. Unless identified in Exhibit B or upon notice and written approval of County, Noble will not deliver any Third Party Materials.
- 1.23 “Training” means the process of informing and familiarizing Staff in the use of Noble’s risk assessment and other Software Applications at sites and times determined by the County. Training includes services provided by any and all Noble staff, training materials and Systems required to comprehensively communicate and instruct Staff.

- 1.24 "User Position" means workstations, personal or desktop computers, terminals or other items installed to support and be dedicated to, at any one time, a single individual as part of the Licensed Software.
- 1.25 "Work Order" means a written document, in substantial conformity with the model work order in Exhibit E, signed by both parties, specifying the mutually-agreed upon terms for the performance of additional tasks by Noble and which, upon performance, shall be included in and governed by all other terms and conditions of this Agreement. If the Work Order calls for the development of software, the Work Order shall also specify ownership of any Intellectual Property created thereby in a manner consistent with the title provisions of this Agreement set forth in Section 7 ("Title"), below, and the acceptance criteria for such software.

## 2. TERMS

- 2.1 Initial Term. The term of this Agreement shall be from October 12, 2015 (the "Effective Date") to June 30, 2016, by and between Noble Software Group, LLC, (hereinafter called "Noble"), and County of Inyo, located at Independence, California (hereinafter called "County")(collectively the "parties") unless sooner terminated per the Agreement terms. In addition, the County will have the option to renew the Agreement for each subsequent year on the 1st of July, unless sooner terminated per the Agreement terms. The option shall be for a one (1) year period which may be exercised again at the end of the applicable option year.
- 2.2 Exercising Option to Renew. The option to renew the Agreement each year beginning the 1st of July, may be exercised by the County so long as:
- (a) Neither Noble nor County has terminated or cancelled this Agreement for any reason.
  - (b) Neither Noble nor County is in default on any terms or conditions of Agreement.
- 2.3 Manner in Which Option is Exercised.
- (a) County may exercise the option to renew no earlier than three (3) months before expiration or the initial term of this Agreement or any extension thereof.
  - (b) County must notify Noble in writing of its intent to exercise an option at least thirty (30) days before expiration of the Agreement, or renewal thereof.

## 3. NOBLE'S SCOPE OF TASKS

- 3.1 Upon execution of this Agreement and receipt of the license fees due hereunder, Noble will promptly deliver a Hosting Site with the Licensed Software to County and accomplish its responsibilities under this Agreement provided that County timely completes its responsibilities under this Agreement, specifically including those set forth in Section 4 County Tasks.
- 3.2 County is responsible for meeting the environmental site requirements set forth in Section 4 County Tasks in a timely manner and at the County's cost.

- 3.3 County may request the performance of additional tasks. If Noble agrees, each such task will be documented in a Work Order which will specify the tasks to be performed, the deliverables, the time table for performance and the basis for payment whether on a fixed-price ("Fixed Price") or time-services-materials-and-expenses (T&M") basis. Unless specified otherwise in the Work Order, the terms and conditions of this Agreement shall apply to performance of the Work Order. The pricing for T&M work shall be at Noble customary pricing schedules unless a specific price is set forth in the Work Order.
- 3.4 Noble shall provide administer, and host a web-based, non-exclusive licensed juvenile and adult Probation assessment and case planning software package ("Software Applications"), including but not limited to: installation, integration, maintenance, testing and Quality Assurance. The hosting solution allows access from a standard web browser that includes library of risk and needs instruments, specifically an evidenced based assessment tool used to assess adult offenders' risk to reoffend and determine top criminogenic needs with respective automated case plan; an evidence based assessment tool used to determine the protective factors and risk needs of juvenile offenders with a respective automated case plan; reentry and jail intake tools; an evidence based detention release tool for juvenile facilities; Prison Rape Elimination Act (PREA) risk assessment tool for juvenile facilities; and, a program that takes data from multiple sources and allows the County to report against that data set.
- 3.5 The system flow will be built in a manner in which data electronically submitted from the County's CMS will be processed by the assessment software as described with results electronically returned and updated to the CMS in a real-time, on-demand fashion.
- 3.6 In addition, Noble will perform additional services, including but not limited to, consulting and staff training of the Noble software under the terms and conditions of subsequent Work Orders (defined below) issued under this Agreement.
- 3.7 Noble shall ensure that the web-based software package is compatible, at minimum, with Internet Explorer 9 and ensure compatibility with new versions of Internet Explorer as they are released. County users shall be able to log-on successfully and Access the Software Applications while running Windows from their workstations and from their electronic tablet. The page navigation function of the Software Applications shall work reliably and with full functionality when Data information is entered or transferred or otherwise input into the System. Data information entered or transferred or otherwise input into the System shall appear on-screen reliably and accurately when called-up by County users utilizing the Software Applications.
- 3.8 Noble shall provide on-going availability for tool, case plan, and Motivational Interviewing (MI) training by a qualified Noble staff.
- 3.9 Noble shall establish, provide and maintain on-going technical/customer support of the Software Applications and System.
- (a) Noble's customer support obligation shall include the following communication channels:

1. Telephone Support: Noble shall maintain telephone support from a help desk during regular business hours to assist County in reporting problems and in providing first-line support in the use and operation of the Software Applications and the System.
  2. Internet Email: Noble shall maintain an email address for the express purpose of providing customer support to County. Noble shall maintain email support during regular business hours to assist County in reporting errors and in providing first-line support in the use and operation of the Software Applications and System.
- (b) Noble and County agree that County's point of contact for maintenance and support of the Software Applications and the System will be designated employees from the County, whose names will be provided on execution and updated as necessary thereafter. The designees will act as the support liaisons between Noble and County.

3.10 Noble shall at all times make a reasonable effort to provide modifications or additions to correct errors in the Software Applications and the System as reported by County. Upon notification from County as an error, whether via telephone or email, Noble will assign a priority level to the error, which priority level will be determined according to the following criteria:

- (a) Priority A: an error that results in the Software Applications and the System being substantially or completely nonfunctional or inoperative. Noble agrees to provide a correction or "work-around" solution to Priority A errors within two (2) business days after such errors is first reported to Noble, and a full solution to such errors no later than fifteen (15) business days after said error is first reported to Noble.
- (b) Priority B: an error that results in the Software Applications and the System operating or performing other than as represented, but which does not have a material adverse impact on the performance of the Software Applications and the System. Noble agrees to provide a correction or "work-around" solution to Priority B errors within seven (7) days after said error is first reported to Noble, and a full solution to such errors no later than thirty (30) business days after said error is first reported to Noble.

Noble will make all reasonable efforts to correct any and all errors or provide a work-around solution for each priority level and, if a work-around is the immediate solution, will make reasonable efforts to provide a final resolution to the error.

3.11 Noble shall continue in its efforts to improve the Software Applications and provide on-going updates with research without: (i) impacting the Software Application's evidence-based efficacy; (ii) changing the Software Applications' operational usability (requiring additional training); (iii) requiring the County to incur greater costs than outlined in this contract; or (iv) putting at risk the statistical validity of the Software Applications. Noble's improvements may be cosmetic, may include added features, and may involve the release of new versions of the original tool or modifications thereto.

3.12 Noble shall provide on-going review (at least yearly) of business rules to determine if they are meeting standards of Evidence Based Practices (EBP).

3.13 Noble shall provide automated case plan training.



- 3.14 Noble shall transfer historical Data from County's current Probation Assessment and CMS. Transferred data will include users, subjects, and the PACT, PACT-Pre, ONA, and SRA assessments. Case plans and case plan data will not be migrated.
- 3.15 Noble shall provide for County's benefit backup procedures and safeguards for any Data stored on the provided System. Noble shall implement and maintain all Security policies, processes, procedures, software and actions as needed to protect and preserve County's Data information, and County's use thereof, including but not limited to the following: (i) regular, complete backup of County's Data information as well as all other data needed to maintain the full functionality of the Software Applications together with County's use of the Data information therewith; (ii) reliable recovery processes and software; (iii) user identification and password encryption procedures and software; (iv) effective regularly updated firewall software; (v) secure and encrypted Data information communications systems and procedures; and (vi) a secure operations center based on current industry standards that is sufficient to prevent the loss and/or disclosure or transmission of Data information to unauthorized third parties. Access to the Software Applications will be with an encrypted and valid user identification and password combination. Password protected information shall be accessible only to authorized County users. County Data information shall not be communicated, transferred, or conveyed to any other entity, including but not limited to, State or Federal agencies, without the express written permission of the County.
- 3.16 Noble shall provide real time, on-demand, bi-directional data integration with CMS to auto-populate the assessment tools and capture resulting analysis within CMS.
- 3.17 Noble shall provide Continuous Quality Improvement (CQI) plan.
- 3.18 Noble shall provide to the County the ability to customize the System to include additional tools implemented by the County.
- 3.19 Noble shall provide a program that takes data from multiple sources and allows you to report against that data set that accesses standard reports, and training to run reports and provide statistical information.
- 3.20 Noble shall provide support with internal booster training – either trainers, curriculum, and/or training/test site for CQI.
- 3.21 Noble shall provide the ability for sending electronic signatures.
- 3.22 Noble shall provide the option of sending case plans to offenders via an encrypted email.
- 3.23 Noble shall at all times maintain the Software Applications, the System and the Data information, as well as maintain any Customization, Implementation, and Integration performed for County in relation thereto. Noble's performance of its Maintenance obligations shall be undertaken and completed in such a way that the operation and functionality of the

Software Applications and the System shall not be negatively affected during regular business hours. All Maintenance required hereby will be at Noble's sole expense and will not be an additional cost to the County.

#### 4. COUNTY'S SCOPE OF TASKS

County is responsible for the following:

- 4.1 County is responsible for meeting the environmental site requirements set forth below, in a timely manner and at the County's cost:
- (a) County will provide the necessary hardware, operating system software, web server software, and database software for the installation of the Licensed Software, as agreed between Noble and the County. Implementation services such as installation, implementation, and training will be executed as a separate Work Order referencing this Agreement.
  - (b) County will provide an appropriate environment during normal business hours, upon reasonable notice, for Noble's on-site support personnel and training staff to work at County's site.
  - (c) County will provide network related services to allow Noble to access the Licensed Software.
  - (d) County will provide County operating systems and platforms with Microsoft Internet Explorer 9 or better, as well as Adobe Reader for the viewing of any reports.
- 4.2 County will make available all on-site training facilities required by County to accomplish all necessary Training.
- 4.3 County understands and acknowledges that Noble will not be liable for network-related problems not under Noble's control, and attributable to the operation of the Software Applications on the County's network.
- 4.4 County understands that Noble does not warranty that the functions, contained in the Software Applications, will be entirely uninterrupted or error free.

#### 5. CONSIDERATION

- 5.1 In consideration of Noble's performance, County agrees to pay Noble in accordance with the following provisions:
- (a) License and Other Fixed Price Fees. The charges for Licensed Software and other fixed price items are or shall be set forth in Exhibit D or Work Orders and payable as set forth therein or, if not set forth, payable as follows: one-third due upon execution of this Agreement or the applicable Work Order, one-third upon delivery, and the balance payable upon acceptance.
  - (b) T&M Fees. Noble will only be paid or reimbursed for travel expenses or per diem which Noble incurs in providing services and work under this Agreement with the written consent of County.

- (c) No Additional Consideration. Except as expressly provided in this Agreement, Noble 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, Noble 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 or 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 Noble for all services and work to be performed under this Agreement shall not exceed eight thousand seven hundred nineteen and no/100 Dollars (hereinafter referred to as "contract limit"). County expressly reserves the right to deny any payment or reimbursement requested by Noble for services or work performed which is in excess of the contract limit.

5.2 A service charge of one and one-half percent (1.5%) per month, or the highest lawful interest rate, whichever is lower, will be applied to all amounts which are not paid within fifteen (15) business days after notice is given that payment is overdue.

## 6. FUNDING LIMITATION

6.1 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 Noble 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 Section 30 (Amendments).

## 7. TAXES

7.1 County agrees to indemnify and hold Noble harmless from any taxes including, but not limited to, sales tax, use tax, withholding, value-added or similar tax, and property taxes that may be assessed or levied by any jurisdiction arising out of the performance of this Agreement but excluding any taxes based upon or determined by reference to Noble's income or level of business activity ("Taxes"). It is understood and agreed that the prices and estimates set forth in this Agreement do not include provision for Taxes and Noble does not collect such taxes for deposit with any federal, state or local taxing authority.

## 8. ACCEPTANCE

8.1 Unless the parties agree otherwise herein or in a Work Order, the Licensed Software will be considered accepted upon delivery. In the event that there are multiple sites, acceptance of the Licensed Software, or any part thereof, at the first such delivery shall constitute acceptance at all subsequent sites.

8.2 If a Work Order calls for installation and acceptance testing, the parties agree to the following procedure.

- (a) Following proper installation of the Licensed Software by Noble pursuant to the Work Order, unless specified in the Work Order, the parties will perform the acceptance tests provided by Noble for the purpose of determining that the Licensed Software performs substantially in accordance with its Documentation or, in the case of new software development, substantially in accordance with County's functional requirements for such software. If the Licensed Software (including newly developed software) substantially performs the acceptance tests, County shall notify Noble within five (5) days, and the date of notification shall be the acceptance date. Failure to do so will constitute acceptance. Testing will be scheduled in accordance with the implementation plan set forth in the Work Order.
- (b) If County fails to notify Noble of any material defect within thirty (30) days of installation of the Licensed Software, the Licensed Software shall be deemed accepted by County.
- (c) If County notifies Noble in writing and demonstrates to Noble that the Licensed Software has not substantially met the acceptance tests, Noble shall make corrections and modifications to the Licensed Software so as to meet such criteria. The charges for corrections and modifications to Fixed Price components are included in the Fixed Price established therefor. The charges for corrections and modifications to T&M components will be charged on a T&M basis.
- (d) Corrections and modifications will be accomplished on a timely basis to make the Licensed Software ready for retesting by County. The parties shall repeat the acceptance tests as soon as reasonably requested by Noble and County shall notify Noble within five (5) days after such tests have been conducted if and when the Licensed Software is accepted. In the event that the Licensed Software (or parts thereof) does not pass the applicable acceptance test(s), County may issue a conditional acceptance, upon terms acceptable to both parties, which will permit utilization in production and continued correction by Noble of any defects. If County declines to grant conditional acceptance, then County may terminate this Agreement in accordance with terms and conditions of this Agreement. Otherwise, the date of the last such test shall be the acceptance date.
- (e) In the event the Licensed Software (or parts thereof) does not pass the applicable acceptance test(s), but is utilized by County in a production environment for a period of thirty (30) consecutive business days, it shall be deemed accepted for all purposes as if it had successfully passed such acceptance test(s).

## 9. TITLE

- 9.1 Noble shall retain title to all Intellectual Property rights embodied in the Licensed Software, Documentation and any modification or enhancement of the Licensed Software or Documentation made under this Agreement or any Work Order ("Noble Property").

- 9.2 County shall retain title to all Intellectual Property rights embodied in non-Licensed software, and any modification or enhancement thereof, that is provided or developed solely by County without any violation of the terms of this Agreement and which is not Noble Property ("County Property").
- 9.3 The parties agree that performance hereunder may result in the development of new concepts, software, methods, techniques, processes, adaptations and ideas, in addition to the Noble Property and/or County Property, which may be delivered by Noble or embedded in Noble's deliverables ("New Property"). The parties agree that ownership of New Property shall be determined on a case by case basis prior to the execution of a Work Order requiring the delivery of any New Property and such ownership shall be clearly detailed in such Work Order. The parties intend for the designation of ownership in the Work Order to be consistent with (but not necessarily bound by) the following guidelines:
- (a) New Property which contains County's proprietary or confidential information shall belong to County to the extent it contains such information; and
  - (b) New Property which contains Noble's proprietary or confidential information shall belong to Noble to the extent it contains such information; and
  - (c) Any other New Property for which ownership is not allocated by Work Order or by the above default rules shall belong to Noble.
- 9.4 In as far as Data entered into the system by County, such Data shall be deemed to be owned by County. Noble shall have right to use such Data in an anonymous fashion, for the purposes of research and validation. Any other commercial use requires notice and County's approval. Anonymous Data is defined, for the purposes of this section, to refer to Data that have had all personally identifying characteristics removed, destroyed, obfuscated, or otherwise rendered de-identifying of the person to whom they relate. County shall have the right to rescind its approval for Noble's right to use the Data at any time, either through oral or written notice.

## 10. LICENSE

- 10.1 In accordance with the terms herein, Noble grants to County, and County accepts from Noble, a personal, non-exclusive and non-transferable (except as otherwise specifically provided by this Agreement) hosting service license to use the current version of Licensed Software (or any other version provided to County by Noble) on Noble's hosting servers for the term of this Agreement.
- 10.2 Software shall be able to be used at any of County's business premises and/or in the course of business via an internet serviced device, such as a tablet, without the prior approval of Noble. The Licensed Software may not be used at other locations unless Noble is notified and approves otherwise, such approval not to be unreasonably withheld. Use of the Licensed Software may be subsequently transferred to other locations maintained by County, provided (1) the total number of User Positions at which the Licensed Software is used by County does not exceed the number of User Positions specified in Exhibit A; and (2) County provides Noble with written notice within thirty (30) days after such transfer.

- 10.3 The Licensed Software shall be used only for the processing of County's own business. County shall not permit any third party to use the Licensed Software. Authorized agents or contractors of County acting for County shall not be considered "third parties."
- 10.4 County shall not use or allow the use of the Licensed Software (a) for rental or in the operation of a service bureau; (b) through terminals located outside County's business premises by persons not employed by or under contract with County; or (c) as on-line control equipment in the operation of a nuclear facility, aircraft navigation or aircraft communication systems, or air traffic control machines.
- 10.5 County shall not, either directly, or through a third party, reverse engineer, disassemble or decompile any software provided by Noble, or make any attempt in any fashion except as specifically provided in this Agreement to obtain the source code to the Licensed Software, nor shall County reproduce or distribute, the Licensed Software or Hosting Site, or any part thereof, as part of any other software program. Further, County may not create any software program which makes direct function calls to any libraries which are Third Party Materials and which are designated as unavailable for such purposes in Exhibit B.
- 10.6 County is strictly prohibited from installing any third party software on Noble's servers without the express written authorization of Noble.
- (a) In the event that the authorized third party software disrupts Noble's server, Noble shall have the right to temporarily disable the software until the problem can be resolved.
- (b) In the event that the County installs third party software on Noble's servers without the express written authorization of Noble's, Noble shall have the right to terminate the Services without notice pursuant to Section 10 herein.

## 11. COUNTY PROPERTY

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

## 12. TERMINATION

- 12.1 Each party has the right to terminate this Agreement and license(s) granted herein:
- (a) Upon written notice if the other party, its officers or employees violate any material provision of this Agreement including, but not limited to, Section 25 ("Confidentiality") or Section 5 ("Consideration"), provided that the non-breaching party is in substantial compliance with the terms of this Agreement. The default notice must be clearly identified as such, be referenced to this Section 12, and specify in detail the basis for the alleged material breaches. Except with regard to breaches of confidentiality (which shall be ten [10] days) and payment obligations (which shall be fifteen [15] business

days), the breaching party shall have thirty (30) days from receipt of such notice to correct such breach;

- (b) In the event the other party (i) terminates or suspends its business, (ii) becomes subject to any bankruptcy or insolvency proceeding under federal or state statute or (iii) becomes insolvent or becomes subject to direct control by a trustee, receiver or similar authority.

- 12.2 In the event of termination by reason of County's failure to substantially comply with any material part of this Agreement, or upon any act which shall give rise to Noble's right to terminate, Noble shall have the right, at any time, to terminate the license(s), deactivate the Hosting Site, and take immediate possession of the Licensed Software and documentation and all copies wherever located, without additional demand or notice. Within five (5) days after termination of the license(s) as provided above, County will return to Noble any Licensed Software in the form provided by Noble or as modified by County at County's cost only if the license is terminated due to County's default or breach, or upon request by Noble destroy the Licensed Software and all copies, and certify in writing that they have been destroyed. Termination under this Article shall not relieve County or Noble of obligations regarding Confidentiality (Section 25).
- 12.3 Without limiting any of the above provisions, in the event of termination as a result of County's failure to substantially comply with any of its material obligations under this Agreement, County shall continue to be obligated for any payments due. Termination of the license(s) shall be in addition to and not in lieu of any equitable or other remedies available to Noble.
- 12.4 Notwithstanding anything contained in this Section 12 to the contrary, once County has made full payment of the license fee for any particular term of hosting the Licensed Software, Noble cannot terminate the license granted hereunder with respect to such program, except for an uncured breach by County of the terms of Section 10 ("License"), a breach of Section 12.6, Section 17 ("Compliance with Law"), Section 25 ("Confidentiality") or Section 29 ("Assignment").
- 12.5 Notwithstanding anything herein to the contrary, in the event of termination of this Agreement by County for cause prior to acceptance of the Licensed Software, the software licenses granted hereunder shall be canceled and County shall discontinue use of the Licensed Software and Hosting Site and return all copies thereof to Noble and Noble shall refund any license fees paid. Upon such termination and return of the Licensed Software and repayment, the parties hereto shall be discharged of all further liabilities under this Agreement except for such liabilities arising out of the continuing obligations of Section 25 (Confidentiality) and Section 14 (Non-solicitation of Employees).
- 12.6 Notwithstanding anything herein, pursuant to Section 10 (Licenses) and 17 (Compliance With Laws), Noble may immediately terminate this Agreement and withdraw the Hosting Site and the provision of any services in the event that a court of competent jurisdiction determines that:

- (a) County used or allowed, authorized or assisted the Hosting Site to be used for illegal purposes; or
- (b) County downloaded or installed a Third Party Material to its Hosting Site without the express written authorization of Noble.

12.7 Under circumstances other than those set forth above, this Agreement may be terminated by County upon the giving of thirty (30) days advance written notice of an intention to terminate to Noble.

12.8 Noble agrees that if the Software Applications stop functioning or become unusable through no fault of the County or systemic failure of the internet, but because the failures within Noble's control or environment, Noble will refund to County, within sixty (60) days of the above referenced failure, the pro-rated amount of the current Quarter's pre-paid, hosting services fees, for County's loss of service access.

12.9 Upon termination for any reason, Noble agrees to return all such Data information in Microsoft SQL backup file format with entire database structure including database logs to the County at the expiration or termination of this Agreement, as well as to destroy any and all backup copies and prior versions and/or formats of the Data information obtained from County using Noble's Software Applications products and services.

### 13. WARRANTIES

13.1 Noble warrants that, for thirty (30) days following County acceptance of the Licensed Software furnished under this Agreement or the deliverables provided pursuant to a Work Order hereunder (the "Warranty Period"), the Licensed Software, exclusive of Third Party Materials, will substantially conform to the accepted level of performance as set forth in Section 8.2(a) ("Acceptance"). To the extent that County notifies Noble in writing during the applicable Warranty Period of any material non-conformity of the Licensed Software or deliverables with such acceptance level, and provides Noble with (a) County's estimation of the severity of such non-conformity and (b) such printouts, typescripts, documentation and other details of such non-conformity as Noble shall request, Noble's sole obligation is to use reasonable commercial measures to remedy or provide a work-around for such defect. In determining the timing of its response, Noble shall be entitled to take into account the severity of the defect. In the event that Noble determines that the Licensed Software is not defective in such respect, County shall reimburse Noble for its services at Noble's then current consulting rate for such services.

13.2 To the extent its agreement with a supplier of Third Party Materials permits, Noble shall pass through to County any performance warranty relative to such Third Party Materials; provided, however, that Noble makes no additional or supplemental warranty with respect thereto.

13.3 Noble warrants that it has, and on the date of acceptance of the Licensed Software will have, the full right and authority to grant this license and that neither this license nor performance under this Agreement does or shall conflict with any other agreement or obligation to which Noble is a party or by which it is bound.



- 13.4 Noble warrants that its technical and consulting services will be of a professional quality conforming to generally accepted industry standards and practices. During the thirty (30) day period following completion of any such services, Noble shall, upon receipt of written notice from County describing a breach of the foregoing Warranty in such reasonable detail as is requested by Noble, perform the services described in such written notice so as to conform to generally-accepted industry standards and practices.
- 13.5 These warranties do not cover defects or nonperformance due to causes and products external to the Licensed Software, and are not valid with respect to such defects or nonperformance.
- 13.6 If the Licensed Software is not in substantial compliance with the warranties contained in this Agreement at the end of the Warranty Period, Noble shall extend the Warranty Period until the Licensed Software is brought into such compliance.
- 13.7 If any modification is made to the Licensed Software by County without Noble's approval, this Warranty shall immediately be terminated with respect to such modified software. Correction for difficulties or defects traceable to County's unauthorized modifications or unauthorized systems changes shall be billed to County at Noble's standard time and material charges.
- 13.8 Noble makes no warranties with regard to Third Party Materials. Along with the transfer of title, Noble agrees to transfer and assign to County all of Noble's rights and interests in and with respect to all purchase agreements for Third Party Materials being supplied under this Agreement between Noble and other manufacturers and distributors, subject to any limitations set forth in such agreements relating to such transfers. Upon request by County, all purchase agreements will be submitted to County for prior approval. Noble will execute any documents or instruments reasonably necessary to effect the transfer and assignment of Noble's rights and interests thereunder. Noble makes no representation as to the effectiveness, adequacy or enforceability of such transferred rights.
- 13.9 ALTHOUGH THE WARRANTIES IN THIS SECTION 13 ARE LIMITED WARRANTIES COUNTY SHALL ADDITIONALLY RECEIVE ALL STATUTORY WARRANTIES INCLUDING THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO AGENT, CONTRACTOR OR EMPLOYEE OF NOBLE, EXCEPT NOBLE'S DULY AUTHORIZED REPRESENTATIVE, IS AUTHORIZED TO ALTER OR EXCEED THE WARRANTY OBLIGATIONS OF NOBLE AS SET FORTH HERE.
14. NON-SOLICITATION OF EMPLOYEES
- 14.1 Each party agrees that, during the period of performance of this Agreement, and for a period of one (1) year following completion of the period of performance, it will not solicit for employment or hire the employees of the other party without such other party's prior written consent thereto. The period of performance for purposes of this Section 14 shall begin on the effective date of this Agreement and end upon the earlier to occur of: (1) final payment by County of any fees due under Section 5 ("Consideration") of this Agreement; or (2) termination of this Agreement and the license(s) granted hereunder.

- 14.2 If either party hires any personnel of the other party who are or have been assigned to perform work for the party seeking to hire such personnel under this Agreement, the hiring party shall pay the other party a fee for the additional benefit obtained thereby. If such hire occurs during the performance of this Agreement or within one (1) year following completion of the period of performance, the hiring party shall pay an amount equal to one hundred percent (100%) of the total first year compensation paid to such personnel.
15. **INDEPENDENT CONTRACTOR STATUS.** Noble and County agree that Noble is an independent contractor. All acts of Noble, its agents, officers, employees, and volunteers, relating to the performance of this Agreement, shall be performed as independent contractors, and not as agents, officers, or employees of County. Noble, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in this Agreement, Noble has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer, or employee of Noble is to be considered an employee of any department or division of Inyo County. It is understood by both Noble 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) Noble shall determine the method, details, and means of performing the work and services to be provided by Noble under this Agreement;
  - (b) Noble 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 Noble in fulfillment of this Agreement;
  - (c) Noble, its agents, officers, employees, and volunteers are, and at all times during the term of this Agreement shall, represent and conduct themselves as independent contractors, and not as employees of any department or division of Inyo County.
16. **NONDISCRIMINATION.** During the performance of this Agreement, Noble, its agents, officers, employees, and volunteers 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. Noble and its agents, officers, employees, and volunteers 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. Noble 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 the Fair Employment and Housing Act.
17. **COMPLIANCE WITH LAW**
- 17.1 This Agreement is made subject to any laws, regulations, orders or other restrictions on the export of the Licensed Software, or information about the Licensed Software, which may be imposed at any time or from time to time by the United States Government. County (i) shall comply with all such laws, regulations, permits, orders and other restrictions to the extent that they are applicable to County and (ii) shall not, directly or indirectly, export or re-export (as

defined in the United States Export Administration Regulations) the Licensed Software or any information about the Licensed Software to any country for which the United States Government, or any agency thereof, requires an export license or other governmental approval without first obtaining the same. Noble shall comply with all applicable statutes with respect to labor employed, and shall protect and indemnify County against any payroll taxes or contributions imposed with respect to employees of Noble or any subcontractor by any applicable law dealing with old age benefits, FICA, unemployment compensation, health insurance and related subjects. Noble shall be liable for and hereby represents to County that all payments and obligations to subcontractors and suppliers will be timely made and satisfied at all times during the term of this Agreement, and agrees to indemnify County for any loss to County relating to Noble's violation of the provisions of this Article, provided, however, Noble is given prompt written notice of any claim or action and control, authority, information, and reasonable assistance for defense or settlement thereof; and provided further that County shall not settle such claim, suit or proceeding without the written consent of Noble.

17.2 County acknowledges and agrees that Noble may elect at its sole discretion to monitor the activities of the County on its Hosted Site. County agrees to use the Services and the Website for legal purposes only. In the event that Noble becomes aware or reasonably believes, in its sole discretion, that the Website is being used for illegal purposes, Noble shall be entitled to immediately terminate the Agreement and the Services without notice in addition to any remedies to which it may be entitled under law.

## 18. INDEMNIFICATION

18.1 County agrees to indemnify and save harmless Noble from and against all losses, damages, actions or causes of action, suits, claims, demands, penalties and interest arising in connection with or out of any illegal use of the Licensed Software or the Hosting Site by County employees, agents, or officers.

18.2 Noble agrees to indemnify and save harmless County from and against all losses, damages, actions or causes of action, suits, claims, demands, penalties and interest arising in connection with or from any actions of Noble.

## 19. APPLICABLE LAW

19.1 The law of the State of California applies to this Agreement and the rights, duties, and obligations of the parties hereto. The state and or federal courts in Inyo County, California, shall have exclusive jurisdiction of any action arising out of or relating to this Agreement and each of the parties further irrevocably agrees to waive any objection to the venue of any such suit or proceeding in Inyo County, California, or to in personam jurisdiction, provided that service is effective.

19.2 The United Nations Convention on Contracts for the International Sale of Goods is excluded from application hereto.

## 20. PROPRIETARY RIGHTS INDEMNITY

- 20.1 Noble shall defend, indemnify and hold harmless County with respect to any claim, demand, cause of action, or liability, including attorneys' fees, to the extent that such is based upon a claim that the Licensed Software, (including any deliverables pursuant to Work Orders) used by County within the scope of the licenses granted hereunder, infringes any United States, UK, Hong Kong, France, Germany, Switzerland, or Japan patent, any United States copyright, or any trade secret or other intellectual property rights; provided that Noble is promptly notified in writing of such claim and provided further that Noble shall have the exclusive right to control such defense. The acceptance, by Noble, of tender of defense of any claim shall give Noble the right to select legal counsel and manage the defense, provided that County shall be given regular notice and opportunity to participate in such litigation, at County's expense. In no event shall County settle any claim, lawsuit or proceeding without Noble's prior written approval. County may, at its own expense, assist in such defense if it so chooses.
- 20.2 In the event of any such claim, litigation or threat thereof, Noble, at its sole option and expense, may procure for County the right to continue to use the Licensed Software or, at its sole option and expense, may replace or modify the Licensed Software with functionally-compatible, non-infringing software. If such settlement or such modification is not reasonably practical in the opinion of the parties, after giving due consideration to all factors including financial expense, or if a temporary or final injunction or other judgment is obtained against Noble with respect to the Licensed Software or any part thereof, Noble may cancel this Agreement or the applicable Work Order and the licenses granted thereunder upon fifteen (15) days written notice to County and shall refund to County the unamortized portion of the amounts paid to Noble by County for the development and/or acquisition thereof based upon five (5) year straight-line depreciation, such depreciation to commence on the date on which the Licensed Software was first accepted hereunder. Upon such repayment Noble shall be discharged of all further liability hereunder except for the obligations set forth in Section 20.1 hereof.
- 20.3 To the extent its agreement with a vendor of Third Party Materials permits, Noble will pass through to County any proprietary rights for indemnification relating to such Third Party Materials; provided, however, that Noble gives no additional or supplemental indemnity with respect thereto.
- 20.4 The foregoing states the entire liability of Noble and the exclusive remedies of County with respect to the infringement of any proprietary rights by the Licensed Software or any parts thereof, and County hereby expressly waives any other such liabilities.

## 21. GENERAL INDEMNITY

- 21.1 The parties acknowledge that it may be necessary for the employees of each to be present at the facilities of the other for extended periods of time. The parties agree upon reasonable notice to provide the employees of the other with all reasonable facilities and services to assure that their services may be properly performed.

21.2 Each party will instruct its employees to conform to the internal regulations and procedures of the other party while on such party's premises.

21.3 Additionally, each party agrees to indemnify, defend, and save harmless the other party, its officers, agents and employees from any and all claims and losses accruing or resulting to any person, firm, or corporation for personal injury or tangible property damage, but only to the extent of the negligence and/or willful misconduct of the indemnifying party.

21.4

## 22. INSURANCE

22.1 Noble certifies, and will provide evidence thereof at County's request, that Noble maintains:

22.2 A standard policy covering the obligations of Noble for Worker's Compensation Insurance pursuant to the laws of California or such other jurisdiction as applicable.

22.3 Insurance covering bodily injury and property damages in the amount of not less than \$1,000,000 for each occurrence and \$3,000,000 aggregate. Such coverage may be achieved through a combination of commercial general liability and umbrella liability policies.

22.4 Automobile liability insurance covering all owned, non-owned, and hired vehicles with a combined single limit for bodily injury and property damage of not less than \$2,000,000 per accident.

## 23. LIMITATION OF LIABILITY

23.1 Noble shall not be liable to County for cumulative direct damages greater than the lesser of (1) the total amount having then been paid by County to Noble under this Agreement, or (2) if such damages arise in connection with the performance of any Work Order, the amount having then been paid by County to Noble under such Work Order; provided, however, that the limitation of this sentence shall not apply to Noble's obligations set forth in Section 20 ("Proprietary Rights Indemnity") or Section 21 ("General Indemnity") of this Agreement or for such liabilities covered by the insurance defined in Section 22 ("Insurance") in which case the limits of such coverage will govern.

23.2 Except where the limitation does not apply as described above, County releases Noble from all obligations, liability, claims, or demands relating to the Licensed Software and Documentation and this Agreement in excess of the limitations provided for in this Section 23. The parties acknowledge that the limitation set forth in this Section is integral to the amount of fees levied in connection with the license of the Licensed Software and Documentation and the services rendered hereunder and that, were Noble to assume any further liability other than as set forth herein, such fees would of necessity be set substantially higher.

23.3 County further agrees that it shall have no claim or cause of action against third party licensors to Noble of any Third Party Materials which are embedded in the Licensed Software, except to the extent such rights have been duly assigned to County.

#### 24. FORCE MAJEURE

24.1 Neither party shall be liable for default or delay caused by any occurrence beyond its reasonable control or beyond the reasonable control of any subcontractor, including but not limited to fires, strikes, accidents, acts of God and subcontractor defaults. In the event Noble should be delayed in the completion of any portion of the work by reason of any such occurrence, the time within which the portion of work is to be completed shall be extended by the period of such delay, but no such extension shall be made unless a notice thereof is presented by Noble to County in writing within ten (10) working days after the occurrence of such delay and no payment shall be made by County to Noble for any expenses incurred by Noble by reason of any such default or delay.

24.2 In addition to the foregoing, Noble shall not be liable for default or delay caused by Noble's efforts to comply with U.S. Government export control laws and regulations. In the event that U.S. Government export control laws or regulations change after the execution of this Agreement and such changes inhibit or prohibit Noble from performing under this Agreement, Noble shall not be liable for its non-performance.

#### 25. CONFIDENTIALITY

25.1 Any information which a party considers to be confidential or proprietary shall, if tangible, be marked as such or, if communicated orally, designated at the time and promptly confirmed in writing as such. Information which is so marked or designated and confirmed, and the Licensed Software regardless of form or designation, shall be "Confidential Information" under this Agreement. Information received by Noble while on the premises of County shall be deemed Confidential Information whether marked as such or not.

25.2 Confidential Information shall be held in trust and used only as necessary for the performance of this Agreement. Confidential Information shall be treated with the same degree of care to avoid disclosure to third parties as is used with respect to the recipient party's own Confidential Information, but not less than a reasonable degree of care.

25.3 Confidential Information shall be disclosed only to those employees or agents of a party who have a need to know such information and are under a binding obligation of confidentiality with respect to any such information received. Confidential Information shall not be disclosed to any other third party without the prior written consent of the party disclosing the Confidential Information. The party receiving Confidential Information shall defend, indemnify and save the disclosing party harmless from and against any and all damages, including reasonable attorneys' fees, sustained as a result of the unauthorized use or disclosure of the disclosing party's Confidential Information.

25.4 Confidential Information shall not include information (a) at the time of its disclosure was known to the party to whom disclosed; (b) is already in the public domain or becomes generally known or published without breach of this Agreement; (c) is lawfully disclosed by a third party free to disclose such information; (d) is independently developed by the party to whom disclosed without reference to or use of the Confidential Information; or (d) is legally required to be disclosed provided that the party so compelled shall promptly notify the other party so as to permit such other party to appear and object to the disclosure and further provided that such disclosure shall not change or diminish the confidential and/or proprietary status of the Confidential Information.

25.5 Noble further 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 Noble in the course of providing services and work under this Agreement, shall be privileged, restricted, or confidential. Noble agrees to keep confidential all such information and records. Disclosure of such confidential, privileged, or protected information shall be made by Noble only with the express written consent of the County. Any disclosure of confidential information by Noble without the County's written consent is solely and exclusively the legal responsibility of Noble in all respects.

Notwithstanding anything in the Agreement to the contrary, names of persons receiving public social services are confidential and are to be protected from unauthorized disclosure in accordance with Title 45, Code of Federal Regulations Section 205.50, the Health Insurance Portability and Accountability Act of 1996, and Sections 10850 and 14100.2 of the Welfare and Institutions Code, and regulations adopted pursuant thereto. For the purpose of this Agreement, all information, records, and data elements pertaining to beneficiaries shall be protected by the provider from unauthorized disclosure.

25.6 Information that may be properly disclosed to a third-party pursuant to California Government Code Section 6250 et seq. does not constitute Confidential Information. Such non-confidential information shall not include public records exempt from disclosure by express provisions of law and neither Contractor nor County shall disclose public records exempt from disclosure by express provisions of law.

25.7 Notwithstanding the restrictions of this Section 25, Noble or County may announce the parties' relationship in a press release subject to the reasonable written approval of the other party.

## 26. DISPUTE RESOLUTION

26.1 Except as provided in Section 27 below and unless otherwise required in order to comply with deadlines under the law, neither party shall file an action or institute legal proceedings with respect to any dispute, controversy, or claim arising out of, relating to, or in connection with, this Agreement until: (a) the aggrieved party has given the other party written notice of its grievance setting forth the nature of the dispute, the amount involved, if any, and the remedy desired, and delivering same by certified mail; (b) the other party has failed to provide a prompt and effective remedy; (c) the aggrieved party has requested senior executives for both

parties to meet and discuss the matter in order to consider informal and amicable means of resolution; and (d) either such meeting failed to occur within fifteen (15) days after such request or the meeting did not produce a mutually satisfactory resolution of the matter.

## 27. INJUNCTIVE RELIEF

27.1 Noble and County hereby acknowledge and agree that damages at law and the dispute resolution provisions of Section 26 ("Dispute Resolution") may be inadequate remedies for the breach of Sections 8 ("Title"), Section 9 ("License"), Section 14 ("Non-Solicitation of Employees") or Section 25 ("Confidentiality") hereof, and, accordingly, Noble and County hereby agree that Noble and/or County may be entitled to temporary and permanent injunctive or other equitable relief with respect to any such breach without the necessity of proving actual damages or posting a bond or other security or resorting to the provisions of Section 13 ("Warranties"). The rights set forth in this Section 27 shall be in addition to any other rights which the parties may have at law or in equity.

27.2 Noble and County agree that if any portion of this Injunctive Relief provision is found to be over-reaching or unenforceable, that these provisions can, nonetheless, be applied to the extent found to be enforceable.

## 28. NOTICES

28.1 Unless stated otherwise, all notices, approvals, consents, requests, demands, or other communication to be given to either party shall be in writing by any means where receipt is acknowledged, including electronic transmission, except by facsimile transmission, and shall be effective on the date of receipt thereof. If undeliverable, or if receipt is not acknowledged by the receiving party, such communication shall be effective ten (10) days from the date mailed or sent.

28.2 Such communication shall be addressed to the parties, except Default Notices and Notices of Termination which shall be addressed to the parties and their legal counsel, at their respective addresses set forth below, or at any other address that each party shall provide to the other in writing:

### **NOBLE'S LEGAL COUNSEL:**

Noble Software Group, LLC  
Post Office Box 990891  
Redding, CA 96099  
Attention: Chief Financial Officer

Lasher Holzapfel Sperry & Ebberson  
601 Union St., Suite 2600  
Seattle, WA 98101-4000  
Attention: Ronald E. Braley

### **COUNTY OF INYO:**

Probation Department  
Post Office Drawer "T"  
Independence, CA 93526  
Attention: Admin. Legal Secretary

Office of County Counsel  
Post Office Drawer "M"  
Independence, CA 93526  
Attention: County Counsel



## 29. ASSIGNMENT

29.1 This Agreement shall be binding upon and inure to the benefit of the parties' respective successors and permitted assigns. Neither party may assign this Agreement and/or any of its rights and/or obligations hereunder without the prior written consent of the other party and any such attempted assignment shall be void, except that either party may assign this Agreement and/or any of its rights and/or obligations hereunder, upon written notice to the other party to another entity in the event of that party's merger or consolidation with another entity, without the consent of the other party, provided that the assignee is capable of fulfilling and intends to fulfill the obligations of the assigning party under this Agreement. Each party may terminate this Agreement in case there is a change of control of the other party, but shall be entitled to any refund whatsoever and all amounts owing shall be immediately paid. The term, "Change of Control" shall be limited to an ownership change of more than Fifty Percent (50%) during any twelve-month period. In the case of a governmental agency as County, the term, "change of control" shall be limited to a complete transfer of the responsibilities of such agency for which this Software has been licensed to another agency.

## 30. AMENDMENT

30.1 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.

## 31. SEVERABILITY.

31.1 In the event any one or more of the provisions of this Agreement shall be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall remain in effect and the Agreement shall be read as though the offending provision had not been written or as the provision shall be determined by such court to be read.

## 32. GENERAL

32.1 This Agreement constitutes the complete and exclusive statement of the Agreement between the parties as relates to the subject matter and supersedes all proposals, oral or written, and all other representations, statements, negotiations and undertakings relating to the subject matter.

32.2 No change in, addition to, or waiver of any of the provisions of this Agreement shall be binding upon either party unless in writing signed by an authorized representative of such party. No waiver by either party of any breach by the other party of any of the provisions of this Agreement shall be construed as a waiver of that or any other provision on any other occasion.

- 32.3 Upon termination or other expiration of this Agreement, each party shall forthwith return to the other all papers, materials and other properties of the other held by it for purposes of execution of this Agreement.
- 32.4 The captions used in this Agreement are inserted for the convenient reference of the parties and in no way define, limit or describe the scope or intent of this Agreement or any part hereof.
- 32.5 Dates or times by which Noble is required to make performance under this license shall be postponed automatically for so long as Noble is prevented from meeting them by causes which are County's responsibility.
- 32.6 The prevailing party in a controversy or claim shall have the right to collect its reasonable expenses incurred in enforcing this Agreement, including reasonable attorney's fees.
- 32.7 This Agreement may be executed in two original counterparts, which together shall constitute the same Agreement, but only one of which need be produced to evidence the Agreement.
- 32.8 The parties further agree that the rights and obligations set forth in Sections 5 ("Consideration"), 7 ("Taxes"), 9 ("Title"), 14 ("Non-Solicitation of Employees"), 17 ("Compliance with Law"), 19 ("Applicable Law"), 20 ("Proprietary Rights"), 21 ("General Indemnity"), 23 ("Limitation of Liability"), 25 ("Confidentiality"), 26 ("Dispute Resolution"), 27 ("Injunctive Relief"), 28 ("Notices"), and subsections 32.1, 32.2, 32.3, 32.4, and 32.7 of Section 32 ("General") shall survive the completion or termination of this Agreement for any reason and enforcement thereof shall not be subject to any conditions precedent.
- 32.9 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.

IN WITNESS WHEREOF, each party has caused a counterpart original of this Agreement to be executed as of the date first written above by its authorized representative.

ACCEPTED BY:

COUNTY OF INYO

NOBLE SOFTWARE GROUP, LLC.

Signed:



Signed:



Print Name:

KEVIN D CARUNCHIO

Print Name:

Aaron Pictor

Title:

COUNTY ADMINISTRATOR

Title:

Chief Financial Officer

Date:

10-15-2015

Date:

10/12/15

**EXHIBIT A: LICENSED SOFTWARE**

**1.0 LICENSED SOFTWARE**

All listed Licensed Software will be delivered by a Hosting Site, created and maintained by Noble for the purposes of delivering the Licensed Software to County via the Internet.

**PRODUCT**

**DESCRIPTION**

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**2.0 USE OF LICENSED SOFTWARE**

The Licensed Software listed above may be used in accordance with the Software License Agreement to support the following:

Up to **[XXNumber of users]** named users

**EXHIBIT B: THIRD PARTY MATERIALS**

**1.0 OVERVIEW**

Noble is not responsible for the procurement and delivery of any third party materials to the County as part of the execution of this Agreement.

**EXHIBIT C: SCHEDULE OF FEES**

Not to exceed annually \$8,719.00 (eight thousand seven hundred nineteen and no/100 dollars) broken down as set forth below.

| HOSTED NOBLE ASSESSEMENT PLATFORM                        | PRICE          |
|--|----------------|
| License Maintenance                                      | Not Applicable |
| Annual Hosting Fee<br>Adult and Juvenile, up to 16 Users | \$5,719        |
| Software Integration                                     | Included       |
| Software Customization                                   | Not Applicable |
| Training (up to 16 Staff)                                |                |
| - Juvenile Cutover Training                              | Included       |
| - Juvenile Assessment Refresher (1/2 Day)                | \$2,200        |
| - Adult Cutover Training (2 Days)                        | Included       |
| - Adult Assessment Refresher (1/2 Day)                   | Included       |
| Quality Assurance  |                |
| - IRR Site Access, 8 Users                               | \$800          |
| Consulting   | Included       |

**EXHIBIT D: PRICING**

## 1. LICENSED SOFTWARE

The Licensee may use the following Software at the locations listed/defined in this Agreement.

## 2. PRICING FOR LICENSED SOFTWARE

Pricing for **16 named users** is set at **\$5,719 annually, plus \$800 annually for IRR Site access for 16 users**

HOSTING FEE FOR ASSESSMENT PLATFORM WITH ONE ASSESSMENT TOOL, CASE PLANNING, AND INTEGRATION OF USER, SUBJECT, AND CHARGE HISTORY. Fee also includes IRR Site access.

Pricing for the listed components below is \$6,519 USD.

| PRODUCT  | PRICE   |
|--|---------|
| 16 named users, hosted, Noble Assessment Platform for Adult and Juvenile | \$5,719 |
| IRR Site Access, 16 Users  | \$ 800  |

## 3. INSTALLATION/DELIVERY SERVICES/ACCEPTANCE

In order to ensure the effectiveness and success of the delivery services, Noble will assign the following project team:

(1) County Representative

(1) Systems Engineer

(1) Application Consultant

At times additional Noble staff may be required for the current tasks, and equally at other times the number of Noble staff working on a project may be less than that indicated above. The team members listed above will charge their time as agreed by County and Noble toward the services agreement as listed above.

## 3.1 ACCEPTANCE CRITERIA

- (a) ASSESSMENT PLATFORM - All Active Enterprise Component software (as delineated above) is deemed accepted after delivery to County and five days of the system running without a Priority A error.
- (b) CASE PLANNING - The Case Planning module will be considered accepted following all case plan reports allowed for are able to be completed and be saved for a subject.
- (c) INTEGRATION - Integration will be deemed accepted after the system successfully imports data for all areas of the application for which County has implemented integration methods per the documentation.

The system may not be considered acceptable if it encounters any unresolved Priority A problems as defined in the Noble Software Maintenance Agreement. County will accept the system in parts as indicated in the project plan and in conjunction with the system test plans.

#### 4. TRAINING PROGRAM

In an attempt to meet County's training requirements the following schedule has been constructed to offer a purchased block of training for classes up to 25 students. The following classes are currently available:

| PRODUCT                       | DAYS  |
|-------------------------------|-------|
| Juvenile Assessment Refresher | ½ Day |
| Adult Assessment Refresher    | ½ Day |

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#### PRICING – PAYMENT SCHEDULE

The schedule of payment is as follows:

Full contract amount will be invoiced at delivery. All invoices are net thirty (30).

**EXHIBIT E: SAMPLE WORK ORDER**

NOBLE SOFTWARE GROUP, LLC  
WORK ORDER

Addendum Reference (Date/Number/Code) \_\_\_\_\_

This addendum specifies additional software licenses and services to be provided by Noble Software Group, LLC ("Noble") to Inyo County ("County"). All terms and conditions of the Software License Agreement between Noble and County, dated ("Agreement"), apply to this addendum as if the same had been set forth herein in full. In case of conflict between the terms of this addendum and the Agreement, the terms of this addendum shall prevail.

**1. PROJECT IDENTIFICATION AND DESCRIPTIVE INTRODUCTION**

**2. DESCRIPTION OF SOFTWARE LICENSED AND/OR SERVICES**

2.1 Software and Authorized Sites. The software under this addendum consists of the following components which may be used at the following authorized sites:

2.2 Services. The implementation or other services consist of the following:

**3. FEES**

3.1 Software. Individual prices and the total price are as follows:

3.2 Maintenance on Software

Quarterly rate: \$\_\_\_\_\_ or the following percentage of the software list price:  
\_\_\_\_\_%

Maintenance is under the terms of the \_\_\_\_\_ agreement dated  
\_\_\_\_\_ ("Maintenance Agreement")

3.3 Services (e.g., installation, support, training). Services will be performed on either a time-and-materials-and-expenses basis or a fixed price basis at the following rates/fees:

3.4 Hardware (if any)

3.5 Expenses (e.g., travel, meals, hotel)

**4. PAYMENT SCHEDULE (WHEN ARE TO BE PAID)**



4.1 Software license fees

4.2 Services

4.3 Maintenance fees

4.4 Hardware

5. PROJECT PLAN/PERFORMANCE SCHEDULE

6. ACCEPTANCE CRITERIA AND PROCEDURE. UNLESS SPECIFIED BELOW, ACCEPTANCE IS UPON DELIVERY.

7. WARRANTY

8. PREREQUISITES/COUNTY TASKS

9. OWNERSHIP OF THE DELIVERABLES

ACCEPTED:

County

Noble Software Group, LLC

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**AMENDMENT NUMBER ONE (1) TO  
AGREEMENT BETWEEN THE COUNTY OF INYO AND  
NOBLE SOFTWARE GROUP, LLC  
FOR THE PROVISION OF INDEPENDENT CONTRACTOR SERVICES**

WHEREAS, the County of Inyo (hereinafter referred to as "County") and Noble Software Group, LLC \_\_\_\_\_, of Redding, California \_\_\_\_\_ (hereinafter referred to as "Contractor"), have entered into an Agreement for the Provision of Independent Contractor Services dated October 12, 2015, on County of Inyo Standard Contract No. \_\_\_\_\_, for the term from October 12, 2015 to June 30, 2016.

WHEREAS, County and Contractor do desire and consent to amend such Agreement as set forth below;

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

County and Contractor hereby amend such Agreement as follows:

The option to extend the term of the Contract dated October 12, 2015 for the usage of on-line assessment software by the Probation Department, expiring on June 30, 2016, shall be extended for another year (July 1, 2016 through June 30, 2017) with the same terms and at a cost of \$5,719 for the annual hosting fee (up to 16 Users) and \$800 for quality assurance (IR Site Access, 8 Users).

The effective date of this Amendment to the Agreement is July 1, 2016.

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

AMENDMENT NUMBER ONE (1) TO  
AGREEMENT BETWEEN THE COUNTY OF INYO AND  
NOBLE SOFTWARE GROUP, LLC  
FOR THE PROVISION OF INDEPENDENT CONTRACTOR SERVICES

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

COUNTY OF INYO

By: [Signature]  
Dated: 06-10-2016

CONTRACTOR

By: [Signature]  
Signature  
Aaron Picton / Noble  
Type or Print  
Dated: 5/12/16

APPROVED AS TO FORM AND LEGALITY:

[Signature]  
County Counsel

APPROVED AS TO ACCOUNTING FORM:

[Signature]  
County Auditor

APPROVED AS TO PERSONNEL REQUIREMENTS:

[Signature]  
Personnel Services

APPROVED AS TO RISK ASSESSMENT:

[Signature]  
County Risk Manager

**AMENDMENT NUMBER TWO (2) TO  
AGREEMENT BETWEEN THE COUNTY OF INYO AND  
NOBLE SOFTWARE GROUP, LLC  
FOR THE PROVISION OF INDEPENDENT CONTRACTOR SERVICES**

WHEREAS, the County of Inyo (hereinafter referred to as "County") and Noble Software Group, LLC \_\_\_\_\_, of Redding, California (hereinafter referred to as "Contractor"), have entered into an Agreement for the Provision of Independent Contractor Services dated original: 10/12/15 // Amendment #1 7/1/16 \_\_\_\_\_, on County of Inyo Standard Contract No. \_\_\_\_\_, for the term from July 1, 2016 \_\_\_\_\_ to June 30, 2017 \_\_\_\_\_.

WHEREAS, County and Contractor do desire and consent to amend such Agreement as set forth below;

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

County and Contractor hereby amend such Agreement as follows:

The option to extend the term of the original contract dated October 12, 2015 and amended (Amendment #1) on July 1, 2016 for the time period of July 1, 2016 through June 30, 2017 for the usage of on-line assessment software by the Probation Department, expiring on June 30, 2017, shall be extended for another year (July 1, 2017 through June 30, 2018) with the same terms and at a cost \$5,719 for the annual hosting fee (up to 16 Users) and \$800 for quality assurance (IRR Site Access, 8 Users).

The effective date of this Amendment to the Agreement is July 1, 2017\_\_\_\_\_.

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

ORIGINAL

AMENDMENT NUMBER TWO (2) TO  
AGREEMENT BETWEEN THE COUNTY OF INYO AND  
NOBLE SOFTWARE GROUP, LLC  
FOR THE PROVISION OF INDEPENDENT CONTRACTOR SERVICES

9<sup>TH</sup> IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEALS THIS  
DAY OF May, 2017.

COUNTY OF INYO

CONTRACTOR

By: [Signature]

By: [Signature]

Signature

Dated: 05-19-2017

Aaron Pix

Type or Print

Dated: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY:

[Signature]  
County Counsel

APPROVED AS TO ACCOUNTING FORM:

[Signature]  
County Auditor

APPROVED AS TO PERSONNEL REQUIREMENTS:

[Signature]  
Personnel Services

APPROVED AS TO RISK ASSESSMENT:

[Signature]  
County Risk Manager

**AMENDMENT NUMBER THREE (3) TO THE  
AGREEMENT BETWEEN THE COUNTY OF INYO AND  
NOBLE SOFTWARE GROUP, LLC,  
FOR THE PROVISION OF INDEPENDENT CONTRACTOR SERVICES**

WHEREAS, the County of Inyo (hereinafter referred to as "County") and NOBLE SOFTWARE GROUP, LLC, of Redding, California (hereinafter referred to as "Contractor"), entered into an Agreement for the Provision of Independent Contractor Services dated October 12, 2015, and thereafter amended the Agreement on July 1, 2016 and again on July 1, 2017, hereby amends the contract for the term from July 1, 2018 to June 30, 2019 unless sooner terminated.

WHEREAS, County and Contractor do desire and consent to amend such Agreement as set forth below:

WHEREAS, the parties have twice previously amended such Agreement to extend the contract term and now wish to amend the Agreement and extend it from July 1, 2018 to June 30, 2019.

The effective date of this Amendment to the Agreement is July 1, 2018.

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

**AMENDMENT NUMBER THREE (3) TO THE  
AGREEMENT BETWEEN THE COUNTY OF INYO AND  
NOBLE SOFTWARE GROUP, LLC.  
FOR THE PROVISION OF INDEPENDENT CONTRACTOR SERVICES**

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

**COUNTY OF INYO**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

08-08-2018

**CONTRACTOR**

By: \_\_\_\_\_

Signature

Aaron P. Dixon Sr. Noble

Type or Print

Dated: \_\_\_\_\_

7/30/18

APPROVED AS TO FORM AND LEGALITY:



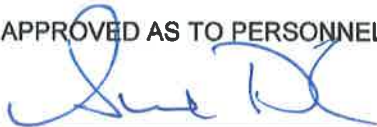
County Counsel

APPROVED AS TO ACCOUNTING FORM:



County Auditor

APPROVED AS TO PERSONNEL REQUIREMENTS:



Personnel Services

APPROVED AS TO RISK ASSESSMENT:



County Risk Manager

**AMENDMENT NUMBER FOUR (4) TO  
AGREEMENT BETWEEN THE COUNTY OF INYO AND  
NOBLE SOFTWARE GROUP, LLC  
FOR THE PROVISION OF INDEPENDENT CONTRACTOR SERVICES**

WHEREAS, the County of Inyo (hereinafter referred to as "County") and NOBLE SOFTWARE GROUP, LLC \_\_\_\_\_ of Redding, California (hereinafter referred to as "Contractor"), have entered into an Agreement for the Provision of Independent Contractor Services dated October 12, 2015, and titled Software Hosting Agreement for the term from October 12, 2015 to June 30, 2016.

WHEREAS, County and Contractor do desire and consent to amend such Agreement as set forth below;

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

County and Contractor hereby amend such Agreement as follows:

The parties have previously amended such Agreement three times to extend the contract term and now wish to amend the Agreement and extend the term from July 1, 2019 to June 30, 2020 with the same terms and at a cost \$5,719 for the annual hosting fee (up to 16 Users) and \$800 for quality assurance (IRR Site Access, 8 Users).

The effective date of this Amendment to the Agreement is July 1, 2019.

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



**AMENDMENT NUMBER FOUR (4) TO**  
**AGREEMENT BETWEEN THE COUNTY OF INYO AND**  
**NOBLE SOFTWARE GROUP, LLC**  
**FOR THE PROVISION OF INDEPENDENT CONTRACTOR SERVICES**

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

COUNTY OF INYO

By: \_\_\_\_\_

Dated: 6/14/19

CONTRACTOR

By: \_\_\_\_\_

Signature

Aaron Picton / Noble

Type or Print

Dated: 5/13/2019

APPROVED AS TO FORM AND LEGALITY:

Grace Muehle  
County Counsel

APPROVED AS TO ACCOUNTING FORM:

[Signature]  
County Auditor

APPROVED AS TO PERSONNEL REQUIREMENTS:

[Signature]  
Personnel Services

APPROVED AS TO RISK ASSESSMENT:

[Signature]  
County Risk Manager

**AMENDMENT NUMBER FIVE (5) TO  
AGREEMENT BETWEEN THE COUNTY OF INYO AND  
NOBLE SOFTWARE GROUP, LLC  
FOR THE PROVISION OF INDEPENDENT CONTRACTOR SERVICES**

WHEREAS, the County of Inyo (hereinafter referred to as "County") and  
NOBLE SOFTWARE GROUP, LLC, of Redding, California  
(hereinafter referred to as "Contractor"), have entered into an Agreement for the Provision of Independent  
Contractor Services dated October 12, 2015, on County of Inyo Standard  
Contract No. 117, for the term from October 12, 2015 to June 30, 2016.

WHEREAS, County and Contractor do desire and consent to amend such Agreement as set forth  
below;

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

County and Contractor hereby amend such Agreement as follows:

The parties have previously amended such Agreement four times to extend the contract term and now wish to amend the  
Agreement and extend the term from July 1, 2020 to June 30, 2021 with the same cost of \$5,719 for the annual hosting fee (up  
to 16 Users) and \$800 for quality assurance (IRR Site Access, 8 Users)

The parties wish to amend the Agreement to reflect the following changes:

Remove Section 23 - Limitation of Liability

Add a Section 22.5 - Inyo County, its officers, officials, employees, and volunteers are covered as additional insureds on the  
general liability policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor  
including materials, parts, or equipment furnished in connection with such work or operations.

The effective date of this Amendment to the Agreement is July 1, 2020.

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

**AMENDMENT NUMBER FIVE (5) TO  
AGREEMENT BETWEEN THE COUNTY OF INYO AND  
NOBLE SOFTWARE GROUP, LLC  
FOR THE PROVISION OF INDEPENDENT CONTRACTOR SERVICES**

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

**COUNTY OF INYO**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

**CONTRACTOR**

By: \_\_\_\_\_

  
Signature

Aaron Picton  
Type or Print

Dated: 5/13/2020


**APPROVED AS TO FORM AND LEGALITY:**

  
County Counsel

**APPROVED AS TO ACCOUNTING FORM:**

  
County Auditor

**APPROVED AS TO PERSONNEL REQUIREMENTS:**

  
Personnel Services

**APPROVED AS TO RISK ASSESSMENT:**

  
County Risk Manager



# County of Inyo



## Probation

### CONSENT - ACTION REQUIRED

**MEETING:** July 7, 2020

**FROM:** Jeffrey Thomson

**SUBJECT:** Ratify and approve Amendment #1 for Maintenance Contract with Siemens Industry Inc. for the Juvenile Center Fire Suppression System

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**RECOMMENDED ACTION:**

Request Board ratify and approve Amendment No. 1 to the Agreement between the County of Inyo and Siemens Industry Inc. of Fresno, CA, to extend the Agreement from July 1, 2020 to June 30, 2021 with the same cost of \$7,242 paid in two installments per year for the semi-annual inspection and maintenance of equipment services (fire and safety equipment – fire suppression system), contingent upon the Board's approval of the Fiscal Year 2020-2021 Budget, and authorize the Chairperson to sign, contingent upon all appropriate signatures being obtained.

**SUMMARY/JUSTIFICATION:**

SimplexGrinnel originally installed the electronic controls and Life Safety system (fire suppression system) in the Inyo County Jail and Juvenile Center. SimplexGrinnel held the maintenance contract on this equipment every year due to the proprietary nature of the entire system and the need for Simplex replacement parts. In 2003, Inyo County Juvenile Center received a proposal from the Fire Safety Division of Siemens to maintain, repair and inspect our Fire and Life Safety Equipment. Siemens was able to offer a maintenance contract because nearly all of their technical service personnel were former SimplexGrinnel employees, specifically the technicians who provided service to our facility. Siemens could also acquire the needed parts and provide a twenty-four (24) hour response window under any circumstance. Siemens has been awarded the maintenance contracts since 2003 at the Jail and Juvenile Center and the service technicians are familiar with the Juvenile Center's fire suppression system.

Both parties would like to extend the Agreement from July 1, 2020 to June 30, 2021.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

N/A

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

The Board could choose not to extend the Agreement with Siemens; however, this is not recommended as Siemens has been reliable and knowledgeable with our system; provides the emergency response we need; and is currently under a maintenance contract with the County to inspect the Jail. Yearly inspections and maintenance of the fire suppression system is required on a facility that houses juveniles.

**OTHER AGENCY INVOLVEMENT:**

N/A

**FINANCING:**

Historically, funding has been provided through Operating Transfers in Other Financing Sources (Revenue Code 4998) from Facilities Trust and will be budgeted in the Juvenile Institutions Budget (023100), Expenditure Object Code 5265 - Professional Services. We anticipate in FY 20-21 that this funding will continue; however, if it does not, we will work with the Budget Team to cover the cost of this contract.

**ATTACHMENTS:**

1. Siemens Contract
2. Siemens Contract Amendment 1

**APPROVALS:**

|                  |                               |
|------------------|-------------------------------|
| Krystal Phillips | Created/Initiated - 6/16/2020 |
| Darcy Ellis      | Approved - 6/18/2020          |
| Krystal Phillips | Approved - 6/18/2020          |
| Marshall Rudolph | Approved - 6/18/2020          |
| Amy Shepherd     | Approved - 6/18/2020          |
| Sue Dishion      | Approved - 6/26/2020          |
| Aaron Holmberg   | Approved - 6/29/2020          |
| Krystal Phillips | Approved - 6/29/2020          |
| Jeffrey Thomson  | Final Approval - 6/30/2020    |

**AGREEMENT BETWEEN COUNTY OF INYO  
AND SIEMENS INDUSTRY INC.  
FOR THE PROVISION OF MAINTENANCE OF FIRE SUPPRESSION SYSTEM SERVICES**

**INTRODUCTION**

WHEREAS, the County of Inyo (hereinafter referred to as "County") may have the need for the maintenance of equipment \_\_\_\_\_ services of Siemens Industry Inc. of Fresno, California \_\_\_\_\_ (hereinafter referred to as "Contractor"), and in consideration of the mutual promises, covenants, terms, and conditions hereinafter contained, the parties hereby agree as follows:

**TERMS AND CONDITIONS**

**1. SCOPE OF WORK.**

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

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

**2. TERM.**

The term of this Agreement shall be from July 1, 2017 \_\_\_\_\_ to June 30, 2020 \_\_\_\_\_ 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-one thousand seven hundred twenty-six 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 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 ensure 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 or as otherwise may be required. 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.sam.gov>.

#### **6. OFFICE SPACE, SUPPLIES, EQUIPMENT, ETC.**

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

#### **7. COUNTY PROPERTY.**

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

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

#### **8. WORKERS' COMPENSATION.**

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

#### **9. INSURANCE.**

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



**10. STATUS OF CONTRACTOR.**

All acts of Contractor, its agents, officers, and employees, relating to the performance of this Agreement, shall be performed as independent contractors, and not as agents, officers, or employees of County. Contractor, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in Attachment A, Contractor has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer, or employee of the Contractor is to be considered an employee of County. 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 further 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. Any disclosure of confidential information by Contractor without the County's written consent is solely and exclusively the legal responsibility of Contractor in all respects.

Notwithstanding anything in the Agreement to the contrary, names of persons receiving public social services are confidential and are to be protected from unauthorized disclosure in accordance with Title 45, Code of Federal Regulations Section 205.50, the Health Insurance Portability and Accountability Act of 1996, and Sections 10850 and 14100.2 of the Welfare and Institutions Code, and regulations adopted pursuant thereto. For the purpose of this Agreement, all information, records, and data elements pertaining to beneficiaries shall be protected by the provider from unauthorized disclosure.

**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. AMENDMENT.**

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

**24. NOTICE.**

Any notice, communication, amendments, additions, or deletions to this Agreement, including change of address of either party during the terms of this Agreement, which Contractor or 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 - Juvenile Center           | Department     |
| P.O. Box 306/201 Mazourka Canyon Road | Street         |
| Independence, CA 93526                | City and State |

|                                     |                |
|-------------------------------------|----------------|
| Contractor:                         |                |
| Siemens Industry Inc.               | Name           |
| 4273 West Richert Avenue, Suite 110 | Street         |
| Fresno, CA 93722                    | City and State |

**25. ENTIRE AGREEMENT.**

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

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**AGREEMENT BETWEEN COUNTY OF INYO  
AND SIEMENS INDUSTRY INC.  
FOR THE PROVISION OF MAINTENANCE OF FIRE SUPPRESSION EQUIPMENT SERVICES**


IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEALS  
THIS 27th DAY OF June, 2017.

**COUNTY OF INYO**

By: Mark Tillman

Dated: 6/27/17

**CONTRACTOR**

By:   
Signature Larry Hillman  
**Branch Manager**  
**Siemens Industry**

Print or Type Name

Dated: 5/2/17

**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  
SIEMENS INDUSTRY INC.**

**AND** \_\_\_\_\_  
**FOR THE PROVISION OF** MAINTENANCE OF FIRE SUPPRESSION EQUIPMENT **SERVICES**

**TERM:**

**FROM:** July 1, 2017 **TO:** June 30, 2020

**SCOPE OF WORK:**

As noted in the Advantage Services Proposal Agreement, specifically pages 3-8, see attached and as noted below:

1. An annual inspection will be performed in November or December of each year with an annual maintenance visit to be scheduled prior to June 30 of each year.
2. Deputy Director Mark Olsen or his Designee is to be notified (at least one week in advance) when an inspection and/or a maintenance visit is scheduled.

Contact and Site Location:  
Inyo County Juvenile Center  
201 Mazourka Canyon Road  
Independence, California  
Deputy Chief Mark Olson or his Designee  
Phone Numbers: 760/872-4005 or 760/872-4111

2. TERM. (page 1) is replaced in its entirety with:

**2. TERM**

A. Initial Term. The term of this Agreement shall be from July 1, 2017 to June 30, 2020, unless sooner terminated as provided below.

B. Extension of Term. In addition to the initial term, there will be one (1) option for the County or Contractor to extend the Agreement as follows:

- (a) from July 1, 2020 through June 30, 2021; and,
- (b) from July 1, 2021 through June 30, 2021.

The option to extend may be exercised by either party, in the manner and on the terms and conditions hereinafter provided. The initial term and successive options to extend, if any, shall not exceed an aggregate total of more than sixty (60) months.

C. Exercising Options to Extend. The option to extend the term of the Agreement for the periods identified above may be exercised by the County or Contractor in the manner and on the terms and conditions below:

**1. Terms and Conditions:**

- (a) neither Contractor nor County has terminated or cancelled this Agreement for any reason.
- (b) neither Contractor nor County is in default on any term or condition of this Agreement.

**2. Manner in Which Options Can Be Exercised:**

- (a) County or Contractor may exercise the option to extend no earlier than three (3) months before expiration of the initial term of this Agreement or any extension thereof.
- (b) The County or Contractor must notify the other party in writing of its intent to exercise an option at least thirty (30) days before expiration of the contract, or an extension thereof.
- (c) The option to extend shall be upon the same terms and conditions as stated in this Contract.

## 1 Overview

### 1.1 Executive Summary

You have made a significant investment in your facility and its complex technical systems which are critical to the profitability and productivity of your overall business. This proposed service solution, our Service Agreement, will proactively serve to protect that substantial investment through a program of planned service tasks by our trained technical staff.

This Service Agreement has been specifically developed to support your unique facility, and the services provided herein will help you in achieving your facility goals.

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### 1.2 Current Situation

Inyo County has requested that Siemens prepare a Service Agreement for the 2017-2020 fiscal years, with two single year options, 2020-2021 and 2021-2022.

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### 1.3 Siemens Capabilities & Commitment to Our Customers

Siemens Industry, Inc. is the leading single-source provider of cost-effective facility performance solutions for the comfort, life safety, security, energy efficiency and operation of some of the most technically advanced buildings in the world. Siemens is pleased to offer this proposal for technical support services to your facility. For more than 150 years, Siemens has built a culture of long-term commitment to customers through innovation and technology. We are confident that we have the capabilities to meet your critical facility needs today and in the future, and we look forward to the opportunity to serve you.

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## 2 Service Solution

### 2.1 FIRE ALARM & LIFE SAFETY SERVICES

#### Approach

##### Gold Level

The Gold Advantage Services plan is designed for customers looking for a partner to ensure dependability and high reliability from their facility systems. When emergencies occur, Siemens experts will provide online or phone support within 2 hours and if this cannot remedy the emergency, arrive on site within 4 hours for critical components 24 hours a day every day. For non-emergency technical problems or for non-critical components, Siemens will be on site within 24 hours 24x7.

#### Performance

Designed for customers requiring absolute confidence in their fire system operation, Advantage Services Performance Package provides you with the world-class expertise available only from Siemens, the world leader in fire alarm systems and system maintenance. Our single-minded objective is to make certain your system is

operating properly 24-hours a day, 7 days a week and that your system is in full compliance with local and national requirements. The Performance Package is also specially designed to reduce false alarms and help minimize system downtime and costly repairs.

The Performance includes code-compliant testing of your fire alarm system, smoke detector sensitivity testing, and a detailed written report following each service visit.

### 2.1.1 Customer Support Services

#### Written Report of All Services Performed

We will complete a service report for each visit detailing the purpose of the call and summarizing the work that was performed.

### 2.1.2 Technical Support Services

#### Emergency Online/Phone Response: Monday through Sunday, 24 Hours per Day

System and software troubleshooting and diagnostics will be provided remotely to enable faster response to emergency service requests and to reduce the costs and disruptions of downtime. Siemens will respond within 2 hours, Monday through Sunday, 24 hours per day, including Holidays, upon receiving notification of an emergency, as determined by your staff and Siemens. Where applicable, Siemens will furnish and install the necessary online service technology to enable Siemens to remotely access into your system, through a dedicated telephone line that will be provided by the facility. Where remote access is not available to the system, Siemens will provide phone support to your staff to assist in their onsite troubleshooting and diagnosis. If remote diagnostics determine a site visit is required to resolve the problem, a technician can be dispatched. Labor for dispatch is covered in this agreement.

#### Emergency Onsite Response: Monday through Sunday, 24 Hours per Day

Emergency Onsite Response will be provided to reduce the costs and disruptions of downtime when an unexpected problem does occur. Siemens will provide this service between scheduled service calls and respond onsite at your facility within 4 hours for critical emergencies, or within 24 hours for non-emergency conditions, Monday through Sunday, 24 hours per day, including Holidays, upon receiving notification of an emergency. Critical emergencies, as determined by your staff and Siemens, are failures at a system or panel level that would result in the loss of the operation of an entire section of a building or place the facility at high risk. Non-emergency conditions, as determined by your staff and Siemens, are failures at an individual component level resulting in minimal impact to the overall operation of the facility. Non-emergency conditions, as determined by your staff and Siemens, may be incorporated into the next scheduled service call.

#### Fire Life Safety System Testing and Inspection

As designated agent, we will perform the required annual test and inspection of the fire alarm system using NFPA-recommended test frequencies and methods as guidelines. We will provide the necessary documentation to satisfy the AHJ and to maintain your Certificate of Occupancy. A list of equipment covered under this service agreement, along with test frequencies, can be found in the List of Maintained Equipment section of this service agreement.



Smoke Detector Sensitivity Testing

Smoke Detector Sensitivity testing will be performed, in accordance with NFPA 72 guidelines, using the manufacturer's recommended test methods and a UL approved testing device. We will provide an analysis of the test results, along with recommendations for detectors that require either cleaning or replacement.

3 Service Implementation Plan

3.1 Fire Alarm & Life Safety Services On-site Response Time and Call Windows

|  | Gold   |
|--|--|
| Attribute                                      |  |
| Emergency On/In/Phone Response                 | 2 hours  |
| Response time - onsite for critical components | 4 hours – labor to appear onsite is covered within this response time coverage*  |
| Response time - onsite for non-emergency       | 24 hours – labor to appear onsite is covered within this response time coverage* |
| Hours of Service                               | 24 x 7 – Response time labor is covered within these hours of service            |
| Window for Call Handling                       | 24 x 7 – Availability to take your call  |

\*Labor and material costs for troubleshooting problems and repairing or replacing components are handled separately. These costs can be billable or included within your Repair and Replacement Coverage. See [List of Maintained Equipment](#) to view your current Repair and Replacement Coverage.

### 3.2 Maintained Equipment Table



Siemens Building Technologies  
Service Agreement

| Equipment Category  | Equipment SubCategory | Equipment                       | Qty | Serial Number | Location | Mfg/Model |
|---|-----------------------|---------------------------------|-----|---------------|----------|-----------|
| Fire Alarm System   | Field Peripherals     | Tamper Switch Monitor Module    | 1   |               |          |           |
| Services (Times per year): Test and Inspection (2)                                    |                       |                                 |     |               |          |           |
| Fire Alarm System   | Field Peripherals     | Waterflow Switch Monitor Module | 2   |               |          |           |
| Services (Times per year): Test and Inspection (2)                                    |                       |                                 |     |               |          |           |
| Fire Alarm System   | Field Peripherals     | Strobe                          | 34  |               |          |           |
| Services (Times per year): Test and Inspection (1)                                    |                       |                                 |     |               |          |           |
| Fire Alarm System   | Field Peripherals     | Speakers or Horns with Strobes  | 13  |               |          |           |
| Services (Times per year): Test and Inspection (1)                                    |                       |                                 |     |               |          |           |
| Fire Alarm System   | Detectors             | Conventional Smoke Detector     | 39  |               |          |           |
| Services (Times per year): Sensitivity Testing-Manual (0.5) - Test and Inspection (1) |                       |                                 |     |               |          |           |
| Fire Alarm System   | Field Peripherals     | Conventional Pull Station       | 4   |               |          |           |
| Services (Times per year): Test and Inspection (1)                                    |                       |                                 |     |               |          |           |
| Fire Alarm System   | Detectors             | Conventional Heat Detectors     | 53  |               |          |           |

Advantage Services

Services (Times per year): Test and Inspection (1)

|                   |                        |                         |   |
|-------------------|------------------------|-------------------------|---|
| Fire Alarm System | Control & Annunciation | Siemens MXL Alarm Panel | 1 |
|-------------------|------------------------|-------------------------|---|

Services (Times per year): Test and Inspection (1)

|                   |                        |                                  |   |
|-------------------|------------------------|----------------------------------|---|
| Fire Alarm System | Control & Annunciation | Remote Control/Annunciator Panel | 1 |
|-------------------|------------------------|----------------------------------|---|

Services (Times per year): Test and Inspection (1)

### 3.3 Service Team

An important benefit of your Service Agreement derives from having the trained service personnel of Siemens Industry, Inc. familiar with your building systems. Our implementation team of local experts provides thorough, reliable service and scheduling for the support of your system.

The following list outlines the service team that will be assigned to the service agreement for your facility.

Your Assigned Team of Service Professionals will include:

Danelle Henry - Sales Account Representative manages the overall strategic service plan based upon your current and future service requirements.

Shawn Neylon - Service Account Engineer or Team Leader is responsible for ensuring that our contractual obligations are delivered, your expectations are being met and you are satisfied with the delivery of our services.

Ryan Mastoskie - Service Operations Manager is responsible for managing the delivery of your entire support program and service requirements.

Lucy Arroyo - Service Coordinator is responsible for scheduling your planned maintenance visits, and handling your emergency situations by taking the appropriate action.

Office: 559-276-2600

Toll Free 24/7 Service Line: 1-866-SBT-PROS

4 Siemens Industry, Inc.

4.1 Signature Page and Investment By and Between:

Siemens Industry, Inc.  
4273 West Richert Ave. Suite 110  
Fresno, CA 93722  
Danelle Henry  
(559) 916-8448

County of Inyo  
201 Mazourka Canyon Rd  
Independence, CA 93526  
Alisa Lembke  
760-872-7075

Services shall be provided at 201 Mazourka Canyon Rd, Independence, CA 93526.

Siemens Industry, Inc. shall provide the services as outlined in the attached proposal dated 03/22/2017 and the attached terms and conditions.

Duration: This agreement shall remain in effect for an Initial Term of 3 Years beginning 07/01/2017. This agreement has the option of two, one year renewals of 7/1/2020- 6/30/2021 and 7/1/2021- 6/30/2022. If extended to year 4 and/or 5, the yearly maintenance amount will be negotiated prior to the expiration of the prior year.

Initial Term Investments:

|        |                          |                  |                                       |
|--------|--------------------------|------------------|---------------------------------------|
| Year 1 | 07/01/2017 to 06/30/2018 | \$7,242 annually | paid \$3,621 semi-annually in advance |
| Year 2 | 07/01/2018 to 06/30/2019 | \$7,242 annually | paid \$3,621 semi-annually in advance |
| Year 3 | 07/01/2019 to 06/30/2020 | \$7,242 annually | paid \$3,621 semi-annually in advance |

Applicable sales taxes are excluded from the investments. The pricing quoted in this proposal are firm for 30 days.

Proposal accepted by:

Proposal submitted by:

County of Inyo

Danelle Henry  
Account Executive  
Siemens Industry, Inc.

Mark Tiller 6/27/17  
Signature Date

Signature Date

P.O.# \_\_\_\_\_

Brian Klee Larry Hillman  
Branch Manager  
Siemens Industry

"PO Number will be used for Internal Purposes Only"

Customer purchase order included as an attachment to this agreement and will be referenced on invoices.

Branch Manager

Or

Customer purchase order not required. Invoices will be approved and processed with signature of authorized customer representative.

[Signature] 5/2/17  
Signature Date

The Customer acknowledges that when approved by the Customer and accepted by Siemens Industry, Inc., this Proposal and the Standard Terms and Conditions of Sale for Services, (together with any other documents incorporated into the forgoing) shall constitute the entire agreement of the parties with respect to its subject matter. BY EXECUTION HEREOF, THE SIGNER CERTIFIES THAT (S)HE HAS READ ALL OF THE TERMS AND CONDITIONS AND DOCUMENTS, THAT SIEMENS INDUSTRY, INC. OR ITS REPRESENTATIVES HAVE MADE NO AGREEMENTS OR REPRESENTATIONS EXCEPT AS SET FORTH THEREIN, AND THAT (S)HE IS DULY AUTHORIZED TO EXECUTE THE SIGNATURE PAGE ON BEHALF OF THE CUSTOMER.

**AMENDMENT NUMBER ONE (1) TO  
AGREEMENT BETWEEN THE COUNTY OF INYO AND  
SIEMENS INDUSTRY INC.  
FOR THE PROVISION OF INDEPENDENT CONTRACTOR SERVICES**

WHEREAS, the County of Inyo (hereinafter referred to as "County") and Siemens Industry Inc, of Fresno, California (hereinafter referred to as "Contractor"), have entered into an Agreement for the Provision of Independent Contractor Services dated July 1, 2017, on County of Inyo Standard Contract No. 116, for the term from July 1, 2017 to June 30, 2020.

WHEREAS, County and Contractor do desire and consent to amend such Agreement as set forth below;

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

County and Contractor hereby amend such Agreement as follows:

The option to extend the term of the Contract # 116 dated July 1, 2017 for the maintenance services of the fire suppression system/equipment at the Juvenile Center, expiring on June 30, 2020, shall be extended for a 3rd year (July 1, 2020 through June 30, 2021) in the amount of \$3,621 to be billed and paid semi-annually and in advance (total amount for Year 3: \$7,242).

The effective date of this Amendment to the Agreement is July 1, 2020.

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

**AMENDMENT NUMBER ONE (1) TO  
AGREEMENT BETWEEN THE COUNTY OF INYO AND  
SIEMENS INDUSTRY INC.  
FOR THE PROVISION OF INDEPENDENT CONTRACTOR SERVICES**

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

**COUNTY OF INYO**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

**CONTRACTOR** DocuSigned by:

By: Paul Salonia

01782703314410  
Paul Salonia

\_\_\_\_\_  
Type or Print

Dated: 6/12/2020

**APPROVED AS TO FORM AND LEGALITY:**

Shore Choshla  
County Counsel

DocuSigned by:  
Miniam Borrelli 5/2020  
0188516700148E

**APPROVED AS TO ACCOUNTING FORM:**

Christie Martindale  
County Auditor

**APPROVED AS TO PERSONNEL REQUIREMENTS:**

Sue DeShon By: Mouca Turk  
Personnel Services

**APPROVED AS TO RISK ASSESSMENT:**

Ramon Abolmberg  
County Risk Manager



# County of Inyo



## Health & Human Services - Health/Prevention

### DEPARTMENTAL - ACTION REQUIRED

**MEETING:** July 7, 2020

**FROM:** Rhiannon Baker

**SUBJECT:** Ratify Agreement between Inyo County and California Department of Health Care Services for Medi-Cal County Inmate Program (MCIP) Administrative Services

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**RECOMMENDED ACTION:**

Request Board ratify and approve agreement 20-10220 between the County of Inyo and the California Department of Health Care Services (DHCS) for the reimbursement of administrative costs for the Medi-Cal Inmate Program (MCIP) to DHCS in an amount not to exceed \$2,500 for the period of July 1, 2020 to June 30, 2023, contingent upon the Board's approval of future budgets, and authorize the HHS Director to sign 2 copies.

**SUMMARY/JUSTIFICATION:**

Your Board approved the participation agreement between Inyo County and the California Department of Health Care Services (DHCS) for fiscal years 20/21, 21/22, and 22/23 MCIP on April 14, 2020.

The Medi-Cal Inmate Program provides Medi-Cal coverage for eligible inmates who receive inpatient services at a medical facility located off the grounds of the correctional facility for an expected stay of more than 24 hours. This program will relieve the county of the federal share of these services provided to inmates. The medical provider will bill Medi-Cal as they usually do and receive payment. DHCS will then quarterly submit invoices to the counties where the inmate is being held to re-coop the non-federal share of the services.

The administration fee for these services has been estimated to be \$94.93 FY20/21, \$99.67 FY21/22, \$104.66 FY22/23 from \$89.29 in FY 19/20.

Health and Human Services has developed a comprehensive case management system to identify when an inmate's hospitalization meets these criteria so that the Medi-Cal application is completed timely, the dates of services and eligibility correspond, and services and costs are tracked.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

NA

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

The Board could choose not to ratify this agreement. This is not recommended as this would leave the county responsible for the cost of all medical services provided to the inmate that would otherwise be paid by Medi-Cal.

**OTHER AGENCY INVOLVEMENT:**

HHS divisions, Sheriff, and Probation

**FINANCING:**

Health Services Realignment. These expenses are paid out of Health (045100) in Professional Services (5265).  
No County General Funds.

**ATTACHMENTS:**

1. Inyo MCIP Agreement FY 20-23

**APPROVALS:**

|                    |                               |
|--------------------|-------------------------------|
| Rhiannon Baker     | Created/Initiated - 6/19/2020 |
| Darcy Ellis        | Approved - 6/22/2020          |
| Anna Scott         | Approved - 6/26/2020          |
| Melissa Best-Baker | Approved - 6/29/2020          |
| Marilyn Mann       | Approved - 6/29/2020          |
| Marshall Rudolph   | Approved - 6/29/2020          |
| Amy Shepherd       | Approved - 6/29/2020          |
| Marilyn Mann       | Final Approval - 6/30/2020    |



## **MEDI-CAL COUNTY INMATE PROGRAM AGREEMENT FOR ADMINISTRATIVE SERVICES**

1. Intent of Agreement

This Reimbursement for Administrative Costs for the Medi-Cal Inmate Program (MCIP) Agreement (Agreement) is intended to reimburse the California Department of Health Care Services (DHCS) for its administrative costs associated with the MCIP as further detailed below and in Schedule A attached hereto.

2. Parties

The parties to this Agreement are DHCS and the County of Inyo (County).

3. Authority

- A. DHCS is the single state agency responsible for administering the California Medical Assistance Program (Medi-Cal), including MCIP, pursuant to Welfare and Institutions Code section 14100.1.
- B. This Agreement is authorized by Welfare and Institutions Code sections 14053.7 and 14053.8 and Penal Code section 5072.

4. Term of the Agreement

The term of this Agreement shall be from July 1, 2020 through and including June 30, 2023.

5. Definitions.

- A. The term “Certified Public Expenditure Process” or “CPE Process” means the process established for Medi-Cal under state law (including but not limited to Welfare and Institutions Code section 14166.1, et seq.), the California Medi-Cal State Plan, and approved Medicaid demonstration projects and waivers through which public Medi-Cal providers claim Federal Financial Participation (FFP) for allowable expenditures.
- B. The term “days” as used in this Agreement shall mean calendar days unless specified otherwise.
- C. The term “Demonstration Project” means the California Medi-Cal 2020 Demonstration, Number 11-W-00193/9, as approved by CMS effective beginning December 30, 2015 and any successor demonstration projects.

- D. The term “Designated Public Hospital” is defined as set forth in the Demonstration Project, and codified in state law at Welfare and Institutions Code section 14184.10, subdivision (f) pursuant to SB 815 (2016), and may be modified from time to time.
- E. The term “Inmate” as used in this Agreement includes persons identified in Welfare and Institutions Code sections 14053.7(e)(2)(A) and 14053.8(k) “Juvenile Inmate,” and Government Code sections 26605.6(a) “Prisoner,” 26605.7(a) “Prisoner” and (d)(1) “Probationer,” and 26605.8 “Prisoner” and “Probationer.”
- F. The term “MCIP” or “Medi-Cal County Inmate Program” contains the following three components: the Adult County Inmate Program (ACIP), as authorized in state law pursuant to Welfare and Institutions Code section 14053.7 and Penal Code section 5072, the Juvenile County Ward Program (JCWP), as authorized in Welfare and Institutions Code section 14053.8, and the County Compassionate Release Program (CCRP) and County Medical Probation Program (CMPP), as authorized by Government Code sections 26605.6, 26605.7, and 26605.8.
- G. “MCIP Administrative Services” means the administrative services provided by DHCS personnel for the administration of MCIP.
- H. “Medi-Cal provider” means, any individual, partnership, group association, corporation, institution, or entity and the officer, directors, owners, managing employees or agents of any partnership, group association, corporation, institution, or entity that provides services, goods, supplies, or merchandise, directly or indirectly, to a Medi-Cal beneficiary, and that has been enrolled in the Medi-Cal program.
- I. The State Fiscal Year (SFY) begins on July 1st of each calendar year and ends on June 30th in the subsequent calendar year.

6. Maximum Payable Amount

The amount that the County shall be obligated to pay for MCIP administrative services rendered under this Agreement shall not exceed its share of the nonfederal share of DHCS administrative costs. The maximum payable amount the County shall be obligated to pay for services rendered under this Agreement shall not exceed **\$299.26** which shall be based on a methodology specified in Addendum A.

- A. The maximum payable amount shall be further subject to the allocated State Fiscal Year’s (SFY’s) annual limits not to exceed:

**\$94.93** for July 1, 2020, through and including June 30, 2021  
**\$99.67** for July 1, 2021, through and including June 30, 2022  
**\$104.66** for July 1, 2022, through and including June 30, 2023

For future contract periods not covered under this Agreement, the maximum payable amount shall be determined through a new Agreement or an amendment to this Agreement.

7. Contact Persons

Any notice, request, demand, or other communication required or permitted hereunder, shall be deemed to be properly given when furnished in writing to the following:

A. In the case of the County to:

Anna Scott, Deputy Director  
County of Inyo  
207A West South Street  
Bishop, CA 93514

Or to such person or address as the County may furnish in writing to DHCS.

B. In the case of DHCS to:

California Department of Health Care Services  
Local Governmental Financing Division  
County Based Claiming & Inmate Services Section  
Attn: Inmate Medi-Cal Claiming Unit  
1501 Capitol Avenue, MS 4603  
P.O. Box 997436  
Sacramento, CA 95899-7436

Or to such person or address as DHCS may, from time to time, furnish in writing or to the County.

8. Payment Terms and Invoicing

A. General Terms

1. DHCS shall submit a quarterly invoice to the County for the County's apportioned share of the nonfederal share of the MCIP administrative services for the period billed.
2. The County shall pay DHCS for the County's apportioned share of the non-federal share of MCIP administrative services which shall be based on a methodology specified in Addendum A within 60 days of receipt of an invoice.
3. Failure by the County to timely pay DHCS shall constitute a material breach of this Agreement, which at DHCS' discretion, may result in termination of

both this Agreement and the MCIP Evergreen Provider Agreement (PA) by DHCS. The County may cure such breach by rendering payment of the amount owed to DHCS three days prior to the termination of this Agreement or the PA.

4. The County shall not make payments for any invoice or portion thereof exceeding the respective maximum payable amount. Payment for any MCIP administrative services rendered by DHCS exceeding the respective maximum payable amount shall require an amendment. If the County fails to execute a retroactive amendment to the maximum payable amount under this Agreement, DHCS shall terminate both the Agreement and the PA.
5. Payments shall be sent to DHCS at the following address, or such other address as DHCS may specify in writing:

California Department of Health Care Services  
Local Governmental Financing Division  
County Based Claiming & Inmate Services Section  
Attn: Inmate Medi-Cal Claiming Unit  
1501 Capitol Avenue, MS 4603  
P.O. Box 997436  
Sacramento, CA 95899-7436

9. DHCS Responsibilities

A. MCIP Administrative Services

1. DHCS shall administer MCIP and this Agreement for the purpose of claiming federal reimbursement for MCIP services. It is understood by both parties that other administrative activities remain the responsibility of the County.
2. DHCS shall maintain accounting records for personnel services at a level of detail as described in Schedule A. Additionally, these records must identify any equipment and all related operating expenses.
3. DHCS shall submit to the County a quarterly invoice for the County's apportioned share of the nonfederal share of MCIP administrative services based on Addendum A. The quarterly invoice for reimbursement shall identify the following summarized categories of DHCS' costs for the allocated SFY period billed: salary, benefits, operating expenses, and total costs. Costs shall be multiplied by one minus the Federal Medical Assistance Percentage (FMAP) applicable to such administrative costs subject to the limit on the amount reimbursable by the County. The maximum payable amount shall not exceed the County's apportioned share, which shall be based on a methodology specified in Addendum A.

B. General Responsibilities

1. Should the scope of work for this Agreement conflict with DHCS' responsibilities under federal Medicaid law, those responsibilities shall take precedence.
2. DHCS' cessation of any activities due to federal Medicaid responsibilities does not relinquish the obligation of the County to reimburse DHCS for administrative costs incurred by DHCS in connection with this Agreement for periods in which the County participated in MCIP.
3. DHCS agrees to provide to the County, or any federal or state department with monitoring or reviewing authority, access and the right to examine its applicable records and documents for compliance with relevant federal and state statutes, regulations, and this Agreement.

10. County Responsibilities

A. MCIP Administrative Services

1. As a condition of participation, the County accepts responsibility for reimbursing DHCS for the County's apportioned share of the nonfederal share of costs of MCIP administrative services based on Addendum A.
2. The County shall reimburse DHCS its allotted portion of the nonfederal share of funding allocated for compensation, associated operating expenses, equipment, and travel costs for no more than 3.50 full-time equivalent (FTE) positions composed of: one-half (0.50) FTE Staff Service Manager I, one (1) FTE Health Program Specialist I, one (1) FTE Staff Services Analyst/Associate Governmental Program Analyst, one-half (0.50) FTE Attorney, and one-half (0.50) FTE Accounting Officer, to be established and housed at DHCS, to support the reported expenditures submission process for obtaining federal reimbursement under this Agreement.
3. If a County does not participate in MCIP or does not abide by the terms of this Agreement, the County remains responsible for arranging for and paying for medical care for its MCIP eligible beneficiaries.

B. General Responsibilities

1. Upon compliance with all applicable provisions of this Agreement and applicable laws, the County may send its MCIP eligible beneficiaries to Medical providers to receive MCIP services.

2. The County shall reimburse DHCS pursuant to Paragraph A with funds from the County's General Fund, or from any other funds allowed under federal law and regulation.
3. In the event of a federal deferral or disallowance applicable to MCIP expenditures, the County shall provide all documents requested by DHCS within fourteen days.

11. Amendments

Amendments to this Agreement shall be in writing signed by the parties to this Agreement, and, if required by state law, by approval of the California Department of General Services. Notwithstanding the previous sentence, any changes made to the contact persons identified in Article 5 may be made by written communication, e-mail to the other contact person or persons and without formal amendment.

12. Termination and Agreement Disputes

- A. This Agreement may be terminated by either party upon written notice given at least 30 days prior to the termination date. Notice shall be addressed to the respective parties as identified in Article 5. The County shall remain obligated after the termination date to pay for all MCIP administrative costs incurred by DHCS for periods in which the County participated in the MCIP.
- B. This Agreement shall terminate upon cessation of the MCIP. The County shall remain obligated after the termination date to pay for all of the County's apportioned share of MCIP administrative costs incurred by DHCS for periods in which the County participated in MCIP
- C. Termination of this Agreement will automatically terminate the County's MCIP Evergreen PA.

13. General Provisions

- A. Indemnification. It is agreed that the County shall defend, hold harmless, and indemnify DHCS, its officers, employees, and agents from any and all reported expenditures, liability, loss, or expense (including reasonable attorney fees) for injuries or damage to any person, any property, or both which arise out of the terms and conditions of this Agreement and the negligent or intentional acts or omissions of the County, its officers, employees, or agents.
- B. Severability. If any term, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way. Notwithstanding the previous sentence, if a decision by a court of competent jurisdiction invalidates, voids,

- or renders unenforceable a term, condition, or provision in this Agreement that is included in the purpose of this Agreement then the parties to this Agreement shall either amend this Agreement pursuant to Article 9, or it shall be terminated pursuant to Article 10.
- C. Records. DHCS and the County shall maintain and preserve all records relating to this Agreement for a period of three years from DHCS' receipt of the last payment of FFP, or until three years after all audit findings are resolved, whichever is later. This does not limit any responsibilities of DHCS or the County provided for elsewhere in this Agreement, or in state or federal law.
- D. Compliance with Applicable Laws. All parties performance under this Agreement shall be in accordance with all applicable federal and state laws, including, but not limited to:
1. The Americans with Disabilities Act of 1990, as amended;
  2. Section 504 of the Rehabilitation Act of 1973, as amended;
  3. Title XIX of the Social Security Act;
  4. Welfare and Institutions Code section 14000 et seq.;
  5. Government Code section 53060;
  6. The California Medicaid State Plan;
  7. Applicable laws and regulations related to licensure, certification, confidentiality of records, quality assurance, and nondiscrimination;
  8. The Policy and Procedure Letters, and similar instructions, published with regulatory authority;
  9. Government Code sections 26605.6, 26605.7, and 26605.8;
  10. Penal Code section 5072;
  11. 42 Code of Federal Regulations; and,
  12. Applicable sections of the California Code of Regulations.
- E. Controlling Law and Venue. The validity of this Agreement and its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for any action brought concerning this Agreement shall be in any county in which the Attorney General maintains an office.

F. Integration Clause.

1. This Agreement and any exhibits and addendums attached hereto shall constitute the entire Agreement among the parties to it pertaining to the implementation of MCIP and supersedes any prior or contemporaneous understanding or agreement with respect to the subject matter of this Agreement.
2. Notwithstanding Subparagraph G.1., DHCS Form 9098 or DHCS Form 6208 (whichever is applicable) is incorporated by reference into this Agreement if the County has a DHCS Form 9098 or DHCS Form 6208 on record. Notwithstanding Subparagraph G.1., the terms of the DHCS Form 9098 or DHCS Form 6208 control to the extent there is a conflict with this Agreement, except for Article 10 of this Agreement. If the DHCS Form 9098 or DHCS Form 6208 does not address a matter addressed by this Agreement, then this Agreement controls.

G. Conformance Clause. Any provision of this Agreement in conflict with present or future governing authorities is hereby amended to conform to those authorities and such amended provisions supersede any conflicting provisions in this Agreement. The governing authorities include, but are not limited to the authorities listed in Article 11.E.

H. Waiver. No covenant, condition, duty, obligation, or undertaking made a part of this Agreement shall be waived except by amendment of the Agreement by the parties hereto, and forbearance or indulgence in any other form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the other party to which the same may apply; and, until performance or satisfaction of all covenants, duties, obligations, or undertakings is complete, the party shall have the right to invoke any remedy available under this Agreement, or under law, notwithstanding such forbearance or indulgence.

I. Third Party Benefit. None of the provisions of this Agreement are or shall be construed as for the benefit of, or enforceable by, any person not a party to this Agreement.

J. Conflict of Interest. The County is subject to the Medi-Cal Conflict of Interest Law, as applicable and set forth in Welfare and Institutions Code section 14022 and Article 1.1 (commencing with Welfare and Institutions Code section 14047), and implemented pursuant to 22 California Code of Regulations, section 51466.

K. Budget Contingency Clause. If funding associated with MCIP for any SFY is reduced by the State Budget Act DHCS shall have the option to cancel this Agreement, with no liability occurring to the State.



- L. Confidentiality. The County shall comply with the applicable confidentiality requirements as specified in Section 1902(a)(7) of the Social Security Act; 42 Code of Federal Regulations, part 431.300; Welfare and Institutions Code section 14100.2; and 22 California Code of Regulations, section 51009; and, the Business Associates Agreement attached and hereby incorporated by reference.

---

The signatories to this Agreement represent and warrant that they have full and binding authority to the commitments contained herein on behalf of their respective entity.

**County of Inyo**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES  
Contracts Section**

Signature: \_\_\_\_\_

Name: Carrie Talbot \_\_\_\_\_

Title: SSMI, Contracts Section \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE A  
SCOPE OF WORK**

CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES (DHCS)

DHCS agrees to:

1. Calculate the actual costs for administrative accounting, policy development, and data processing maintenance activities, including the indirect costs related to the MCIP program provided by its staff, which is in accordance with the provisions of Section 1903(w) of the Social Security Act and 42 Code of Federal Regulations, part 433, subpart B.
2. Lead the development, implementation, and administration for the MCIP.
3. Submit claims for Federal Financial Participation (FFP) based on Certified Public Expenditures (CPE) from participating MCIP counties.
4. On an annual basis, submit any necessary materials to the federal government to provide assurances that claims for FFP will include only those expenditures that are allowable under federal law.
5. Maintain accounting records to a level of detail that identifies the actual expenditures incurred for personnel services including salary or wages, benefits, and overhead costs for DHCS' staff. Additionally, these records will identify any equipment and all related operating expenses applicable to these positions. Records should include, but not be limited to general expense, rent and supplies for identified staff and managerial staff working specifically on activities or assignments directly related to the MCIP.
6. Ensure that an appropriate audit trail exists within DHCS' records and accounting system and maintain expenditure data as indicated in this Agreement.
7. Designate a person to act as liaison with the County for issues arising from this Agreement. This person shall be identified to the County's contact person for this Agreement.
8. Provide a written response to the County's contact person within 30 days of receiving a written request for information related to the MCIP.
9. Provide the County with accounting, program technical assistance, and training related to the MCIP.
10. Maintain an invoice tracking system for MCIP and provide a report on a quarterly basis.

11. Establish an annual MCIP administrative cost based on Addendum A.
12. Invoice the County on a quarterly basis for administrative costs.

### **ADDENDUM A: MCIP Administrative Costs**

The MCIP Administrative Contract is a three-year contract. At the beginning of each calendar year, counties have the opportunity to inform DHCS of their intent to continue participation in MCIP for the upcoming State Fiscal Year (SFY) by completing the MCIP Letter of Intent (LOI).

The methodology for calculating each county's nonfederal share of administrative costs was developed by DHCS in consultation with the California State Association of Counties, County Health Executives Association of California, California Association of Public Hospitals and Health Systems, and the California State Sheriffs' Association. The nonfederal share of administrative costs allocated to each county is based on the following:

- 1) 30% of the total administrative costs will be distributed evenly to participating counties over 50,000 in population. \*
- 2) 70% of the total administrative costs will be allocated to participating counties pro-rata based on population. \*

*\*Population data will be obtained from the California Department of Finance, Demographic Estimates*

To account for a cost of living adjustment on a yearly basis after the initial SFY of the current Agreement, DHCS will include a year over year growth factor of 5% to the maximum payable amount of the annual administrative cost for each subsequent SFY. DHCS will invoice participating counties for the nonfederal share of administrative costs quarterly after the close of the previous quarter based on actual administrative costs per the methodology above.



# County of Inyo



## Health & Human Services - Health/Prevention

### DEPARTMENTAL - ACTION REQUIRED

**MEETING:** July 7, 2020

**FROM:** Rhiannon Baker

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

---

**RECOMMENDED ACTION:**

Request Board ratify and approve the Standard Agreement Between the County of Inyo and California Department of Public Health, AIDS Drug Assistance Program, Office of AIDS, Agreement 20-10139, to continue Inyo County HHS/Public Health as an Enrollment site, for the period of July 1, 2020 through June 30, 2023 and authorize the HHS Director to sign the Standard Agreement, Contractor Certification CCC-307 form and Darfur Contracting Act form.

**SUMMARY/JUSTIFICATION:**

There is no funding attached to this request. The request is to provide the following documents to the CDPH so that we may continue as an Enrollment Site and will continue to be responsible for coordinating state programs, services and activities related to HIV and AIDS: 1) Standard Agreement (STD213) Cover page; 2) Exhibit A-I, CCC-307-Contractor Certification; 3) Darfur Contracting Act Certification.

This agreement continues the administration of the AIDS Drug Assistance Program (ADAP) enrollment process provided by Inyo County Health & Human Services/Public Health Division. ADAP is a medication assistance program that benefits Inyo County clients infected with HIV, who have limited health insurance and resources to obtain needed medications.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

NA

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Non-acceptance of this request would mean that we would not be an Enrollment Site as required by CDPH and therefore could not fulfill the requirements of the ADAP program.

**OTHER AGENCY INVOLVEMENT:**

None

**FINANCING:**

There is no funding associated with this agreement.

**ATTACHMENTS:**

1. Standard Agreement
2. Darfur Contracting Act Form
3. Contractor Certification CCC307

**APPROVALS:**

|                    |                               |
|--------------------|-------------------------------|
| Rhiannon Baker     | Created/Initiated - 6/19/2020 |
| Darcy Ellis        | Approved - 6/22/2020          |
| Anna Scott         | Approved - 6/22/2020          |
| Melissa Best-Baker | Approved - 6/29/2020          |
| Marilyn Mann       | Approved - 6/29/2020          |
| Marshall Rudolph   | Approved - 6/29/2020          |
| Amy Shepherd       | Approved - 6/29/2020          |
| Marilyn Mann       | Final Approval - 6/30/2020    |

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## Darfur Contracting Act

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

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

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

**OR**

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

**OR**

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

**CERTIFICATION**

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

|   |  |
|---|--|
| <i>Company Name (Printed)</i>                   | <i>Federal ID Number</i>                   |
| County of Inyo                                  | 95-6005445                                 |
| <i>By (Authorized Signature)</i>                |  |
| <i>Printed Name and Title of Person Signing</i> |  |
| Marilyn Mann, Director                          |  |
| <i>Date Executed</i>                            | <i>Executed in the County and State of</i> |
|   |  |

# Contractor Certification Clause

CCC 04/2017

## CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

|                                       |                   |
|---------------------------------------|-------------------|
| Contractor/Bidder Firm Name (Printed) | Federal ID Number |
|---------------------------------------|-------------------|

By (Authorized Signature)

Printed Name and Title of Person Signing

|               |                           |
|---------------|---------------------------|
| Date Executed | Executed in the County of |
|---------------|---------------------------|

## CONTRACTOR CERTIFICATION CLAUSES

1. **STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 11102) (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](http://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 of \$100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.3.

8. GENDER IDENTITY: For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.35.

## **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.



# County of Inyo



## Health & Human Services - Social Services

### DEPARTMENTAL - ACTION REQUIRED

**MEETING:** July 7, 2020

**FROM:** Tyler Davis

**SUBJECT:** Memorandum of Understanding with Kern County for Adoptions Services

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**RECOMMENDED ACTION:**

Request Board ratify and approve the Memorandum of Understanding with Kern County for provision of Adoptions Services for the period July 1, 2020 through June 30, 2025, and authorize the Chairperson to sign four (4) original copies.

**SUMMARY/JUSTIFICATION:**

Public adoption services are a final and permanent stage of services for certain children involved in the Child Welfare program. Annually, Inyo County's Child Welfare program may have the need for adoption services for one child; in some years, no children in Inyo's Child Welfare program move to adoptions. Because of this historically low volume, Inyo County has had a long-standing agreement, lasting more than three decades, with Kern County for their Child Welfare program to provide adoption services when the need arises in Inyo County.

The most recent MOU expired on June 30, 2020, and the updated MOU was approved by the Kern County Board of Supervisors in May 2020 and received by HHS in mid-June. The Department is respectfully requesting your Board ratify and approve the MOU.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

NA

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Your Board could deny approval. If so, our Inyo County Child Welfare staff would have to be trained in the statutory and regulatory requirements to provide the mandated public adoptions services.

**OTHER AGENCY INVOLVEMENT:**

California Department of Social Services, Inyo County Juvenile Court

**FINANCING:**

There is no funding exchange involved in this MOU. The State funds public adoptions for counties, and Inyo's historically small numbers of adoptions have been included in the formula for Kern's allocation for adoptions

**ATTACHMENTS:**

1. Inyo-Kern Adoption Contract

**APPROVALS:**

|                    |                               |
|--------------------|-------------------------------|
| Tyler Davis        | Created/Initiated - 6/24/2020 |
| Darcy Ellis        | Approved - 6/24/2020          |
| Keri Oney          | Approved - 6/26/2020          |
| Melissa Best-Baker | Approved - 6/29/2020          |
| Marilyn Mann       | Approved - 6/30/2020          |
| Marshall Rudolph   | Approved - 6/30/2020          |
| Amy Shepherd       | Approved - 6/30/2020          |
| Marilyn Mann       | Final Approval - 6/30/2020    |

**AGREEMENT  
FOR  
INTER-COUNTY ADOPTION SERVICES  
Independent Contractor**

(County of Kern – County of Inyo)

THIS AGREEMENT ("**Agreement**") is made and entered into on MAY 19 2020 ("**Execution Date**"), by and between the COUNTY OF KERN, a political subdivision of the State of California ("**County**"), as represented by the Department of Human Services ("**Department**"), and the County of Inyo, a political subdivision of the State of California, ("**Inyo**"), whose principal place of business is at 163 May Street, Bishop, CA 93514. County/Department and Inyo are referred to individually as a "**Party**" and collectively as the "**Parties**".

**WHEREAS:**

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

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

1. TERM

This Agreement shall commence on the July 1, 2020, and shall remain in effect until June 30, 2025, unless sooner terminated as provided for in this Agreement.

2. ADOPTION SERVICES CRITERIA

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

- A. The child has been declared free from the care, custody, and control of one or both parents; or



- B. The child, prior to relinquishment by one or both parents, has been accepted for voluntary placement by the welfare department or by a public adoption agency.

3. RESPONSIBILITIES OF INYO

- A. Inyo shall place the child in a eligible facility as specified in EAS 45-202.5 or EAS 45-203.4; and
  - 1. If the child is placed in the family home of a relative or the home of a person named in a direct court order, Inyo shall document that the home is suited to the child's needs.
  - 2. If the child is placed in a licensed Foster Family Home, approved Resource Family Home or with a certified Foster Family Agency, Inyo shall document that such placement is necessary to meet the needs of the child, and the current placement is in the best interest of the child.
  - 3. Email a completed Adoption Review form to Department for the initial Adoption Assessment a minimum of 45 days prior to the 366.21 (e), 366.21 (f), 366.22 or 366.25 hearing.
  - 4. Notify Department within 5 days after the 366.21 (e), 366.21 (f), 366.22 or 366.25 hearing that a 366.26 hearing has been calendared.
  - 5. Continue to make monthly contacts with the child and substitute care provider and document contacts in the CWS/CMS system.
  - 6. Provide Department Adoption Social Worker with hard copies of all birth, medical, dental, mental health and educational records for the purpose of writing the child assessment.
  - 7. Communicate any changes in the child or prospective adoptive parent's status to Department within 5 days.
- B. Inyo shall determine eligibility for Aid to Families with Dependent Children—Foster Care (AFDC—FC) and pay aid as appropriate under application federal and State statutes and regulations.
- C. Inyo shall complete the re-determination for ongoing eligibility for the Adoption Assistance Program as appropriate under the application of federal and State statutes and regulations.

4. RESPONSIBILITIES OF COUNTY

- A. Department shall provide the following services in accordance with 45 CFR 233.110(a)(2) and EAS 45-201.4:
  - 1. Develop a written assessment of the child, determine if freeing the child for adoption is in the child's best interest, and identify the current caretaker(s) of the child as the prospective adoptive parent(s) if appropriate.

2. Travel to Inyo County to interview and assess the child and current family for the purpose of making a recommendation to the court as to the most appropriate permanent plan for the child and identifying the current caretaker(s) as the prospective adoptive parent(s).
3. Upon notification from Inyo that 366.26 hearing has been calendared, assign an adoption social worker as secondary on the case record in CWS/CMS.

B. Department shall provide Inyo with the following:

1. Completed Child Assessment and an assessment of the prospective adoptive parent(s) with recommendations of adoption, legal guardianship, placement with a fit and willing relative or another permanent planned living arrangement.
2. Adoption folder containing all educational, medical, dental, and mental health history, and any other necessary documentation for the purposes of completing the adoption.
3. Completion of the Adoption Placement Agreement.
4. Completion of the Adoption Assistance Agreement.
5. Determination of Adoption Assistance Payment level.

5. COMPENSATION

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

6. REPRESENTATIONS

Both Department and Inyo understand that federal and State participation in AFDC—FC payments are dependent upon mutual completion of all responsibilities as set forth above in **Sections 3 and 4**.

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

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

7. ASSIGNMENT

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

8. NEGATION OF PARTNERSHIP

In the performance of the services under this Agreement, the Parties shall be, and acknowledges that the Parties are in fact and law, independent parties and not agents or employee of the other Party. The parties have and retain the rights to exercise full supervision and control over the manner and methods of providing services under this Agreement. The Parties retain full supervision and control over the employment, direction, compensation and discharge of all persons assisting each Party in the provision of services under this Agreement. With respect to each Party's employees, if any, that Party shall be solely responsible for payment of wages, benefits and other compensation, compliance with all occupational safety, welfare and civil rights laws, tax withholding and payment of employment taxes whether federal, State or local, and compliance with any and all other laws regulating employment.

9. IMMIGRATION REFORM AND CONTROL ACT

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

10. INDEMNIFICATION

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

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

judicial or administrative hearing or process to determine where a violation of this section has occurred.

11. INSURANCE

Both Kern and Inyo are self-insured and carry excess insurance to cover the risk of bodily injury and property damage losses caused by the acts and/or omissions of the Parties' respective employees, officers and/or agents in carrying out the activities required under this Agreement.

12. EVALUATION

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

13. CONTRACT DISPUTE

Should a dispute arise between Inyo and County relating to performance under this Agreement, each Party will, prior to exercising any other remedy which may be available, provide the other Party with written notice of the particulars of the dispute within 30 calendar days of the dispute. Both Parties will meet, review the factors in the dispute, and recommend a means of resolving the dispute before a written response is given to the other Party. Party receiving the written notice will provide a written response to the other Party within 30 days of receipt of the written notice.

14. TERMINATION

Either Party may terminate this Agreement, with or without cause, upon 30 days prior written notice to the other Party.

15. NOTICES

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

Notice to County shall be addressed as follows:

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

Notice to Contractor shall be addressed as follows:

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

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

16. OWNERSHIP OF DOCUMENTS

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

17. CONFLICT OF INTEREST

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

18. SOLE AGREEMENT

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

19. AUTHORITY TO BIND COUNTY

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

20. MODIFICATION OF AGREEMENT

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

21. NON-WAIVER

No covenant or condition of this Agreement can be waived except by the written consent of both Parties. Forbearance or indulgence by a Party in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by that Party. The other Party shall be entitled to invoke any remedy available to the other Party under this Agreement or by law or in equity despite said forbearance or indulgence.

22. CHOICE OF LAW/VENUE

The Parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the State of California. This Agreement has been entered into in the County of Kern. Accordingly, the Parties agree that the venue of any action relating to this Agreement shall be in the County of Kern.

23. CONFIDENTIALITY

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

A. During the term of this Agreement, Parties may receive or create certain confidential Personally Identifiable Information ("PII"). This PII is subject to protection under State and federal law, including the Information Practices Act of 1997 (Cal. Civ. Code §§ 1798 et seq.), and other applicable laws. The Parties represent that the Parties have in place policies and procedures that will adequately safeguard any PII the Parties receive or create, and the Parties specifically agree, on behalf of themselves, the Parties' subcontractors and agents, to safeguard and protect the confidentiality of PII consistent with applicable law, including currently effective provisions of the Information Practices Act of 1997.

B. For purposes of this section, PII means any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information whether oral or recorded in any form or medium.

- C. The Parties acknowledge that State and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The Parties hereto specifically agree to take such action as is necessary to implement the requirements and other applicable laws relating to the security or confidentiality of PII. The Parties understand and agree that the Parties must provide, when requested, written evidence that the Parties are in compliance with applicable Regulations.
- D. Notwithstanding any other provision of this Agreement, the Parties may terminate this Agreement upon twenty (20) days' notice in the event: (a) the Parties do not promptly provide written evidence of compliance with the Information Practices Act of 1997, or (b) the Parties become aware that the Parties or any of the Parties' subcontractors or agents discloses PII in a manner that is not authorized by the Parties or by applicable law.
- E. During the term of this Agreement, the contractor agrees to abide by the Information Exchange Agreement between the Social Security Administration ("SSA") and the California Department of Health Care Services "DHCS"), the Computer Matching and Privacy Protection Act Agreement between the Social Security Administration and the Health and Human Services Agency of California, the Electronic Information Exchange Security Requirement and Procedures for State and Local Agencies Exchanging Electronic Information with the Social Security Administration-Technical Systems Security Requirements ("TSSR"), and the Computer Matching Agreement between the Department of Homeland Security United States Citizenship and Immigration Services and the California Department of Health Care Services. **These documents contain sensitive material and the Contractor agrees not to post these documents in a public viewing area including any public Internet site.** Contractor agrees to abide by all relevant requirements in the National Institute of Standards and Technology ("NIST") Special Publications ("SP") 800-122 and 800-53 (<https://www.nist.gov/>), and the Memorandums of Understanding that the County has with DHCS and CDSS regarding all Personally Identifiable Information ("PII").

#### CONTRACTOR RESPONSIBILITIES

- 1) Contractor will provide a list of all employees who will have access to SSA data to the County prior to County giving Contractor access to such data. See **Exhibit "A"**.
- 2) Contractor and their staff will be required to complete an initial and annual confidentiality training. Each staff member, who handles SSA information, will sign a non-disclosure agreement stating they are aware of the requirements to maintain the confidentiality and non-disclosure of any SSA related information that is used by them to complete their daily duties and any sanctions and penalties that can follow any wrongful disclosure of

PII/PHI information will be the responsibility of the Contractor. Contractor will maintain the non-disclosure statements for their employees for the required five years as stated in the TSSR and NIST guidelines. Additionally, if requested, Contractor will provide proof of such training to the Department as required by the MOUs.

- 3) Contractor agrees to allow the County to complete periodic onsite reviews of their facility to ensure that the following steps meet SSA's requirements:
  - a) Safeguards for sensitive information;
  - b) Technological safeguards on computer(s) that have access to SSA-provided information;
  - c) Security controls and measures to prevent, detect, and resolve unauthorized access to, use of, and re-disclosure of SSA-provided information, and;
  - d) Continuous monitoring of the Contractor's or agent's network and infrastructure and assets.
  - e) Compliance with all applicable TSSR and NIST guidelines.
- 4) Contractor will maintain records of all PII and PHI exchanges under this contract for a period of five years and will provide such records upon request to the County for evidentiary purposes.
- 5) Contractor agrees no PII or PHI record will be stored outside the Contractor's information system without approval by County. Contractor will physically control and securely store information system media, both paper and digital, based on the highest Federal Information Processing Standard ("FIPS") 199 security category of the information recorded on the media. Contractor will restrict the pickup, receipt, transfer, and delivery of such media to authorized personnel.
- 6) Contractor is required to encrypt any PHI/PII information prior to transmission to the County as outlined in the TSSR and NIST guidelines. If encryption is not available, Contractor will work with County on alternate methods to receive any PII/PHI documents.
- 7) Contractor is required to report any breach or loss of PII/PHI within 24 hours to the appropriate County Security Officers. See **Exhibit "A"**.
- 8) Contractor will institute a destruction policy for the handling of all PII/PHI information including shredding, burning, and pulverizing of records to avoid any accidental disclosure of such information along with purging and sanitizing digital media using approved equipment, techniques, and



procedures. Contractor will track, document, and verify media sanitization actions.

- 9) Contractor and their employees who wrongfully disclose PII/PHI information are subject to criminal and civil sanctions including but not limited to suspension of all access to PII information provided by the County, jail time, and court actions by the person(s) whose information was disclosed.

#### COUNTY RESPONSIBILITIES

- 1) County will provide Contractor with training materials which the Contractor will use to assist in completing their initial and annual training. See **Exhibit "A"** for access instructions.
- 2) County will provide Contractor access to the TSSR guidelines and the Memorandums of Understanding with DHCS and CDSS to assist them in meeting the requirements for maintaining confidentiality of all PII/PHI records. See **Exhibit "A"** for access instructions.
- 3) County will maintain records of all Contractor's and employees who handle PII/PHI as part of their daily duties and will only give access to SSA provided information as outlined in this Agreement.
- 4) If necessary, County will request records for evidentiary purposes when needed from the Contractor.
- 5) County agrees to provide a copy of their Breach Reporting Incident Policy to the Contractor along with contact names and telephone numbers for all County Privacy Officers.

#### 24. ENFORCEMENT OF REMEDIES

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

#### 25. SEVERABILITY

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

26. COMPLIANCE WITH LAW

Both Parties shall observe and comply with all applicable County, State and federal laws, ordinances, rules, and regulations ("**Applicable Laws**") now in effect or hereafter enacted, each of which are hereby made a part hereof and incorporated herein by reference.

27. CAPTIONS AND INTERPRETATION

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

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

28. TIME OF ESSENCE

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

29. COUNTERPARTS

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

30. FORCE MAJEURE

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

31. NONDISCRIMINATION

Neither Party, nor any officer, agent, employee, servant or subcontractor of either Party, shall discriminate in the treatment or employment of any individual or groups of individuals on the grounds of age, sex, color, disability, national origin, race, marital status, sexual orientation, religion, political affiliation, or any other classification protected by law, either directly, indirectly or through contractual or other arrangements.

32. AUDIT, INSPECTION, AND RETENTION OF RECORDS

Both Parties agree to maintain and make available accurate books and records relative to all its activities under this Agreement. The Parties shall permit each other to audit, examine and make excerpts and transcripts from such records, and to conduct audits or reviews of all invoices, materials, records of personnel, or other data related to all other matters

covered by this Agreement. The Parties shall maintain such data and records in an accessible location and condition for a period of not less than three years from the end of this agreement, or until after the conclusion of any fiscal audit, whichever occurs last. The State of California and/or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon County herein.

33. NON-COLLUSION COVENANT

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

34. NO THIRD PARTY BENEFICIARIES

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

35. SIGNATURE AUTHORITY


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

**[Remainder of this page is intentionally left blank.]**

The Parties have executed this Agreement on the Execution Date.

COUNTY OF KERN

Dated: MAY 19 2020

By   
Chairman, Board of Supervisors  
"County"

COUNTY OF INYO

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Chairman, Board of Supervisors,  
"Inyo"

APPROVED AS TO CONTENT:  
Kern County Department of Human Services

Dated: 5-5-20


By   
Dena Murphy, Director

APPROVED AS TO FORM:  
Office of the County Counsel

Dated: 5/15/20

By  for  
Bryan Walters,  
Kern County Deputy County Counsel

Dated: 6/23/20

By   
Grace Chuchla,  
Inyo County Deputy County Counsel



# County of Inyo



## County Administrator - Recycling & Waste Management

### DEPARTMENTAL - ACTION REQUIRED

**MEETING:** July 7, 2020

**FROM:** Leslie Chapman

**SUBJECT:** Approve the contract between Inyo County and Browns Supply, Inc for cardboard processing and hauling

---

**RECOMMENDED ACTION:**

Request Board ratify and approve the contract between the County of Inyo and Brown's Supply of Bishop, CA for the provision of cardboard processing in an amount not to exceed \$126,000 for the period of July 1, 2020 through June 30, 2023, contingent upon the Board's approval of future budgets, and authorize the Chairperson to sign, contingent upon all appropriate signatures being obtained.

**SUMMARY/JUSTIFICATION:**

Brown's Supply owns, maintains and operates the equipment for the cardboard baling at the Bishop Sunland Landfill for the Inyo County Recycling and Waste Management Program (RWM), and has for many years. Brown's Supply also transports the cardboard bails to recycling centers in Southern California. Historically, there was not a contract because Brown's received sufficient proceeds from the recycling centers in Southern California for the bails. Over recent years, the redemption value has gone from \$120 per ton to \$35 per ton for the cardboard bails, which does not cover their costs. Brown's is willing to continue processing the cardboard, but not at a loss for the company.

Bishop Waste is the only other company that provides cardboard baling in our area at this time. RWM contacted Bishop Waste and received a verbal quote for between \$250 and \$450 per ton. Brown's Supply's cost is \$35 per ton.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

RWM could purchase a cardboard bailer and hire additional staff to process, bail and transport cardboard but this

would cost RWM approximately \$100,000 for equipment, with an additional \$150,000 per year for additional staff. RWM would also have to pay to have the bails shipped to a recycling center in Southern California.

**OTHER AGENCY INVOLVEMENT:**

**FINANCING:**

These services are included in the proposed Fiscal Year 2020-2021 Solid Waste Budget, 5265 Professional and Special Services, and will be included in future Solid Waste Budgets.

**ATTACHMENTS:**

1. Brown's Cardboard Contract

**APPROVALS:**

|                  |                              |
|------------------|------------------------------|
| Teresa Elliott   | Created/Initiated - 6/4/2020 |
| Darcy Ellis      | Approved - 6/8/2020          |
| Teresa Elliott   | Approved - 6/11/2020         |
| Marshall Rudolph | Approved - 6/12/2020         |
| Amy Shepherd     | Approved - 6/12/2020         |
| Leslie Chapman   | Final Approval - 7/1/2020    |

**AGREEMENT BETWEEN COUNTY OF INYO**

**AND \_\_\_\_\_**  
**FOR THE PROVISION OF \_\_\_\_\_ SERVICES**

**INTRODUCTION**

WHEREAS, the County of Inyo (hereinafter referred to as "County") may have the need for the \_\_\_\_\_ services of \_\_\_\_\_ of \_\_\_\_\_ (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 \_\_\_\_\_, whose title is: \_\_\_\_\_. Requests to the Contractor for work or services to be performed under this Agreement will be based upon the County's need for such services. The County makes no guarantee or warranty, of any nature, that any minimum level or amount of services or work will be requested of the Contractor by the County under this Agreement. County by this Agreement incurs no obligation or requirement to request from Contractor the performance of any services or work at all, even if County should have some need for such services or work during the term of this Agreement.

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

**2. TERM.**

The term of this Agreement shall be from \_\_\_\_\_ to \_\_\_\_\_ 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 \_\_\_\_\_ 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 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 ensure 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 or as otherwise may be required. 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.sam.gov>.

## **6. OFFICE SPACE, SUPPLIES, EQUIPMENT, ET CETERA.**

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. INSURANCE.**

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

## **9. 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 Contractor is to be considered an employee of County. 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.

**10. DEFENSE AND INDEMNIFICATION.**

Contractor shall hold harmless, defend and indemnify County and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work hereunder or its failure to comply with any of its obligations contained in the agreement, except such loss or damages which was caused by the sole negligence or willful misconduct of the County.

**11. 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.

**12. 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.

**13. 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.

**14. 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.

**15. 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.

**16. WAIVER OF DEFAULT.**

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided in paragraph twenty-two (22) below.

**17. CONFIDENTIALITY.**

Contractor further 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. Any disclosure of confidential information by Contractor without the County's written consent is solely and exclusively the legal responsibility of Contractor in all respects.

Notwithstanding anything in the Agreement to the contrary, names of persons receiving public social services are confidential and are to be protected from unauthorized disclosure in accordance with Title 45, Code of Federal Regulations Section 205.50, the Health Insurance Portability and Accountability Act of 1996, and Sections 10850 and 14100.2 of the Welfare and Institutions Code, and regulations adopted pursuant thereto. For the purpose of this Agreement, all information, records, and data elements pertaining to beneficiaries shall be protected by the provider from unauthorized disclosure.

**18. CONFLICTS.**

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

**19. POST AGREEMENT COVENANT.**

Contractor agrees not to use any confidential, protected, or privileged information which is gained from the 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.

**20. SEVERABILITY.**

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

**21. FUNDING LIMITATION.**

The ability of County to enter this Agreement is based upon available funding from various sources. In the event that such funding fails, is reduced, or is modified, from one or more sources, County has the option to cancel, reduce, or modify this Agreement, or any of its terms within ten (10) days of its notifying 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-two (22) (Amendment).

**22. 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.

**23. 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  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Department  
Address  
City and State

Contractor:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Name  
Address  
City and State

**24. 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 \_\_\_\_\_**

**FOR THE PROVISION OF \_\_\_\_\_ SERVICES**

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

**COUNTY OF INYO**

**CONTRACTOR**

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Print or Type Name

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY:

County Counsel

\_\_\_\_\_

APPROVED AS TO ACCOUNTING FORM:

\_\_\_\_\_  
County Auditor

APPROVED AS TO PERSONNEL REQUIREMENTS:

\_\_\_\_\_  
Personnel Services

APPROVED AS TO INSURANCE REQUIREMENTS:

\_\_\_\_\_  
County Risk Manager

**ATTACHMENT A**

**AGREEMENT BETWEEN COUNTY OF INYO**

**AND \_\_\_\_\_**  
**FOR THE PROVISION OF \_\_\_\_\_ SERVICES**

**TERM:**

**FROM: \_\_\_\_\_ TO: \_\_\_\_\_**

**SCOPE OF WORK:**

**ATTACHMENT B**

**AGREEMENT BETWEEN COUNTY OF INYO**

**AND \_\_\_\_\_**  
**FOR THE PROVISION OF \_\_\_\_\_ SERVICES**

**TERM:**

**FROM: \_\_\_\_\_ TO: \_\_\_\_\_**

**SCHEDULE OF FEES:**

**ATTACHMENT C**

**AGREEMENT BETWEEN COUNTY OF INYO**

**AND \_\_\_\_\_**  
**FOR THE PROVISION OF \_\_\_\_\_ SERVICES**

**TERM:**

**FROM: \_\_\_\_\_ TO: \_\_\_\_\_**

**SEE ATTACHED INSURANCE PROVISIONS**





# County of Inyo



## Clerk of the Board

### DEPARTMENTAL - ACTION REQUIRED

**MEETING:** July 7, 2020

**FROM:** Assistant Clerk of the Board

**SUBJECT:** Approval of Board of Supervisors Meeting Minutes

---

**RECOMMENDED ACTION:**

Request Board approve the minutes of the regular Board of Supervisors meetings of June 9, 2020 and June 16, 2020, and the special Board meeting of June 30, 2020.

**SUMMARY/JUSTIFICATION:**

The Board is required to keep minutes of its proceedings. Once the Board has approved the minutes as requested, the minutes will be made available to the public via the County's webpage, [www.inyocounty.us](http://www.inyocounty.us).

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

N/A

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

N/A

**OTHER AGENCY INVOLVEMENT:**

N/A

**FINANCING:**

N/A

**ATTACHMENTS:**

**APPROVALS:**

Darcy Ellis  
Darcy Ellis

Created/Initiated - 6/22/2020  
Final Approval - 6/22/2020



# County of Inyo



## Public Works - Road Dept.

### TIMED ITEMS - ACTION REQUIRED

**MEETING:** July 7, 2020

**FROM:** Chris Cash

**SUBJECT:** Second reading of right-of-way / tree ordinance

---

**RECOMMENDED ACTION:**

Request Board approve an ordinance titled, "An Ordinance of the Board of Supervisors of the County of Inyo, State of California, Adding Chapter 12.20 to the Inyo County Code and Amending Chapter 12.08 of the Inyo County Code."

**SUMMARY/JUSTIFICATION:**

On June 16, your Board voted to read title and waive further reading of a proposed ordinance titled "An Ordinance of the Board of Supervisors of the County of Inyo, State of California, Adding Chapter 12.20 to the Inyo County Code and Amending Chapter 12.08 of the Inyo County Code" and scheduled the ordinance for enactment at 10:30 a.m. on July 7, 2020.

The ordinance therefore comes to your Board for enactment today.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Your Board could choose to not enact the proposed ordinance. Alternately, your Board could choose to provide direction to staff to make additional edits to the ordinance.

**OTHER AGENCY INVOLVEMENT:**

**FINANCING:**

**ATTACHMENTS:**

1. Ordinance to Amend Chapter 12

**APPROVALS:**

Grace Chuchla

Created/Initiated - 6/18/2020

Darcy Ellis  
Grace Chuchla  
Marshall Rudolph  
Chris Cash  
Michael Errante

Approved - 6/18/2020  
Approved - 6/23/2020  
Approved - 6/30/2020  
Approved - 6/30/2020  
Final Approval - 6/30/2020

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE BOARD OF SUPERVISORS  
OF THE COUNTY OF INYO, STATE OF CALIFORNIA,  
ADDING CHAPTER 12.20 TO THE INYO COUNTY CODE AND AMENDING  
CHAPTER 12.08 OF THE INYO COUNTY CODE RELATED  
TO VEGETATION MANAGEMENT WITHIN THE RIGHT-OF-WAY**

The Board of Supervisors of Inyo County ordains as follows:

**SECTION ONE. PURPOSE.**

The purpose of this Ordinance is to add Chapter 12.20 to the Inyo County Code and amend Chapter 12.08 of the Inyo County Code to clarify certain responsibilities and rules surrounding the maintenance of trees and vegetation in the County highway, in the streetside apron / sidewalk, and on private property.

**SECTION TWO. AUTHORITY.**

This Ordinance is enacted pursuant to general police power possessed by the Inyo County Board of Supervisors as a means to protect public health and safety, preserve community aesthetics, and ensure the accessibility of Inyo County's roads and pedestrian areas.

**SECTION THREE. MODIFICATIONS TO TITLE 12.**

Chapter 12.20, attached hereto as Exhibit A, is hereby added to Title 12 of the Inyo County Code. Chapter 12.08 of the Inyo County Code is hereby amended as shown in Exhibit B. All other sections of Title 12 are not modified.

**SECTION FOUR. SEVERABILITY.**

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this Ordinance would be subsequently declared invalid or unconstitutional.

**SECTION FIVE. CEQA COMPLIANCE.**

This ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and Section 15060(c)(3) (the activity is not a project as defined in Section 15378 of the CEQA Guidelines, because it has no potential for resulting in physical change to the environment, directly or indirectly.)

**SECTION SIX. EFFECTIVE DATE.**

This ordinance shall take effect and be in full force and effect thirty (30) days after its adoption. Before the expiration of fifteen (15) days from the adoption hereof, this ordinance shall be published as required by Government Code Section 25124. The Clerk of the Board is hereby instructed and ordered to so publish this ordinance together with the names of the Board members voting for or against the same.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of June, 2020, by the following vote:

AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_  
ABSENT: \_\_\_\_\_

\_\_\_\_\_  
MATT KINGSLEY, Chairperson  
Inyo County Board of Supervisors

ATTEST: Clint Quilter  
Clerk of the Board

By: \_\_\_\_\_  
Darcy Ellis, Assistant  
Assistant Clerk of the Board

# Exhibit A

## **Inyo County Code Chapter 12.20 – County Roads and Trees Policy**

### **12.20.010 Definitions**

As used in this Chapter, the following terms shall have the following meanings:

1. “Adjacent to” or “abuts” shall mean and refer to any two parcels of land or areas of land that share a common boundary line.
2. “County highway” shall mean and refer to the entire width of the right-of-way that has been dedicated to and accepted by the County for highway purposes, minus the area that constitutes the “streetside apron,” as that term is defined below.
3. “County highway vertical clearance area” shall mean and refer to the area directly above a County highway to a height of 14 feet. For paved sidewalks, the vertical clearance area shall be measured in a straight line directly up from the face of the curb. For unpaved sidewalks, the vertical clearance area shall be measured in a straight line directly up from the outer edge of the pavement.
4. “Streetside apron” shall mean and refer to the portion of the County highway that is bounded by private property on one side and, in the case of unpaved sidewalks, the edge of the pavement on the other side. In the case of paved sidewalks, “sidestreet apron” shall mean and refer to the portion of the County highway that is bounded by private property on one side and the face of the curb on the other side.
5. “Private property” shall mean and refer to the land that abuts the sidestreet apron over which the owner has exclusive and absolute rights such that the owner may exclude the public from the land.
6. “Tree” shall mean and refer to any woody perennial plant having a single main axis, stem, or trunk, exceeding 8 feet in height.
7. “Vegetation” shall mean and refer to any plant that is not a tree.

### **12.20.020 Responsibility of property owner for maintenance of the streetside apron**

Property owners shall be solely responsible for the maintenance of any streetside apron that is adjacent to any portion of their property. The streetside apron must be maintained in a manner that permits the safe and unobstructed passage of pedestrian traffic.

Maintenance responsibilities include, but are not limited to:

1. Maintaining trees in a properly trimmed state so that their branches do not present a hazard to pedestrians, vehicles, or private property and do not pose an excessive fire or fall hazard.
2. Maintaining trees in accordance with the standards set forth by the American National Standards Institute Standard for Tree Pruning (ANSI A300), as it may be amended from time to time.

3. Removing or remedying trees that are dead, seriously diseased, badly out of balance, or in the process of falling.
4. Trimming vegetation so that it does not obstruct travel on the streetside apron or present a hazard to pedestrians, vehicles, or private property.
5. Keeping the streetside apron free of permanent obstructions, refuse, junk, or any other large objects that would impede pedestrian travel.
6. Ensuring that paved sidewalks are not excessively cracked, lifted, or vertically displaced.
  - a. A crack greater than 2 inches in width is deemed excessive per se.
  - b. A vertical displacement or lift greater than 1 inch is deemed excessive per se.
7. Ensuring that paved sidewalks meet all structural and accessibility requirements set out in the Americans with Disabilities Act and the California Building Code.

A property owner shall be responsible for any nonconformance with the responsibilities listed above, regardless of the source or cause of the nonconformance.

Nothing in this section shall be interpreted to prohibit the parking of a properly registered and operable vehicle on an unpaved streetside apron if parking is otherwise permitted in that area.

**12.20.030 Responsibility of property owner for maintenance of private property**

Property owners shall be solely responsible for the maintenance of any trees or vegetation located on private property. Trees and vegetation located on private property must be maintained in a manner that minimizes, to the greatest extent possible, any hazards or nuisances posed by trees and vegetation.

Maintenance responsibilities for trees and vegetation located on private property include, but are not limited to:

1. Maintaining trees in a properly trimmed state so that their branches do not present a hazard or a nuisance to pedestrians, vehicles, or neighboring property.
2. Maintaining trees in accordance with the standards set forth by the American National Standards Institute Standard for Tree Pruning (ANSI A300), as it may be amended from time to time.
3. Removing or remedying trees that are dead, seriously diseased, badly out of balance, or in the process of falling.
4. Trimming vegetation so that it does not impede the access of emergency responders, encroach on neighboring property, or present a fire hazard.

**12.20.040 Permitting requirements for the maintenance or removal of existing trees and vegetation in the streetside apron**

Nothing in this Chapter shall be interpreted to require a property owner to seek permission from Inyo County before trimming, maintaining, or removing a tree or vegetation in the streetside



apron or on private property; provided, however, that this Chapter shall not exempt a property owner from seeking the required permits from any County department should the trimming, maintenance, or removal of a tree or vegetation cause the property owner to engage in an ancillary activity, such as encroaching on a County highway, that would otherwise require a permit.

**12.20.050 Permitting requirements for the addition of new trees in the streetside apron**

No plant that is reasonably anticipated within 10 years to reach a size that would qualify it as a tree shall be placed in any streetside apron in Inyo County until the Inyo County Public Works Department has, in their sole discretion, approved the kind, variety, and location of the tree and granted a permit for planting the tree.

In deciding whether to grant or deny a permit, the Inyo County Road Department may consider the following nonexclusive factors:

1. Whether the tree is of a type that can be reasonably anticipated to cause damage to or obstruct the County highway or streetside apron.
2. Whether the tree is of a type that can be reasonably anticipated to cause damage to surrounding properties.
3. Whether the tree is of a type that can be reasonably anticipated to thrive in the climate where it will be located.
4. Any other factors that the Road Department considers necessary due to the unique circumstances of the property.

**12.20.060 Abatement procedures should a property owner not maintain the streetside apron or private property**

The failure of a property owner to maintain the streetside apron adjacent to his or her private property in compliance with the standards described in Section 12.20.020 and/or to maintain their private property in compliance with the standards described in Section 12.20.030 is hereby declared to be a nuisance per se. Any County official may seek to abate a violation of Section 12.20.020 or Section 12.20.030 per the procedures described in Inyo County Code Section 22.12.050; provided, however, that if the failure to maintain the streetside apron or private property results in an encroachment in to the County highway or the County highway vertical clearance area, then the abatement procedures described in section 12.20.070 shall apply.

**12.20.070 Abatement of tree and vegetation encroachments on County highways**

Should a private property owner fail to maintain the streetside apron or their private property such that vegetation or trees encroach into the County highway or the County highway vertical clearance area, the following abatement procedures shall apply:

1. If an encroachment is determined to exist, the Inyo County Road Commissioner or his or her designee shall notify the involved property owner and/or legal occupant in writing.
2. The written notification shall contain the following information:
  - a. That the property is causing a prohibited encroachment on the County highway and/or County highway vertical clearance area;
  - b. That the property owner has 60 days to remedy the encroachment;
  - c. That, if the encroachment is not removed within 60 days, the County reserves the right to remove the encroachment and bill the property owner for costs incurred in removing the encroachment.
3. If the encroachment is not removed within 60 days, the Inyo County Road Commissioner shall send a second letter to the property owner or legal occupant informing him or her of the date on which the County will remove the encroachment.
4. Should the property owner fail to remedy the encroachment by the date stated on the second letter, the Inyo County Road Commissioner may perform all maintenance necessary to ensure the safety of the County highway and the preservation of the County highway vertical clearance area. All costs including, without limitation, reasonable administrative and attorney fees associated with the removal of the encroachment shall be charged to the property owner. Any fine and/or cost of removing the encroachment may be recorded as a lien against the property.

The Inyo County Road Commissioner, in their discretion, may shorten the 60 day period for the property owner or legal occupant to remedy the encroachment based on a determination that the encroachment poses an imminent threat to public safety, substantially impedes vehicular traffic, or poses an imminent threat to the structural integrity of the County highway.

A property owner or legal occupant may appeal an order of abatement served pursuant to this section via the procedures and deadlines set out in Inyo County Code § 22.12.050(C) and 22.12.050(D).

All powers granted by this section shall be in addition to the powers given to the Inyo County Road Department by state and federal law and the Inyo County Code regarding the abatement of encroachments on County highways. Nothing in this section shall be interpreted to limit any power granted to the Inyo County Road Department by state or federal law regarding the abatement of encroachments on County highways.

# Exhibit B

## **Chapter 12.08 – Encroachments on Highways**

### **12.08.010 Definitions.**

Unless the context otherwise requires, the definitions and general provisions set forth in this section govern the construction of this chapter:

- A. “County road commissioner” means the county road commissioner of Inyo County;
- B. “Encroach” includes going upon or using a public highway for any of the following purposes:
  - 1. Excavating or disturbing the public highway,
  - 2. Erecting or maintaining any post, sign, pole, loading platform or other structure on the public highway,
  - 3. Leaving on the public highway any rubbish, brush, earth or other material of any nature whatsoever,
  - 4. Constructing, placing or maintaining on the public highway any pathway, sidewalk, wall, culvert or other drainage facility, pipe, conduit or cable, traveling on the public highway by any vehicles or object of dimensions, weight or characteristic not permitted by law;
- C. “Public highway” means the full width of any paved or unpaved road, street, lane or alley, including any shoulder, used by or for the general public whether or not those roads, streets, lanes and alleys have been accepted as and declared to be part of the county system of public highways except highways forming a part of the state highway system or privately owned road, so posted;

### **12.08.020 Right of lawful use.**

Any permit granted under this chapter shall be subject to the right of the county, or any other person or persons, firm, corporation, district or other body of persons entitled thereto, to use that part of the public highway for any purpose for which it may be lawfully used, and no part of the highway shall be unduly obstructed at any time.

### **12.08.030 Exceptions.**

This chapter shall not apply to any officer or employee of the county in the discharge of his official duties, or to any work being performed by any person or persons, firm or corporation under contract with the county.

### **12.08.040 Permit—Required when.**

It is unlawful for any person, firm, corporation or other body or association of persons, without first obtaining an encroachment permit, to

1. Make or cause to be made any excavation of any nature whatever within, upon or under the limits of any public highway;
2. Make or cause to be made any alteration of any nature within, upon or under any public highway;
3. Construct, put upon or leave thereon, or to cause to be constructed, put upon, maintained or left thereon any obstruction or impediment of any nature whatsoever in any public highway,
4. Place any pipeline, conduit or other fixture in any public highway
5. Move over or cause to be moved over the surface of any public highway, or over any bridge, viaduct or other structure maintained by the county, any vehicle or combination of vehicles, or other object of dimension or weight in excess of that permitted by law.
6. Otherwise encroach upon any public highway.

Nothing in this section shall be construed to require a permit for any activities that, per Chapter 12.20, may be performed without a permit.

**12.08.050 Permit—Issuance.**

The encroachment permits required by this chapter shall be issued by the county road commissioner subject to conditions set forth in this chapter or required by law. The Board of Supervisors shall, by resolution, establish a fee schedule for such permits. The fee shall be calculated so as to recover the total cost of administration and enforcement of all rules and regulations surrounding encroachment permits, but shall not exceed the actual cost of the regulatory program authorized by this Chapter.

**12.08.060 Encroachment Permit—Application.**

The county road commissioner shall prescribe and provide a regular form of application for the use of any applicant for an encroachment permit required by this chapter. The application form shall contain space for the name, address and principal place of business of the applicant, together with such details as in the judgment of the county road commissioner are necessary to establish the exact location, dimensions, duration and purpose of the proposed use or other encroachment. The application form shall be completed and signed by the applicant and thereafter filed in the office of the county road commissioner.

**12.08.070 Violation—Penalty.**

Any person, firm, corporation or other body or association of persons who violates this chapter is guilty of a misdemeanor and is punishable as provided in Section 1.20.010. Each day's violation of this chapter is a separate offense. Any violation of this Chapter may also be

punished pursuant to the abatement procedures and fines set out in Cal. Streets & Highway Code, Division 2, Chapter 6 (section 1480, *et seq.*), as may be amended from time to time.



# County of Inyo



## County Administrator

### **CORRESPONDENCE - ACTION - ACTION REQUIRED**

**MEETING:** July 7, 2020

**FROM:** Assistant Clerk of the Board

**SUBJECT:** IMACA Request for Signature on Grant Application Form

---

**RECOMMENDED ACTION:**

Request Board authorize the County Administrator's signature on Attachment C to Inyo-Mono Advocates for Community Action's Grant Application for funding services and activities for homeless and at-risk of homelessness populations.

**SUMMARY/JUSTIFICATION:**

IMACA is applying for Emergency Solutions Grant funding this year in order to provide emergency shelter (hotel/motel vouchers) in Inyo County. As part of the application process, IMACA must submit a Certification of Local Government Approval, and recently submitted its annual request for the County Administrator's signature on the document.

Historically, the County Administrator has agreed to sign the certification on behalf of the County with the approval of the Board of Supervisors and inclusion of language indemnifying the County. The County Administrator is once again seeking Board approval to sign the certification with the added language, in keeping with past practice as well as Inyo County Code which gives the Board discretionary authority over such matters.

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

N/A

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Your Board could choose to not authorize the County Administrator to sign the certification, but this is not recommended as it will negatively impact IMACA's ability to obtain the grant funding.

**OTHER AGENCY INVOLVEMENT:**

Inyo-Mono Advocates for Community Action

**FINANCING:**

There are no fiscal impacts to the County associated with this request.

**ATTACHMENTS:**

1. 2020 Emergency Solutions Grants - Attachment-C - Local Government Certification
2. Emergency Solutions Grants 2020 Notice of Funding Availability

**APPROVALS:**

|             |                               |
|-------------|-------------------------------|
| Darcy Ellis | Created/Initiated - 6/26/2020 |
| Darcy Ellis | Final Approval - 6/26/2020    |



**Attachment C - Emergency Shelter Certification of Local Government Approval (Private Non-Profits Only)**

If the Emergency Shelter is located in a city, the Certification of Local Government Approval must be completed by the city. If the Project is located in the unincorporated area of a county, the Certification must be from the county.

I, **Clint Quilter, CAO**, duly Authorized to act on behalf of **County of Inyo**, hereby approve of the operation of the following Emergency Shelter, **Hotel/Motel Vouchers**, proposed by **IMACA**, which is/are to be located/operated in **County of Inyo**.

**Primary Activity and the Location**

**You may operate your application activities from multiple sites if ALL of the following boxes are checked below:**

- All activity locations are operated as a single activity by the applicant.
- All activity locations operate under the same budget.
- All activity locations operate as a single program, adhering to the same Written Standards and program or client rules.

If ALL the above boxes are checked, identify the locations: **hotel/motel vouchers in Inyo County**

**CERTIFICATION OF LOCAL GOVERNMENT APPROVAL**

|   |                                      |                                     |      |
|---|--------------------------------------|-------------------------------------|------|
| <b>Clint Quilter</b>                      | <b>County Administrative Officer</b> |                                     |      |
| PRINTED NAME OF AUTHORIZED REPRESENTATIVE | TITLE                                | AUTHORIZED REPRESENTATIVE SIGNATURE | DATE |

\* Provided however let it be known, Inyo County has no legal responsibility to oversee any Operation subject to the grant and specifically disclaims any liability for the methods, means and provision of services under the grant which are under sole and exclusive control of IMACA.

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT****Division of Financial Assistance**

2020 W. El Camino Avenue, Suite 670

Sacramento, CA 95833

(916) 263-2771

[www.hcd.ca.gov](http://www.hcd.ca.gov)

May 12, 2020

**MEMORANDUM FOR: ALL POTENTIAL APPLICANTS****FROM:**  
Jennifer Seeger, Acting Deputy Director  
Division of Financial Assistance**SUBJECT:****Emergency Solutions Grants Program  
2020 Notice of Funding Availability**  
Balance of State Allocation and Continuum of Care Allocation  
  
Notice of Application Due Date Extension and  
Revised Balance of State Allocation Competitive Application

The Department of Housing and Community Development (HCD) issued a Notice of Funding Availability (NOFA) for the Emergency Solutions Grants (ESG) Program Balance of State Allocation and Continuum of Care Allocation on February 28, 2020, with applications due on May 28, 2020. The availability of ESG funds is \$5 million and \$6 million respectively.

**HCD is now extending the application due date for both the Balance of State Allocation and the Continuum of Care Allocation to July 10, 2020.**

HCD has also revised the 2020 Competitive Application for the Balance of State Allocation, Form VII – Impact and effectiveness System Level Performance Measure Section in order to clarify and simplify the required data input.

The ESG application form along with federal and state regulations is posted on the ESG website. To receive ESG NOFA FAQs, notice of the NOFA webinar, and other program information and updates, please subscribe to the ESG listserv. For questions, or assistance, please email [ESG@HCD.ca.gov](mailto:ESG@HCD.ca.gov).

# **Federal Emergency Solutions Grants Program**

## **Balance of State Allocation**

### **2020 Notice of Funding Availability**



**Gavin Newsom, Governor  
State of California**

**Alexis Podesta, Secretary  
Business, Consumer Services and Housing Agency**

**Douglas R. McCauley, Acting Director  
California Department of Housing and Community Development**

Division of Financial Assistance, Federal Programs Branch  
Emergency Solutions Grants Program  
2020 W. El Camino Avenue, Suite 150, Sacramento, CA 95833  
ESG Program Email: [ESG@hcd.ca.gov](mailto:ESG@hcd.ca.gov)

**February 28, 2020**

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## I. Overview

### A. Notice of Funding Availability

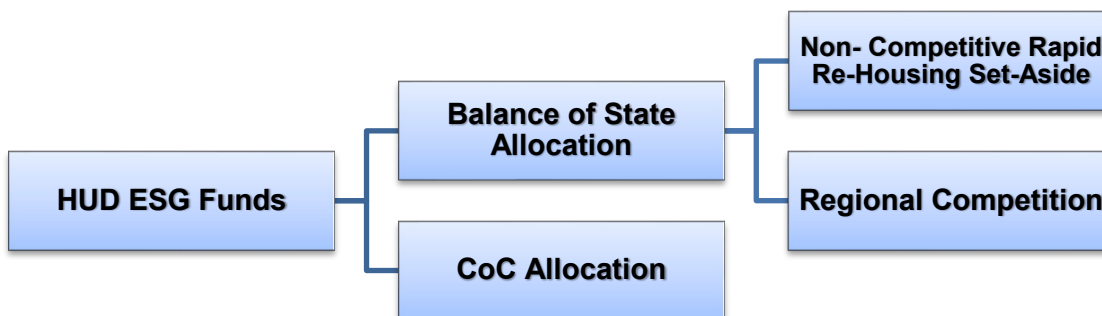
The California Department of Housing and Community Development (HCD) receives funding from the United States Department of Housing and Urban Development (HUD) for the Emergency Solutions Grants (ESG) program. Approximately \$5 million in new federal funds, as well as additional disencumbered funds that may become available later this year, will be allocated to the eligible Continuum of Care (CoC) Service Areas listed in [Appendix A](#).

The ESG program provides funding for the following objectives:

- Engaging individuals and families experiencing homelessness;
- Improving the quality of Emergency Shelters (ES) for individuals and families experiencing homelessness by helping to operate these shelters, and by providing essential services to shelter residents;
- Rapidly re-housing individuals and families experiencing homelessness; and
- Preventing families/individuals from becoming homeless.

The funds are distributed in two separate funding pools: the CoC allocation and the Balance of State (BoS) allocation. Funding in the BoS allocation is made available based on recommendations from a CoC in two ways:

1. Through [regional competitions](#) within three geographic regions (Northern Region, Bay Area Region, Central and Imperial Valley Region) pursuant to California Code of Regulations (CCR), Title 25 CCR 8404 (a) (3); and
2. Through a [noncompetitive process](#) for Rapid Re-Housing (RR) activities.



This NOFA outlines application requirements and timelines for CoCs and their recommended applicants for the BoS allocation. Please see the Authorizing Legislation Section for citations to the applicable program regulations. CoCs are responsible for recommending applicants to HCD for funds available under this NOFA. CoC recommended applicants can apply for both the non-competitive RR funds and the regional competition funds.

All references to the “state” are references to the State of California. All references to ESG funding reference federal ESG funds administered by HCD unless otherwise noted.

**B. Tentative program timeline**

|                          |  |
|--------------------------|--|
| <b>February 28, 2020</b> | ESG NOFA and application for the BoS allocation released |
| <b>May 28, 2020</b>      | Application deadline                                     |
| <b>September 2020</b>    | HCD announces BoS awards                                 |

**C. What is new in the NOFA**

Pursuant to HCD’s Annual Action Plan, the scoring section Impact and Effectiveness has slightly changed in regard to system-level performance data. Scoring will now be based on the CoC Service Area’s shown improvement in either of the following two measures over the 12-month period ending September 30, 2018: 1) The Change in Exits to Permanent Housing, (Measure 7b1, or as may be renumbered by HUD); or 2) Increases in the number of Chronically Homeless served, as measured under Metric 3.917, or as may be renumbered by HUD.

**D. Authorizing legislation**

Federal funding under this NOFA is made available pursuant to Subtitle B of Title IV of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11371 et seq. This NOFA should be read in conjunction with the following regulations that establish state and federal ESG requirements. Relevant legal authority includes, but is not limited to, the following:

- Code of Federal Regulations (CFR), Title 24, Part 576;
- 25 CCR, Division 1, Chapter 7, Subchapter 20;
- 24 CFR Part 91 relating to Annual Action Plan requirements;
- 24 CFR Part 58, relating to environmental reviews;
- Homeless Definition Final Rule: The Interim Rule, published in the Federal Register on December 4, 2015, cited above, provides the homeless definition that applies to the ESG program.
- Chronically Homeless Definition Final Rule: The Interim Rule, published in the Federal Register on December 4, 2015, cited above, provides the chronically homeless definition that applies to the ESG program.
- Office of Management and Budget (OMB) requirements for Universal Identifier and Central Contractor Registration, 2 CFR Part 25, Appendix A to Part 25.

If state or federal statutes or regulations, or other laws, relating to the ESG program are modified by Congress, HUD, HCD, or the state Legislature, the changes may become effective immediately and impact the work that was awarded funding under this NOFA.

If there is a conflict between the state and federal regulations, the federal regulations shall prevail. In addition, HCD reserves the right, at its sole discretion, to suspend or amend the provisions of this NOFA. If such an action occurs, HCD will notify interested parties. Awards made under this NOFA are also contingent upon HCD receiving an award letter from HUD for 2020.

## E. Role of Continuum of Care in the BoS Allocation

CoCs play an integral role in recommending homeless provider applicants who compete for funds through their local procurement process. Applications from homeless providers shall only be considered if they are recommended by the CoC where the proposed activity is located. CoCs are required to submit the CoC recommendation package, which can be found on the [ESG website](#) with the ESG application.

**For single-county CoCs**, a maximum of two applications may be recommended by each CoC for the regional competition and a maximum of two applications may be recommended by each CoC for its noncompetitive funds.

**For multi-county CoCs**, a maximum of three applications may be recommended by each CoC for the regional competition and a maximum of three applications may be recommended by each CoC for its noncompetitive funds.

In making these recommendations, the CoC must follow a fair and open process that meets the requirements of 25 CCR 8404. In addition, CoCs must submit a letter of recommendation that certifies the provider selection process was compliant with the requirements of 25 CCR 8404, 8408, and 8409. Among other things, CoCs are responsible for ensuring that the provider will:

- Provide eligible sources of matching funds;
- Operate consistently with system-wide written standards, adopted by the CoC for the proposed eligible activity;
- Enter data into the applicable community-wide Homeless Management Information System (HMIS) operated by the CoC; and
- Use the CoC's Coordinated Entry System (CES) in a manner that prioritizes access to people with the most severe needs and otherwise promotes consistency with the [Core Practices](#).

## II. **BoS Noncompetitive Funding**

### A. Overview

Subject to the maximum number of applications (discussed in the above section), CoCs are responsible for recommending homeless service providers for noncompetitive RR funds for a minimum of 40 percent up to a maximum of 50 percent of ESG funds in their BoS formula allocation as listed in [Appendix A](#). In making this recommendation, CoCs shall use a process that meets the following requirements:

1. Is a fair and open competition that avoids conflicts of interest in project selection, implementation, and the administration of funds;
2. Considers selection criteria reasonably consistent with the criteria identified in the BoS regional competition;
3. Complies with the core practice requirements in 25 CCR 8409;
4. Incorporates the performance standards set forth in HCD's Annual Action Plan;
5. Complies with federal and applicable state ESG regulations;
6. Considers any other practices promoted or required by HUD; and

7. Ensures the funded homeless service provider(s) maintain documentation of satisfactory match pursuant to the requirements of 24 CFR Part 576.201.

Note: 25 CCR 8408(e) prohibits subpopulation targeting with ESG funds in Homelessness Prevention (HP) and RR programs except if documentation of both of the following is provided to HCD prior to the award of funds for these activities:

1. Evidence of an unmet need for these activities for the subpopulation proposed for targeting
2. Evidence of existing funding in the CoC Service Area for programs that address the needs of the excluded populations for these activities.

**B. Annual Action Plan requirements**

The following requirements regarding the BoS activities are in HCD's Annual Action Plan. Pursuant to 24 CFR Part 91, the Annual Action Plan is required by HUD and governs the distribution and use of ESG funds allocated by HUD to states and local governments. CoCs must adhere to these requirements as part of their provider recommendation process.

**C. Amounts available for Administrative activities**

Recommended local government service providers may request up to \$200 of federal ESG funds to pay for direct administrative costs<sup>1</sup>.

**D. Eligible activities**

Pursuant to state ESG regulations<sup>2</sup>, all activities permitted under the federal ESG regulations shall be eligible except for renovation, conversion, or major rehabilitation activities under 24 CFR Part 576.102. Minor repairs to an ESG-funded ES that do not qualify as renovation, conversion, or major rehabilitation are an eligible use of state ESG funds.

The following additional limitations apply:

**Homeless Management Information System**

ESG funds may be used for HMIS activities associated with contributing data derived from ESG-funded programs. As defined in state regulations, HMIS includes the use of a comparable database as permitted by HUD. In no event can costs exceed 10 percent of the total amount requested per application. HMIS activities must comply with HUD's standards on participation, data collection, and reporting. See 24 CFR Part 576.107 for a complete list of eligible HMIS costs.

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<sup>1</sup> 24 CFR Part 576.108; 25 CCR 8404 (b)

<sup>2</sup> 25 CCR 8408



## **Rapid Re-Housing Assistance and 10 Percent Combination Applications: Street Outreach and Homelessness Prevention**

ESG funds may be used to provide housing relocation and stabilization services and short- or medium-term rental assistance as necessary to help a homeless individual or family move as quickly as possible into permanent housing and achieve stability in that housing.

A minimum of 40 percent and up to a maximum of 50 percent of a CoC's BoS formula allocation may be accessed noncompetitively for RR. In addition, applicants may request up to a total of 10 percent per RR application for Street Outreach (SO) and 10 percent per RR application for HP without having to apply separately. The SO and/or HP activity may be subcontracted to another eligible provider or may be provided directly by the applicant.

RR activities must meet all the HUD requirements specified at 24 CFR Part 576.104, 24 CFR Part 576.105, and 24 CFR Part 576.106, including, but not limited to, requirements for:

- Eligible program participants;
- Eligible costs, including financial assistance costs and services costs;
- Maximum amounts and periods of assistance;
- Use with other subsidies;
- Limitations on maximum rent levels;
- Rental assistance agreement with owner;
- Lease agreement between owner and participant; and
- Condition of housing where assistance is provided.

**Note:** Rental assistance payments provided as part of an RR or HP activity under 24 CFR Part 576.106 typically cannot exceed HUD's Fair Market Rent (FMR)<sup>3</sup>. Assistance must also comply with HUD's standard for rent reasonableness<sup>4</sup>. Requests for exceptions to the FMR can be made to HUD through HCD and must be approved in writing by HUD. Contact your HCD Representative in the Federal Programs Branch for further assistance.

In addition to federal requirements<sup>5</sup>, no subpopulation targeting will be permitted in RR activities unless documentation of the following is provided to HCD prior to the award of funds for these activities:

1. Evidence of an unmet need for these activities for the subpopulation proposed for targeting; and
2. Evidence of existing funding in the CoC Service Area for programs that address the needs of the excluded populations for these activities.

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<sup>3</sup> 24 CFR Part 888

<sup>4</sup> 24 CFR Part 982.507

<sup>5</sup> 25 CCR 8408

## E. Terms of assistance

### **Minimum and maximum grant limits**

No individual application minimum and maximum grant amounts will be established by the state for the noncompetitive RR set-aside. The CoC shall determine the amounts of each individual application.

### **Maximum number of applications, contracts, and subcontracts**

1. Under the noncompetitive allocation, for single county CoCs, no more than two applications shall be recommended by the CoC and submitted to HCD. HCD will award no more than two noncompetitive allocation contracts per single-county CoC Service Area. For multi-county CoCs, no more than three applications shall be recommended by the CoC and submitted to HCD. HCD will award no more than three noncompetitive allocation contracts per multi-county CoC Service Area.
2. There are two types of subcontracting permitted under ESG.  
A subcontract does not absolve the grantee from any responsibility or liability to HCD. Grantee is fully responsible for ensuring that the subcontractor adheres to all state and federal laws and regulations in carrying out its services or activities
  - a. Subcontracting for services provided to the funded program. Procuring services related to carrying out the funded program is permissible. Examples: security, supportive services, food services. Federal procurement rules may apply.
  - b. Applications that contain multiple ESG-eligible activities as permitted under HCD's Annual Action Plan or this NOFA may subcontract with separate providers for those ESG-eligible activities. For example, RR programs that request funds for both RR and HMIS may subcontract with a different entity for their HMIS.

Notwithstanding the above, contracting with, or in any way assigning the ESG grant in part or whole to another provider for any activity is strictly prohibited, unless approved in writing by HCD.

The following table summarizes eligible ESG activities under the noncompetitive RR set-aside.

| ACTIVITY   | ALLOWABLE ESG AMOUNTS AND PERCENTAGES PER APPLICATION UNDER NONCOMPETITIVE RR SET-ASIDE<br>(unless otherwise noted)   |
|--|---|
| For single-county CoCs, up to two applications may be submitted. For multi-county CoCs, up to three applications may be submitted. |   |
| <b>Rapid Re-Housing</b>  | <u>Noncompetitive set-aside</u> : Per allocation, CoC must elect a minimum of 40 percent and a maximum of 50 percent of their BoS formula allocation.   |
| <b>Street Outreach</b>   | Up to a maximum of 10 percent of a total application request when requested in combination with RR. The SO activity may be subcontracted to another eligible provider or may be provided directly by the applicant. |
| <b>Homelessness Prevention</b>   | Up to a maximum of 10 percent of a total application request when requested in combination with RR. The HP activity may be subcontracted to another eligible provider or may be provided directly by the applicant. |
| <b>HMIS</b>  | Up to a maximum of 10 percent per application. The HMIS activity may be subcontracted to another eligible provider or may be provided directly by the applicant.  |
| <b>Grant Administration</b>  | Local government service providers may request up to \$200 per application for Grant Administration.  |

Note: Applicants are urged to consult the relevant state and federal regulations for full requirements associated with each activity.

### III. BoS regional competitive requirements

#### A. Amounts available for Administrative activities

Recommended local government service providers may request up to \$200 of ESG funds.

#### B. Eligible activities

All applicants must obtain a recommendation from their CoC. Under the regional competition, for single-county CoCs, no more than two applications shall be recommended by the CoC and submitted to HCD. HCD will award no more than two contracts through the regional competition per single-county CoC Service Area.

For multi-county CoCs, no more than three applications shall be recommended by the CoC and submitted to HCD. HCD will award no more than three contracts through the regional competition per multi-county CoC Service Area.

The following activities are eligible under the BoS regional competition.

1. Pursuant to state ESG Regulation 25 CCR 8408, all activities permitted under the federal ESG regulations shall be eligible except for renovation, conversion, or major rehabilitation activities under 24 CFR Part 576.102. Minor repairs to an ESG-funded ES that do not qualify as renovation, conversion, or major rehabilitation are an eligible use of state ESG funds.
2. The following additional limitations apply:

### **Homeless Management Information System**

ESG funds may be used for HMIS activities associated with contributing data derived from ESG-funded programs. As defined in the state ESG regulations, HMIS includes the use of a comparable database as permitted by HUD. HMIS activities must comply with HUD's standards on participation, data collection, and reporting. See the federal regulations for a complete list of eligible HMIS costs.

### **Rapid Re-Housing Assistance and 10 Percent Combination Applications: Street Outreach and Homelessness Prevention**

ESG funds may be used to provide housing relocation and stabilization services, and short- or medium-term rental assistance, as necessary to help a homeless individual or family move as quickly as possible into permanent housing and achieve stability in that housing.

RR may be requested as a stand-alone activity or applicants may request up to 10 percent per RR application for SO and 10 percent per RR application for HP without having to apply separately. The SO and/or HP activity may be subcontracted to another eligible provider or may be provided directly by the applicant. Stand-alone SO applications are also permitted. Stand-alone HP applications are not permitted.

RR activities must meet all the HUD requirements specified at 24 CFR Part 576.104 including, but not limited to, requirements for:

- Eligible program participants.
- Eligible costs, including financial assistance costs and services costs.
- Maximum amounts and periods of assistance.
- Use with other subsidies.
- Limitations on maximum rent levels.
- Rental assistance agreement with owner.
- Lease agreement between owner and participant.
- Condition of housing where assistance is provided.

**Note:** Rental assistance payments provided as part of an RR or HP activity under 24 CFR Part 576.106 typically cannot exceed HUD's FMR as provided under 24 CFR Part 888 and must comply with HUD's standard for rent reasonableness as established under 24 CFR Part 982.507. Request for exceptions to FMR can be made to HUD through HCD and must be approved in writing by HUD. Contact your HCD Representative in the Federal Programs Branch for further assistance.

In addition to federal requirements, pursuant to 25 CCR 8408, no subpopulation targeting will be permitted in RR activities unless documentation of both of the following is provided to HCD prior to the award of funds for these activities:

1. Evidence of an unmet need for these activities for the subpopulation proposed for targeting.
2. Evidence of existing funding in the CoC Service Area for programs that address the needs of the excluded populations for these activities.

## **Emergency Shelter**

ESG funds may be used to cover the cost of providing essential services and shelter operations, as defined in the federal regulations 24 CFR 576.102, to homeless individuals and families in an ES. An ES is any facility where the primary purpose is to provide a temporary shelter for general or specific populations experiencing homelessness and that does not require occupants to sign leases or occupancy agreements. Hotel or motel vouchers may only be used as ES if there is no other appropriate ES available for a homeless individual or family. State and federal ESG regulations do not impose a maximum length of stay on ES activities. Consistent with the state's Core Practices in 25 CCR 8409 (b), programs should seek to help participants quickly identify barriers to obtaining and maintaining housing, and quickly resolve their housing crisis before providing other non-related housing services. Federal regulations prohibit involuntary family separation for children under the age of 18.

ESG-funded ES activities must operate for the full term of the ESG grant contract and must comply with all requirements of 24 CFR Part 576.101, which addresses maintenance of effort requirements to ensure ESG funds are not replacing local government funds during the immediate 12-month period before the ESG contract takes effect.

**Day shelters:** A day shelter must meet the criteria in the ES definition to compete as an ES. The primary purpose of a day shelter must be to provide temporary shelter for persons experiencing homelessness. Facilities such as multi-purpose centers or stand-alone soup kitchens do **not** qualify as an ES. Day shelters must target people who are sleeping on the streets, living in places not designed for human habitation, or in an ES. Clients experiencing such homelessness must be permitted to stay at the day shelter during all hours it is open for shelter.

## **Street Outreach**

ESG funds may be used for SO activities that include the costs of providing essential services necessary to reach out to unsheltered homeless people, connect these individuals with ES, housing or critical services, and provide urgent, non-facility-based care to unsheltered homeless people who are unwilling or unable to access ES, housing, or an appropriate health facility.

Eligible activities include engagement, case management, emergency health and mental health services, transportation, and services for special populations, as defined in the federal regulations 24 CFR 576.101. ESG-funded SO activities must operate for at least as long as the term of the ESG grant and must comply with the requirements at 24 CFR Part 576.101, which addresses maintenance of effort requirements to ensure ESG funds are not replacing local government funds during the immediate 12-month period before the ESG contract takes effect.

While SO is an eligible stand-alone activity, it may also be proposed in conjunction with RR or ES. SO is included with RR or ES to facilitate reaching and prioritizing persons experiencing homelessness, who are unsheltered and living in places not designed for human habitation for services, consistent with the state's Core Practices<sup>6</sup>.

### **Homelessness Prevention**

HP activities are not eligible as a stand-alone activity but may be proposed in conjunction with ES (for example, to facilitate shelter diversion) or with RR activities (for example, to facilitate preventing homelessness of a previously assisted individual or family experiencing instability after RR assistance has ended).

ESG funds can provide housing relocation and stabilization services and short- or medium-term rental assistance to individuals or families "at risk of homelessness"<sup>7</sup>, but only to the extent of helping the individuals or families regain housing stability.

In addition to federal requirements, pursuant to 25 CCR 8408, no subpopulation targeting will be permitted in HP activities unless documentation of both of the following is provided to HCD prior to the award of funds for these activities:

1. Evidence of an unmet need for these activities for the subpopulation proposed for targeting; and
2. Evidence of existing funding in the CoC Service Area for programs that address the needs of the excluded populations for these activities.

### **C. Terms of assistance**

#### **Minimum and maximum grant limits**

Each application submitted must be for a minimum of \$75,000 and a maximum of \$200,000. These amounts include all eligible activities, including HMIS, and indirect costs.

1. There are two types of subcontracting permitted under ESG.  
A subcontract does not absolve the grantee from any responsibility or liability to HCD.

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<sup>6</sup> 25 CCR 8409

<sup>7</sup> 24 CFR Part 576.2

Grantee is fully responsible for ensuring that the subcontractor adheres to all state and federal laws and regulations in carrying out its services or activities

- a. Subcontracting for services provided to the funded program. Procuring services related to carrying out the funded program is permissible.  
Examples: security, supportive services, food services.  
Federal procurement rules may apply.
- b. Applications that contain multiple ESG-eligible activities as permitted under HCD’s Annual Action Plan or this NOFA may subcontract with separate providers for those ESG-eligible activities. For example, RR programs that request funds for both RR and HMIS may subcontract with a different entity for their HMIS.

Notwithstanding the above, contracting with, or in any way assigning the ESG grant in part or whole to another provider for any activity is strictly prohibited, unless approved in writing by HCD.

The following table summarizes the eligible ESG activities under the regional competition.

| ACTIVITY   | ALLOWABLE ESG AMOUNTS AND PERCENTAGES PER APPLICATION UNDER THE REGIONAL COMPETITION<br>(unless otherwise noted)  |
|--|---|
| For single-county CoCs, up to two applications may be submitted. For multi-county CoCs, up to three applications may be submitted. |   |
| <b>Rapid Re-Housing</b>  | <u>Regional competition</u> : \$75,000 minimum, \$200,000 maximum per application.  |
| <b>Emergency Shelter</b>   | \$75,000 minimum, \$200,000 maximum per application.  |
| <b>Street Outreach</b>   | \$75,000 minimum, \$200,000 maximum per application as a stand-alone activity, or up to a maximum of 10 percent of a total application (not to exceed \$20,000) when requested in addition to RR or ES. The SO activity may be subcontracted to another eligible provider or may be provided directly by the applicant. |
| <b>Homelessness Prevention</b>   | Up to a maximum of 10 percent of a total application request (not to exceed \$20,000) when requested in combination with RR or ES. The HP activity may be subcontracted to another eligible provider or may be provided directly by the applicant. No stand-alone HP applications are permitted.                        |
| <b>HMIS</b>  | Up to a maximum of 10 percent per application (not to exceed \$20,000). The HMIS activity may be subcontracted to another eligible provider or may be provided directly by the applicant.   |
| <b>Grant Administration</b>  | Local government service providers may request up to \$200 per application.   |

Note: Applicants are urged to consult the relevant state and federal regulations for all requirements associated with each activity.

#### D. Regional competition application requirements

##### CoC application recommendations

Applications shall only be considered if they are recommended by the CoC where the proposed activity is located. CoCs are required to submit the CoC recommendation package found with the ESG application on the [ESG website](#).

Recommended applications may not include funding requests of less than \$75,000 or more than \$200,000. In recommending applicants through the regional competition, the CoC must follow a procurement process consistent with 25 CCR 8404(a)(4) including, but not limited to, the following:

1. Conducting a fair and open competition that avoids conflicts of interest in project selection, implementation, and the administration of funds; and
2. Considering state application eligibility and rating criteria as described in the “Application Threshold Requirements,” “Application Submittal Requirements,” and the “Rating Criteria” sections of this NOFA.

Selecting an eligible activity or activities to be offered consistent with the state’s Core Practices as described in 25 CCR 8408 and 8409. In order to document that the provider selection process meets ESG requirements, the CoC must submit the following:

1. A letter or other documentation that describes the provider selection process and certifies that their process meets the requirements of 25 CCR 8404, 8408, and 8409.
2. The applicant-ranking list that shows for each application recommended for funding: (a) the applicant name and address, (b) project name and address, (c) proposed activities and proposed subpopulation targeting, if any, with ESG funds, (d) city(ies) and county(ies) where proposed activities will be provided, and (e) dollar amounts recommended for funding by activity.
3. For each application not recommended for funding: (a) the applicant name and address, (b) project name and address, (c) proposed activities and proposed subpopulation targeting, if any, with ESG funds, (d) city(ies) and county(ies) where the activities were proposed, and (e) dollar amounts requested by activity.

### **Application threshold requirements**

An application must meet the following threshold requirements to be eligible for rating and ranking:

1. The application was complete and received by the deadline.
2. The applicant is eligible as described in Section III(B) of this NOFA.
3. The CoC recommends the applicant from the Service Area where the proposed activity is located, as documented by the certification of approval from the CoC.  
Note: Single-county CoCs may recommend no more than two applications. Multi-county CoCs may recommend no more than three applications.
4. The application includes a funding request of at least \$75,000, but not more than \$200,000.
5. Proposed activities are eligible pursuant to Section III Subsection B of this NOFA.
6. Pursuant to 25 CCR 8401 applicant must have adequate and documented site control for any application proposing an ES activity.
7. The application includes a certification of written standards for the proposed activities adopted by the CoC, as described in Section VI of this NOFA.
8. The application includes a completed Authorizing Resolution (AR) approved by the applicant’s governing board. The AR designates a person or persons responsible for, and authorized to execute, all documents related to the application of ESG funds, ESG award, and submittal of funds requests. Please see the instructions for completing the



AR, along with a sample AR, on the ESG website. Failure to include required elements in the AR, as demonstrated in the sample resolution provided \_\_on the ESG Program website\_, or errors in the AR, will require execution of a corrected AR and may delay execution of HCD's Standard Agreement for ESG funds.

9. Pursuant to 24 CFR Part 576.202 (a) (2), for private non-profit organizations proposing ES activities, the application must include a Certification of Local Approval completed and signed by the city or county where the activity is located.
10. For applications from private nonprofit-organizations, the application contains the organization's current bylaws and articles of incorporation.
11. Pursuant to 24 CFR Part 576.201, applicants must have identified dollar-for-dollar match for the federal ESG funding with funds from other public or private sources.

An application may be deemed ineligible if the application does not meet the threshold requirements, if the application is incomplete, or if HCD cannot determine compliance with the threshold requirements. HCD may request clarification of unclear or ambiguous statements made in the application and other supporting documents, if this information will not affect the competitive scoring of the application. HCD may request documentation necessary for compliance with state or federal requirements and may request that an applicant revise application documents as necessary to establish compliance as long as such revisions do not affect the competitive scoring of the application.

**E. Rating criteria (25 CCR 8407)**

All applications meeting the threshold requirements will be rated based on the following criteria.

| <b><u>Factor</u></b>        | <b><u>Criteria</u></b>  | <b><u>Max Points</u></b> |
|-----------------------------|---|--------------------------|
| <b>Applicant Experience</b> | Length of experience implementing the proposed eligible activity or activity similar to the proposed eligible activity.   | 20                       |
|                             | For applicants who have received ESG funding in at least one of the past three years (e.g. 2017, 2018, or 2019), a maximum of 20 points will be deducted for the following: <ul style="list-style-type: none"> <li>• HCD has terminated or disencumbered ESG grant funding;</li> <li>• The applicant has unresolved monitoring findings in ESG that pose a substantial risk to HCD; or</li> <li>• The applicant has not submitted annual reports in a timely manner for ESG grants.</li> </ul>  | -20                      |
| <b>Program Design</b>       | Quality of the proposed program in delivering eligible activities to participants consistent with the CoC's written standards and state ESG Regulation section 8409 Core Practices. The CoC representative must self-certify the Core Practice Table in the application is true and correct.<br><br>In making determinations under this rating factor, HCD may examine such things as CoC written standards for the proposed activity, provider guidelines governing activity operations, program rules for clients, the reasonableness of program staffing | 20                       |

| <u>Factor</u>                   | <u>Criteria</u>   | <u>Max Points</u> |
|---------------------------------|---|-------------------|
|                                 | patterns, and the activity budget relative to program design, target population, and local conditions.  |                   |
| <b>Need for Funds</b>           | <p>Need for funds is based on whether the application activity and subpopulation targeting, if any, meets a high need for the community as identified by the CoC in a manner that is consistent with the state’s Core Practices.</p> <p>Need is supported by data and analysis provided by the CoC, including, but not limited to, HMIS data and data from the most recent Point-in-Time Count of homeless persons published by HUD.</p>  | 10                |
| <b>Impact and Effectiveness</b> | <p>Scoring for the performance outcomes in the impact and effectiveness-rating factor will be evaluated using data from HMIS for federal fiscal year October 1, 2018 – September 30, 2019, or for those projects not in operation during this entire time, the most recent 12-month period. For data coming from victim service providers, data from a HUD-compliant comparable database may be used.</p> <p><u>Project-level performance data – up to 24 points</u><br/>The project level measures are as follows:</p> <p>1) Average length of project participation for individual leavers<br/><a href="#">CoC Program HMIS Manual</a></p> <p>2) Leavers exiting to permanent housing. Scores assigned will be based on relative success rate. For project-level performance metrics, programs of the same activity type (i.e. SO, ES, RR) will only be compared against programs of that same activity-type.</p> <p><u>System-Level Performance Data – up to 6 points</u><br/>Reports submitted by the CoC must be consistent with HUD’s May 2015 System Performance Measures. Scoring will be based on the CoC Service Area’s shown improvement in either of the following two measures over the 12-month period ending September 30, 2019: 1) The Change in Exits to Permanent Housing, (Measure 7b1, or as may be renumbered by HUD); or 2) Increases in the number of Chronically Homeless served, as measured under Metric 3.917, or as may be renumbered by HUD.</p> | 30                |
| <b>Cost Efficiency</b>          | <p>Using HMIS and expenditure data for federal fiscal year October 1, 2018 – September 30, 2019, or, for those programs not in operation during this entire time. Applications will be evaluated based on the average cost per exit to permanent housing based on the total program expenditures for the proposed activity and the number of exits to permanent housing<br/><a href="#">CoC Program HMIS Manual.</a></p>  | 10                |

| <b><u>Factor</u></b> | <b><u>Criteria</u></b>  | <b><u>Max Points</u></b> |
|----------------------|---|--------------------------|
|                      | <p>For data coming from victim service providers, data from a HUD-compliant comparable database may be used.</p> <p>HCD may require additional documentation to verify the accuracy of the information provided. If this occurs, the applicant shall promptly provide such documentation.</p> |                          |
| <b>TOTAL</b>         |   | <b>90</b>                |

### **Application selection**

Applications will be ranked based on their score as follows:

1. Within each regional allocation, applications will be ranked in descending order and awarded the amount requested in the application, or a revised amount if necessary to conform to funding limits in the NOFA. In the event of a tie between applicants within a regional allocation, funds will be awarded to the applicant who scored the most points in the Impact and Effectiveness rating factor.
2. When there are insufficient funds to fully fund the next highest ranked application, this application may be partially funded, if the approved activities can be adequately performed with the remaining ESG allocation (25 CCR 8407 (b)(3)).

Applicants are advised that, if funded, their application will be incorporated by reference into the Standard Agreement.

HCD will carefully examine the applicant's records at the time of grant monitoring to determine the accuracy of statements made in their application. If it is determined that an applicant falsified any certification or application information, HCD reserves the right to require reimbursement of the full amount of the ESG award, and to prohibit further participation in the ESG program. HCD may also impose any other actions permitted under 24 CFR Part 576.501 (c).

### **Appeals**

Time is of the essence in awarding federal ESG funds. Any funding delays could result in the loss of all ESG funding received by HCD. Therefore, HCD's funding decisions are final and are not subject to appeal.

## **IV. Eligible applicants**

To provide ESG-eligible activities within a CoC Service Area as listed in [Appendix A](#), applicants must be either private non-profit organizations or units of general-purpose local governments. In addition, all applicants must have a Dun and Bradstreet Universal Numbering System (DUNS) number. Applicants must list their DUNS number in the ESG application. Evidence of an active DUNS number with the correct applicant address is required as part of the application

and may be obtained by searching the System of Award Management. Applicants must include a copy of the search result in the application.

HCD will not award any ESG funds to applicants that are debarred, suspended, proposed for debarment, or declared ineligible or voluntarily excluded from participation from federally assisted programs.

Private non-profit organization, as defined in 24 CFR Part 576.2, is an organization that: 1) is a secular or religious organization described in Section 501(c) of the Internal Revenue Code of 1986 and is exempt from taxation under subtitle A of the Codes; 2) has an accounting system; 3) has a voluntary board; 4) practices nondiscrimination in the provision of assistance; and 5) does not include a governmental organization, such as a public housing agency or housing finance agency.

Faith-based organizations receiving ESG funds, like all organizations receiving HUD funds, must serve all eligible program participants without regard to religion.

Units of general-purpose local governments, as defined in 24 CFR Part 576.2, are any city, county, town, township, parish, village, or other general-purpose political subdivision of a state.

Units of general-purpose local governments applying for ESG funding for ES and/or SO activities must not replace funds the local government provided for these activities during the immediately preceding 12-month period, except in situations of severe financial deficit as determined by HUD.

## V. Eligible costs

Grantees and their recommended subgrantees must follow all the OMB Cost Principles and Generally Accepted Accounting Principles (GAAP). The OMB requirements are listed in 2 CFR Part 200.

Shifting costs between awards to overcome funding deficiencies is not allowed.

Costs charged to the ESG program must be allowable, allocable, and reasonable.

Allowable costs must conform to any limitations or exclusion set forth in the federal cost principles and the ESG NOFA. In addition, allowable costs must comply with the policies and procedures afforded all activities within the grantee or subgrantee organization, and must be treated consistently, whether as an indirect or direct cost. Finally, allowable costs must comply with the GAAP and the costs must be adequately documented.

Allocable costs are those treated consistently with other costs incurred for the same purpose in like circumstances, and these costs must meet the requirements listed in 2 CFR Part 200.405.

Reasonable costs do not exceed, in nature or amount, costs that would be incurred by a prudent person under the circumstances prevailing at the time a decision was made to incur the cost.

**Eligible costs may be direct or indirect.** They must be incurred for the same purpose in like circumstances and must be treated consistently as either direct or indirect costs.

Direct costs are those costs that can be identified specifically with a particular final cost objective (such as the ESG award) and can be directly assigned to an activity relatively easily with a high degree of accuracy.

Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective or activity.

HCD will reimburse grantees for indirect costs at a “de minimus rate” based on the Modified Total Direct Cost (MTDC), unless the grantee has a federally authorized indirect cost rate agreement. If the grantee has a federally authorized indirect cost rate agreement, HCD will reimburse grantees for indirect costs at the authorized rate. If an applicant is requesting an indirect cost rate higher than 10 percent, based on a federally authorized indirect cost rate agreement, that agreement must be submitted with their application. Grantees that will seek reimbursement for any indirect costs must comply with all OMB requirements including 2 CFR Part 200.403 and 2 CFR Part 200 Appendix 4. Grantee records must include evidence of the MTDC calculations, indirect cost limits, and supporting documentation for actual direct cost billing.

All eligible costs incurred after the date of the ESG award letter issued by HCD are reimbursable after full execution of the state Standard Agreement. Contractors shall not plan to expend any state ESG funds requiring reimbursement prior to the award letter. In addition, no funds shall be expended until any required environmental review process has been completed, if required under 24 CFR Part 50.

## **VI. Implementation requirements**

### **A. Core Practices**

Use of coordinated entry: Unless exempted by federal rules, all ESG-funded activities shall utilize a Coordinated Entry System (CES) established by the CoC in a manner that promotes the following:

1. Comprehensive and coordinated access to assistance regardless of where an individual or family is located in the CoC Service Area. Local systems should be easy to navigate and have protocols in place to ensure immediate access to assistance for people who are experiencing homelessness or are most at-risk.
2. Prioritized access to assistance for people with the most urgent and severe needs, including, but not limited to, survivors of domestic violence. ESG-funded activities shall seek to prioritize people who:
  - Are unsheltered and living in places not designed for human habitation
  - Have experienced the longest amount of time homeless
  - Have multiple and severe services needs that inhibit their ability to quickly identify and secure housing on their own

- For HP activities, are at greatest risk of becoming Literally Homeless<sup>8</sup> without an intervention, and are at greatest risk of experiencing a longer time in ES or on the street should they become homeless.

Housing First practices: All ESG-assisted projects shall operate in a manner consistent with Housing First practices as reflected in the state's Core Practices<sup>9</sup> and the CoC written standards and progressive engagement and assistance practices, including the following:

1. Ensuring low-barrier, easily accessible assistance to all people, including, but not limited to, people with no income or income history, and people with active substance abuse or mental health issues
2. Helping participants quickly identify and resolve barriers to obtaining and maintaining housing
3. Quickly resolving a participant's housing crisis before focusing on other non-housing related services
4. Allowing participants to choose the services and housing that meets their needs, within practical and funding limitations
5. Connecting participants to appropriate support services available in the community that foster long-term housing stability

Progressive engagement: Offering financial assistance and supportive services in a manner that offers a minimum amount of assistance initially, adding more assistance over time, if needed, to quickly resolve the participant's housing crisis by either ending homelessness, avoiding an immediate return to becoming literally Homeless, or avoiding the imminent risk of becoming homeless. The type, duration, and amount of assistance offered shall be based on an individual assessment of the household and the availability of other resources or support systems to resolve their housing crisis and stabilize them in housing.

RR and HP terms of assistance: RR activities funded within the same CoC Service Area shall follow the same program requirements for type, duration, and amount of assistance provided, unless the CoC provides sufficient written justification for any differences and these are approved in writing by HCD. HP activities funded within the same CoC Service Area shall follow the same program requirements for type, duration, and amount of assistance provided, unless sufficient written justification for any differences is provided by the CoC and HCD approves such justification in writing.

## **B. Written Standards**

Funded activities must operate consistently with the written standards currently adopted by the CoC and applicable to all similar activities. In general, written standards address such things as policies and procedures for evaluating eligibility, targeting and prioritizing of services, length and terms of assistance, coordination among services, and participation in

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<sup>8</sup> The Homeless Definition and Eligibility for SHP, SPC, and ESG, "Homeless Definition"

<sup>9</sup> 25 CCR 8409

HMIS. Applicants should consult the federal regulations for what should be addressed in written standards for each activity.

In addition, state regulations require that written standards reflect the state's Core Practices<sup>10</sup>, including:

1. Protocols for use of coordinated entry to promote comprehensive and coordinated access to assistance and prioritized while prioritizing access to assistance for people with the most urgent and severe need;
2. Use Housing First and progressive engagement practices; and
3. Consistent program requirements governing decisions around type, duration, and amount of assistance provided if multiple RR or HP programs are operated within the same Service Area.

### C. Match

Grantees must make matching contributions in an amount that equals the amount of federal ESG funds awarded. HCD may request documentation as part of program monitoring to determine the sources and amounts used to meet the federal ESG matching requirement.

Matching contributions may be obtained from any source, including any federal source other than the ESG program, as well as state, local, and private sources. However, the following requirements apply to matching contributions from a federal source of funds:

1. Laws governing any funds to be used as matching contributions do not prohibit those funds from being used to match ESG funds.
2. Per 24 CFR Part 576.201, if ESG funds are used to satisfy the matching requirements of another federal program, then funding from that program may not be used to satisfy the matching requirements.

## VII. **Contract expenditure and obligation requirements**

All of the grantee's ESG funds must be expended for eligible activity costs within 24 months after the date HUD signs the grant agreement with HCD.

After the Standard Agreement with HCD is fully executed, grantees may request an advance of 30 days working capital or \$5,000, whichever is greater. Otherwise, all funding requests are on a reimbursement-only basis.

All eligible costs incurred after the date of the award letter issued to the grantee by HCD are reimbursable. Grantees shall not expend any funds requiring reimbursement prior to the date of the award letter. However, no funds shall be expended until any required environmental review process has been completed, if required under 24 CFR Part 50.

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<sup>10</sup> 25 CCR 8409

Requests for disbursement must be made at least quarterly. HCD may establish minimum reimbursement amounts, or other related procedures necessary for the efficient administration of the ESG program.

## **VIII. Additional federal requirements**

### **A. General**

The requirements in 24 CFR Part 5, subpart A are applicable, including the nondiscrimination and equal opportunity requirements found at 24 CFR Part 5.105(a). Section 3 of the HUD Act of 1968 and implementing regulations at 24 CFR Part 135 apply, except that homeless individuals have priority over other Section 3 residents in accordance with 24 CFR Part 576.405(c).

### **B. Homeless participation**

If the entity makes policies and decisions regarding any facilities, services, or other assistance that receives funding under ESG, the grantee must provide for the participation of at least one homeless individual or formerly homeless individual on the grantee's Board of Directors or other equivalent policy-making entity."

### **C. Program termination**

Consistent with the organizations written standards, if an individual or family receiving ESG assistance violates program requirements, the grantee may terminate assistance. The grantee is required to terminate assistance in accordance with a formal written process that has been established and that recognizes the rights of individuals or families affected. The grantee must exercise reasonable judgment and examine all extenuating circumstances in determining when violations warrant termination so that a program participant's assistance is terminated only in the most severe cases.

### **D. Program administration**

Demonstration of the financial management and programmatic expertise necessary to successfully develop, design, implement, and monitor the proposed activity or activities is required. This expertise can be demonstrated through previous experience in successfully developing projects similar to the one proposed by either partners or key staff within the grantee's organization.

### **E. Faith-based activities**

Religious organizations may receive ESG funds only if they agree to provide all eligible activities under this program in a manner that is in accordance with 24 CFR Part 576.406. Organizations that are religious or faith-based are eligible to receive ESG funds, on the same basis as any other organization. Organizations that are directly funded under the ESG program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services funded under ESG. Refer to 24 CFR Part 576.406 for additional details.



## **F. Affirmative outreach**

The grantee must make known that the facilities, assistance, and services are available to all on a nondiscriminatory basis. If it is unlikely that the procedures the grantee intends to use will reach persons of any particular race, color, religion, sex, age, national origin, familial status, or disability who may qualify for those facilities and services, the grantee must establish additional procedures to ensure that such persons are made aware of these facilities, assistance, and services.

The grantee must take appropriate steps to ensure effective communication with persons with disabilities including, but not limited to, adopting procedures that will make available to interested persons information concerning the location of assistance, services, and facilities that are accessible to persons with disabilities. Consistent with Title VI and Executive Order 13166, grantees are also required to take reasonable steps to ensure meaningful access to programs and activities for Limited English proficiency persons.

All applicants should refer to the HUD guidelines on Limited English proficiency located on the [HUD webpage](#).

## **G. Uniform administrative requirements**

The requirements of 2 CFR Part 200 apply to grantees that are units of general-purpose local governments and private non-profit organizations. These regulations include allowable costs and non-federal audit requirements.

## **H. Environmental review responsibilities**

The grantee shall supply all available relevant information on each property necessary for HCD and HUD to perform an environmental review, as required. The grantee shall also carry out mitigating measures required by HCD or select an alternate eligible property, if required. HCD may eliminate from consideration any application that would require an Environmental Impact Statement (EIS).

The grantee, or any contractor of the grantee, may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct property for a project, or commit or expend ESG or local funds for eligible activities under this part, until HCD or HUD has performed an environmental review under 24 CFR Part 50 and the grantee has received HCD's or HUD's written approval of the property. For all funded applications, HCD will inform the grantee of any required additional environmental review.

## **I. Procurement of recovered materials**

The grantee and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a

manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**J. Shelter and housing standards**

The revised standards for ES require all shelters to meet minimum habitability standards related to safety, sanitation, and privacy pursuant to 24 CFR Part 576.403(a) and 24 CFR Part 576.403(b). If ESG funds are used to help program participants remain in or move into permanent housing, that housing must meet minimum standards pursuant to 24 CFR Part 576.403 (c).

**K. Recordkeeping and reporting requirements**

Grantees must have policies and procedures to ensure that recordkeeping and reporting requirements are met. The policies and procedures must be established in writing and implemented to ensure that ESG funds are used in accordance with all requirements. In addition, sufficient records must be established and maintained to enable HCD and HUD to determine whether ESG requirements are being met. Refer to 24 CFR Part 576.500 for additional details.

**L. Enforcement**

HCD will review the performance of grantees in carrying out their responsibilities under this part whenever determined necessary by HUD, but at least annually. In conducting performance reviews, HUD will rely primarily on information obtained from the records and reports from HCD, and when appropriate, its grantees. Sources may include information from onsite monitoring, audit reports, and information from the Integrated Disbursement & Information System and HMIS. HUD may also consider relevant information pertaining to HCD and its grantees, performance gained from other sources, including citizen comments, complaint determinations, and litigation. Reviews to determine compliance with specific requirements of this part will be conducted as necessary, with or without prior notice to HCD or its grantees. Refer to 24 CFR Part 576.501 for additional details.

**M. Other federal requirements**

Grantees must be able to meet all federal requirements relative to the ESG program, specifically those concerning equal opportunity and fair housing, affirmative marketing, environmental review, displacement, relocation, acquisition, labor, lead-based paint, conflict of interest, debarment, and suspension. Pertinent federal requirements are noted in federal ESG regulations and all applicants should be aware that, if funded, these requirements would apply.

**IX. Application submittal requirements**

One hardcopy application package with original signatures and one USB flash drive that includes a copy of the application package with signatures must be received by HCD on or before the application deadline.

Applications will be accepted beginning the first business day following release of this NOFA and must be received by HCD no later than **5:00 p.m. Pacific Standard Time on Thursday, May 28, 2020**. HCD will only accept applications through postal carriers that provide date stamp verification confirming delivery to HCD's office, such as U.S. Postal Service, UPS, FedEx. Personal deliveries are not accepted. The delivery address is:

California Department of Housing and Community Development  
Division of Financial Assistance, Federal Programs Branch  
Emergency Solutions Grants Program  
2020 W. El Camino Avenue, Suite 150  
Sacramento, CA 95833

Applicants must submit their approved Board Resolutions by the application due date. HCD will NOT accept Resolutions after this time.

Applications that do not meet the filing deadline requirements will not be eligible for funding. Applications must be on HCD's Excel forms and cannot be altered or modified by the applicant.

Questions regarding the ESG NOFA and application process can be directed to [ESG@hcd.ca.gov](mailto:ESG@hcd.ca.gov).

## Appendix A: Estimated BoS Formula Allocation

| 2020 Estimated BoS Allocation*     |          |   |                    |                                   |                    |                                   |                    |
|------------------------------------|----------|---|--------------------|-----------------------------------|--------------------|-----------------------------------|--------------------|
| CoC #                              | CoC Name | 2020 ESG Formula Allocation   | 40% for RR         | Regional Competition after 40% RR | 50% for RR         | Regional Competition after 50% RR |                    |
| <b>Bay Area Allocation</b>         |          |   |                    |                                   |                    |                                   |                    |
| 1                                  | 507      | Marin County CoC  | \$169,883          | \$67,953                          | \$101,930          | \$84,942                          | \$84,942           |
| 2                                  | 517      | Napa City & County CoC  | \$108,860          | \$43,544                          | \$65,316           | \$54,430                          | \$54,430           |
| 3                                  | 518      | Vallejo/Solano County CoC   | \$226,284          | \$90,514                          | \$135,770          | \$113,142                         | \$113,142          |
| 4                                  | 508      | Watsonville/Santa Cruz City & County CoC  | \$293,790          | \$117,516                         | \$176,274          | \$146,895                         | \$146,895          |
|                                    |          |   | <b>\$798,817</b>   | <b>\$319,527</b>                  | <b>\$479,290</b>   | <b>\$399,409</b>                  | <b>\$399,409</b>   |
| <b>Central and Imperial Valley</b> |          |   |                    |                                   |                    |                                   |                    |
| 1                                  | 521      | Davis/Woodland/Yolo County CoC  | \$277,307          | \$110,923                         | \$166,384          | \$138,654                         | \$138,654          |
| 2                                  | 525      | El Dorado County CoC  | \$134,652          | \$53,861                          | \$80,791           | \$67,326                          | \$67,326           |
| 3                                  | 613      | Imperial County CoC   | \$322,956          | \$129,182                         | \$193,774          | \$161,478                         | \$161,478          |
| 4                                  | 530      | Inyo, Mono, Alpine Counties CoC   | \$116,104          | \$46,442                          | \$69,662           | \$58,052                          | \$58,052           |
| 5                                  | 520      | Merced City & County CoC  | \$295,150          | \$118,060                         | \$177,090          | \$147,575                         | \$147,575          |
| 6                                  | 515      | Roseville/Rocklin/Placer County CoC   | \$151,575          | \$60,630                          | \$90,945           | \$75,788                          | \$75,788           |
| 7                                  | 513      | Visalia, Kings, Tulare Counties CoC   | \$378,591          | \$151,436                         | \$227,155          | \$189,296                         | \$189,296          |
| 8                                  | 531      | Nevada County CoC   | \$142,954          | \$57,182                          | \$85,772           | \$71,477                          | \$71,477           |
|                                    |          |   | <b>\$1,819,289</b> | <b>\$727,716</b>                  | <b>\$1,091,573</b> | <b>\$909,645</b>                  | <b>\$909,645</b>   |
| <b>Northern</b>                    |          |   |                    |                                   |                    |                                   |                    |
| 1                                  | 526      | Amador, Calaveras, Tuolumne and Mariposa Counties CoC                           | \$171,612          | \$68,645                          | \$102,967          | \$85,806                          | \$85,806           |
| 2                                  | 519      | Chico/Paradise/Butte County CoC   | \$304,091          | \$121,636                         | \$182,455          | \$152,046                         | \$152,046          |
| 3                                  | 523      | Colusa, Glenn, Trinity Counties CoC   | \$187,694          | \$75,078                          | \$112,616          | \$93,847                          | \$93,847           |
| 4                                  | 522      | Humboldt County CoC   | \$306,258          | \$122,503                         | \$183,755          | \$153,129                         | \$153,129          |
| 5                                  | 529      | Lake County CoC   | \$237,135          | \$94,854                          | \$142,281          | \$118,568                         | \$118,568          |
| 6                                  | 509      | Mendocino County CoC  | \$234,618          | \$93,847                          | \$140,771          | \$117,309                         | \$117,309          |
| 7                                  | 516      | Redding/Shasta, Siskiyou, Lassen, Plumas, Del Norte, Modoc, Sierra Counties CoC | \$278,461          | \$111,384                         | \$167,077          | \$139,231                         | \$139,231          |
| 8                                  | 527      | Tehama County CoC   | \$233,155          | \$93,262                          | \$139,893          | \$116,578                         | \$116,578          |
| 9                                  | 524      | Yuba City & County/Sutter County CoC  | \$221,608          | \$88,643                          | \$132,965          | \$110,804                         | \$110,804          |
|                                    |          |   | <b>\$2,174,632</b> | <b>\$869,853</b>                  | <b>\$1,304,779</b> | <b>\$1,087,316</b>                | <b>\$1,087,316</b> |
|                                    |          | <b>Total</b>  | <b>\$4,792,738</b> | <b>\$1,917,095</b>                | <b>\$2,875,643</b> | <b>\$2,396,369</b>                | <b>\$2,396,369</b> |

\*Estimates are based on HCD's 2019 ESG allocation. Amounts are subject to award of 2020 ESG funds by HUD to the State, and will be finalized prior to issuance of Standard Agreements to State grantees. Note: Allocations are also subject to change if AEs or CoCs do not continue to participate for 2020.



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**COUNTY OF INYO**  
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June 30, 2020

Honorable Board of Supervisors  
County of Inyo  
Independence, Calif. 93526

Honorable Board Members:

In Accordance with Section and 26920 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 this date. The count showed the funds to be in balance, pending written verification of inactive accounts.

Very Truly Yours,

Amy Shepherd  
Auditor-Controller

By: , Deputy  
RUSTY HUERTA

# STATEMENT

## MONEY IN COUNTY TREASURY

**FOR DECEMBER TO MARCH 2020**

STATE OF CALIFORNIA  
COUNTY OF INYO

The undersigned, County Auditor, having counted the money in the County Treasury of said County, as required by Section 26920 of the Government Code, and being duly sworn on oath, makes the following report for the period ending March 25, 2020.

Amount of money that should be in the treasury on March 25, 2020

|   |                   |                  |
|---|-------------------|------------------|
| is  | \$159,238,577.84  |                  |
| Receipts from 12/31/19-03/25/20                 | \$30,155,989.79   |                  |
| (Less paid warrants) Amount actually therein is | (\$39,635,405.07) |                  |
| Active Balance                                  |                   | \$9,881,758.14   |
| Silver  |                   | \$60.99          |
| Currency  |                   | \$613.00         |
| Certificates of Deposit                         |                   | \$128,345,672.62 |
| CD  |                   | \$12,125,000.00  |
| Local Agency Debt                               |                   | \$730,715.08     |
| Deposits on Hand                                |                   |                  |
| Corp Obligation                                 |                   | \$1,027,646.53   |
|   |                   |                  |
|   | 149,759,162.56    | \$152,111,466.36 |
|   |                   |                  |

Difference:

12/27/19 REMOTE DEP TRANSIT \$89,899.28  
 12/30/19 CUSIP: 3134GUN30 FA-PURCHASE (\$2,000,000.00)  
 12/30/19 ICSOS: CAL PERS (\$83402.30)  
 12/30/19 ICSOS: CAL PERS (\$132494.50)  
 12/30/19 CUSIP: 3130A9DH1-FULL CALL \$3,000,000.00



03/25/20 REMOTE DEP TRANSIT (\$499,698.68)  
 03/25/20 LAIF WITHDRAWAL-CONF#1596410 (\$2,000,000.00)  
 03/25/20 VAULT DEPOSIT IN TRANSIT (\$22,000.00)  
 03/25/20 CUSIP#3133ELUK8-SETTLEMENT \$2,000,000.00  
 03/25/20 CUSIP#3130AJF79-SETTLEMENT \$2,000,000.00  
 03/25/20 REMOTE DEP IN TRANSIT LN#2018-01 (\$790.00)  
 03/24/20 ED#9703 POOL DP XFER:ESCB CK#198  
 03/19/20 SIFPD WF ACCT ANALYSIS-CK#1984 (\$

County Auditor

Subscribed and sworn to before me this 30th day of June 2020



  
 Assistant Clerk of the Board of Supervisors  
 INYO COUNTY



| FY Year | Budget  | July        | August      | Sept.       | Oct.        | Nov.        | Dec.        | Jan         | Feb         | March       | April       | May         | June        | TOTAL        |
|---------|---------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|--------------|
| 2001-02 | Sheriff | \$17,568.00 | \$29,776.00 | \$24,716.00 | \$13,106.00 | \$20,122.00 | \$16,130.00 | \$15,730.00 | \$22,121.00 | \$14,773.00 | \$15,321.00 | \$17,440.00 | \$22,507.00 | \$229,310.00 |
| 2002-03 | Sheriff | \$26,409.00 | \$18,875.00 | \$14,597.00 | \$20,582.00 | \$16,614.00 | \$15,196.00 | \$18,846.00 | \$12,354.00 | \$24,390.00 | \$17,704.00 | \$16,251.00 | \$9,712.00  | \$211,530.00 |
| 2003/04 | Sheriff | \$20,652.00 | \$10,562.00 | \$14,292.00 | \$14,577.00 | \$13,484.00 | \$12,317.00 | \$22,540.00 | \$17,773.00 | \$13,934.00 | \$7,070.00  | 12,782.00   | 10,218.00   | \$170,201.00 |
| 2004/05 | Sheriff | \$19,859.00 | \$9,096.00  | \$10,036.00 | \$9,072.00  | \$11,197.00 | \$6,305.00  | \$15,019.00 | \$9,794.00  | \$11,564.00 | \$17,223.00 | \$17,635.00 | \$13,940.00 | \$150,740.00 |
| 2005-06 | Sheriff | \$24,078.00 | \$18,496.00 | \$12,444.00 | \$15,841.00 | \$11,371.00 | \$15,300.00 | \$19,108.00 | \$16,384.00 | 17,515.00   | \$13,259.00 | 16,317.00   |             | \$180,113.00 |
| 2006-07 | Sheriff | \$26,310.00 | \$22,120.00 | \$24,151.00 | \$20,575.00 | \$24,085.00 | \$17,224.00 | \$23,530.00 | \$17,540.00 | \$15,848.00 | \$22,461.00 |             |             | \$213,844.00 |
| 2007-08 | Sheriff | \$35,499.00 | \$17,506.00 | \$31,975.00 | \$15,535.00 | \$20,842.00 | 21,968.00   | \$21,705.00 | \$26,047.00 | \$21,586.00 | \$37,145.00 | \$25,116.00 | \$24,931.00 | \$299,855.00 |
| 2008-09 | Sheriff | \$47,862.00 | \$14,850.00 | \$19,384.00 | \$12,552.00 | \$14,621.00 | \$15,865.00 | \$13,449.00 | \$17,531.00 | \$17,629.00 | \$12,665.00 | \$17,567.00 | \$21,566.00 | \$225,541.00 |
| 2009-10 | Sheriff | \$25,480.00 | \$17,722.00 | \$18,686.00 | \$16,444.00 | \$23,697.00 | \$24,697.00 | \$23,352.00 | \$13,600.00 | \$16,924.00 | \$13,187.00 | \$15,917.00 | \$11,942.00 | \$221,648.00 |
| 2010-11 | Sheriff | \$23,723.00 | \$18,506.00 | \$20,983.00 | \$19,556.00 | \$17,956.00 | \$31,825.00 | 18,752.00   | \$19,447.00 | \$19,552.00 | \$27,651.00 | \$20,855.00 | \$22,994.00 | \$261,800.00 |
| 2011-12 | Sheriff | \$19,382.00 | \$21,152.00 | \$26,936.00 | \$25,339.63 | \$22,334.58 | \$20,445.96 | \$15,581.82 | \$13,929.99 | \$15,565.63 | \$19,021.51 | \$22,352.19 | \$16,685.35 | \$238,726.66 |
| 2012-13 | Sheriff | \$27,357.13 | \$28,796.44 | \$34,839.37 | \$24,645.46 | \$8,302.70  | \$22,742.47 | \$20,293.68 | \$27,727.58 | \$20,608.20 | \$18,933.99 | \$32,740.81 | \$16,712.41 | \$283,700.24 |
| 2013-14 | Sheriff | \$22,010.90 | \$30,004.58 | \$21,924.03 | \$25,386.25 | \$27,705.70 | \$19,269.13 | \$19,804.12 | \$23,103.59 | \$12,812.62 | \$40,657.55 | \$19,427.50 | \$25,615.56 | \$287,721.53 |
| 2014-15 | Sheriff | \$26,463.99 | \$25,110.54 | \$24,133.06 | \$29,228.12 | \$19,759.97 | \$18,506.19 | \$16,919.22 | \$22,563.18 | \$15,225.74 | \$22,238.43 | \$38,242.59 | \$15,773.84 | \$274,164.87 |
| 2015-16 | Sheriff | \$24,435.78 | \$24,224.23 | \$25,543.55 | \$38,122.69 | \$21,301.83 | \$17,036.08 | \$17,675.83 | \$17,567.44 | \$24,144.24 | \$23,878.96 | \$35,380.97 | \$16,053.54 | \$285,365.14 |
| 2016-17 | Sheriff | \$21,623.98 | \$19,972.64 | \$53,767.93 | \$32,462.80 | \$25,088.47 | \$18,533.84 | \$23,097.23 | \$44,673.95 | \$28,923.44 | \$39,488.09 | \$36,205.62 | \$33,903.65 | \$278,559.30 |
| FY Year | Budget  | July        | August      | Sept.       | Oct.        | Nov.        | Dec.        | Jan         | Feb         | March       | April       | May         | June        | TOTAL        |
| 2001-02 | Jail    | \$6,278.00  | \$10,218.00 | \$10,673.00 | \$5,077.00  | \$6,422.00  | \$5,562.00  | \$5,194.00  | \$11,007.00 | \$11,644.00 | \$10,001.00 | \$8,082.00  | \$5,706.00  | \$95,864.00  |
| 2002-03 | Jail    | \$9,902.00  | \$8,624.00  | \$8,077.00  | \$8,169.00  | \$11,434.00 | \$6,581.00  | \$11,095.00 | \$5,996.00  | \$9,036.00  | \$8,107.00  | \$6,863.00  | \$5,583.00  | \$99,467.00  |
| 2003-04 | Jail    | \$12,206.00 | \$12,147.00 | \$10,471.00 | \$9,547.00  | \$10,858.00 | \$5,343.00  | \$7,927.00  | \$4,693.00  | \$7,235.00  | \$3,568.00  | \$5,118.00  | \$7,077.00  | \$96,190.00  |
| 2004-05 | Jail    | \$9,905.00  | \$5,186.00  | \$8,294.00  | \$5,080.00  | \$5,598.00  | \$3,972.00  | \$7,773.00  | \$5,178.00  | \$5,490.00  | \$9,208.00  | \$6,489.00  | \$6,684.00  | \$78,857.00  |
| 2005-06 | Jail    | \$9,945.00  | \$9,954.00  | \$7,576.00  | \$10,669.00 | \$10,621.00 | \$6,505.00  | \$10,788.00 | \$9,434.00  | 13,564.00   | \$9,968.00  | \$10,325.00 |             | \$109,349.00 |
| 2006-07 | Jail    | \$18,236.00 | \$12,222.00 | \$14,583.00 | \$12,005.00 | \$11,769.00 | \$6,129.00  | \$16,260.00 | \$13,128.00 | \$8,156.00  | \$12,013.00 |             |             | \$124,501.00 |
| 2007-08 | Jail    | \$23,401.00 | \$13,877.00 | \$17,485.00 | \$13,537.00 | \$10,586.00 | \$7,076.00  | \$6,721.00  | \$6,914.00  | \$12,160.00 | \$22,521.00 | \$14,780.00 | \$17,172.00 | \$166,230.00 |
| 2008-09 | Jail    | \$14,812.00 | \$14,465.00 | \$12,613.00 | \$7,671.00  | \$9,841.00  | \$9,357.00  | \$7,643.00  | \$12196.00  | \$9,702.00  | \$9,997.00  | \$15,558.00 | \$9,581.00  | \$133,436.00 |
| 2009-10 | Jail    | \$14,060.00 | \$13,756.00 | \$12,679.00 | \$9,414.00  | \$7,094.00  | \$8,186.00  | \$4,464.00  | \$4,316.00  | \$5,379.00  | \$9,334.00  | \$7,729.00  | \$8,418.00  | \$104,829.00 |
| 2010-11 | Jail    | \$10,231.00 | \$7,691.00  | \$7,797.00  | \$4,241.00  | \$5,946.00  | \$7,441.00  | \$7,761.00  | \$8,759.00  | \$8,013.00  | \$10,387.00 | \$7,855.00  | \$7,666.00  | \$93,788.00  |
| 2011-12 | Jail    | \$7,868.00  | \$9,148.00  | \$13,791.00 | \$13,821.61 | \$11,131.78 | \$6,091.73  | \$6,358.72  | \$7,627.21  | \$16,459.92 | \$8,133.22  | \$3,511.28  | 5,396.13    | \$109,338.60 |
| 2012-13 | Jail    | \$9,851.94  | \$22,987.52 | \$9,693.45  | \$10,652.10 | \$7,537.09  | \$12,630.63 | \$7,947.40  | \$9,120.59  | \$9,585.65  | \$6,475.67  | \$14,055.81 | \$8,517.89  | \$129,055.74 |
| 2013-14 | Jail    | \$7,229.83  | \$11,249.70 | \$11,630.13 | \$7,756.07  | \$20,472.26 | \$14,211.87 | \$16,385.86 | \$8,399.09  | \$9,993.15  | \$25,089.23 | \$13,038.21 | \$22,289.16 | \$167,760.40 |
| 2014-15 | Jail    | \$14,641.52 | \$15,248.17 | \$19,078.03 | \$23,753.40 | \$17,004.70 | \$14,894.58 | \$12,924.38 | \$15,169.08 | \$15,819.74 | \$13,511.76 | \$27,217.52 | \$18,414.59 | \$207,677.47 |
| 2015-16 | Jail    | \$17,646.35 | \$20,388.98 | \$10,739.47 | \$24,152.37 | \$14,887.81 | \$13,140.45 | \$15,147.73 | \$13,187.70 | \$16,463.62 | \$11,935.64 | \$28,695.13 | \$13,643.97 | 200,029.22   |
| 2016-17 | Jail    | \$11,727.04 | \$15,302.99 | \$20,904.69 | \$14,220.17 | \$13,782.16 | \$9,788.37  | \$11,808.54 | \$18,898.78 | \$12,321.48 | \$19,361.13 | \$18,131.76 | \$13,376.70 | \$126,025.57 |

|                  |              |                       |              |
|------------------|--------------|-----------------------|--------------|
| TOTAL FY 2005-06 | \$289,456.00 | Average for 12 month  | \$26,314.00  |
| TOTAL FY 2006-07 | \$338,345.00 | Average for 11 months | \$30,758.64  |
| TOTAL FY 2007-08 | \$466,805.00 | Average for 12 months | \$38,840.31  |
| TOTAL FY 2008-09 | \$358,977.00 | Average for 12 months | \$29,914.75  |
| TOTAL FY 2009-10 | \$326,477.00 | Average for 12 month  | \$27,206.41  |
| TOTAL FY 2010-11 | \$355,588.00 | Average for 12 month  | \$29,632.33  |
| TOTAL FY 2011-12 | \$346,065.26 | Average for 12 month  | \$28,831.77  |
| TOTAL FY 2012-13 | \$412,755.98 | Average for 11 month  | \$34,396.33  |
| TOTAL FY 2013-14 | \$455,482.93 | Average for 12 month  | \$37,956.91  |
| TOTAL FY 2014-15 | \$481,842.34 | Average for 12 month  | \$40,153.53* |
| TOTAL FY 2015-16 | \$485,394.36 | Average for 12 months | \$40,449.53* |
| TOTAL FY 2016-17 | \$404,584.87 | Average for 12 months | \$33,715.41  |

\*Does not include jail kitchen services overtime – began including kitchen services 1-16



RECAP - SHERIFF AND JAIL OVERTIME REPORTS

| FY Year | Budget  | July        | August        | Sept.       | Oct.        | Nov.        | Dec.        | Jan         | Feb         | March       | April       | May         | June        | TOTAL        |
|---------|---------|-------------|---------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|--------------|
| 1990-91 | Sheriff |             |               |             |             |             |             | \$11,431.27 | \$16,517.07 | \$11,888.82 | \$10,438.75 | \$10,805.87 | \$9,310.89  | \$70,392.67  |
| 1991-92 | Sheriff | \$15,462.13 | \$13,296.38   | \$16,410.77 | \$16,611.39 | \$16,590.17 | \$10,124.27 | \$19,472.29 | \$20,262.10 | \$18,235.05 | \$21,753.68 | \$17,614.92 | \$13,814.82 | \$199,647.97 |
| 1992-93 | Sheriff | \$22,655.27 | \$21,269.55   | \$27,322.32 | \$14,728.53 | \$8,522.72  | \$11,767.60 | \$7,074.76  | \$8,183.73  | \$10,228.68 | \$16,106.16 | \$21,304.16 | \$12,040.58 | \$181,204.06 |
| 1993-94 | Sheriff | \$12,194.84 | \$12,880.26   | \$11,796.20 | \$19,656.88 | \$9,736.05  | \$10,453.40 | \$14,047.46 | \$10,747.67 | \$13,729.75 | \$15,248.90 | \$13,850.25 | \$12,729.83 | \$157,071.49 |
| 1994-95 | Sheriff | \$19,768.43 | \$17,650.58   | \$16,382.17 | \$8,178.84  | \$7,514.05  | \$5,283.38  | \$8,265.57  | \$6,077.04  | \$4,821.38  | \$7,312.77  | \$5,826.53  | \$8,107.30  | \$115,188.04 |
| 1995-96 | Sheriff | \$10,267.77 | \$8,811.96    | \$7,581.31  | \$8,941.34  | \$5,194.86  | \$2,945.02  | \$7,671.86  | \$6,285.61  | \$3,953.81  | \$6,757.84  | \$7,095.62  | \$4,022.16  | \$79,529.16  |
| 1996-97 | Sheriff | \$5,717.13  | \$9,947.00    | \$7,858.83  | \$8,458.00  | \$15,222.00 | \$14,247.00 | \$9,382.00  | \$6,171.00  | \$11,184.51 | \$12,575.00 | \$15,159.00 | \$11,174.00 | \$127,095.47 |
| 1996/97 | Holiday | \$7,483.00  | Not Available | \$12,293.84 | \$4,296.00  | \$5,250.00  | -0-         | \$14,033.00 | \$11,063.00 | -0-         | -0-         | \$5,387.00  |             | \$59,805.84  |
| 1997-98 | Sheriff | \$9,946     | \$10,073.00   | \$8,826.00  | \$11,306    | \$5,821.00  | \$6,832.00  | \$5722.00   | \$11,354.00 | \$12,618.00 | \$18,161.00 | \$11,419.00 | \$11,603.00 | \$123,681.00 |
| 1998-99 | Sheriff | \$14,265    | \$13,893.00   | \$13,762.00 | \$12,770.00 | \$10,203.00 | \$10,119.00 | \$17,714.00 | \$14,606.00 | \$16,394.00 | \$9,834.00  | \$15,710.00 | \$15,312.00 | \$164,582.00 |
| 1999-20 | Sheriff | \$18,980.00 | \$15,700.00   | \$18,380.00 | \$12,235.00 | 13,968.00   | \$12,751.00 | \$15,919.00 | \$10,134.00 | \$18,225.00 | \$14,697.00 | \$13,545.00 | \$21,715.00 | \$186,249.00 |
| 2000-01 | Sheriff | \$17,948.00 | \$13,273.00   | \$12,379.00 | \$15,270.00 | \$12,629.00 | \$13,537.00 | \$15,019.00 | \$18,333.00 | \$9,206.00  | \$15,085.00 | \$10,156.00 | \$14,809.00 | \$167,644.00 |

| FY Year | Bud get | July        | August      | Sept.       | Oct.        | Nov.        | Dec.       | Jan         | Feb         | March       | April       | May         | June        | TOTAL        |
|---------|---------|-------------|-------------|-------------|-------------|-------------|------------|-------------|-------------|-------------|-------------|-------------|-------------|--------------|
| 1990-91 | Jail    |             |             |             |             |             |            | \$8,961.35  | \$9,734.76  | \$8,144.51  | \$8,780.58  | \$7,034.26  | \$8,454.56  | \$51,110.02  |
| 1991-92 | Jail    | \$7,535.08  | \$6,561.64  | \$6,702.07  | \$9,498.79  | \$10,559.57 | \$6,237.61 | \$10,220.51 | \$5,694.12  | \$5,838.63  | \$7,923.09  | \$7,170.30  | \$5,339.41  | \$89,280.82  |
| 1992-93 | Jail    | \$10,231.09 | \$10,595.77 | \$11,379.12 | \$10,598.70 | \$5,363.46  | \$4,054.21 | \$4,434.02  | \$4,036.28  | \$5,468.12  | \$7,344.10  | \$8,404.39  | \$9,468.65  | \$91,377.91  |
| 1993-94 | Jail    | \$11,816.15 | \$7,687.97  | \$7,186.15  | \$8,495.28  | \$8,325.29  | \$9,581.32 | \$22,451.63 | \$12,318.18 | \$13,524.36 | \$16,935.94 | \$13,848.56 | \$11,728.60 | \$143,899.43 |
| 1994-95 | Jail    | \$12,943.44 | \$9,290.30  | \$8,195.87  | \$2,714.16  | \$4,408.35  | \$1,527.37 | \$5,078.75  | \$4,340.92  | \$5,800.83  | \$3,493.95  | \$3,031.58  | \$2,151.83  | \$62,977.35  |
| 1995-96 | Jail    | \$7,984.10  | \$3,228.28  | \$5,486.78  | \$2,338.29  | \$5,459.02  | \$2,536.07 | \$4,421.55  | \$3,424.93  | \$2,674.10  | \$2,420.38  | \$1,293.52  | 1,498.51    | \$42,765.53  |
| 1996-97 | Jail    | \$2,649.57  | \$1,745.00  | \$3,771.33  | \$3,472.00  | \$9,341.00  | \$7,985.00 | 2,620.00    | \$1,367.00  | \$2,344.00  | \$39,551    | \$2,561.00  | \$3,089.00  | \$80,495.90  |
| 1997-98 | Jail    | \$4,991.00  | \$9,012.00  | \$4,454.00  | \$6,044.00  | \$7,794.00  | \$7,849.00 | \$9,830.00  | \$12,752.00 | \$8,034.00  | \$7,836.00  | 6,958.00    | \$5,427.00  | \$90,981.00  |
| 1998-99 | Jail    | \$4,125.00  | \$5,707.00  | \$8,030.00  | \$6,044.00  | \$6,680.00  | \$3,879.00 | \$4,800.00  | \$4,839.00  | \$4,051.00  | \$7,145.00  | \$10,199.00 | \$6,301.00  | \$71,800.00  |
| 1999-00 | Jail    | \$6,853.00  | \$6,196.00  | \$6,465.00  | \$5,768.00  | 9,512.00    | \$5,066.00 | \$4,447.00  | \$1,828.00  | \$4,381.00  | \$21,862.00 | \$4,020.00  | \$6,281.00  | \$82,679.00  |
| 2000-01 | Jail    | \$4,117.00  | \$3,719.00  | \$7,353.00  | \$7,095.00  | \$6,491.00  | \$9,549.00 | \$5,751.00  | \$9,965.00  | \$6,111.00  | \$8,085.00  | \$5,360.00  | \$7,218.00  | \$80,814.00  |

|                             |  |  |  |  |         |  |              |  |  |   |  |  |  |             |
|-----------------------------|--|--|--|--|---------|--|--------------|--|--|---|--|--|--|-------------|
| TOTAL 6 months FY 1990-1991 |  |  |  |  |         |  | \$121,502.69 |  |  | average per month for 6 months          |  |  |  | \$20,250.44 |
| TOTAL FY 1991-1992          |  |  |  |  |         |  | \$288,928.79 |  |  | average per month                       |  |  |  | \$24,077.39 |
| TOTAL FY 1992-1993          |  |  |  |  |         |  | \$272,581.97 |  |  | average per month                       |  |  |  | \$22,715.16 |
| TOTAL FY 1993-1994          |  |  |  |  |         |  | \$300,970.92 |  |  | average per month                       |  |  |  | \$25,080.91 |
| TOTAL FY 1995-1996          |  |  |  |  |         |  | \$122,295.49 |  |  | average per month                       |  |  |  | \$10,191.29 |
| TOTAL FY 1996-1997          |  |  |  |  |         |  | \$207,591.37 |  |  | average for 12 months without Holiday   |  |  |  | \$17,299.28 |
|                             |  |  |  |  | Holiday |  | \$59,805.84  |  |  | average for 12 months including Holiday |  |  |  | \$22,283.10 |
| TOTAL FY 1997-98            |  |  |  |  |         |  | \$214,662.00 |  |  | average per month                       |  |  |  | \$17,888.50 |
| TOTAL FY 1998-99            |  |  |  |  |         |  | \$236,382.00 |  |  | average per month                       |  |  |  | \$19,698.50 |
| TOTAL FY 1999-2000          |  |  |  |  |         |  | \$268,928.00 |  |  | average for 12 month                    |  |  |  | \$22,410.67 |
| TOTAL FY 2000-2001          |  |  |  |  |         |  | \$248,458.00 |  |  | Average for 12 month                    |  |  |  | \$20,704.83 |
| TOTAL FY 2001-2002          |  |  |  |  |         |  | \$325,174.00 |  |  | Average for 12 month                    |  |  |  | \$27,097.93 |
| TOTAL FY 2002-2003          |  |  |  |  |         |  | \$310,997.00 |  |  | Average for 12 month                    |  |  |  | \$25,916.47 |
| TOTAL FY 2003/04            |  |  |  |  |         |  | \$266,391.00 |  |  | Average for 12 month                    |  |  |  | \$22,199.25 |
| TOTAL FY 2004-05            |  |  |  |  |         |  | \$229,597.00 |  |  | Average for 12 month                    |  |  |  | \$19,133.08 |



*"A Professional Service Agency"*

## **Memorandum**

**To:** Sheriff Hollowell, U/S Pritchard, Lt. Sparks, Sgt. Carter  
**From:** Riannah Reade, Administrative Assistant to the Sheriff  
**CC:** Board of Supervisors, CAO, Assistant to the Board  
**Date:** June 25, 2020  
**Re:** February 2020 overtime

Following, please find the amount of overtime expended and overtime balances for the month of February 2020.

| Budget # | Budget             | Expended            |
|----------|--------------------|---------------------|
| 022700   | Sheriff General    | \$3,410.01          |
| 022701   | Kitchen Services   | \$ 2,083.53         |
| 022710   | Sheriff Safety     | \$ 41,091.81        |
| 022900   | Jail General       | \$ 6,847.92         |
| 022910   | Jail Safety        | \$ 15,497.07        |
|          | <b>Grand Total</b> | <b>\$ 68,930.34</b> |

Account Director Reports are attached. If you have any questions, please do not hesitate to contact me.

Thank you.





*"A Professional Service Agency"*

**Memorandum**

**To:** Sheriff Hollowell, U/S Pritchard, Lt. Sparks, Sgt. Carter  
**From:** Riannah Reade, Administrative Assistant to the Sheriff  
**CC:** Board of Supervisors, CAO, Assistant to the Board  
**Date:** June 25, 2020  
**Re:** March 2020 overtime

Following, please find the amount of overtime expended and overtime balances for the month of March 2020.

| Budget # | Budget             | Expended            |
|----------|--------------------|---------------------|
| 022700   | Sheriff General    | \$2,342.47          |
| 022701   | Kitchen Services   | \$ 1,367.56         |
| 022710   | Sheriff Safety     | \$ 17,972.88        |
| 022900   | Jail General       | \$ 5,361.19         |
| 022910   | Jail Safety        | \$ 9,239.89         |
|          | <b>Grand Total</b> | <b>\$ 36,553.99</b> |

Account Director Reports are attached. If you have any questions, please do not hesitate to contact me.

Thank you.





*"A Professional Service Agency"*

**Memorandum**

**To:** Sheriff Hollowell, U/S Pritchard, Lt. Sparks, Sgt. Carter  
**From:** Riannah Reade, Administrative Assistant to the Sheriff  
**CC:** Board of Supervisors, CAO, Assistant to the Board  
**Date:** June 25, 2020  
**Re:** April 2020 overtime

Following, please find the amount of overtime expended and overtime balances for the month of April 2020.

| Budget # | Budget             | Expended            |
|----------|--------------------|---------------------|
| 022700   | Sheriff General    | \$ 2,395.37         |
| 022701   | Kitchen Services   | \$ 1,046.96         |
| 022710   | Sheriff Safety     | \$ 14,767.08        |
| 022900   | Jail General       | \$ 2,937.37         |
| 022910   | Jail Safety        | \$ 4,562.49         |
|          | <b>Grand Total</b> | <b>\$ 25,709.27</b> |

Account Director Reports are attached. If you have any questions, please do not hesitate to contact me.

Thank you.





*"A Professional Service Agency"*

**Memorandum**

**To:** Sheriff Hollowell, U/S Pritchard, Lt. Sparks, Sgt. Carter  
**From:** Riannah Reade, Administrative Assistant to the Sheriff  
**CC:** Board of Supervisors, CAO, Assistant to the Board  
**Date:** June 25, 2020  
**Re:** May 2020 overtime

Following, please find the amount of overtime expended and overtime balances for the month of May 2020.

| Budget # | Budget             | Expended            |
|----------|--------------------|---------------------|
| 022700   | Sheriff General    | \$2,081.49          |
| 022701   | Kitchen Services   | \$ 1,980.43         |
| 022710   | Sheriff Safety     | \$ 17,996.61        |
| 022900   | Jail General       | \$ 1,299.75         |
| 022910   | Jail Safety        | \$ 6,847.05         |
|          | <b>Grand Total</b> | <b>\$ 30,205.33</b> |

Account Director Reports are attached. If you have any questions, please do not hesitate to contact me.

Thank you.







# County of Inyo



## Treasurer/Tax Collector

### **CORRESPONDENCE - INFORMATIONAL - NO ACTION REQUIRED**

**MEETING:** July 7, 2020

**FROM:** Alisha McMurtrie

**SUBJECT:** Treasury Status Report for Quarter Ending March 31, 2020.

---

**RECOMMENDED ACTION:**

Review Treasury Status Report for the Quarter Ending March 31, 2020 and direct any questions to the County Treasurer.

**SUMMARY/JUSTIFICATION:**

The report is provided pursuant to the provisions of Section 53646(b) of the Government Code. The primary purposes of the report are to disclose the following:

- the investments and deposits of the treasury;
- the cost basis and market values of the investments;
- compliance to the County Investment Policy;
- the weighted average of the investments; and
- the projected ability of the treasury to meet the expected expenditure requirements of the treasury's pooled participants for the next six months

**BACKGROUND/HISTORY OF BOARD ACTIONS:**

N/A

**ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

N/A

**OTHER AGENCY INVOLVEMENT:**

Pursuant to Section 53646(g) of the Government Code, copies of this report, while no longer mandated, will continue to be provided to the members of the Treasury Oversight Committee.

**FINANCING:**

N/A

**ATTACHMENTS:**

1. 03-31-2020 Treasury Status Report

**APPROVALS:**

Moana Chapman  
Darcy Ellis  
Moana Chapman  
Alisha McMurtrie

Created/Initiated - 6/1/2020  
Approved - 6/2/2020  
Approved - 6/4/2020  
Final Approval - 6/4/2020

COUNTY OF INYO  
TREASURER-TAX COLLECTOR  
168 NORTH EDWARDS STREET  
POST OFFICE DRAWER O  
INDEPENDENCE, CA 93526-0614  
(760) 878-0312 • (760) 878-0311 FAX



ALISHA McMURTRIE  
TREASURER-TAX COLLECTOR

TO: Honorable Members of the Inyo County Board of Supervisors  
FROM: Alisha McMurtrie, Treasurer-Tax Collector  
SUBJECT: Report of the Status of the Inyo County Treasury as of: March 31, 2020  
DATE: May 19, 2020

The following status report of the County Treasury as of 03-31-2020 is provided pursuant to the provisions of Section 53646(b) of the Government Code.

The attached copy of the "Treasurer's Daily Reconciliation" provides a breakdown of the dollar amount of the Treasury assets by depository for monetary assets and by issuer for securities.

The attached copy of the custody statement from TRACKER, a Division of C2, LLC reflects, among other things, the following information regarding each security held: issuer, maturity date; CUSIP number; face amount; cost basis; and market value (calculated by Merrill Lynch).

The weighted average maturity of the investments of the Treasury was 662 days.

The latest PARS/OPEB investment statement is attached for reference.

It is anticipated that the County Treasury will be able to meet the liquidity requirements of its pooled participants for the next six months.

The investment portfolio is in compliance with the Inyo County Treasury Investment Policy.

NOTES: Regarding Inyo County's monetary assets held outside the County Treasury:

- Various Inyo County Departments and treasury pool participants maintain and administer bank checking accounts outside the County Treasury.
- Inyo County's PARS relationship for our OPEB investment began in June 2010. To date: the PARS balance as of:04/30/2020 was \$7,236,297.41 (Principal: \$4,424,326.00 plus Interest: \$2,951,281.91 less Fees: \$-139,310.50)

C: Members of the Inyo County Treasury Oversight Committee

**TREASURER'S DAILY RECONCILIATION**  
For the Business Day of:  
3/31/2020

**AUDITOR BALANCES:**

|                                       |                         |   |
|---------------------------------------|-------------------------|---|
| Beginning "Claim on Cash in Treasury" | <b>\$153,264,880.20</b> |   |
| Deposit Authorizations                | \$747,372.76            |   |
| Checks Paid on: 03/30/20              | (\$176,957.06)          |   |
| Account Analysis:                     |                         |   |
| Outgoing Debits:                      | (\$2,476,550.65)        | 03/31/2020 SEE ATTACHED EXHIBIT "A" FOR OUTGOING WIRE DETAILS |
| Ending "Claim on Cash in Treasury"    | <b>\$151,358,745.25</b> |   |

**TREASURER BALANCES:**

**CASH ON HAND:**

|        |            |
|--------|------------|
| Drawer | \$348.09   |
| Vault  | \$1,872.50 |

**REMOTE DEPOSIT ON HAND:**

Date:  
Date:  
Date:

**BANK ACCOUNTS:**

|                                     |                |
|-------------------------------------|----------------|
| Union Bank - General Account        | \$3,522,018.81 |
| Eastern Sierra Community Bank - Gen | \$944,385.22   |
| El Dorado #2107 - Directs Account   | \$12,094.98    |
| El Dorado #9703 - Cash Account      | \$100,448.00   |

**INVESTMENTS:**

|                                       |                  | <i>Agency</i> | <i>Limit</i> |
|---------------------------------------|------------------|---------------|--------------|
| Local Agency Investment Fund          | \$28,500,000.00  | 18.83%        | 50,000,000   |
| UBS Money Market                      | \$2,500,000.00   | 1.65%         | of 10.00%    |
| Local Agencies                        | \$729,972.31     | 0.48%         | of 100.00%   |
| Federal Agencies                      | \$82,503,724.00  | 54.51%        | of 100.00%   |
| Federal Agencies-Treasury Notes/Bonds | \$1,964,687.50   | 1.30%         | of 100.00%   |
| Commercial Paper                      | \$15,877,261.12  | 10.49%        | of 15.00%    |
| Corporate Obligation                  | \$1,027,646.53   | 0.68%         | of 30.00%    |
| CDs                                   | \$12,125,000.00  | 8.01%         | of 30.00%    |
| Grand TTL Investments                 | \$145,228,291.46 |               |              |

**NOTES**

|                     |                 |        |           |
|---------------------|-----------------|--------|-----------|
| Maturities > 1 Year | \$62,995,620.22 | 41.62% | of 60.00% |
|---------------------|-----------------|--------|-----------|

**GRAND TOTAL TREASURY BALANCE:** **\$149,809,459.06**

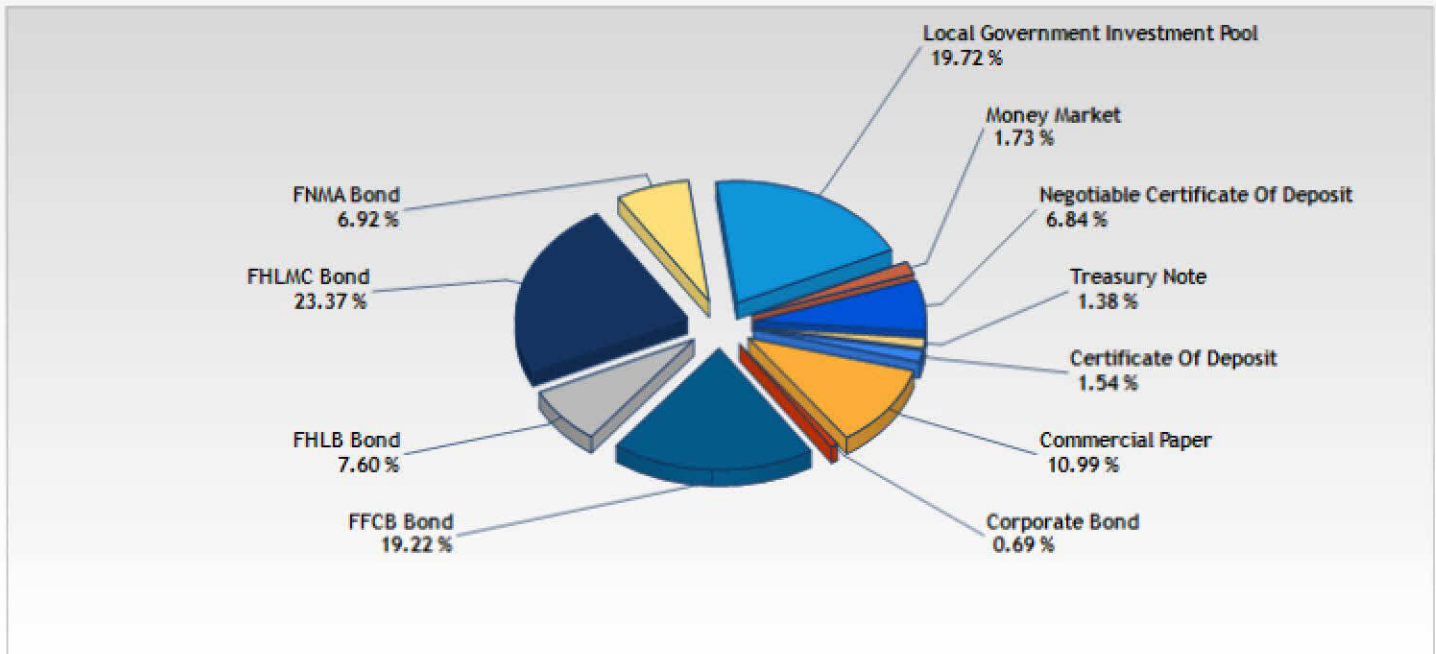
**RECONCILIATION**

|                             |                         |                                      |
|-----------------------------|-------------------------|--------------------------------------|
| <b>Treasury Over/Short:</b> | <b>(\$1,549,286.19)</b> |                                      |
| <b>Explanation:</b>         | (\$526,664.42)          | 03/31/20 REMOTE DEPOSIT IN TRANSIT   |
|                             | (\$1,000,000.00)        | 03/31/30 ESCB WIRE XFER: UB          |
|                             | (\$22,621.77)           | 03/31/30 ED#9703 POOL DEP XFER: ESCB |

(\$30.23) \_\_\_\_\_ 03/19/20 SIFPD WF ACCT ANALYSIS - CK# 1984  
**(\$1,549,286.19)**

Inyo County  
 Distribution  
 Group By: Security Type  
 Average By: Book Value  
 Portfolio / Report Group: All Portfolios  
 As of: 3/31/2020

### Portfolio Holdings Distribution by Security Type



| Security Type                     | Face Amount/Shares    | YTM @ Cost   | Cost Value            | Days To Maturity | % of Portfolio | Market Value          | Book Value            | Duration To Maturity |
|-----------------------------------|-----------------------|--------------|-----------------------|------------------|----------------|-----------------------|-----------------------|----------------------|
| Certificate Of Deposit            | 2,232,000.00          | 1.533        | 2,232,000.00          | 1,495            | 1.54           | 2,232,000.00          | 2,232,000.00          | 3.96                 |
| Commercial Paper                  | 16,000,000.00         | 1.358        | 15,877,261.12         | 115              | 10.99          | 16,000,000.00         | 15,877,261.12         | 0.00                 |
| Corporate Bond                    | 1,000,000.00          | 2.016        | 1,027,646.53          | 112              | 0.69           | 1,000,000.00          | 1,002,754.06          | 0.31                 |
| FFCB Bond                         | 27,775,000.00         | 2.114        | 27,774,000.00         | 686              | 19.22          | 27,775,000.00         | 27,774,875.43         | 1.83                 |
| FHLB Bond                         | 11,000,000.00         | 2.194        | 10,977,324.00         | 1,262            | 7.60           | 11,000,000.00         | 10,990,917.17         | 3.30                 |
| FHLMC Bond                        | 33,775,000.00         | 1.910        | 33,768,500.00         | 1,458            | 23.37          | 33,775,000.00         | 33,770,166.06         | 3.75                 |
| FNMA Bond                         | 10,000,000.00         | 1.514        | 9,983,900.00          | 454              | 6.92           | 10,000,000.00         | 9,995,150.50          | 1.23                 |
| Local Government Investment Pool  | 28,500,000.00         | 1.787        | 28,500,000.00         | 1                | 19.72          | 28,500,000.00         | 28,500,000.00         | 0.00                 |
| Money Market                      | 2,500,000.00          | 0.850        | 2,500,000.00          | 1                | 1.73           | 2,500,000.00          | 2,500,000.00          | 0.00                 |
| Negotiable Certificate Of Deposit | 9,893,000.00          | 1.906        | 9,893,000.00          | 354              | 6.84           | 9,893,000.00          | 9,893,000.00          | 0.95                 |
| Treasury Note                     | 2,000,000.00          | 2.110        | 1,964,687.50          | 106              | 1.38           | 2,000,000.00          | 1,994,136.06          | 0.29                 |
| <b>TOTAL / AVERAGE</b>            | <b>144,675,000.00</b> | <b>1.838</b> | <b>144,498,319.15</b> | <b>662</b>       | <b>100</b>     | <b>144,675,000.00</b> | <b>144,530,260.40</b> | <b>1.70</b>          |

Inyo County  
Portfolio Holdings  
Compliance Report | by Investment Policy  
Report Format: By Transaction  
Group By: Asset Category  
Average By: Face Amount / Shares  
Portfolio / Report Group: All Portfolios  
As of 3/31/2020

| Description                                  | CUSIP#    | Settlement Date | YTM   | Face Amount | Cost Value | Market Value | Maturity Date | Days To Maturity |
|--|-----------|-----------------|-------|-------------|------------|--------------|---------------|------------------|
| <b>Certificate of Deposit - 30 %</b>         |           |                 |       |             |            |              |               |                  |
| Synchrony Bank UT 1.9 4/24/2020              | 87165FGF5 | 04/24/2015      | 1.900 | 248,000.00  | 248,000.00 | 248,000.00   | 04/24/2020    | 24               |
| Beneficial Bank PA 1.25 4/27/2020            | 08173QBP0 | 04/27/2016      | 1.250 | 248,000.00  | 248,000.00 | 248,000.00   | 04/27/2020    | 27               |
| Goldman Sacks Bank NY 1.9 5/6/2020           | 38148JSU6 | 05/06/2015      | 1.900 | 248,000.00  | 248,000.00 | 248,000.00   | 05/06/2020    | 36               |
| American Express UT 1.95 5/7/2020            | 02587DXT0 | 05/07/2015      | 1.950 | 245,000.00  | 245,000.00 | 245,000.00   | 05/07/2020    | 37               |
| Commercial Bank MI 1.75 5/29/2020            | 201282HB9 | 12/30/2015      | 1.750 | 245,000.00  | 245,000.00 | 245,000.00   | 05/29/2020    | 59               |
| Evergreen Bank IL 1.6 5/29/2020              | 300185FM2 | 05/31/2017      | 1.600 | 248,000.00  | 248,000.00 | 248,000.00   | 05/29/2020    | 59               |
| Citbank UT 2.3 6/30/2020                     | 17284DDN9 | 06/30/2015      | 2.300 | 248,000.00  | 248,000.00 | 248,000.00   | 06/30/2020    | 91               |
| Guaranty State Bank KS 1.6 6/30/2020         | 401228AW1 | 12/30/2015      | 1.600 | 245,000.00  | 245,000.00 | 245,000.00   | 06/30/2020    | 91               |
| Capital One Bank 2.25 7/1/2020               | 140420SX9 | 07/01/2015      | 2.250 | 248,000.00  | 248,000.00 | 248,000.00   | 07/01/2020    | 92               |
| Capital One VA 2.3 7/15/2020                 | 14042E4P2 | 07/15/2015      | 2.300 | 248,000.00  | 248,000.00 | 248,000.00   | 07/15/2020    | 106              |
| Lubbock National Bank TX 1.55 7/29/2020      | 549152CM6 | 01/29/2016      | 1.550 | 245,000.00  | 245,000.00 | 245,000.00   | 07/29/2020    | 120              |
| Iowa State Bank IA 1.55 7/29/2020            | 46256YAH2 | 01/29/2016      | 1.550 | 245,000.00  | 245,000.00 | 245,000.00   | 07/29/2020    | 120              |
| Iroquois Federal Savings IL 1.6 8/12/2020-17 | 46355PBV9 | 02/12/2016      | 1.600 | 248,000.00  | 248,000.00 | 248,000.00   | 08/12/2020    | 134              |
| Carroll County State Bank IA 1.2 8/12/2020   | 145087AH5 | 08/12/2016      | 1.200 | 248,000.00  | 248,000.00 | 248,000.00   | 08/12/2020    | 134              |
| Bridgewater Bank MN 1.5 8/17/2020            | 108622ET4 | 02/17/2016      | 1.500 | 248,000.00  | 248,000.00 | 248,000.00   | 08/17/2020    | 139              |
| Kansas Statebank 1.55 8/19/2020              | 50116CAJ8 | 02/19/2016      | 1.550 | 248,000.00  | 248,000.00 | 248,000.00   | 08/19/2020    | 141              |
| Everbank FL 2.05 8/28/2020                   | 29976DA59 | 08/28/2015      | 2.050 | 248,000.00  | 248,000.00 | 248,000.00   | 08/28/2020    | 150              |
| Barclays Bank DE 2.2 9/16/2020               | 06740KJK4 | 09/16/2015      | 2.200 | 248,000.00  | 248,000.00 | 248,000.00   | 09/16/2020    | 169              |
| First Service Bank AR 1.5 11/12/2020         | 33640VBG2 | 02/12/2016      | 1.500 | 248,000.00  | 248,000.00 | 248,000.00   | 11/12/2020    | 226              |
| Maple City Savings TX 1.5 12/7/2020          | 56511PAC2 | 12/07/2016      | 1.500 | 248,000.00  | 248,000.00 | 248,000.00   | 12/07/2020    | 251              |
| HSBC Bank VA Step 12/9/2020                  | 40434AE62 | 12/09/2015      | 2.353 | 248,000.00  | 248,000.00 | 248,000.00   | 12/09/2020    | 253              |
| BMW Bank NA UT 2.25 12/18/2020               | 05580ADM3 | 12/18/2015      | 2.250 | 245,000.00  | 245,000.00 | 245,000.00   | 12/18/2020    | 262              |
| Bank Hapoalin NY 2.05 1/15/2021              | 06251AL40 | 01/15/2016      | 2.050 | 245,000.00  | 245,000.00 | 245,000.00   | 01/15/2021    | 290              |

| Description  | CUSIP#    | Settlement Date | YTM          | Face Amount          | Cost Value           | Market Value         | Maturity Date | Days To Maturity |
|--|-----------|-----------------|--------------|----------------------|----------------------|----------------------|---------------|------------------|
| Community Financial Services KY 1.6 2/17/2021            | 20364ABA2 | 02/17/2016      | 1.600        | 248,000.00           | 248,000.00           | 248,000.00           | 02/17/2021    | 323              |
| Investors Community Bank WI 1.8 2/26/2021                | 46147USN1 | 02/27/2017      | 1.800        | 248,000.00           | 248,000.00           | 248,000.00           | 02/26/2021    | 332              |
| Privatebank & Trust 1.5 5/26/2021                        | 74267GVG9 | 05/26/2016      | 1.500        | 248,000.00           | 248,000.00           | 248,000.00           | 05/26/2021    | 421              |
| UBS Bank UT 1.65 6/7/2021                                | 90348JAR1 | 06/07/2016      | 1.650        | 248,000.00           | 248,000.00           | 248,000.00           | 06/07/2021    | 433              |
| Mercantil Commercial FL 1.65 6/24/2021                   | 58733ACY3 | 06/24/2016      | 1.650        | 248,000.00           | 248,000.00           | 248,000.00           | 06/24/2021    | 450              |
| Apex Bank 1.5 10/12/2021                                 | 03753XAQ3 | 10/12/2016      | 1.500        | 248,000.00           | 248,000.00           | 248,000.00           | 10/12/2021    | 560              |
| Discover Bank DE 1.75 11/2/2021                          | 254672M39 | 11/02/2016      | 1.750        | 245,000.00           | 245,000.00           | 245,000.00           | 11/02/2021    | 581              |
| JPMorgan Chase OH 1.8 11/18/2021-17                      | 48126XLB9 | 11/18/2016      | 1.800        | 248,000.00           | 248,000.00           | 248,000.00           | 11/18/2021    | 597              |
| Jefferson Financial LA 2.2 11/22/2021                    | 474067AJ4 | 11/22/2017      | 2.200        | 248,000.00           | 248,000.00           | 248,000.00           | 11/22/2021    | 601              |
| Texas Exchange Bank TX 1.7 11/30/2021-19                 | 88241TAV2 | 11/30/2016      | 1.700        | 248,000.00           | 248,000.00           | 248,000.00           | 11/30/2021    | 609              |
| State Bank India NY 2.35 2/24/2022                       | 8562846J8 | 02/24/2017      | 2.350        | 248,000.00           | 248,000.00           | 248,000.00           | 02/24/2022    | 695              |
| United Community Bank GA 2.05 3/1/2022                   | 90984P5A9 | 03/01/2017      | 2.050        | 248,000.00           | 248,000.00           | 248,000.00           | 03/01/2022    | 700              |
| Belmont Savings Bank MA 2.15 3/21/2022                   | 080515BV0 | 03/20/2017      | 2.150        | 248,000.00           | 248,000.00           | 248,000.00           | 03/21/2022    | 720              |
| American Express UT 2.45 4/5/2022                        | 02587DN38 | 04/05/2017      | 2.450        | 248,000.00           | 248,000.00           | 248,000.00           | 04/05/2022    | 735              |
| MERRICK BANK 1.75 11/29/2022                             | 59013KEA0 | 11/29/2019      | 1.750        | 248,000.00           | 248,000.00           | 248,000.00           | 11/29/2022    | 973              |
| Mountain America UT 2.4 11/30/2022                       | 62384RAD8 | 11/30/2017      | 2.400        | 248,000.00           | 248,000.00           | 248,000.00           | 11/30/2022    | 974              |
| Morgan Stanley Bank UT 2.65 2/8/2023                     | 61747MJ77 | 02/08/2018      | 2.650        | 248,000.00           | 248,000.00           | 248,000.00           | 02/08/2023    | 1,044            |
| ALLY BANK 0.9 3/13/2023                                  | 02007GMY6 | 03/12/2020      | 0.900        | 248,000.00           | 248,000.00           | 248,000.00           | 03/13/2023    | 1,077            |
| ENERBANK USA 1.8 11/22/2023                              | 29278TMN7 | 11/27/2019      | 1.800        | 248,000.00           | 248,000.00           | 248,000.00           | 11/22/2023    | 1,331            |
| Citibank National SD 3.4 1/9/2024                        | 17312QZ36 | 01/09/2019      | 3.400        | 245,000.00           | 245,000.00           | 245,000.00           | 01/09/2024    | 1,379            |
| AMERICAN COMMERCE BANK 0.9 3/27/2024                     | 02519TBA3 | 03/27/2020      | 0.900        | 248,000.00           | 248,000.00           | 248,000.00           | 03/27/2024    | 1,457            |
| MORGAN STANLEY PRIVATE BANK NA 1.9 11/20/2024            | 61760A3B3 | 11/27/2019      | 1.900        | 248,000.00           | 248,000.00           | 248,000.00           | 11/20/2024    | 1,695            |
| LIVE OAK BANKING COMPANY 1.85 11/27/2024                 | 538036GU2 | 11/27/2019      | 1.850        | 248,000.00           | 248,000.00           | 248,000.00           | 11/27/2024    | 1,702            |
| VIRIVA FCU 1.85 11/27/2024                               | 92823NAA9 | 11/27/2019      | 1.850        | 248,000.00           | 248,000.00           | 248,000.00           | 11/27/2024    | 1,702            |
| CELTIC BANK 1.85 11/27/2024                              | 15118RTC1 | 11/27/2019      | 1.850        | 248,000.00           | 248,000.00           | 248,000.00           | 11/27/2024    | 1,702            |
| SOMERSET TRUST CO 1 3/19/2025                            | 835104BZ2 | 03/19/2020      | 1.000        | 248,000.00           | 248,000.00           | 248,000.00           | 03/19/2025    | 1,814            |
| <b>Sub Total / Average Certificate of Deposit - 30 %</b> |           |                 | <b>1.837</b> | <b>12,125,000.00</b> | <b>12,125,000.00</b> | <b>12,125,000.00</b> |               | <b>564</b>       |
| <b>Commercial Paper - 15 %</b>                           |           |                 |              |                      |                      |                      |               |                  |
| MUFG BANK LTD/NY 0 6/22/2020                             | 62479LFN0 | 02/24/2020      | 1.588        | 3,000,000.00         | 2,984,331.67         | 3,000,000.00         | 06/22/2020    | 83               |
| MUFG BANK LTD/NY 0 7/24/2020                             | 62479LGQ2 | 03/10/2020      | 0.682        | 6,000,000.00         | 5,984,586.67         | 6,000,000.00         | 07/24/2020    | 115              |
| NATXNY 0 8/7/2020  | 63873JH78 | 11/22/2019      | 1.844        | 7,000,000.00         | 6,908,342.78         | 7,000,000.00         | 08/07/2020    | 129              |
| <b>Sub Total / Average Commercial Paper - 15 %</b>       |           |                 | <b>1.360</b> | <b>16,000,000.00</b> | <b>15,877,261.12</b> | <b>16,000,000.00</b> |               | <b>115</b>       |



| Description   | CUSIP#    | Settlement Date | YTM          | Face Amount         | Cost Value          | Market Value        | Maturity Date | Days To Maturity |
|---|-----------|-----------------|--------------|---------------------|---------------------|---------------------|---------------|------------------|
| <b>Coporate Obligation - 30 %</b>                     |           |                 |              |                     |                     |                     |               |                  |
| PNC Bank 2.6 7/21/2020-15                             | 69353RES3 | 07/21/2015      | 2.016        | 1,000,000.00        | 1,027,646.53        | 1,000,000.00        | 07/21/2020    | 112              |
| <b>Sub Total / Average Coporate Obligation - 30 %</b> |           |                 | <b>2.016</b> | <b>1,000,000.00</b> | <b>1,027,646.53</b> | <b>1,000,000.00</b> |               | <b>112</b>       |
| <b>Federal Agencies - 100 %</b>                       |           |                 |              |                     |                     |                     |               |                  |
| FHLB 1.6 4/13/2020                                    | 3130AB3F1 | 04/13/2017      | 1.600        | 1,000,000.00        | 1,000,000.00        | 1,000,000.00        | 04/13/2020    | 13               |
| FHLMC Step 4/24/2020                                  | 3134GBGD8 | 04/24/2017      | 1.695        | 2,000,000.00        | 1,998,000.00        | 2,000,000.00        | 04/24/2020    | 24               |
| FFCB 2.76 5/5/2020                                    | 3133EJQ51 | 11/28/2018      | 2.760        | 3,000,000.00        | 3,000,000.00        | 3,000,000.00        | 05/05/2020    | 35               |
| FFCB 2.75 5/26/2020                                   | 3133EJW88 | 11/28/2018      | 2.750        | 3,775,000.00        | 3,775,000.00        | 3,775,000.00        | 05/26/2020    | 56               |
| FFCB 1.19 7/13/2020-17                                | 3133EGLB9 | 07/13/2016      | 1.203        | 2,000,000.00        | 1,999,000.00        | 2,000,000.00        | 07/13/2020    | 104              |
| FHLMC 1.7 12/22/2020                                  | 3134GBSA1 | 06/22/2017      | 1.700        | 2,000,000.00        | 2,000,000.00        | 2,000,000.00        | 12/22/2020    | 266              |
| FNMA 1.25 5/6/2021                                    | 3135G0K69 | 05/16/2016      | 1.418        | 2,000,000.00        | 1,983,900.00        | 2,000,000.00        | 05/06/2021    | 401              |
| FNMA 1.5 5/26/2021                                    | 3136G3PR0 | 05/26/2016      | 1.500        | 2,000,000.00        | 2,000,000.00        | 2,000,000.00        | 05/26/2021    | 421              |
| FNMA 1.55 7/27/2021-19                                | 3136G3H24 | 07/27/2016      | 1.550        | 6,000,000.00        | 6,000,000.00        | 6,000,000.00        | 07/27/2021    | 483              |
| FHLB 1.875 11/29/2021                                 | 3130AABG2 | 11/30/2016      | 2.115        | 2,000,000.00        | 1,977,324.00        | 2,000,000.00        | 11/29/2021    | 608              |
| FFCB 2.8 12/17/2021                                   | 3133EJ3B3 | 12/17/2018      | 2.800        | 5,000,000.00        | 5,000,000.00        | 5,000,000.00        | 12/17/2021    | 626              |
| FFCB 1.7 12/20/2021-20                                | 3133ELES9 | 12/20/2019      | 1.700        | 2,000,000.00        | 2,000,000.00        | 2,000,000.00        | 12/20/2021    | 629              |
| FFCB 1.7 6/2/2022-20                                  | 3133ELCH5 | 12/02/2019      | 1.700        | 3,000,000.00        | 3,000,000.00        | 3,000,000.00        | 06/02/2022    | 793              |
| FHLMC Step 6/15/2022-19                               | 3134GBRV6 | 06/15/2017      | 2.420        | 1,000,000.00        | 1,000,000.00        | 1,000,000.00        | 06/15/2022    | 806              |
| FFCB 1.6 2/10/2023-21                                 | 3133ELMD3 | 02/10/2020      | 1.600        | 3,000,000.00        | 3,000,000.00        | 3,000,000.00        | 02/10/2023    | 1,046            |
| FHLMC 1.75 5/18/2023-20                               | 3134GUPP9 | 11/18/2019      | 1.750        | 3,000,000.00        | 3,000,000.00        | 3,000,000.00        | 05/18/2023    | 1,143            |
| FFCB 2.3 6/7/2023-21                                  | 3133EKNY8 | 06/07/2019      | 2.300        | 2,000,000.00        | 2,000,000.00        | 2,000,000.00        | 06/07/2023    | 1,163            |
| FFCB 1.68 11/22/2023-21                               | 3133ELAN4 | 11/22/2019      | 1.680        | 2,000,000.00        | 2,000,000.00        | 2,000,000.00        | 11/22/2023    | 1,331            |
| FHLB Step 4/15/2024-20                                | 3130AGAA3 | 04/15/2019      | 2.749        | 3,000,000.00        | 3,000,000.00        | 3,000,000.00        | 04/15/2024    | 1,476            |
| FHLB 2.55 6/5/2024-20                                 | 3130AGKB0 | 06/05/2019      | 2.550        | 3,000,000.00        | 3,000,000.00        | 3,000,000.00        | 06/05/2024    | 1,527            |
| FHLMC 2.3 7/30/2024-20                                | 3134GTP56 | 07/30/2019      | 2.300        | 2,000,000.00        | 2,000,000.00        | 2,000,000.00        | 07/30/2024    | 1,582            |
| FHLMC 2.25 8/5/2024-20                                | 3134GTQ30 | 08/05/2019      | 2.250        | 1,000,000.00        | 1,000,000.00        | 1,000,000.00        | 08/05/2024    | 1,588            |
| FHLMC 2 11/18/2024-20                                 | 3134GURP7 | 11/19/2019      | 2.000        | 4,775,000.00        | 4,775,000.00        | 4,775,000.00        | 11/18/2024    | 1,693            |
| FHLMC 2.05 12/23/2024-20                              | 3134GUB66 | 12/23/2019      | 2.050        | 2,000,000.00        | 2,000,000.00        | 2,000,000.00        | 12/23/2024    | 1,728            |
| FHLMC 2.02 12/23/2024-20                              | 3134GUYS3 | 12/23/2019      | 2.020        | 5,000,000.00        | 5,000,000.00        | 5,000,000.00        | 12/23/2024    | 1,728            |
| FHLMC 2.07 12/30/2024-20                              | 3134GUN30 | 12/30/2019      | 2.070        | 2,000,000.00        | 2,000,000.00        | 2,000,000.00        | 12/30/2024    | 1,735            |
| FHLMC 1.92 1/6/2025-21                                | 3134GUF21 | 01/06/2020      | 1.920        | 3,000,000.00        | 3,000,000.00        | 3,000,000.00        | 01/06/2025    | 1,742            |
| FHLMC 1.75 2/18/2025-20                               | 3134GVCN6 | 02/18/2020      | 1.782        | 3,000,000.00        | 2,995,500.00        | 3,000,000.00        | 02/18/2025    | 1,785            |

| Description  | CUSIP#    | Settlement Date | YTM          | Face Amount           | Cost Value            | Market Value          | Maturity Date | Days To Maturity |
|--|-----------|-----------------|--------------|-----------------------|-----------------------|-----------------------|---------------|------------------|
| FFCB 1.2 3/25/2025-21  | 3133ELUK8 | 03/25/2020      | 1.200        | 2,000,000.00          | 2,000,000.00          | 2,000,000.00          | 03/25/2025    | 1,820            |
| FHLB 1.2 3/25/2025-21  | 3130AJF79 | 03/25/2020      | 1.200        | 2,000,000.00          | 2,000,000.00          | 2,000,000.00          | 03/25/2025    | 1,820            |
| FHLMC 1.4 3/26/2025-20   | 3134GVHE1 | 03/30/2020      | 1.400        | 3,000,000.00          | 3,000,000.00          | 3,000,000.00          | 03/26/2025    | 1,821            |
| <b>Sub Total / Average Federal Agencies - 100 %</b>              |           |                 | <b>1.968</b> | <b>82,550,000.00</b>  | <b>82,503,724.00</b>  | <b>82,550,000.00</b>  |               | <b>1,051</b>     |
| <b>Local Agency Investment Fund - \$ 50M</b>                     |           |                 |              |                       |                       |                       |               |                  |
| LAIF LGIP  | LAIF4000  | 09/30/2018      | 1.787        | 28,500,000.00         | 28,500,000.00         | 28,500,000.00         | N/A           | 1                |
| <b>Sub Total / Average Local Agency Investment Fund - \$ 50M</b> |           |                 | <b>1.787</b> | <b>28,500,000.00</b>  | <b>28,500,000.00</b>  | <b>28,500,000.00</b>  |               | <b>1</b>         |
| <b>Treasury Notes   Bonds - 100 %</b>                            |           |                 |              |                       |                       |                       |               |                  |
| T-Note 1.5 7/15/2020   | 9128282J8 | 07/15/2017      | 2.110        | 2,000,000.00          | 1,964,687.50          | 2,000,000.00          | 07/15/2020    | 106              |
| <b>Sub Total / Average Treasury Notes   Bonds - 100 %</b>        |           |                 | <b>2.110</b> | <b>2,000,000.00</b>   | <b>1,964,687.50</b>   | <b>2,000,000.00</b>   |               | <b>106</b>       |
| <b>UBS Money Market - 10 %</b>                                   |           |                 |              |                       |                       |                       |               |                  |
| UBS Financial MM   | MM9591    | 06/30/2018      | 0.850        | 2,500,000.00          | 2,500,000.00          | 2,500,000.00          | N/A           | 1                |
| <b>Sub Total / Average UBS Money Market - 10 %</b>               |           |                 | <b>0.850</b> | <b>2,500,000.00</b>   | <b>2,500,000.00</b>   | <b>2,500,000.00</b>   |               | <b>1</b>         |
|  |           |                 |              |                       |                       |                       |               |                  |
| <b>Total / Average</b>   |           |                 | <b>1.837</b> | <b>144,675,000.00</b> | <b>144,498,319.15</b> | <b>144,675,000.00</b> |               | <b>662</b>       |

COUNTY OF INYO  
PARS OPEB Trust Program

Account Report for the Period  
4/1/2020 to 4/30/2020

Clint Quilter  
County Administrative Officer  
County of Inyo  
P.O. Drawer N  
Independence, CA 93526

### Account Summary

| Source        | Beginning Balance<br>as of<br>4/1/2020 | Contributions | Earnings            | Expenses          | Distributions | Transfers     | Ending<br>Balance as of<br>4/30/2020 |
|---------------|--|---------------|---------------------|-------------------|---------------|---------------|--------------------------------------|
| OPEB          | \$6,772,170.26                         | \$0.00        | \$466,052.69        | \$1,925.54        | \$0.00        | \$0.00        | \$7,236,297.41                       |
| <b>Totals</b> | <b>\$6,772,170.26</b>                  | <b>\$0.00</b> | <b>\$466,052.69</b> | <b>\$1,925.54</b> | <b>\$0.00</b> | <b>\$0.00</b> | <b>\$7,236,297.41</b>                |

### Investment Selection

Source

OPEB Moderate HighMark PLUS

### Investment Objective

Source

OPEB The dual goals of the Moderate Strategy are growth of principal and income. It is expected that dividend and interest income will comprise a significant portion of total return, although growth through capital appreciation is equally important. The portfolio will be allocated between equity and fixed income investments.

### Investment Return

| Source | 1-Month | 3-Months | 1-Year | Annualized Return |         |          | Plan's Inception Date |
|--------|---------|----------|--------|-------------------|---------|----------|-----------------------|
|        |         |          |        | 3-Years           | 5-Years | 10-Years |                       |
| OPEB   | 6.88%   | -6.70%   | -0.29% | 4.55%             | 4.43%   | -        | 6/16/2010             |

Information as provided by US Bank, Trustee for PARS; Not FDIC Insured; No Bank Guarantee; May Lose Value

Past performance does not guarantee future results. Performance returns may not reflect the deduction of applicable fees, which could reduce returns. Information is deemed reliable but may be subject to change.

Investment Return: Annualized rate of return is the return on an investment over a period other than one year multiplied or divided to give a comparable one-year return.

Account balances are inclusive of Trust Administration, Trustee and Investment Management fees