



# AGENDA

## BOARD OF SUPERVISORS, COUNTY OF MONO STATE OF CALIFORNIA

Regular Meetings: The First, Second, and Third Tuesday of each month. Location of meeting is specified just below.

MEETING LOCATION Mammoth Lakes Suite Z, 437 Old Mammoth Rd, Suite Z, Mammoth Lakes, CA 93546

### Regular Meeting August 21, 2018

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#### TELECONFERENCE LOCATIONS:

1) First and Second Meetings of Each Month: Mammoth Lakes CAO Conference Room, 3rd Floor Sierra Center Mall, 452 Old Mammoth Road, Mammoth Lakes, California, 93546; 2) Third Meeting of Each Month: Mono County Courthouse, 278 Main, 2nd Floor Board Chambers, Bridgeport, CA 93517.

Board Members may participate from a teleconference location. Note: Members of the public may attend the open-session portion of the meeting from a teleconference location, and may address the board during any one of the opportunities provided on the agenda under Opportunity for the Public to Address the Board.

**NOTE:** In compliance with the Americans with Disabilities Act if you need special assistance to participate in this meeting, please contact Shannon Kendall, Clerk of the Board, at (760) 932-5533. Notification 48 hours prior to the meeting will enable the County to make reasonable arrangements to ensure accessibility to this meeting (See 42 USCS 12132, 28CFR 35.130).

Full agenda packets are available for the public to review in the Office of the Clerk of the Board (Annex I - 74 North School Street, Bridgeport, CA 93517). Any writing distributed less than 72 hours prior to the meeting will be available for public inspection in the Office of the Clerk of the Board (Annex I - 74 North School Street, Bridgeport, CA 93517). **ON THE WEB:** You can view the upcoming agenda at <http://monocounty.ca.gov>. If you would like to receive an automatic copy of this agenda by email, please subscribe to the Board of Supervisors Agendas on our website at <http://monocounty.ca.gov/bos>.

***UNLESS OTHERWISE SPECIFIED BY TIME, ITEMS SCHEDULED FOR EITHER THE MORNING OR AFTERNOON SESSIONS WILL BE HEARD ACCORDING TO AVAILABLE TIME AND PRESENCE OF INTERESTED PERSONS. PUBLIC MAY COMMENT ON AGENDA ITEMS AT THE TIME THE ITEM IS HEARD.***

9:00 AM Call meeting to Order

Pledge of Allegiance

#### 1. OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD

on items of public interest that are within the subject matter jurisdiction of the Board.  
(Speakers may be limited in speaking time dependent upon the press of business)

and number of persons wishing to address the Board.)

**2. RECOGNITIONS - NONE**

**3. COUNTY ADMINISTRATIVE OFFICE**

CAO Report regarding Board Assignments

Receive brief oral report by County Administrative Officer (CAO) regarding work activities.

**4. DEPARTMENT/COMMISSION REPORTS**

**5. CONSENT AGENDA**

(All matters on the consent agenda are to be approved on one motion unless a board member requests separate action on a specific item.)

**A. Mono County Response to 2017-2018 Grand Jury Final Report**

Departments: CAO

The County is required to respond within 90 days to Grand Jury Reports. The 2017-2018 Grand Jury Final Report was issued in mid-July, and included only one investigation into offices within the County's jurisdiction, which was the annual jail visit. Staff has prepared a response for Board consideration.

**Recommended Action:** Approve 2017-2018 Grand Jury Final Report response letter, with any necessary changes.

**Fiscal Impact:** None.

**B. Multi-Year Contract for Substance Use Disorder/ Drug MediCal Services for Fiscal Years 2017-18 through 2019-20 between Department of Health Care Services and Mono County Behavioral Health Department**

Departments: Behavioral Health

Proposed contract with Department of Health Care Services for Substance Use Disorder Services for FY 2017-2018 through 2019-2020.

**Recommended Action:** Approve County entry into proposed contract and authorize Behavioral Health Director to execute said contract on behalf of the County.

**Fiscal Impact:** This contract has no impact on the County General Fund. This contract provides annual revenue of \$178,000 to Mono County Behavioral Health for three years.

**C. Solid Waste Franchise Agreement with Mammoth Disposal Company and D&S Waste, Inc.**

Departments: Public Works - Solid Waste

An updated Primary Franchise Agreement has been proposed with Mammoth

Disposal Company and D&S Waste Removal, Inc., pertaining to collection of solid waste from residential and commercial customers in Unincorporated Mono County through December 31, 2022.

**Recommended Action:** Approve and sign two franchisee agreements for the collection and disposal of solid waste within the unincorporated area of the County, specifically the (1) Primary Franchise Agreement between County of Mono and Mammoth Disposal Company for Collection of Solid Waste from Residential and Commercial Customers in Unincorporated Mono County and the (2) Primary Franchise Agreement between County of Mono and D & S Waste Removal, Inc. for Collection of Solid Waste from Residential and Commercial Customers in Unincorporated Mono County (collectively, “Franchise Agreements”).

**Fiscal Impact:** Under the existing Franchise Agreements, the County collects from Mammoth Disposal Company and D & S Waste Removal, Inc. (collectively, “Franchisees”) approximately \$30,000 annually and \$90,000 annually, respectively, and deposits those amounts into the County’s Solid Waste Enterprise Fund to support the County’s solid waste programs, including anticipated costs related to the closure of Benton Crossing Landfill at the end of 2022.

**D. Letter to Los Angeles Congressional Representatives**

Departments: Board of Supervisors

Letter to Los Angeles Congressional representatives Tony Cardenas, Nanette Diaz Barragan, Judy Chu, Jimmy Gomez and Maxine Waters responding to their letter dated July 26, 2018 concerning the additional export of water from Long Valley and Little Round Valleys by the Los Angeles Department of Water and Power.

**Recommended Action:** Approve proposed letter as drafted or as revised following Board discussion.

**Fiscal Impact:** None.

**E. Letter of Support for Hazardous Fuel Reduction by Mammoth Lakes Fire Safe Council**

Departments: Board of Supervisors

In July, the Mammoth Community Water District (District) submitted a pre-application to the Sierra Nevada Conservancy (SNC) to request additional funding for the Lakes Basin Hazardous Fuels Reduction Project, a 661 acre fuels reduction project located in the Mammoth Lakes Basin. Mammoth Lakes Fire Safe Council was awarded \$500,000 in grant funding for this project in June, 2018 and the District is seeking to receive the remainder of the funding necessary for project completion.

**Recommended Action:** Review and approve letter in support of hazardous fuels reduction project in Mammoth Lakes Basin to Sierra Nevada Conservancy.

**Fiscal Impact:** None.

6. **CORRESPONDENCE RECEIVED**

All items listed are located in the Office of the Clerk of the Board, and are available for review. Direction may be given to staff regarding, and/or the Board may discuss, any item of correspondence listed on the agenda.

A. **Reds Meadow Fuels Reduction Project Letter**

Inyo National Forest, Mammoth Ranger District, is proposing to undertake the Red's Meadow Hazardous Fuels Reduction Program. The proposed action is included, as well as information for submitting comments.

B. **Fish Enhancement Budget Potential Deductions Letter**

A letter from Pine Cliff Resorts in June Lake regarding the potential decrease of the County fish enhancement budget.

7. **REGULAR AGENDA - MORNING**

A. **Public Hearing - CalTrans Speed Survey**

Departments: Community Development  
9:30 AM (30 minutes)

(Wendy Sugmura) - The California Department of Transportation (Caltrans) has conducted a speed zone survey on State Route 120, west of the junction of US 395, from post mile 0.0 to 12.05. This section of SR 120 is currently posted at 50 mph. It is Caltrans recommendation that the 50 mph speed limit be removed and to post this area at 55 mph.

**Recommended Action:** Receive information from Caltrans concerning the speed survey and possible speed increase on State Route 120. Provide direction to Caltrans District 9 and/or county staff.

**Fiscal Impact:** None.

B. **Trails Maintenance 2018 Grant Program Report**

Departments: Economic Development  
20 minutes

(Wendy Schneider) - Presentation and report by Wendy Schneider, Executive Director of Friends of the Inyo, regarding the FY17-18 Trails Maintenance Grant Program. Due to the size of the document, the PowerPoint presentation can be found as a Supporting Document at <https://monocounty.ca.gov/bos/page/board-supervisors-11>.

**Recommended Action:** None (informational only). Provide any desired direction to staff.

**Fiscal Impact:** None at this time. Friends of the Inyo was allocated a \$23,805 grant from the general fund in FY17-18 for Mono County trails maintenance projects. For FY18-19, the non-profit organization has requested a grant allocation of \$27,500.

**C. Community Event Marketing Fund Recipient Report - June Lake Jam Fest**

Departments: Economic Development

10 minutes

(Janet Hunt, Executive Director, June Lake Jam Fest) - Presentation by Janet Hunt, Executive Director of the June Lake Jam Fest regarding the growth and success of the annual June Lake Jam Fest. As a recipient of Mono County's Community Event Marketing Fund, Ms. Hunt would like to express her appreciation of the Board's support on behalf of local non-profit Mono Arts Council, and to share event attendee demographics and benefit to local lodging sector and community.

**Recommended Action:** None (informational only). Provide any desired direction to staff.

**Fiscal Impact:** None at this time. The Mono County Community Event Marketing Fund (CEMF) of \$20,000 is a reimbursement grant program designed to assist local non-profits in driving overnight visitation to their tourism-based events. Mono Arts Council received a \$4,000 CEMF grant in FY17-18 to promote the 2018 June Lake Jam Fest.

**D. Community Grant Fund Recipient Report - Southern Mono Historical Society**

Departments: Economic Development

10 minutes

(Marianne O'Connor, Southern Mono Historical Society/Hayden Cabin Museum) - Presentation by Marianne O'Connor of the Southern Mono Historical Society (SMHS) regarding the Jazz by the Creek event and the Hayden Cabin Museum Roof Repair project. As a recipient of Mono County's community grant programs, Ms. O'Connor would like to extend her appreciation to the Board of Supervisors on behalf of SMHS, and to share the results/progress of the funded programs.

**Recommended Action:** None (informational only). Provide any desired direction to staff.

**Fiscal Impact:** None at this time. In FY17-18, the Southern Mono Historical Society received \$2,000 from Mono County's Community Event Marketing Fund to help advertise the Jazz by the Creek fundraising event to markets outside the Eastern Sierra; and \$1,000 from the Historical Societies Grant Fund towards the Hayden Cabin Museum roof repair.

**E. Financing Arrangement for Construction of the Proposed Mono County Civic Center**

Departments: Finance, CAO, County Counsel

90 minutes (30 minutes presentation; 1 hour discussion)

(Janet Dutcher, Leslie Chapman, Stacey Simon) - Present information about the Certificate of Participation debt-financing structure and review the anticipated debt transaction recommended for the Mono County Civic Center project. Introduce proposed financing team and discuss each of their roles. Review next steps involved for obtaining debt proceeds to fund construction costs. Financing specialists will be available to answer any questions the Board or the public may have and to provide additional information, as requested.

**Recommended Action:** Receive presentation and other relevant information.

**Fiscal Impact:** None at this time.

**8. OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD**

on items of public interest that are within the subject matter jurisdiction of the Board. (Speakers may be limited in speaking time dependent upon the press of business and number of persons wishing to address the Board.)

**9. CLOSED SESSION**

**A. Closed Session -- Human Resources**

CONFERENCE WITH LABOR NEGOTIATORS. Government Code Section 54957.6. Agency designated representative(s): Stacey Simon, Leslie Chapman, Dave Butters, Janet Dutcher, and Anne Larsen. Employee Organization(s): Mono County Sheriff's Officers Association (aka Deputy Sheriff's Association), Local 39--majority representative of Mono County Public Employees (MCPE) and Deputy Probation Officers Unit (DPOU), Mono County Paramedic Rescue Association (PARA), Mono County Public Safety Officers Association (PSO), and Mono County Sheriff Department's Management Association (SO Mgmt). Unrepresented employees: All.

**B. Closed Session -- Initiation of litigation**

CONFERENCE WITH LEGAL COUNSEL -- ANTICIPATED LITIGATION. Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Government Code section 54956.9. Number of potential cases: one.

**C. Closed Session -- Exposure to Litigation**

CONFERENCE WITH LEGAL COUNSEL -- EXISTING LITIGATION. Paragraph (1) of subdivision (d) of Government Code section 54956.9. Name of case: Claim for damages filed by Jennifer Huh against Mono County Superintendent of Schools, Mono County Office of Education and Mono County.

**D. Closed Session -- Existing Litigation**

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION. Paragraph (1) of subdivision (d) of Government Code section 54956.9. Name of case: Mono County v. Los Angeles Department of Water and Power, et al. (CV180078).

**THE AFTERNOON SESSION WILL RECONVENE NO EARLIER THAN 1 P.M.**

**10. OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD**

on items of public interest that are within the subject matter jurisdiction of the Board. (Speakers may be limited in speaking time dependent upon the press of business and number of persons wishing to address the Board.)

**11. REGULAR AGENDA - AFTERNOON**

**A. Opioid Epidemic and Harm Reduction Presentation**

Departments: Public Health, Behavioral Health

1 hour

(Dr. Tom Boo, Bryan Wheeler, Robin Roberts, Ingrid Braun, Sandra Pearce) - This presentation is a collaborative effort between Mono County Public Health, Behavioral Health, and Sheriff's Office to inform the Board, stakeholders, and community about opioids, local evidence-based interventions, and opportunities to move forward in addressing strategic priority 1C: Improving Public Health and Safety through addressing the opioid crisis and substance abuse.

**Recommended Action:** None (informational only). Provide any desired direction to staff.

**Fiscal Impact:** There is no fiscal impact to the General Fund.

**B. CDPH Naloxone Distribution Grant**

Departments: Public Health

10 minutes

(Tom Boo) - Naloxone Distribution Grant from the California Department of Public Health (CDPH) for the purchase of Narcan products for the emergency treatment of opioid overdose.

**Recommended Action:** Approve County entry into the Naloxone Distribution Grant Agreement #16-11059 with CDPH and authorize the Public Health Director's signature to execute said contract on behalf of the County, including forms CDPH 1229 and Contractor Certification Clause (CCC).

**Fiscal Impact:** There is no fiscal impact to the County General Fund. The grant would provide the Mono County Health Department with \$506.25 for administrative costs and \$10,125.00 for Narcan Products (270 doses).

**C. CDPH, Syringe / Needle Exchange Program**

Departments: Public Health

10 minutes

(Sandra Pearce) - Syringe Exchange Program of the California Department of Public Health, Office of AIDS (CDPH/OA).

**Recommended Action:** Authorize the Public Health Department's submission of an application to become a CDPH/OA Syringe Exchange Program.

**Fiscal Impact:** There is no impact to the General Fund. Funding and supplies will be provided through various public health related grant programs.

**D. Workshop and Request for Qualifications for Permanent Supportive Housing and Affordable Housing Project Developer in Mammoth Lakes**

Departments: Behavioral Health

30 minutes

(Amanda Greenberg) - Presentation by Amanda Greenberg from the Behavioral Health Department and Jennifer Lopez, a national housing consultant, regarding the development of permanent supportive housing/affordable (PS/A) housing in Mammoth Lakes and Walker, CA. Approval to release Request for Qualifications for PS/A housing developer.

**Recommended Action:** Authorize Mono County Behavioral Health to release a Request for Qualifications (RFQ) in substantially the form provided in the packet and including such changes as approved by County Counsel, for an experienced PS/A housing developer to partner with Mono County in the identification, development and operation of a PS/A housing project in Mammoth Lakes.

**Fiscal Impact:** There is no fiscal impact to the Mono County General Fund. Up to \$2 million is available for this project through the Mental Health Services Act. This item does not commit funding at this time.

**E. Proposed Amendment to Mono County Code Section 12.10.021 - Exemptions to Solid Waste Handling Requirements**

Departments: Public Works - Solid Waste

15 minutes

(Justin Nalder) - Proposed Amendment to Mono County Code Section 12.10.021 - Exemptions to Solid Waste Handling Requirements, to eliminate in its entirety the exemption from the solid waste franchise/franchise agreement requirement provided in Section 12.10.21(A)(3); in addition, amend the definition of "construction and demolition waste" provided in Section 12.02.020 to exclude the terms "rubble" and "pavements."

**Recommended Action:** Introduce, read title, and waive further reading of proposed ordinance amending Mono County Code Section 12.10.021 – Exemptions to Solid Waste Handling Requirements.



**Fiscal Impact:** If the revision to the Mono County Code provisions relating to certain exemptions afforded to the collection, handling, and disposal of construction and demolition waste (C&D Waste) is approved, then there may be an increase in revenue to the Solid Waste Enterprise Fund from the payment of additional tipping fees and export fees by solid waste franchisees to the County. Amount of the increase cannot be estimated at this time.

**F. California Cannabis Regulations - Proposed Final Regulations**

Departments: County Counsel, Community Development, CAO

15 minutes

(Michael Draper, Christy Milovich) - Discussion of the State's Proposed Final Regulations for Cannabis: Review of consistency with adopted County regulations, and consideration of a comment letter to be submitted within the open comment period related to language in the proposed regulations which allows cannabis deliveries to be made to any jurisdiction within California and/or additional provisions of the proposed regulations.

**Recommended Action:** Consider the State's draft permanent regulations and potentially approve proposed comment letter, as drafted or as revised.

**Fiscal Impact:** None.

**12. BOARD MEMBER REPORTS**

The Board may, if time permits, take Board Reports at any time during the meeting and not at a specific time.

**ADJOURN**



**OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS**

**REGULAR AGENDA REQUEST**

Print

**MEETING DATE** August 21, 2018

**Departments: CAO**

**TIME REQUIRED**

**SUBJECT** Mono County Response to 2017-2018 Grand Jury Final Report

**PERSONS  
APPEARING  
BEFORE THE  
BOARD**

**AGENDA DESCRIPTION:**

(A brief general description of what the Board will hear, discuss, consider, or act upon)

The County is required to respond within 90 days to Grand Jury Reports. The 2017-2018 Grand Jury Final Report was issued in mid-July, and included only one investigation into offices within the County's jurisdiction, which was the annual jail visit. Staff has prepared a response for Board consideration.

**RECOMMENDED ACTION:**

Approve 2017-2018 Grand Jury Final Report response letter, with any necessary changes.

**FISCAL IMPACT:**

None.

**CONTACT NAME:** Tony Dublino

**PHONE/EMAIL:** 760.932.5415 / tdublino@mono.ca.gov

**SEND COPIES TO:**

**MINUTE ORDER REQUESTED:**

YES  NO

**ATTACHMENTS:**

Click to download
<a href="#">Staff Report</a>
<a href="#">Response Letter</a>

**History**

Time	Who	Approval
8/16/2018 6:20 AM	County Administrative Office	Yes
8/16/2018 12:08 PM	County Counsel	Yes

8/16/2018 3:30 PM

Finance

Yes



# County of Mono

## County Administrative Office

**Leslie L. Chapman**  
County Administrative Officer

**Tony Dublino**  
Assistant County Administrative Officer

**Dave Butters**  
Human Resources Director

**Jay Sloane**  
Risk Manager

TO: Board of Supervisors

FROM: Tony Dublino, Assistant CAO

DATE: August 21, 2018

RE: Board of Supervisor's Response to 2017-18 Mono County Grand Jury Report

**Recommendation:**

Approve proposed Board of Supervisors response or provide additional comments and clarifications.

**Fiscal Impact:**

None.

**Discussion:**

State law requires elected officials as well as the Board of Supervisors to respond to the findings and recommendations of Grand Jury reports. The Board must respond within 90 days of the issuance of the report (Penal Code section 933(c)).

State law prescribes the specific manner and language to be used by an agency head or governing body in responding to findings and recommendations of a grand jury report. The prescribed response with respect to a finding is to "agree" or "disagree" with an explanation. The prescribed response with respect to a recommendation is generally to indicate whether the recommendation will or will not be "implemented" with an explanation. (Penal Code section 933.05).

In June, the Board approved a response to the 2017-2018 Grand Jury Interim Report that was issued at that time. None of the Grand Jury's investigations or findings in the 2017-2018 Interim Report or Final Report have resulted in any recommendations or action required of Mono County offices or agencies. The only investigation in the Final Report that is within the jurisdiction of Mono County is the annual jail visit. The proposed Board response is to 'agree' with all findings.

If you have any questions regarding this item, please contact me at (760) 932-5415.

Respectfully submitted,

Tony Dublino  
Assistant CAO



Jennifer Halferty ~ District One    Fred Stump ~ District Two    Bob Gardner ~ District Three  
John Peters ~ District Four    Stacy Corless ~ District Five

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## BOARD OF SUPERVISORS COUNTY OF MONO

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P.O. BOX 715, BRIDGEPORT, CALIFORNIA 93517  
(760) 932-5533 • FAX (760) 932-5531  
*Shannon Kendall, Clerk of the Board*

August 21, 2018

Honorable Judge Mark Magit  
Presiding Judge of the Superior Court  
100 Thompsons Way  
P.O. Box 1037  
Mammoth Lakes, California 93546

Re: Response to the Mono County Grand Jury 2017-2018 Final Report

Dear Judge Magit:

Please consider this letter as the official response to the Mono County Grand Jury 2017-2018 Final Report and place this document on file as the Mono County Board of Supervisors' response.

As your honor is aware, the 2016-2017 Grand Jury complaints, findings and recommendations involving offices within the County's jurisdiction have been satisfied, and no further action is being recommended in the 2017-2018 Final Report. The County is pleased to learn that all new complaints received by the 2017-2018 Grand Jury involving offices within the County's jurisdiction have been investigated with no resulting recommendations for additional action.

The majority of the 2017-2018 investigations involved offices that are not within the County's jurisdiction, and the County has no related comments.

The County has no reason to dispute the Grand Jury's findings relating to the one investigation involving offices within our jurisdiction (annual jail visit), and accepts all related findings:

### **Investigation #2**

#### **Mono County Jail**

***The County accepts the findings.***

The Board of Supervisors and County staff recognize the critical role the Grand Jury provides to the community and the County by ensuring the legal and financial adequacy of government services. The Grand Jury provides a sense of openness, transparency and accountability that are crucial to our democracy, and the County appreciates the work performed and the guidance offered. The County thanks the members of the Grand Jury for their public service and encourages the Court to continue to ensure broad representation from all communities of Mono County.

Sincerely,

Bob Gardner, Chair  
Mono County Board of Supervisors



**OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS**

**REGULAR AGENDA REQUEST**

Print

**MEETING DATE** August 21, 2018

**Departments: Behavioral Health**

**TIME REQUIRED**

**SUBJECT** Multi-Year Contract for Substance Use Disorder/ Drug MediCal Services for Fiscal Years 2017-18 through 2019-20 between Department of Health Care Services and Mono County Behavioral Health Department

**PERSONS APPEARING BEFORE THE BOARD**

**AGENDA DESCRIPTION:**

(A brief general description of what the Board will hear, discuss, consider, or act upon)

Proposed contract with Department of Health Care Services for Substance Use Disorder Services for FY 2017-2018 through 2019-2020.

**RECOMMENDED ACTION:**

Approve County entry into proposed contract and authorize Behavioral Health Director to execute said contract on behalf of the County.

**FISCAL IMPACT:**

This contract has no impact on the County General Fund. This contract provides annual revenue of \$178,000 to Mono County Behavioral Health for three years.

**CONTACT NAME:** Robin Roberts

**PHONE/EMAIL:** 760-924-1740 / rroberts@mono.ca.gov

**SEND COPIES TO:**

**MINUTE ORDER REQUESTED:**

YES  NO

**ATTACHMENTS:**

Click to download
<a href="#">Staff Report</a>
<a href="#">Transmittal Letter DMC Contract</a>
<a href="#">DHCS SUD Standard Agreement Amendment</a>

<a href="#">DHCS DMC Contract FY 2017-2020 Exhibit A</a>
<a href="#">Exhibit A, Attachment I</a>
<a href="#">DHCS DMC FY 2017-2020 Exhibit B</a>
<a href="#">Exhibit B, Attachment I</a>
<a href="#">DHCS DMC Contract FY 2017-2020 Exhibit D(F)</a>
<a href="#">DHCS DMC Contract FY 2017-2020 Exhibit E</a>
<a href="#">DHCS SUD Contract Exhibit F</a>
<a href="#">DHCS SUD Certification</a>
<a href="#">DHCS SUD Civil Rights FY 2017-2020</a>

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**History**

<b>Time</b>	<b>Who</b>	<b>Approval</b>
8/17/2018 5:56 AM	County Administrative Office	Yes
8/16/2018 10:23 AM	County Counsel	Yes
8/16/2018 6:20 PM	Finance	Yes





**MONO COUNTY BEHAVIORAL HEALTH DEPARTMENT**

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**COUNTY OF MONO**

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P. O. BOX 2619 MAMMOTH LAKES, CA 93546 (760) 924-1740 FAX: (760) 924-1741

TO: Mono County Board of Supervisors  
FROM: Robin K. Roberts, Behavioral Health Director  
DATE: August 21, 2018

**SUBJECT:**

Proposed Multi-Year contract between the California Department of Health Care Services and Mono County Behavioral Health to provide Substance Use Disorder Services through Drug MediCal. This contract is for Fiscal Years 2017-2018 through 2019-2020.

**RECOMMENDATION:**

Approve entry into proposed contract and authorize the Behavioral Health Director to execute said contract on behalf of the County.

**DISCUSSION:**

This is the standard contract for Substance Use Services with an addition for Mono County Behavioral Health (MCBH) to enter into contract for Drug MediCal (DMC) services. In the past, DHCS allowed small counties to “opt-out” of the DMC contract due to the financial and practical hardships—for example, having to create and maintain the infrastructure and administrative systems to meet the DMC requirements—and allowed departments like MCBH to provide SUD services as needed without the administrative oversight that is necessary with DMC. During 2018, DHCS was alerted by the Centers for Medical & Medicaid Services (Federal, CMS) that all counties must enter into contract for DMC or DHCS would be out of compliance with CMS. As a result, DHCS changed their agreement with small counties who had “opted out” of DMC (there are eleven in the state) and required all to contract for these services or have, potentially, Realignment funds be reduced.

MCBH is recommending the Board approve the contract for DMC services knowing that this will, potentially, cause us to provide the same services we were but with added administrative costs that will cause us to run this program in the red. We have determined that this is the better option given the threat by DHCS could be we lose an undetermined amount of Realignment funding. Given the addition of significant administrative oversight, state auditing, and requirements that we cannot fulfill (time and distance requirements for various types of treatment, Methadone treatment available daily, among them) due to our location and size, we will potentially have recouped any revenue we were able to capture through billing for services.

MCBH is dedicated to providing comprehensive SUD services to our residents. As the Board will hear, we are very close to having what is necessary to provide Medically Assisted Treatment (a part of the DMC requirement) to our residents, which will allow MCBH to treat addiction as a medical issue and use current best practice methods to do so. That we sometimes must meet larger county requirements to preserve our funding is nothing new to us or other Mono County departments. This Staff Report is simply to alert the Board to some of the barriers that are necessary for us to continue to do our job for the County.

**FISCAL IMPACT:**

There is no fiscal impact to the Mono County General Fund.

\$534,000 revenue over the duration of this contract for MCBH; or \$178,000 each FY.

**SUBMITTED BY:**

Robin K. Roberts, Director of Behavioral Health, Contact: 760.924.1740



State of California—Health and Human Services Agency  
Department of Health Care Services



EDMUND G. BROWN JR.  
GOVERNOR

DATE: August 2, 2018

TO: Mono County Behavioral Health Department  
Contract # 17-94117

SUBJECT: Transmittal of the Multi-Year Contract for Substance Use Disorder Services for  
Fiscal Years 2017-18 through 2019-20

Enclosed for signature is the multi-year Contract for Substance Use Disorder (SUD) services for Fiscal Year (FY) 2017-18 through FY 2019-20.

The Contract must be signed by the Contractor's appropriate designee and returned to the Department of Health Care Services (DHCS) by close of business September 28, 2018.

The requirements for processing the enclosed multi-year Contract include the following:

Obtain a resolution, approved board minutes, order, motion, or ordinance from your County Board of Supervisors, which specifically approves and authorizes execution of this Contract.

The individual authorized by the County Board of Supervisors (BOS) must sign five Standard Agreements (Form STD 213). Please ensure that the printed name, title and address are correct. If they are not correct, please cross out and replace to the right side of the name and/or address (ensuring all written information is legible).

Return the following to DHCS: **\*\*Please do not staple any documents.\*\***

- One copy of resolution, approved board of minutes, order, motion, or ordinance (or authority documentation if signed by someone other than BOS).
- Five original signed STD 213s. Only an original wet signature will be accepted; signature stamps or seals are **not** an acceptable form of signature.
- Five copies of each of the following exhibits:
  - § Exhibit A – Scope of Work
  - § Exhibit A, Attachment I–Program Specifications
  - § Exhibit B –Budget Detail and Payment Provisions
  - § Exhibit B, Attachment I – Funding Amounts
  - § Exhibit D (F) – Special Terms and Conditions
  - § Exhibit E – Additional Provisions
  - § Exhibit F – Privacy and Information Security Provisions
- One original signed CCC 04/2017 (Contractor Certification Clauses)
- One original signed California Civil Rights Laws Certification

Send to either:

<b>Regular Mail</b>	<b>Overnight Mail</b>
Department of Health Care Services ATTN: Nancy Shinn SUD Program, Policy and Fiscal Division P.O. Box 997413, MS 2624 Sacramento, CA 95899-7413	Department of Health Care Services ATTN: Nancy Shinn SUD Program, Policy and Fiscal Division 1500 Capitol Avenue, MS 2624 Sacramento, CA 95814

Please retain a copy of the signed Standard Agreement and the documents, as outlined in the Standard Agreement (copies enclosed), as a temporary record until such time you receive a copy of the executed Contract.

Upon DHCS' receipt of the signed Standard Agreements and authority documentation (including all enclosed exhibits), the Contract will be processed and an original signed copy will be returned for your records with all related contractual documents.

This Contract will be valid and enforceable subject to authorization and appropriation of sufficient funds to DHCS' budget authority. If sufficient authorization and appropriation of funds to DHCS' budget authority is denied, a reduction of funds will be made to your Contract.

We appreciate working with you. If you have any questions, please contact Nancy Shinn at (916) 713-8554.

Sincerely,

*Nancy Shinn*

Nancy Shinn, AGPA  
Program Support and Grants Management Branch  
SUD Program, Policy and Fiscal Division

Enclosures:

Standard Agreement (Form STD 213)  
Exhibit A – Scope of Work  
Exhibit A, Attachment I – Program Specifications  
Exhibit B – Budget Detail and Payment Provisions  
Exhibit B, Attachment I – Funding Amounts  
Exhibit D (F) – Special Terms and Conditions  
Exhibit E – Additional Provisions  
Exhibit F – Privacy and Information Security Provisions  
CCC 04/2017 (Contractor Certification Clauses)  
California Civil Rights Laws Certification

REGISTRATION NUMBER	AGREEMENT NUMBER 17-94117
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- This Agreement is entered into between the State Agency and the Contractor named below:  

STATE AGENCY'S NAME Department of Health Care Services	(Also known as DHCS, CDHS, DHS or the State)
CONTRACTOR'S NAME County of Mono	(Also referred to as Contractor)
- The term of this Agreement is: July 1, 2017  
through June 30, 2020
- The maximum amount of this Agreement is: \$ 534,000  
Five Hundred Thirty-Four Thousand Dollars
- The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of this Agreement.

Exhibit A – Scope of Work	2 pages
Exhibit A, Attachment I - Program Specifications	31 pages
Exhibit B - Budget Detail and Payment Provisions	15 page
Exhibit B, Attachment I - Funding Amounts	1 page
Exhibit C - General Terms and Conditions	<a href="#">GTC 04/2017</a>
Exhibit D (F)- Special Terms and Conditions (Attached hereto as part of this agreement)	26 pages
Exhibit E - Additional Provisions	4 pages
Exhibit F - Privacy and Information Security Provisions	32 pages

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

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

<b>CONTRACTOR</b>		<b>California Department of General Services Use Only</b>
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) County of Mono		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Robin K. Roberts MFT, Director Mono County Behavioral Health		
ADDRESS P.O. Box 2619 Mammoth Lakes, CA 93546		<input checked="" type="checkbox"/> Exempt per: Welfare and Institutions Code 14087.4
<b>STATE OF CALIFORNIA</b>		
AGENCY NAME Department of Health Care Services		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING Carrie Talbot, Chief, Contract Management Unit		
ADDRESS 1501 Capitol Avenue, Suite 71.2048, MS 1400, P.O. Box 997413, Sacramento, CA 95899-7413		

**Exhibit A  
Scope of Work**

**1. Service Overview**

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

DHCS and the Contractor enter into this contract pursuant to Section 14124.21 of the Welfare and Institutions Code (hereinafter referred to as W&I Code), and section 11772 of the Health and Safety Code (hereinafter referred to as HSC), DHCS and the Contractor identified in the Standard Agreement are the only parties to this Contract. This Contract is not intended, nor shall it be construed, to confer rights on any third party.

DHCS and the Contractor enter into this contract for the purpose of identifying and providing for covered Drug Medi-Cal services for substance use treatment in the Contractor's service area pursuant to Sections 11848.5(a) and (b) of the HSC, Sections 14021.51 – 14021.53, and 14124.20 – 14124.25 of the W&I Code, and Title 22 of the California Code of Regulations (hereinafter referred to as Title 22), Sections 51341.1, 51490.1, and 51516.1.

The objective is to make substance use treatment services available to Medi-Cal beneficiaries through utilization of federal and state funds available pursuant to Title XIX and Title XXI of the Social Security Act for reimbursable covered services rendered by certified DMC providers.

**2. Service Location**

The services shall be performed at applicable Drug Medi-Cal certified facilities in the County of Mono.

**3. Service Hours**

The services shall be provided during the working hours and days as defined by the Contractor.

**4. Project Representatives**

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

<b>Department of Health Care Services</b>	<b>County of Mono</b>
Contract/Grant Manager: Robert Strom Telephone: (916) 713-8553 Fax: (916) 322-1176 Email: Robert.Strom@dhcs.ca.gov	Robin K. Roberts, MFT Director of Behavioral Health Telephone: (760) 924-1740 Fax: (760) 924-1741 Email: rroberts@mono.ca.gov

**Exhibit A  
Scope of Work**

B. Direct all inquiries to:

<b>Department of Health Care Services</b>	<b>County of Plumas</b>
SUD PPF - PSGMB Attention: Nancy Shinn Mail Station Code 2624 P.O. Box 997413 Sacramento, CA, 95899-7413  Telephone: (916) 713-8554 Fax: (916) 323-1176 Email: Nancy.Shinn@dhcs.ca.gov	Mono Behavioral Health Care Services Attention: Robin K. Roberts, MFT, Director of Behavioral Health P.O. Box 2619 Mammoth Lakes, CA 93546  Telephone: (760) 924-1740 Fax: (760) 924-1741 Email: rroberts@mono.ca.gov

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

**5. Americans with Disabilities Act**

Contractor agrees to ensure that deliverables developed and produced, pursuant to this Contract shall comply with the accessibility requirements of Section 508 of the Rehabilitation Act and the Americans with Disabilities Act of 1973 as amended (29 U.S.C. § 794 (d), and regulations implementing that act as set forth in Part 1194 of Title 36 of the Federal Code of Regulations. In 1998, Congress amended the Rehabilitation Act of 1973 to require Federal agencies to make their electronic and information technology (EIT) accessible to people with disabilities. California Government Code section 11135 codifies section 508 of the Act requiring accessibility of electronic and information technology.

**6. See Exhibit A, Attachment I, for a detailed description of the services to be performed.**

**Exhibit A, Attachment I  
Program Specifications**

**Part I: Drug Medi-Cal Treatment Program Substance Use Disorder Services**

**Section 1: Formation and Purpose**

- A. This Exhibit A, Attachment I, Part I of the contract is entered into by and between the Department of Health Care Services (DHCS) and the Contractor for the purpose of identifying and providing for covered Drug Medi-Cal (DMC) services for Substance Use Disorder (SUD) treatment in the Contractor's service area pursuant to Sections 11848.5(a) and (b) of the Health and Safety Code (hereinafter referred to as HSC), Sections 14021.51 – 14021.53, and 14124.20 – 14124.25 of the Welfare & Institution Code (hereinafter referred to as W&I Code), and Title 22 of the California Code of Regulations (hereinafter referred to as Title 22), Sections 51341.1, 51490.1, and 51516.1.
- B. It is further agreed this contract is controlled by applicable provisions of: (a) the W&I Code, Chapter 7, Sections 14000, et seq., in particular, but not limited to, Sections 14100.2, 14021, 14021.5, 14021.6, 14043, et seq., (b) Title 22, including but not limited to Sections 51490.1, 51341.1 and 51516.1; and (c) Division 4 of Title 9 of the California Code of Regulations (hereinafter referred to as Title 9).
- C. It is understood and agreed that nothing contained in this contract shall be construed to impair the single state agency authority of DHCS.
- D. The objective of this contract is to make SUD treatment services available to Medi-Cal beneficiaries through utilization of federal and state funds available pursuant to Title XIX or Title XXI of the Social Security Act for reimbursable covered services rendered by certified DMC providers.

**Section 2: Covered Services**

- A. Covered Services
  - 1. Contractor shall establish assessment and referral procedures and shall arrange, provide, or subcontract for covered services in the Contractor's service area.  
Covered services include:
    - a) Outpatient drug-free treatment
    - b) Narcotic replacement therapy
    - c) Naltrexone treatment
    - d) Intensive Outpatient Treatment
    - e) Perinatal Residential Substance Abuse Services (excluding room and board)



**Exhibit A, Attachment I  
Program Specifications**

2. In accordance with W&I Code, Section 14124.22, in addition to Narcotic Treatment Program (NTP) services, an NTP provider that is also enrolled as a Medi-Cal provider may provide medically necessary treatment of concurrent health conditions within the scope of the provider's practice, to Medi-Cal beneficiaries who are not enrolled in managed care plans. Medi-Cal beneficiaries enrolled in managed care plans shall be referred to those plans for receipt of medically necessary medical treatment of concurrent health conditions.

Diagnosis and treatment of concurrent health conditions of Medi-Cal beneficiaries not enrolled in managed care plans by a NTP provider may be provided within the Medi-Cal coverage limits. When the services are not part of the SUD treatment reimbursed pursuant to W&I Code, Section 14021.51, services shall be reimbursed in accordance with the Medi-Cal program. Services reimbursable under this section shall include, but not limited to, all of the following:

- a) Medical treatment visits
- b) Diagnostic blood, urine, and X-rays
- c) Psychological and psychiatric tests and services
- d) Quantitative blood and urine toxicology assays
- e) Medical supplies

An NTP provider, enrolled as a Medi-Cal fee-for-service provider, shall not seek reimbursement from a beneficiary for substance abuse treatment services, if services for treatment of concurrent health conditions are billed to the Medi-Cal fee-for-service program.

3. In the event of a conflict between the definition of services contained in this Section of the Contract, and the definition of services in Title 22, Sections 51341.1, 51490.1, and 51516.1, the provisions of Title 22 shall govern.
4. Contractor, to the extent applicable, shall comply with "Sobky v. Smoley" (Document 2A), 855 F. Supp. 1123 (E.D. Cal 1994), incorporated by this reference.
5. Contractor shall comply with federal and state mandates to provide alcohol and other drug treatment services deemed medically necessary for Medi-Cal eligible: (1) pregnant and postpartum women and (2) youth under age 21 who are eligible under the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Program.
  - a) If DMC services are provided to minor consent beneficiaries, Contractor shall comply with California Family Code Section 6929, and Title 22, Sections 50147.1, 50030, 50063.5, 50157(f)(3), 50167(a)(6)(D), and 50195(d).

**Exhibit A, Attachment I  
Program Specifications**

**B. Access to Services**

1. Subject to DHCS provider enrollment certification requirements, Contractor shall maintain continuous availability and accessibility of covered services and facilities, service sites, and personnel to provide the covered services through use of DMC-certified providers. Such services shall not be limited due to budgetary constraints.
  - a) When a request for covered services is made by a beneficiary, Contractor shall require services to be initiated with reasonable promptness. Contractor shall have a documented system for monitoring and evaluating accessibility of care, including a system for addressing problems that develop regarding waiting times and appointments.
  - b) Contractor shall authorize residential services in accordance with the medical necessity criteria specified in Title 22, Section 51303 and the coverage provisions of the approved state Medi-Cal Plan. Room and board are not reimbursable DMC services. If services are denied, the provider shall inform the beneficiary in accordance with Title 22, Section 51341.1 (p).
  - c) Contractor shall require that treatment programs are accessible to people with disabilities in accordance with Title 45, Code of Federal Regulations (hereinafter referred to as CFR), Part 84 and the Americans with Disabilities Act.
2. Covered services, whether provided directly by the Contractor or through subcontractors with DMC certified and enrolled programs, shall be provided to beneficiaries without regard to the beneficiaries' county of residence.
3. The failure of the Contractor, or its subcontractors, to comply with Section B of this Part will be deemed a breach of this contract sufficient to terminate this contract for cause. In the event the contract is terminated, the provision of this Exhibit A, Attachment I, Part II, Section B, shall apply.

**C. Payment for Services**

1. DHCS shall make the appropriate payments set forth in Exhibit B and take all available steps to secure and pay Federal Financial Participation Funds (FFP) and State General Funds (SGF) to the Contractor, once DHCS receives FFP and SGF, for claims submitted by the Contractor. DHCS shall notify Contractor and allow Contractor an opportunity to comment to DHCS when questions are posed by Centers for Medicare and Medicaid Services (CMS), or when there is a federal deferral, withholding, or disallowance with respect to claims made by the Contractor.

**Exhibit A, Attachment I  
Program Specifications**

2. Contractor shall amend its subcontracts for covered services in order to provide sufficient funds to match allowable Federal Medicaid reimbursements for any increase in provider DMC services to beneficiaries.
3. In the event that the Contractor fails to provide covered services in accordance with the provisions of this Contract, at the discretion of DHCS, Contractor may be required to forfeit its county realignment funds pursuant to Government Code Section 30027.10 (a) through (d) from the Behavioral Health Subaccount that is set aside for DMC services and surrender its authority to function as the administrator of covered services in its service area.
4. Contractor shall require all subcontractors to comply with 45 CFR 162.410(a)(1) for any subpart that would be a covered health care provider if it were a separate legal entity. For purposes of this paragraph, a covered health care provider shall have the same definition as set forth in 45 CFR 160.103. DHCS shall make payments for covered services only if Contractor is in compliance with federal regulations.

**Section 3: Drug Medi-Cal Certification and Continued Certification**

A. DMC Certification and Enrollment

1. DHCS will certify eligible providers to participate in the DMC program.
2. DHCS shall certify any county operated or non-governmental providers. This certification shall be performed prior to the date on which the Contractor begins to deliver services under this contract at these sites.
3. The Contractor shall require that providers of perinatal DMC services are properly certified to provide these services and comply with the requirements contained in Title 22, Section 51341.1, Services for Pregnant and Postpartum Women.
4. Contractor shall require all the subcontracted providers of services to be licensed, registered, DMC certified and/or approved in accordance with applicable laws and regulations. The Contractor's subcontracts shall require that providers comply with the following regulations and guidelines:
  - a) Title 21, CFR Part 1300, et seq., Title 42, CFR, Part 8
  - b) Title 22, CCR, Sections 51341.1, 51490.1, and 51516.1, (Document 2C)
  - c) Minimum Quality Treatment Standards, (Document 2F(a))
  - d) Title 9, CCR, Division 4, Chapter 4, Subchapter 1, Sections 10000, et seq
  - e) Title 22, CCR, Division 3, Chapter 3, sections 51000 et. seq.

## **Exhibit A, Attachment I Program Specifications**

In the event of conflicts, the provisions of Title 22 shall control if they are more stringent.

5. Contractor shall notify Provider Enrollment Division (PED) of an addition or change of information in a provider's pending DMC certification application within 35 days of receiving notification from the provider. The Contractor must ensure that a new DMC certification application is submitted to PED reflecting the change.
6. Contractor is responsible for ensuring that any reduction of covered services or relocations by providers are not implemented until approval is issued by DHCS. Within 35 days of receiving notification of a provider's intent to reduce covered services or relocate, the Contractor shall submit, or require the provider to submit, a DMC certification application to PED. The DMC certification application must be submitted to PED 60 days prior to the desired effective date of the reduction of covered services or relocation.
7. If, at any time, a subcontractor's license, registration, certification, or approval to operate a substance use treatment program or provide a covered service is revoked, suspended, modified, or not renewed by entities other than DHCS, the Contractor must notify DHCS Program Support and Grants Management Branch by e-mail at [DHCSMPF@dhcs.ca.gov](mailto:DHCSMPF@dhcs.ca.gov) within two business days of learning of the revocation, suspension, modification, or non-renewal.
  - a) A provider's certification to participate in the DMC program shall automatically terminate in the event that the provider or its owners, officers or directors are convicted of Medi-Cal fraud, abuse or malfeasance. For purposes of this section, a conviction shall include a plea of guilty or nolo contendere.

### **B. Continued Certification**

1. All DMC certified providers shall be subject to continuing certification requirements at least once every five years.
2. DHCS may allow the provider to continue delivering covered services to beneficiaries at a site subject to on-site review by DHCS as part of the recertification process prior to the date of the on-site review, provided the site is operational, the certification remains valid, and has all required fire clearances.
3. DHCS will conduct recertification on-site visits at clinics for circumstances identified in W&I Code, Sections 14043.37, 14043.4, and 14043.7.

**Exhibit A, Attachment I  
Program Specifications**

**Section 4: Monitoring**

A. State Monitoring

1. DHCS Monitoring Reviews and Financial Audits of Contractor

DHCS shall monitor the Contractor's operations for compliance with the provisions of this Contract, and applicable federal and state law and regulations. Such monitoring activities shall include, but not be limited to, inspection and auditing of Contractor services, management systems and procedures, and books and records, as DHCS deems appropriate, at any time during the Contractor's or facility's normal business hours. When monitoring activities identify areas of non-compliance, DHCS shall issue reports to the Contractor detailing findings, recommendations, and corrective action.

2. Postservice Postpayment Utilization Reviews

- a) After the DMC services have been rendered and paid, DHCS shall conduct Postservice Postpayment (PSPP) Utilization Reviews of the subcontracted DMC providers to determine whether the DMC services were provided in accordance with Title 22, Section 51341.1. Any claimed DMC service may be reviewed for compliance with all applicable standards, regulations and program coverage after services are rendered and the claim paid.
- b) DHCS shall issue the PSPP report to the Contractor with a copy to any subcontracted DMC provider. The Contractor shall be responsible for ensuring their subcontracted providers and county-run program's deficiencies are remediated pursuant to Sections 1 and 2 herein. The Contractor shall attest the deficiencies have been remediated and are complete, pursuant to Section 4(A), Paragraph (c), herein.
- c) DHCS shall take appropriate steps in accordance with Title 22, CCR, Section 51341.1 to recover payments made if subsequent investigation uncovers evidence that the claim(s) should not have been paid or that DMC services have been improperly utilized, and/or shall take the corrective action as appropriate. If programmatic or fiscal deficiencies are identified, the provider shall be required to submit a Corrective Action Plan (CAP) to the Contractor for review and approval prior to submission to DHCS for final approval.
  - i. Pursuant to CCR, Title 22, Section 51341.1(o), all deficiencies identified by the PSPP review, whether or not a recovery of funds results, shall be corrected and the entity that provided the services shall submit a Contractor-approved CAP to the PSPP Unit within 60 days of the date of the PSPP report.

**Exhibit A, Attachment I  
Program Specifications**

- 1) The plan shall:
  - a. Address each demand for recovery of payment and/or programmatic deficiency
  - b. Provide a specific description of how the deficiency shall be corrected
  - c. Specify the date of implementation of the corrective action
  - d. Identify who will be responsible for correction and who will be responsible for on-going compliance
- 2) DHCS will provide written approval of the CAP to the Contractor with a copy to the provider. If DHCS does not approve the CAP, DHCS will provide guidance on the deficient areas and request an updated CAP from the Contractor with a copy to the provider. The entity that provided the services must submit an updated CAP to the DMC PSPP Unit within 30 days of notification.

If the entity that provided the services, does not submit a CAP, or, does not implement the approved CAP provisions within the designated timeline, then DHCS may withhold funds from the Contractor until the entity that provided the services is in compliance with Exhibit A, Attachment I, Part I, Section 4(A)(2). DHCS shall inform the Contractor when funds will be withheld.

- d) Contractor and/or subcontractor may appeal DMC dispositions concerning demands for recovery of payment and/or programmatic deficiencies of specific claims. Such appeals shall be handled pursuant to Title 22, CCR, Section 51341.1(q). This section shall not apply to those grievances or complaints arising from the financial findings of an audit or examination made by or on behalf of DHCS pursuant to Exhibit B, Part III, Section 2, of this Contract.
- e) DHCS shall monitor the subcontractor's compliance with PSPP utilization review requirements in accordance with Title 22. Contractor shall also monitor the subcontractor's compliance in accordance with Section 4, Paragraph (A)(2), of this Contract. The federal government may also review the existence and effectiveness of DHCS's utilization review system.
- f) Contractor shall implement and maintain compliance with the system of review described in Title 22, Section 51341.1(k), for the purposes of reviewing the utilization, quality, and appropriateness of covered services and ensuring that all applicable Medi-Cal requirements are met.

**Exhibit A, Attachment I  
Program Specifications**

- g) Contractor shall assure that subcontractor sites keep a record of the clients/patients being treated at each location. Contractor shall retain client records for a minimum of three years after the completion of the final settlement process. When an audit by the Federal Government or DHCS has been started before the expiration of the three-year period, the client records shall be maintained until completion of the audit and the final resolution of all issues as a result of the audit.

3. Training

- a) Contractor shall ensure subcontractors receive training on the requirements of Title 22 regulations and DMC program requirements at least annually from either DHCS's SUD Program, Policy and Fiscal Division (SUD PPF) or the Contractor. Documented attendance of annual trainings offered by DHCS shall suffice to meet the requirements of this provision. Contractor shall report compliance to DHCS' e-mail address SUDCOUNTYREPORTS@dhcs.ca.gov annually as part of the DHCS Contractor monitoring process.
- b) Contractor may request additional technical assistance or training from SUD PPF on an ad hoc basis.

B. Contractor Monitoring

- 1. Program Integrity: Contractor is responsible for ensuring program integrity of its services and its subcontracted providers through a system of oversight, which shall include at least the following:
  - a) Compliance with state and federal law and regulations, including, but not limited to, 42 CFR 433.32, 42 CFR 433.51, 42 CFR 431.800 et. seq., 42 CFR 440.230, 42 CFR 440.260, 42 CFR 455 et. seq., 42 CFR 456 et. seq., 42 CFR 456.23, 22 CCR 51490, 22 CCR 51490.1, 22 CCR 51341.1, 22 CCR 51159, WIC 14124.1, WIC 14124.2, 42 CFR 438.320, 42 CFR 438.416, 42 CFR 438.10, and 42 CFR 438.206.
  - b) Contractor shall conduct, at least annually, a utilization review of DMC providers to assure covered services are being appropriately rendered. The annual review must include an on-site visit of the service provider. Reports of the annual review shall be provided to DHCS's Performance Management Branch at:

Substance Use Disorders Program, Policy and Fiscal Division,  
Performance Management Branch  
Department of Health Care Services  
PO Box 997413, MS-2621  
Sacramento, CA 95899-7413:

**Exhibit A, Attachment I  
Program Specifications**

Or by secure, encrypted email to: [SUDCountyReports@dhcs.ca.gov](mailto:SUDCountyReports@dhcs.ca.gov)

Review reports shall be provided to DHCS within 2 weeks of completion by the Contractor.

Technical assistance is available to counties from DHCS SUD PPF. D.

- c) Contractor shall ensure that Drug and Alcohol Treatment Access Report (DATAR) submissions, detailed in Part III, Paragraph E of this contract are complied with by all treatment providers and subcontracted treatment providers. Contractor shall attest that each subcontracted provider is enrolled in DATAR at the time of execution of the subcontract.
- d) Contractor must monitor and attest compliance and/or completion by providers with CAP requirements (detailed in Section 4, Paragraph (A)(2)(c)) of this Exhibit as required by any PSPP review. Contractor shall attest to DHCS, using the form developed by DHCS that the requirements in the CAP have been completed by the Contractor and/or the provider. Submission of DHCS Form 8049, as identified in this section, by Contractor must be accomplished within the timeline specified in the approved CAP, as noted by DHCS.
- e) Contractor shall certify the DMC claims submitted to DHCS represent expenditures eligible for FFP and attest that the submitted claims have been subject to review and verification process for accuracy and legitimacy (42 CFR 430.30, 433.32, and 433.51). Contractor shall not knowingly submit claims for services rendered to any beneficiary after the beneficiary's date of death, or from uncertified or decertified providers.

**2. Training to DMC Subcontractors**

- a) Contractor shall ensure that all subcontractors receive training on the requirements of Title 22 regulations and DMC requirements at least annually. Documented attendance of any subcontracted provider at the annual trainings offered by DHCS (specified in Section 4, paragraph (A)(3) of this Contract) shall suffice to meet the requirements of this provision. Contractor shall report compliance with this section to DHCS annually as part of the DHCS County monitoring process.

**3. Monthly Monitoring**

- a) Contractor shall check the status of all providers monthly to ensure that they are continuing active participation in the DMC program. Any subcontracted provider that surrenders its certification or closes its facility must be reported by the Contractor to [DHCSMPF@dhcs.ca.gov](mailto:DHCSMPF@dhcs.ca.gov) within two business days of notification or discovery.



**Exhibit A, Attachment I  
Program Specifications**

- b) During the monthly status check, the Contractor shall monitor for a triggering recertification event (change in ownership, change in scope of services, remodeling of facility, or change in location) and report any triggering events to DHCS' County Monitoring Unit within two business days of notification or discovery.

4. Program Complaints

- a) All complaints received by Contractor regarding a DMC certified facility shall be forwarded to the SUD Compliance Division, Complaints Unit within two business days of receipt as follows.

DMC Complaints are to be submitted to:

Department of Health Care Services  
Substance Use Disorder Services  
P.O. Box 997413  
MS# 2601  
Sacramento, CA 95899-7413

Fax form to: (916) 440-5094  
Call the Hotline Phone Toll-Free: (800) 822-6222

Complaints for Residential Adult Alcoholism or Drug Abuse Recovery or Treatment Facilities may also be made by telephoning the appropriate licensing branch listed below:

SUD Compliance Division:

Public Number: (916) 322-2911  
Toll Free Number: (877) 685-8333

The Complaint Form is available and can be submitted online at:  
<http://www.dhcs.ca.gov/individuals/Pages/Sud-Complaints.aspx>.

- b) Contractor shall be responsible for investigating complaints and providing the results of all investigations to DHCS's e-mail address by secure, encrypted e-mail to: [SUDCountyReports@dhcs.ca.gov](mailto:SUDCountyReports@dhcs.ca.gov) within two business days of completion.

**Exhibit A, Attachment I  
Program Specifications**

5. Record Retention

- a) Contractor shall include instructions on record retention in any subcontract with providers and mandate all providers to keep and maintain records for each service rendered, to whom it was rendered, and the date of service, pursuant to W&I Code, Section 14124.1 and 42 CFR Section 433.32, and 22 CCR Section 51341.1.

6. Subcontract Termination

- a) Contractor shall notify their assigned DHCS' County Monitoring Unit analyst through e-mail of the termination of any contract with a certified subcontracted provider, and the basis for termination of the contract, within two business days.

7. Corrective Action Plan

- a) If the Contractor fails to ensure any of the foregoing oversight through an adequate system of monitoring, utilization review, and fiscal and programmatic controls, DHCS may request a CAP from the Contractor to address these deficiencies and a timeline for implementation. Failure to submit a CAP or adhere to the provisions in the CAP may result in a withholding of funds allocated to Contractor for the provision of services, and/or termination of this contract for cause.

- b) Failure to comply with monitoring requirements shall result in:

- i. DHCS shall issue a report to Contractor after conducting monitoring, utilization, or fiscal auditing reviews of the Contractor. When the DHCS report identifies non-compliant services or processes, it shall require a CAP. Contractor shall submit a CAP to DHCS within the timeframes required by DHCS.

- 1) The CAP shall include:

- a. A statement of the deficiency
- b. A list of action steps to be taken to correct the deficiency
- c. Target date for implementation of each corrective action
- d. Who will be responsible for correction and ongoing compliance

**Exhibit A, Attachment I  
Program Specifications**

- ii. DHCS will provide written approval of the CAP to the Contractor. If DHCS does not approve the CAP submitted by the Contractor, DHCS will provide guidance on the deficient areas and request an updated CAP from the Contractor with a new deadline for submission.
- iii. If the Contractor does not submit a CAP, or, does not implement the approved CAP provisions within the designated timeline, DHCS may withhold funds until the Contractor is in compliance. DHCS shall inform the Contractor 30 calendar days in advance of when funds will be withheld.

**Section 5: Investigations and Confidentiality of Administrative Actions**

- A. Contractor acknowledges that if a DMC provider is under investigation by DHCS or any other state, local or federal law enforcement agency for fraud or abuse, DHCS may temporarily suspend the provider from the DMC program, pursuant to W&I Code, Section 14043.36(a). Information about a provider's administrative sanction status is confidential until such time as the action is either completed or resolved. DHCS may also issue a Payment Suspension to a provider pursuant to W&I Code, Section 14107.11 and 42 CFR Section 455.23. Contractor is to withhold payments from a DMC provider during the time a Payment Suspension is in effect.

Contractor shall execute the Confidentiality Agreement, attached as Document 5A. The Confidentiality Agreement permits DHCS to communicate with Contractor concerning subcontracted providers that are subject to administrative sanctions.

**Exhibit A, Attachment I  
Program Specifications**

**Part II - General**

A. Additional Contract Restrictions

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

B. Nullification of this Contract

The parties agree that if the Contractor fails to comply with the provisions of W&I Code Section 14124.24, all areas related to the DMC Treatment Program SUD services this contract shall be null and void.

C. No Unlawful Use or Unlawful Use Messages Regarding Drugs

Contractor agrees that information produced through these funds, and which pertains to drugs and alcohol - related programs, shall contain a clearly written statement that there shall be no unlawful use of drugs or alcohol associated with the program. Additionally, no aspect of a drug or alcohol related program shall include any message on the responsible use, if the use is unlawful, of drugs or alcohol (HSC Section 11999-11999.3). By signing this Contract, Contractor agrees that it will enforce, and will require its subcontractors to enforce, these requirements.

D. Noncompliance with Reporting Requirements

Contractor agrees that DHCS has the right to withhold payments until Contractor has submitted any required data and reports to DHCS, as identified in Exhibit A, Attachment I, Part III – Reporting Requirements, or as identified in Document 1F(a), Reporting Requirements Matrix for Counties.

E. Health Insurance Portability and Accountability Act (HIPAA) of 1996

If any of the work performed under this contract is subject to the HIPAA, Contractor shall perform the work in compliance with all applicable provisions of HIPAA. As identified in Exhibit F, DHCS and County shall cooperate to assure mutual agreement as to those transactions between them, to which this provision applies. Refer to Exhibit F for additional information.

1. Trading Partner Requirements

- a) No Changes. Contractor hereby agrees that for the personal health information (Information), it will not change any definition, data condition or use of a data element or segment as proscribed in the Federal HHS Transaction Standard Regulation (45 CFR 162.915 (a)).

**Exhibit A, Attachment I  
Program Specifications**

- b) No Additions. Contractor hereby agrees that for the Information, it will not add any data elements or segments to the maximum data set as proscribed in the HHS Transaction Standard Regulation (45 CFR 162.915 (b)).
- c) No Unauthorized Uses. Contractor hereby agrees that for the Information, it will not use any code or data elements that either are marked “not used” in the HHS Transaction’s Implementation specification or are not in the HHS Transaction Standard’s implementation specifications (45 CFR 162.915 (c)).
- d) No Changes to Meaning or Intent. Contractor hereby agrees that for the Information, it will not change the meaning or intent of any of the HHS Transaction Standard’s implementation specification (45 CFR 162.915 (d)).

2. Concurrence for Test Modifications to HHS Transaction Standards

Contractor agrees and understands that there exists the possibility that DHCS or others may request an extension from the uses of a standard in the HHS Transaction Standards. If this occurs, Contractor agrees that it will participate in such test modifications.

3. Adequate Testing

Contractor is responsible to adequately test all business rules appropriate to their types and specialties. If the Contractor is acting as a clearinghouse for enrolled providers, Contractor has obligations to adequately test all business rules appropriate to each and every provider type and specialty for which they provide clearinghouse services.

4. Deficiencies

Contractor agrees to correct transactions, errors or deficiencies identified by DHCS, and transactions errors or deficiencies identified by an enrolled provider if the Contractor is acting as a clearinghouse for that provider. When County is a clearinghouse, Contractor agrees to properly communicate deficiencies and other pertinent information regarding electronic transactions to enrolled providers for which they provide clearinghouse services.

5. Code Set Retention

Both parties understand and agree to keep open code sets being processed or used in this contract for at least the current billing period or any appeal period, whichever is longer.

## **Exhibit A, Attachment I Program Specifications**

### 6. Data Transmission Log

Both parties shall establish and maintain a Data Transmission Log, which shall record any and all Data Transmissions taking place between the Parties during the term of this Contract. Each party will take necessary any reasonable steps to ensure that such Data Transmission Logs constitute a current, accurate, complete, and unaltered record of any and all Data Transmissions between the parties, and shall be retained by each party for no less than twenty-four (24) months following the date of the Data Transmission. The Data Transmission Log may be maintained on computer media or other suitable means provided that, if it is necessary to do so, the information contained in the Data Transmission Log may be retrieved in a timely manner and presented in readable form.

### F. Counselor Certification

Any counselor or registrant providing intake, assessment of need for services, treatment or recovery planning, individual or group counseling to participants, patients, or residents in a DHCS licensed or certified program is required to be registered or certified as defined in Title 9, CCR, Division 4, Chapter 8 (Document 3H).

### G. Cultural and Linguistic Proficiency

To ensure equal access to quality care by diverse populations, each service provider receiving funds from this contract shall adopt the Federal Office of Minority Health Culturally and Linguistically Appropriate Service (CLAS) national standards (Document 3V).

### H. Trafficking Victims Protection Act of 2000

Contractor and its subcontractors that provide services covered by this contract shall comply with the Trafficking Victims Protection Act of 2000 (22 USC 7104(g)), as amended by section 1702 of Pub. L. 112-239.

### I. Tribal Communities and Organizations

Contractor shall regularly assess (e.g. review population information available through Census, compare to information obtained in CalOMS Treatment to determine whether population is being reached, survey Tribal representatives for insight in potential barriers) the substance use service needs of the American Indian/Alaskan Native (AI/AN) population within the County geographic area and shall engage in regular and meaningful consultation and collaboration with elected officials of the tribe, Rancheria, or their designee for the purpose of identifying issues/barriers to service delivery and improvement of the quality, effectiveness and accessibility of services available to AI/NA communities within the County.

**Exhibit A, Attachment I  
Program Specifications**

J. Youth Treatment Guidelines

Contractor will follow the guidelines in Document 1V, incorporated by this reference, "Youth Treatment Guidelines," in developing and implementing youth treatment programs funded under this Exhibit, until such time new Youth Treatment Guidelines are established and adopted. No formal amendment of this contract is required for new guidelines to be incorporated into this Contract.

K. Nondiscrimination in Employment and Services

By signing this Contract, Contractor certifies that under the laws of the United States and the State of California, incorporated into this contract by reference and made a part hereof as if set forth in full, Contractor will not unlawfully discriminate against any person.

L. Federal Law Requirements:

1. Title VI of the Civil Rights Act of 1964, Section 2000d, as amended, prohibiting discrimination based on race, color, or national origin in federally funded programs.
2. Title VIII of the Civil Rights Act of 1968 (42 USC 3601 et seq.) prohibiting discrimination on the basis of race, color, religion, sex, handicap, familial status or national origin in the sale or rental of housing.
3. Age Discrimination Act of 1975 (45 CFR Part 90), as amended (42 USC Sections 6101 – 6107), which prohibits discrimination on the basis of age.
4. Age Discrimination in Employment Act (29 CFR Part 1625).
5. Title I of the Americans with Disabilities Act (29 CFR Part 1630) prohibiting discrimination against the disabled in employment.
6. Title II of the Americans with Disabilities Act (28 CFR Part 35) prohibiting discrimination against the disabled by public entities.
7. Title III of the Americans with Disabilities Act (28 CFR Part 36) regarding access.
8. Section 504 of the Rehabilitation Act of 1973, as amended (29 USC Section 794), prohibiting discrimination on the basis of individuals with disabilities.
9. Executive Order 11246, 42 USC 2000e et seq., and 41 CFR Part 60 regarding nondiscrimination in employment under federal contracts and construction contracts greater than \$10,000 funded by federal financial assistance.

**Exhibit A, Attachment I  
Program Specifications**

10. Executive Order 13166 (67 FR 41455) to improve access to federal services for those with limited English proficiency.
11. The Drug Abuse Office and Treatment Act of 1972, as amended, relating to nondiscrimination on the basis of drug abuse
12. Confidentiality of Alcohol and Drug Abuse Patient Records (42 CFR Part 2, Subparts A – E).

**M. State Law Requirements:**

1. Fair Employment and Housing Act (Government Code Section 12900 et seq.) and the applicable regulations promulgated thereunder (2 CCR 7285.0 et seq.).
2. Title 2, Division 3, Article 9.5 of the Government Code, commencing with Section 11135.
3. Title 9, Division 4, Chapter 8 of the CCR, commencing with Section 13000.
4. No state, federal, or County Realignment funds shall be used by the Contractor or its subcontractors for sectarian worship, instruction, or proselytization. No state funds shall be used by the Contractor or its subcontractors to provide direct, immediate, or substantial support to any religious activity.
5. Noncompliance with the requirements of nondiscrimination in services shall constitute grounds for DHCS to withhold payments under this contract or terminate all, or any type, of funding provided hereunder.

**N. Additional Contract Restrictions**

This contract is subject to any additional restrictions, limitations, or conditions enacted by the federal or state governments that affect the provisions, terms, or funding of this contract in any manner.

**O. Information Access for Individuals with Limited English Proficiency**

1. Contractor shall comply with all applicable provisions of the Dymally-Alatorre Bilingual Services Act (Government Code sections 7290-7299.8) regarding access to materials that explain services available to the public as well as providing language interpretation services.
2. Contractor shall comply with the applicable provisions of Section 1557 of the Affordable Care Act (45 CFR Part 92), including, but not limited to, 45 CFR 92.201, when providing access to:



**Exhibit A, Attachment I  
Program Specifications**

- a) Materials explaining services available to the public
- b) Language assistance
- c) Language interpreter and translation services
- d) Video remote language interpreting services

**P. Subcontract Provisions**

Contractor shall include the foregoing Part II general provisions in all of its subcontracts.

**Q. Participation of County Behavioral Health Director's Association of California.**

The County Alcohol and Other Drug (AOD) Program Administrator shall participate and represent the County in meetings of the County Behavioral Health Director's Association of California for the purposes of representing the counties in their relationship with DHCS with respect to policies, standards, and administration for alcohol and other drug abuse services.

The County AOD Program Administrator shall attend any special meetings called by the Director of DHCS. Participation and representation shall also be provided by the County Behavioral Health Director's Association of California.

**Exhibit A, Attachment I  
Program Specifications**

**Part III – Reporting Requirements**

Contractor agrees that DHCS has the right to withhold payments until Contractor submits any required data and reports to DHCS, as identified in this Exhibit A, Attachment I or as identified in Document 1F (a), Reporting Requirement Matrix for Counties.

**A. Year-End Cost Settlement Reports**

Pursuant to W&I Code, Section 14124.24 (g) (1) Contractor shall submit to DHCS, on November 1 of each year, the following year-end cost settlement documents, for itself and its subcontracted providers, by paper or electronic format, as prescribed by DHCS, submission for the previous fiscal year:

1. Document 2P, County Certification Year-End Claim for Reimbursement
2. Document 2P(a), Drug Medi-Cal Provider Cost Report Excel Workbook

**B. Drug Medi-Cal Claims and Reports**

Contractors or providers that bill DHCS or the County for services identified in Section 51516.1 of Title 22 shall submit claims in accordance with DHCS's DMC Provider Billing Manual (Document 2G).

Contractors and subcontractors that provide DMC services shall be responsible for verifying the Medi-Cal eligibility of each client for each month of service prior to billing for DMC services to that client for that month. Medi-Cal eligibility verification should be performed prior to rendering service, in accordance with and as described in DHCS' DMC Provider Billing Manual. Options for verifying the eligibility of a Medi-Cal beneficiary are described in the DHCS' DMC Provider Billing Manual.

Claims for DMC reimbursement shall include only those services covered under Title 22, Section 51341.1(c-d) and administrative charges that are allowed under W&I Code, Sections 14132.44 and 14132.47.

1. Contractor shall submit the "Certified Expenditure" form, reflecting either: (1) the approved amount of the 837P claim file, after the claims have been adjudicated or (2) the claimed amount identified on the 837P claim file, which could account for both approved and denied claims. Contractor shall submit the SHCS Drug Medi-Cal Certification Form DHCS Form DHCS 100224A (Document 4D) to DHCS for each 837P transaction approved for reimbursement of the federal Medicaid funds.

**Exhibit A, Attachment I  
Program Specifications**

2. DMC service claims shall be submitted electronically in a Health Insurance Portability and Accountability Act (HIPAA) compliant format (837P). All adjudicated claim information must be retrieved by the Contractor via an 835 HIPAA compliant format (Health Care Claim Payment/Advice).
3. The following forms shall be prepared as needed and retained by the provider for review by DHCS:
  - a) Multiple Billing Override Certification (MC 6700), Document 2K.
  - b) Good Cause Certification (6065A), Document 2L(a).
  - c) Good Cause Certification (6065B), Document 2L(b).

In the absence of good cause documented on the Good Cause Certification (6065A or 6065B) form, claims that are not submitted within 30 days of the end of the month of service shall be denied. The existence of good cause shall be determined by DHCS in accordance with Title 22, CCR, Sections 51008 and 51008.5.

4. Certified Public Expenditure County Administration

Separate from direct service claims as identified in this section above, county may submit an invoice for administrative costs for administering the DMC program on a quarterly basis. The form requesting reimbursement shall be submitted to DHCS.

5. If while completing the Utilization Review and Quality Assurance requirements of this Exhibit A, Attachment I, Part I, Section 4, any of the Contractor's skilled professional medical and personnel directly supporting staff meet the criteria set forth in 42 CFR 432.50(d)(1), then the Contractor shall submit a written request that specifically demonstrates how the skilled professional medical personnel and directly supporting staff meet all of the applicable criteria set forth in 42 C.F.R. 432.50(d)(1) and outline the duties they will perform to assist DHCS, or DHCS' skilled professional medical personnel, in activities that are directly related to the administration of the DMC Program. DHCS shall respond to the Contractor's written request within 20 days with either a written agreement pursuant to 42 CFR 432.50(d) (2) approving the request, or a written explanation as to why DHCS does not agree that the Contractor's skilled professional medical personnel and directly supporting staff do not meet the criteria set forth in 42 CFR 432.50(d)(1).

C. California Outcomes Measurement System (CalOMS) for Treatment (CalOMS-Tx)

The CalOMS-Tx Business Rules and Requirements are:

**Exhibit A, Attachment I  
Program Specifications**

1. Contractor shall contract with a software vendor that complies with the CalOMS-Tx data collection system requirements for submission of CalOMS-Tx data. A Business Associate Agreement (BAA) shall be established between the Contractor and the software vendor. The BAA shall state that DHCS is allowed to return the processed CalOMS-Tx data to the vendor that supplied the data to DHCS.
2. Contractor shall conduct information technology (IT) systems testing and pass DHCS certification testing before commencing submission of CalOMS-Tx data. If the Contractor subcontracts with vendor for IT services, Contractor is responsible for ensuring that the subcontracted IT system is tested and certified by the DHCS prior to submitting CalOMS-Tx data. If Contractor changes or modifies the CalOMS-Tx IT system, then Contractor shall re-test and pass DHCS re-certification prior to submitting data from a new or modified system.
3. Electronic submission of CalOMS-Tx data shall be submitted by Contractor within 45 days from the end of the last day of the report month.
4. Contractor shall comply with data collection and reporting requirements established by the DHCS CalOMS-Tx Data Collection Guide (Document 3J) and all former Department of Alcohol and Drug Programs Bulletins and DHCS Information Notices relevant to CalOMS-Tx data collection.
5. Contractor shall submit CalOMS-Tx admission, discharge, annual update, resubmissions of records containing errors or in need of correction, and “provider no activity” report records in an electronic format approved by DHCS.
6. Contractor shall comply with the CalOMS-Tx Data Compliance Standards established by DHCS identified in Document 3S for reporting data content, data quality, data completeness, reporting frequency, reporting deadlines, and reporting method.
7. Contractor shall participate in CalOMS-Tx informational meetings, trainings, and conference calls.
8. Contractor shall implement and maintain a system for collecting and electronically submitting CalOMS-Tx data.
9. Contractor shall meet the requirements as identified in Exhibit F, Privacy and Information Security Provisions and Exhibit F, Attachment I – Social Security Administration Agreement.

## **Exhibit A, Attachment I Program Specifications**

### D. CalOMS-Tx General Information

1. If the Contractor experiences system or service failure or other extraordinary circumstances that affect its ability to timely submit CalOMS-Tx, and or meet other CalOMS-Tx data compliance requirements, Contractor shall report the problem in writing by secure, encrypted email to: DHCS by e-mail at [ITServiceDesk@dhcs.ca.gov](mailto:ITServiceDesk@dhcs.ca.gov) before the established data submission deadlines. The written notice shall include a remediation plan that is subject to review and approval by DHCS. DHCS may, at its sole discretion, grant a grace period of up to 60 days for the Contractor to resolve the problem.
2. If DHCS experiences system or service failure, an extension equal to the number of business days will be granted for Contractor data submission.
3. Contractor shall comply with the treatment data quality standards established by DHCS. Failure to meet these standards on an ongoing basis may result in withholding DMC funds.
4. If the Contractor submits data after the established deadlines, due to a delay or problem, Contractor is still responsible for collecting and reporting data from time of delay or problem.

### E. Drug and Alcohol Treatment Access Report (DATAR)

The DATAR business rules and requirements are:

1. The Contractor shall be responsible for ensuring that the Contractor-operated treatment services and all treatment providers, with whom Contractor makes a contract or otherwise pays for the services, submit a monthly DATAR report in an electronic copy format as provided by DHCS.

In instances where the Contractor maintains, either directly or indirectly, a central intake unit or equivalent, which provides intake services including a waiting list, the Contractor shall identify and begin submitting monthly DATAR reports for the central intake unit by a date to be specified by DHCS.

2. Contractor shall ensure that all DATAR reports are submitted by either Contractor-operated treatment services and by each subcontracted treatment provider to DHCS by the 10th of the month following the report activity month.
3. Contractor shall ensure that all applicable providers are enrolled in DHCS' web-based DATARWeb program for submission of data, accessible on the DHCS website when executing the subcontract.

**Exhibit A, Attachment I  
Program Specifications**

4. If the Contractor or its subcontractor experiences system or service failure or other extraordinary circumstances that affect its ability to timely submit a monthly DATAR report, and/or to meet data compliance requirements, the Contractor shall report the problem in writing by secure, encrypted email to: DHCS by e-mail at [ITServiceDesk@dhcs.ca.gov](mailto:ITServiceDesk@dhcs.ca.gov) before the established data submission deadlines. The written notice shall include a corrective action plan that is subject to review and approval by DHCS. A grace period of up to sixty days may be granted, at DHCS' sole discretion, for the Contractor to resolve the problem before DMC payments are withheld (See Exhibit B, Part II, Section 2).
  5. If DHCS experiences system or service failure, no penalties will be assessed to Contractor for late data submission.
  6. The Contractor shall be considered compliant if a minimum of 95% of required DATAR reports from the Contractor's treatment providers are received by the due date.
- F. Failure to meet required reporting requirements shall result in:
1. DHCS shall issue a Notice of Deficiency (Deficiencies) to Contractor regarding specified providers with a deadline to submit the required data and a request for a CAP to ensure timely reporting in the future. DHCS will approve or reject the CAP or request revisions to the CAP, which shall be resubmitted to DHCS within 30 days.
  2. If the Contractor has not ensured compliance with the data submission or CAP request within the designated timeline, then DHCS may withhold funds until all data is submitted. DHCS shall inform the Contractor 30 calendar days in advance of when funds will be withheld.

**Exhibit A, Attachment I  
Program Specifications**

**Part IV – Definitions**

**Section 1 - General Definitions**

The words and terms of this contract are intended to have their usual meanings unless a particular or more limited meaning is associated with their usage pursuant to Division 10.5 of HSC, Section 11750 et seq., and Title 9, CCR, Section 9000 et seq.

- A. **"Available Capacity"** means the total number of units of service (bed days, hours, slots, etc.) that a Contractor actually makes available in the current fiscal year.
- B. **"Contractor"** means the county identified in the Standard Agreement or authorized by the County Board of Supervisors to administer SUD programs.
- C. **"Corrective Action Plan" (CAP)** means the written plan of action document which the Contractor or its subcontracted service provider develops and submits to DHCS to address or correct a deficiency or process that is non-compliant with laws, regulations or standards.
- D. **"County"** means the county in which the Contractor physically provides covered SUD treatment services.
- E. **"County Realignment Funds"** means Behavioral Health Subaccount funds received by the County as per Government Code Section 30025.
- F. **"Days"** means calendar days, unless otherwise specified.
- G. **"Final Settlement"** means permanent settlement of the Contractor's actual allowable costs or expenditures as determined at the time of audit, which shall be completed within three years of the date the year-end cost settlement report was accepted for interim settlement by the DHCS. If the audit is not completed within three years, the interim settlement shall be considered as the final settlement.
- H. **"Interim Settlement"** means temporary settlement of actual allowable costs or expenditures reflected in the Contractor's year-end cost settlement report.
- I. **"Key points of contact"** means common points of access to substance use treatment services from the county, including but not limited to the county's beneficiary problem resolution process, county owned or operated or contract hospitals, and any other central access locations established by the county.
- J. **"Maximum Payable"** means the encumbered amount reflected on the Standard Agreement of this contract and supported by Exhibit B, Attachment I.

**Exhibit A, Attachment I  
Program Specifications**

- K. "Modality"** means those necessary overall general service activities to provide SUD services as described in Division 10.5 of the HSC.
- L. "Performance"** means providing the dedicated capacity in accordance with Exhibit B, Attachment I, and abiding by the terms of this Exhibit, including all applicable state and federal statutes, regulations, and standards, including Alcohol and/or Other Drug Certification Standards (Document 1P), in expending funds for the provision of substance use services hereunder.
- M. "Revenue"** means Contractor's income from sources other than DHCS allocation.
- N. "Service Area"** means the geographical area under Contractor's jurisdiction.
- O. "Service Element"** is the specific type of service performed within the more general service modalities.
- P. "State"** means the Department of Health Care Services or DHCS.
- Q. "Utilization"** means the total actual units of service used by clients and participants.

**Section 2 – Definitions Specific to Drug Medi-Cal**

The words and terms of this contract are intended to have their usual meaning unless a specific or more limited meaning is associated with their usage pursuant to the HSC, CCR Title 9, and/or CCR Title 22. Definitions of covered treatment modalities and services are found in Title 22 (Document 2C) and are incorporated by this reference.

- A. "Administrative Costs"** means the Contractor's actual direct costs, as recorded in the Contractor's financial records and supported by source documentation, to administer the program or an activity to provide service to the DMC program. Administrative costs do not include the cost of treatment or other direct services to the beneficiary. Administrative costs may include, but are not limited to, the cost of training, programmatic and financial audit reviews, and activities related to billing. Administrative costs may include Contractor's overhead per the approved indirect cost rate proposal pursuant to OMB Circular A-87 and the State Controller's Office Handbook of Cost Plan Procedures.
- B. "Authorization"** is the approval process for DMC Services prior to the submission of a DMC claim.
- C. "Beneficiary"** means a person who: (a) has been determined eligible for Medi-Cal; (b) is not institutionalized; (c) has a substance-related disorder per the "Diagnostic and Statistical Manual of Mental Disorders IV (DSM)", or DSM V criteria; and (d) meets the admission criteria to receive DMC covered services.



**Exhibit A, Attachment I  
Program Specifications**

- D. “Certified Provider”** means a SUD clinic location that has received certification to be reimbursed as a DMC clinic by the DHCS to provide services as described in Title 22, California Code of Regulations, Section 51341.1.
- E. "Covered Services"** means those DMC services authorized by Title XIX or Title XXI of the Social Security Act, Title 22 Section 51341.1, W&I Code, Section 14124.24, and California's Medicaid State Plan.
- F. “Direct Provider Contract”** means a contract established between the DHCS and a DMC certified provider entered into pursuant to this Agreement for the provision of DMC services.
- G. "Drug Medi-Cal Program"** means the state system wherein beneficiaries receive covered services from DMC-certified SUD treatment providers.
- H. “Drug Medi-Cal Termination of Certification”** means the provider is no longer certified to participate in the DMC program upon DHCS issuance of a DMC certification termination notice.
- I. "Early and Periodic Screening, Diagnosis, and Treatment Program (EPSDT)"** means the federally mandated Medicaid benefit that entitles full-scope Medi-Cal-covered beneficiaries less than 21 years of age to receive any Medicaid service necessary to correct or ameliorate a defect, mental illness, or other condition, such as a substance-related disorder, that is discovered during a health screening.
- J. “Federal Financial Participation (FFP)”** means the share of Federal Medicaid funds for reimbursement of DMC services.
- K. "Medical Necessity"** means those substance use treatment services that are reasonable and necessary to protect life, prevent significant illness or disability, or alleviate severe pain through the diagnosis and treatment of a disease, illness, or injury or in the case of EPSDT services that meet the criteria specified in Title 22, Sections 51303 and 51340.1.
- L. "Minor Consent DMC Services"** are those covered services that, pursuant to Family Code Section 6929, may be provided to persons 12-20 years old without parental consent.
- M. “Narcotic Treatment Program”** means an outpatient clinic licensed by DHCS to provide narcotic replacement therapy directed at stabilization and rehabilitation of persons who are opiate-addicted and have a substance use diagnosis.

**Exhibit A, Attachment I  
Program Specifications**

- N. “Payment Suspension”** means the DMC certified provider has been issued a notice pursuant to W&I Code, Section 14107.11 and is not authorized to receive payments after the payment suspension date for DMC services, regardless of when the service was provided.
- O. “Perinatal DMC Services”** means covered services as well as mother/child habilitative and rehabilitative services, services access (i.e., provision or arrangement of transportation to and from medically necessary treatment), education to reduce harmful effects of alcohol and drugs on the mother and fetus or infant, and coordination of ancillary services (Title 22, Section 51341.1(c) (4)).
- P. “Postpartum”**, as defined for DMC purposes, means the 60-day period beginning on the last day of pregnancy, regardless of whether other conditions of eligibility are met. Eligibility shall end on the last day of the calendar month in which the 60<sup>th</sup> day occurs.
- Q. “Post Service Post Payment (PSPP) Utilization Review”** means the review for program compliance and medical necessity conducted by DHCS after service was rendered and paid. DHCS may recover prior payments of federal and DHCS funds if such review determines that the services did not comply with the applicable statutes, regulations, or standards (CCR, Title 22, Section 51341.1 (k)).
- R. “Projected Units of Service”** means the number of reimbursable DMC units of service, based on historical data and current capacity, the Contractor expects to provide on an annual basis.
- S. “Provider Certification”** means the provider must be certified by the Provider Enrollment Division of DHCS in order to participate in the Medi-Cal program.
- T. “Provider of DMC Services”** means any person or entity that provides direct substance use treatment services and has been certified by the DHCS in accordance with CCR, Title 22, Section 51000.30-Medi-Cal Provider Application for Enrollment, Continued Enrollment, or Enrollment at a New, Additional, or Change in Location.
- U. “Re-certification”** means the process by which the DMC certified clinic program is required to submit an application and specified documentation, as determined by DHCS, to remain eligible to participate in and be reimbursed in through the DMC program. Re-certification shall occur no less than every five years from the date of previous DMC certification or re-certification.
- V. “Statewide Maximum Allowances (SMA)”** means the maximum amount authorized to be paid by DMC for each covered unit of service for outpatient drug free, intensive outpatient treatment, perinatal residential, and Naltrexone treatment services. While the rates are approved by DHCS, they are subject to change through the regulation process. The SMA for FY 2017-18 is listed in the “Unit of Service” table in Exhibit B, Part 2, Section 2.

**Exhibit A, Attachment I  
Program Specifications**

- W. "Subcontract"** means an agreement between the Contractor and its subcontractors. A subcontractor shall not delegate its obligation to provide covered services or otherwise subcontract for the provision of direct patient/client services.
- X. "Subcontractor"** means an individual or entity that is DMC certified and has entered into an agreement with the Contractor to be a provider of covered services. It may also mean a vendor who has entered into a procurement agreement with the Contractor to provide any of the administrative functions related to fulfilling the Contractor's obligations under the terms of this Exhibit A, Attachment I.
- Y. "Temporary Suspension"** means the provider is temporarily suspended from participating in the DMC program as authorized by W&I Code, Section 14043.36(a). The provider cannot bill for DMC services from the effective date of the temporary suspension.

**Exhibit A, Attachment I  
Program Specifications**

**DOCUMENTS INCORPORATED BY REFERENCE**

The following documents are hereby incorporated by reference into the County contract though they may not be physically attached to the contract but will be issued in a CD under separate cover:

Document 1F(a): Reporting Requirement Matrix – County Submission Requirements for the Department of Health Care Services

Document 1K: Drug and Alcohol Treatment Access Report (DATAR) User Manual

<http://www.dhcs.ca.gov/provgovpart/Pages/DATAR.aspx>

Document 1P: Alcohol and/or Other Drug Program Certification Standards (May 1, 2017)

[http://www.dhcs.ca.gov/Documents/DHCS\\_AOD\\_Certification\\_Standards.pdf](http://www.dhcs.ca.gov/Documents/DHCS_AOD_Certification_Standards.pdf)

Document 1V: Youth Treatment Guidelines

[http://www.dhcs.ca.gov/individuals/Documents/Youth\\_Treatment\\_Guidelines.pdf](http://www.dhcs.ca.gov/individuals/Documents/Youth_Treatment_Guidelines.pdf)

Document 2A: Sobky v. Smoley, Judgment, Signed February 1, 1995

Document 2C: Title 22, California Code of Regulations

<http://ccr.oal.ca.gov>

Document 2F(a): Minimum Quality Treatment Standards for DMC

Document 2G: Drug Medi-Cal Billing Manual

[http://www.dhcs.ca.gov/formsandpubs/Documents/DMC\\_Billing\\_Manual\\_2017-Final.pdf](http://www.dhcs.ca.gov/formsandpubs/Documents/DMC_Billing_Manual_2017-Final.pdf)

Document 2K: Multiple Billing Override Certification (MC 6700)

Document 2L(a): Good Cause Certification (6065A)

Document 2L(b): Good Cause Certification (6065B)

Document 2P: County Certification - Cost Report Year-End Claim for Reimbursement

Document 2P(a): Drug Medi-Cal Provider Cost Report Excel Workbook

**Exhibit A, Attachment I  
Program Specifications**

- Document 3G: California Code of Regulations, Title 9 – Rehabilitation and Developmental Services, Division 4 – Department of Alcohol and Drug Programs, Chapter 4 – Narcotic Treatment Programs  
<https://govt.westlaw.com/calregs/Search/Index>
- Document 3H: California Code of Regulations, Title 9 – Rehabilitation and Developmental Services, Division 4 – Department of Alcohol and Drug Programs, Chapter 8 – Certification of Alcohol and Other Drug Counselors  
<https://govt.westlaw.com/calregs/Search/Index>
- Document 3J: CalOMS Treatment Data Collection Guide  
[http://www.dhcs.ca.gov/provgovpart/Documents/CalOMS\\_Tx\\_Data\\_Collection\\_Guide\\_JAN%202014.pdf](http://www.dhcs.ca.gov/provgovpart/Documents/CalOMS_Tx_Data_Collection_Guide_JAN%202014.pdf)
- Document 3S: CalOMS Treatment Data Compliance Standards  
[http://www.dhcs.ca.gov/provgovpart/Documents/CalOMS\\_Data\\_Compliance%20Standards%202014.pdf](http://www.dhcs.ca.gov/provgovpart/Documents/CalOMS_Data_Compliance%20Standards%202014.pdf)
- Document 3T: Non-Drug Medi-Cal and Drug Medi-Cal DHCS Local Assistance Funding Matrix
- Document 3V: Culturally and Linguistically Appropriate Services (CLAS) National Standards  
<https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=53>
- Document 4A: Drug Medi-Cal Claim Submission Certification – County Contracted Provider – DHCS Form MC 100186 with Instructions
- Document 4B: Drug Medi-Cal Claim Submission Certification – County Operated Provider – DHCS Form MC 100187 with Instructions
- Document 4D: Drug Medi-Cal Certification for Federal Reimbursement (DHCS 100224A)
- Document 4E: Treatment Standards for Substance Use Diagnosis: A Guide for Services (Spring 2010)
- Document 4F: Drug Medi-Cal (DMC) Services Quarterly Claim for Reimbursement of

**Exhibit A, Attachment I  
Program Specifications**

County Administrative Expenses (Form #MC 5312)

Document 5A: Confidentiality Agreement

**Exhibit B**  
**Budget Detail and Payment Provisions**

**Part I – General Fiscal Provisions**

**Section 1 – General Fiscal Provisions**

A. Fiscal Provisions

For services satisfactorily rendered, and upon receipt and approval of documentation as identified in Exhibit A, Attachment I, Part III, the Department of Health Care Services (DHCS) agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates and/or allowable costs specified herein.

B. Use of State General Funds

Contractor may not use allocated Drug Medi-Cal (DMC) State General Funds to pay for any non-Drug Medi-Cal services.

C. Funding Authorization

Contractor shall bear the financial risk in providing any substance use disorder services covered by this Contract.

D. Availability of Funds

It is understood that, for the mutual benefit of both parties, this contract may have been written before ascertaining the availability of congressional appropriation of funds in order to avoid program and fiscal delays that would occur if this contract were not executed until after that determination. In this event, DHCS may amend the amount of funding provided for in this contract based on the actual congressional appropriation.

E. Subcontractor Funding Limitations

Contractor shall reimburse its subcontractors that receive a combination of DMC funding and other federal or county realignment funding for the same service element and location based on the subcontractor's actual costs in accordance with Medicaid reimbursement requirements as specified in Title XIX or of the Social Security Act, Section 51516.1 of California Code of Regulations Title 22, and the Medicaid state plan. Payments at negotiated rates shall be settled to actual cost at year-end.

F. Budget Contingency Clause

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

**Exhibit B**  
**Budget Detail and Payment Provisions**

considerations under this contract and Contractor shall not be obligated to perform any provisions of this contract.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, DHCS shall solely have the option to either cancel this contract with no liability occurring to DHCS, or offer an amended contract to Contractor to reflect the reduced amount.

**G. Expense Allowability / Fiscal Documentation**

1. Invoices, received from a Contractor and accepted and/or submitted for payment by DHCS, shall not be deemed evidence of allowable contract costs.
2. Contractor shall maintain for review and audit and supply to DHCS upon request, adequate documentation of all expenses claimed pursuant to this contract to permit a determination of expense allowability.
3. If the allowability or appropriateness of an expense cannot be determined by DHCS because invoice detail, fiscal records, or backup documentation is nonexistent or inadequate according to generally accepted accounting principles, and generally accepted governmental audit standards, all questionable costs may be disallowed and payment may be withheld by DHCS. Upon receipt of adequate documentation supporting a disallowed or questionable expense, reimbursement may resume for the amount substantiated and deemed allowable.
4. Costs and/or expenses deemed unallowable shall not be reimbursed or, if mistakenly reimbursed, those costs and/or expenses shall be subject to recovery by DHCS pursuant to Title 22, CCR Section 51458.1.

H. Effective the date of execution of this Contract, nothing in this contract waives the protections provided to Contractor under Section 36 of article XIII of the California Constitution ("Proposition 30"). Except where specifically stated in the terms of this contract, Contractor's performance of any additional legal requirements, including, but not limited to court-ordered requirements and statutory or regulatory amendments, is subject to Proposition 30's funding requirements.

**Section 2 – General Fiscal Provisions – Drug Medi-Cal**

**A. Return of Unexpended Funds**

Contractor assumes the total cost of providing covered services on the basis of the payments delineated in this Exhibit B, Part II. Any State General Funds or Federal Medicaid funds paid to the Contractor, but not expended for DMC services shall be returned to DHCS.



**Exhibit B**  
**Budget Detail and Payment Provisions**

**B. Amendment or Cancellation Due to Insufficient Appropriation**

This contract is valid and enforceable only if sufficient funds are made available to DHCS by the United States Government for the purpose of the DMC program. It is mutually agreed that if the Congress does not appropriate sufficient funds for this program, DHCS solely has the option to void this contract or to amend the contract to reflect any reduction of funds.

**C. Exemptions**

Exemptions to the provisions of Item B above, of this Exhibit, may be granted by the California Department of Finance provided that the Director of DHCS certifies in writing that federal funds are available for the term of the Contract.

**D. Allowable costs**

Allowable costs, as used in Section 51516.1 of California Code of Regulations (CCR) Title 22 shall be determined in accordance with Title 42, Code of Federal Regulations (CFR), Chapter IV, Subchapter B, Parts 405 and 413, and Centers for Medicare and Medicaid Services (CMS), "Medicare Provider Reimbursement Manual (Publication Number 15)," which can be obtained from the Centers for Medicare & Medicaid Services, or [www.cms.hhs.gov](http://www.cms.hhs.gov)

In accordance with Welfare and Institutions (W&I) Code Sections 14132.44 and 14132.47, funds allocated to the Contractor for DMC services, including funding for alcohol and other drug services for pregnant and postpartum women pursuant to Title 22, CCR Section 51341.1(c), may not be used as match for targeted case management services or for DMC administrative activities.

**Exhibit B**  
**Budget Detail and Payment Provisions**

**Part II – Reimbursements**

**Section 1. General Reimbursement**

A. Prompt Payment Clause

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

B. Amounts Payable

1. The amount payable under this contract shall not exceed the amount identified on the State of California Standard Agreement form STD 213\_DHCS (Rev. 03/18).
2. Reimbursement shall be made for allowable expenses up to the amount annually encumbered commensurate with the state fiscal year in which services are performed and/or goods are received.
3. The funds identified for the fiscal years covered by under this Section, within this Exhibit, are subject to change depending on the availability and amount of funds appropriated by the Legislature and the Federal Government. The amount of funds available for expenditure by the Contractor shall be limited to the amount identified in the final allocations issued by DHCS for that fiscal year. Changes to allocated funds will require written amendment to the Contract.
4. For each fiscal year, DHCS may settle costs for services to the Contractor and its subcontractors based on each fiscal year-end cost settlement report as the final amendment for the specific fiscal year cost settlement report to the approved single State/County contract.

**Section 2. Drug Medi-Cal**

- A. To the extent that the Contractor provides the covered services in a satisfactory manner in accordance with the terms and conditions of this Contract, DHCS agrees to pay the Contractor Federal Medicaid funds according to Exhibit A, Attachment I, Part III. Subject to the availability of such funds, Contractor shall receive Federal Medicaid funds and/or State General Funds for allowable expenditures as established by the Federal Government and approved by DHCS, for the cost of services rendered to beneficiaries.
- B. Any payment for covered services rendered pursuant to Exhibit A, Attachment I, Part I, shall only be made pursuant to applicable provisions of Title XIX or Title XXI of the Social Security Act, the W&I Code, the HSC, California's Medicaid State Plan, and Title 22, CCR, Sections 51341.1, 51490.1, 51516.1, and 51532.

**Exhibit B**  
**Budget Detail and Payment Provisions**

- C. It is understood and agreed that failure by the Contractor or its subcontractors to comply with applicable federal and state requirements in rendering covered services shall be sufficient cause for DHCS to deny payments to and/or recover payments from the Contractor and/or terminate the Contractor or its subcontractor from DMC program participation. If DHCS or the Department of Health and Human Services (DHHS) disallows or denies payments for any claim, Contractor shall repay to DHCS the Federal Medicaid funds and/or State General Funds it received for all claims so disallowed or denied. The overpayment shall be recovered by any of the methods allowed in Title 22, CCR, Sections 51047(a) and (b).
- D. Before such denial, recoupment, or disallowances are made, DHCS shall provide the Contractor with written notice of its proposed action. Such notice shall include the reason for the proposed action and shall allow the Contractor 60 days to submit additional information before the proposed action is taken, as required in Title 22, CCR, Section 51047(a). This requirement does not apply to the DMC Post Service Post Payment Utilization Reviews.
- E. DHCS shall refund to the Contractor any recovered Federal DMC overpayment that is subsequently determined to have been erroneously collected, together with interest, in accordance with Title 22, CCR, Section 51047(e).
- F. Contractor shall be reimbursed by DHCS on the basis of its actual net reimbursable cost, not to exceed the unit of service maximum rate.
- G. Claims submitted to the Contractor by a subcontracted provider that is not certified or whose certification has been suspended pursuant to the W&I Code section 14107.11 and 42 CFR 455.23, shall not be certified or processed for federal or state reimbursement by the Contractor. Payments for any DMC services shall be held by the Contractor until the payment suspension is resolved.
- H. In the event a contract amendment is required pursuant to the preceding paragraph, Contractor shall submit to DHCS information as identified in Exhibit E, Section 1(D). To the extent the Contractor is notified of DHCS Budget Act allocation prior to the execution of the Contract, DHCS and the Contractor may agree to amend the contract after the issuance of the first revised allocation.
- I. Reimbursement for covered services, other than Narcotic Treatment Program (NTP) services, shall be limited to the lower of:
  - 1. The provider's usual and customary charges to the general public for the same or similar services.
  - 2. The provider's actual allowable costs.
  - 3. The DMC Statewide Maximum Allowance (SMA) for the modality.

**Exhibit B**  
**Budget Detail and Payment Provisions**

- J. Reimbursement to NTP's shall be limited to the lower of either the Uniform Statewide Daily Reimbursement (USDR) rate, pursuant to W&I Code Section 14021.51(h), or the provider's usual and customary charge to the general public for the same or similar service. However, reimbursement paid by a county to an NTP provider for services provided to any person subject to Penal Code Sections 1210.1 or 3063.1 and for which the individual client is not liable to pay, does not constitute a usual or customary charge to the general public for the purpose of this section. (W&I Code Section 14021.51(h)(2)(A)).
- K. DHCS shall reimburse the Contractor the State General Funds and/or Federal Medicaid amount of the approved DMC claims and documents submitted in accordance with Exhibit A, Attachment I, Part III.
- L. DHCS will adjust subsequent reimbursements to the Contractor to actual allowable costs. Actual allowable costs are defined in the Medicare Provider Reimbursement Manual (CMS-Pub.15), which can be obtained from the Centers for Medicare & Medicaid Services, Baltimore, Maryland, or [www.cms.hhs.gov](http://www.cms.hhs.gov).
- M. Contractors and subcontractors must accept, as payment in full, the amounts paid by DHCS in accordance with Title 22, CCR, Section 51516.1, plus any cost sharing charges (deductible, coinsurance, or copayment) required to be paid by the client. However, Contractors and subcontractors may not deny services to any client eligible for DMC services on account of the client's inability to pay or location of eligibility. Contractors and subcontractors may not demand any additional payment from DHCS, client, or other third party payers.

**Section 3. Drug Medi-Cal Direct Provider Contracts**

- A. Pursuant to W&I Code 14124.21, DHCS shall contract with qualified DMC providers within the county when a county does not contract to operate DMC services, in whole or in part.
- B. DHCS will invoice the County for the county realignment share of approved DMC claims received by DHCS from DHCS's direct contractor providers. The County shall reimburse DHCS for the county realignment share of the approved DMC claims within 30 days of receipt of the invoice. If the County does not reimburse DHCS within 30 days of receipt of the invoice, DHCS may offset the amount owed from any other funding owed to the County by DHCS or any other State agency. The parties acknowledge that DHCS's direct contractor providers shall be responsible for repayment of any disallowed claims. However, in no event shall DHCS be liable for Medicaid reimbursement for any disallowed claims.
  - 1. Any Contractor contracting with DHCS for the provision of services through NTP providers may receive reimbursement of the NTP administrative rate.

**Exhibit B**  
**Budget Detail and Payment Provisions**

2. As a result of the direct contract provider's settled cost report, any County Realignment funds owed to the direct contract provider will be handled through an invoice process to the Contractor. Additionally, as a result of the direct contract provider's settled cost report, any County Realignment funds owed to DHCS will be returned to the Contractor.

**Part III - Financial Audit Requirements**

**Exhibit B**  
**Budget Detail and Payment Provisions**

**Section 1. General Fiscal Audit Requirements**

- A. In addition to the requirements identified below, the Contractor and its subcontractors are required to meet the audit requirements as delineated in Exhibit C, General Terms and Conditions, and Exhibit D(F), Special Terms and Conditions, of this Contract.
- B. All expenditures of county realignment funds, state and federal funds furnished to the Contractor and its subcontractors pursuant to this contract are subject to audit by DHCS. Objectives of such audits may include, but not limited to, the following:
  - 1. To determine whether units of service claimed/reported are properly documented by service records and accurately accumulated for claiming/reporting.
  - 2. To validate data reported by the Contractor for prospective contract negotiations.
  - 3. To provide technical assistance in addressing current year activities and providing recommendation on internal controls, accounting procedures, financial records, and compliance with laws and regulations.
  - 4. To determine the cost of services, net of related patient and participant fees, third-party payments, and other related revenues and funds.
  - 5. To determine that expenditures are made in accordance with applicable state and federal laws and regulations and contract requirements.
  - 6. To determine the facts in relation to analysis of data, complaints, or allegations, which may be indicative of fraud, abuse, willful misrepresentation, or failure to achieve the contract objectives of Exhibit C and D(F).
- C. Unannounced visits may be made at the discretion of the DHCS to the Contractor and/or its subcontractors.
- D. The refusal of the Contractor or its subcontractors to permit access to and inspection of electronic or print books and records, physical facilities, and/or refusal to permit interviews with employees, as described in this part constitutes an express and immediate material breach of this contract and will be sufficient basis to terminate the contract for cause or default.
- E. Reports of audits conducted by DHCS shall reflect all findings, recommendations, adjustments and corrective action as a result of its finding in any areas.

**Section 2. Drug Medi-Cal Financial Audits**

**Exhibit B**  
**Budget Detail and Payment Provisions**

- A. In addition to the audit requirements set forth in Exhibit D(F), DHCS may also conduct financial audits of DMC programs, exclusive of NTP services, to accomplish any of, but not limited to, the following audit objectives:
1. To review reported costs for validity, appropriate allocation methodology, and compliance with Medicaid laws and regulations.
  2. To ensure that only the cost of allowable DMC activities are included in reported costs.
  3. To determine the provider's usual and customary charge to the general public in accordance with CMS (The Medicare Provider Reimbursement Manual) (CMS-Pub.15), which can be obtained from the Centers for Medicare & Medicaid Services, Baltimore, Maryland, or [www.cms.hhs.gov](http://www.cms.hhs.gov), for comparison to the DMC cost per unit.
  4. To review documentation of units of service and determine the final number of approved units of service.
  5. To determine the amount of clients' third-party revenue and Medi-Cal share of cost to offset allowable DMC reimbursement.
  6. To compute final settlement based on the lower of actual allowable cost, the usual and customary charge, or the maximum allowance, in accordance with Title 22, Section 51516.1.
- B. In addition to the audit requirements set forth in Exhibit D(F), DHCS may conduct financial audits of NTP programs. For NTP services, the audits will address items A(3) through A(5) above, except that the comparison of the provider's usual and customary charge in A(3) will be to the DMC USDR rate in lieu of DMC cost per unit. In addition, these audits will include, but not be limited to:
1. For those NTP providers required to submit a cost report pursuant to W&I Code Section 14124.24, a review of cost allocation methodology between NTP and other service modalities, and between DMC and other funding sources.
  2. A review of actual costs incurred for comparison to services claimed.
  3. A review of counseling claims to ensure that the appropriate group or individual counseling rate has been used and that counseling sessions have been billed appropriately.
  4. A review of the number of clients in group sessions to ensure that sessions include no less than two and no more than twelve clients at the same time, with at least one Medi-Cal client in attendance.

**Exhibit B**  
**Budget Detail and Payment Provisions**

5. Computation of final settlement based on the lower of Uniform Statewide Daily Reimbursement Rate or the provider's usual and customary charge to the general public.
  6. A review of supporting service, time, financial, and patient records to verify the validity of counseling claims.
- C. Contractor shall be responsible for any disallowances taken by the Federal Government, DHCS, or the Bureau of State Audits as a result of any audit exception that is related to its responsibilities. Contractor shall not use funds administered by DHCS to repay one federal funding source with funds provided by another federal funding source, or to repay federal funds with state funds, or to repay state funds with federal funds.
- D. Contractor agrees to promptly develop and implement any corrective action plans in a manner acceptable to DHCS in order to comply with recommendations contained in any audit report. Such corrective action plans shall include time-specific objectives to allow for measurement of progress and are subject to verification by DHCS within six months from the date of the plan.
- E. Contractor, in coordination with DHCS, shall provide follow-up on all significant findings in the audit report, including findings relating to a subcontractor, and submit the results to DHCS.

If differences cannot be resolved between DHCS and the Contractor regarding the terms of the final financial audit settlements for funds expended under Exhibit B, Contractor may request an appeal in accordance with the appeal process described in the Title 22, CCR , Section 51341.1(q). When a financial audit is conducted by the Federal Government, DHCS, or the Bureau of State Audits directly with a subcontractor of the Contractor, and if the subcontractor disagrees with audit disallowances related to its programs, claims or services, Contractor shall, at the subcontractor's request, request an appeal to DHCS in accordance with Title 22, CCR , Section 51341.1(q). Contractor shall include a provision in its subcontracts regarding the process by which a subcontractor may file an audit appeal via the Contractor.

- F. Providers of DMC services shall, upon request, make available to DHCS their fiscal and other records to assure that such provider have adequate recordkeeping capability and to assure that reimbursement for covered DMC services are made in accordance with Title 22, CCR, Section 51516.1. These records include, but are not limited to, matters pertaining to:
1. Provider ownership, organization, and operation
  2. Fiscal, medical, and other recordkeeping systems



**Exhibit B**  
**Budget Detail and Payment Provisions**

3. Federal income tax status
  4. Asset acquisition, lease, sale, or other action
  5. Franchise or management arrangements
  6. Patient service charge schedules
  7. Costs of operation
  8. Cost allocation methodology
  9. Amounts of income received by source and purpose
  10. Flow of funds and working capital
- G. Contractor shall retain records of utilization review activities required in Exhibit A, Attachment I Part I, Section 4(B) herein for a minimum of three years.

**Exhibit B**  
**Budget Detail and Payment Provisions**

**Part IV – Records**

**Section 1. General Provisions**

A. Maintenance of Records

Contractor shall maintain sufficient books, records, documents, and other evidence necessary for DHCS to audit contract performance, contract compliance and fiscal. Contractor shall make these records available to DHCS, upon request, to evaluate the quality and quantity of services, accessibility and appropriateness of services, and to ensure fiscal accountability. Regardless of the location or ownership of such records, they shall be sufficient to determine if costs incurred by Contractor are reasonable, allowable and allocated appropriately. All records must be capable of verification by qualified auditors.

1. Contractor and subcontractors shall include in any contract with an audit firm a clause to permit access by DHCS to the working papers of the external independent auditor, and require that copies of the working papers shall be made for DHCS at its request.
2. Contractor and subcontractors shall keep adequate and sufficient financial records and statistical data to support the year-end documents filed with DHCS. All records must be capable of verification by qualified auditors.
3. Accounting records and supporting documents shall be retained for a three-year period from the date the year-end cost settlement report was approved by DHCS for interim settlement. When an audit by the Federal Government, DHCS, or the California State Auditor has been started before the expiration of the three-year period, the records shall be retained until completion of the audit and final resolution of all issues that arise in the audit. Final settlement shall be made at the end of the audit and appeal process. If an audit has not been completed within three years, the interim settlement shall be considered as the final settlement.
4. Financial records shall be kept so that they clearly reflect the source of funding for each type of service for which reimbursement is claimed. These documents include, but are not limited to, all ledgers, books, vouchers, time sheets, payrolls, appointment schedules, client data cards, and schedules for allocating costs. All records must be capable of verification by qualified auditors.
5. Contractor's subcontracts shall require that all subcontractors comply with the requirements of Exhibit A, Attachment I, Part I, Section 3.
6. Should a subcontractor discontinue its contractual agreement with the Contractor, or cease to conduct business in its entirety, Contractor shall be responsible for retaining the subcontractor's fiscal and program records for the required retention

## **Exhibit B Budget Detail and Payment Provisions**

period. DHCS Administrative Manual (SAM) contains statutory requirements governing the retention, storage, and disposal of records pertaining to state funds. Contractor shall follow SAM requirements located at <http://sam.dgs.ca.gov/TOC/1600.aspx>.

The Contractor shall retain all records required by W&I Code section 14124.1, 42 CFR 433.32, and 22 CCR 51341.1 for reimbursement of services and financial audit purposes.

7. In the expenditure of funds hereunder, Contractor shall comply with the requirements of SAM and the laws and procedures applicable to the obligation and expenditure of federal and state funds.

### **B. Dispute Resolution Process**

1. In the event of a dispute under this Exhibit A, Attachment I, Part I, other than an audit dispute, Contractor shall provide written notice of the particulars of the dispute to DHCS before exercising any other available remedy. Written notice shall include the contract number. The Director (or designee) of DHCS and the County Drug or Alcohol Program Administrator (or designee) shall meet to discuss the means by which they can effect an equitable resolution to the dispute. Contractor shall receive a written response from DHCS within 60 days of the notice of dispute. The written response shall reflect the issues discussed at the meeting and state how the dispute will be resolved.
2. As stated in Part III, Section 2, of this Exhibit, in the event of a dispute over financial audit findings between DHCS and the Contractor, Contractor may appeal the audit in accordance with Title 22, CCR , Section 51341.1(q). When a financial audit by the Federal Government, DHCS, or the California State Auditor is conducted directly with a subcontractor of the Contractor, and if the subcontractor disagrees with audit disallowances related to its programs, claims or services, Contractor shall, at the subcontractor's request, request an appeal to DHCS in accordance with Title 22, CCR , Section 51341.1(q). Contractor shall include a provision in its subcontracts regarding the process by which a subcontractor may file an audit appeal via the Contractor.
3. Contractors that conduct financial audits of subcontractors, other than a subcontractor whose funding consists entirely of non-Department funds, shall develop a process to resolve disputed financial findings and notify subcontractors of their appeal rights pursuant to that process. This section shall not apply to those grievances or compliances arising from the financial findings of an audit or examination made by or on behalf of DHCS pursuant to Part III of this Exhibit.
4. To ensure that necessary corrective actions are taken, financial audit findings are either uncontested or upheld after appeal may be used by DHCS during prospective contract negotiations.

**Exhibit B  
Budget Detail and Payment Provisions**

**Part V. Drug Medi-Cal Reimbursement Rates**

**A. "Uniform Statewide Daily Reimbursement Rate (USDR)"** means the rate for NTP services based on a unit of service that is a daily treatment service provided pursuant to Title 22, CCR, Sections 51341.1 and 51516.1 and Title 9, CCR, commencing with Section 10000 (Document 3G), or the rate for individual or group counseling. The following table shows USDR rates.

Service	Type of Unit of Service (UOS)	<u>SFY 2017/18</u>	<u>SFY 2017/18</u>	<u>SFY 2018/19</u>	<u>SFY 2018/19</u>
		Non-Perinatal (Regular) Rate Per UOS	Perinatal Rate Per UOS	Non-Perinatal (Regular) Rate Per UOS	Perinatal Rate Per UOS
NTP-Methadone Dosing	Daily	\$13.11	\$14.11	\$13.54	\$14.58
NTP-Individual Counseling (*)	One 10-minute increment	\$15.37	\$16.39	\$15.88	\$16.39
NTP Group Counseling (*)	One 10-minute increment	\$3.43	\$4.28	\$3.43	\$4.28

(\*) The NTP Contractors may be reimbursed for up to 200 minutes (20 ten-minute increments) of individual and/or group counseling per calendar month. If a medical necessity determination is made that requires additional NTP counseling beyond 200 minutes per calendar month, NTP Contractors may bill and be reimbursed for additional counseling (in 10-minute increments). Medical justification for the additional counseling must be clearly documented in the patient record.

Reimbursement for covered NTP services shall be limited to the lower of the NTP's usual and customary charge to the general public for the same or similar services or the USDR rate.

**Exhibit B  
Budget Detail and Payment Provisions**

**B. “Unit of Service”** means a face-to-face contact on a calendar day for outpatient drug free, intensive outpatient treatment, perinatal residential, and Naltrexone treatment services. Only one face-to-face service contact per day is covered by DMC except in the case of emergencies when an additional face-to-face contact may be covered for intake crisis intervention or collateral service. To count as a unit of service, the second contact shall not duplicate the services provided on the first contact, and each contact shall be clearly documented in the beneficiary’s record. While the rates are approved by DHCS, they are subject to change through the regulation process. Units of service are identified in the following table.

Service	Type of Unit of Service (UOS)	Non-Perinatal (Regular) Rate Per UOS		Perinatal Rate Per UOS	
		<u>SFY 17/18</u>	<u>SFY 18/19</u>	<u>SFY 17/18</u>	<u>SFY 18/19</u>
Intensive Outpatient Treatment	Face-to-Face Visit	\$58.53	\$58.53	\$84.43	\$87.21
Naltrexone Treatment	Face-to-Face Visit	19.06	19.06	NA	NA
Outpatient Drug Free	Face-to Face Visit – Individual (per person)	\$76.91	\$79.44	\$81.93	\$81.93
	Face-to-Face Visit – Group (per person)	\$30.89	\$30.89	\$38.56	\$38.56
Perinatal Residential	Daily – Residential Day	NA	NA	\$90.14	\$90.14

## Exhibit B, Attachment I

### Funding Amounts

Fiscal Year 2017-18	Funding Amount
	Original
<b>State General Funds (7/1/17 to 6/30/18)</b>	
- Non-Perinatal SGF** (08)	12,500
- Perinatal SGF** (09)	1,000
Administration Costs SGF** (603)	7,500
<b>TOTAL</b>	<b>21,000</b>
<b>Drug Medi-Cal Federal Share (7/1/17 to 6/30/18)</b>	
- Non-Perinatal Federal Share (01)	125,000
- Perinatal Federal Share (03)	10,000
Administration Costs (603)	22,000
<b>TOTAL</b>	<b>157,000</b>
<b>GRAND TOTAL</b>	<b>178,000</b>
<b>Original THREE-YEAR TOTAL</b>	
	<b>534,000</b>

Fiscal Year 2018-19	Funding Amount
	Original
<b>State General Funds (7/1/18 to 6/30/19)</b>	
- Non-Perinatal SGF** (08)	12,500
- Perinatal SGF** (09)	1,000
Administration Costs SGF** (603)	7,500
<b>TOTAL</b>	<b>21,000</b>
<b>Drug Medi-Cal Federal Share (7/1/18 to 6/30/19)</b>	
- Non-Perinatal Federal Share (01)	125,000
- Perinatal Federal Share (03)	10,000
Administration Costs (603)	22,000
<b>TOTAL</b>	<b>157,000</b>
<b>GRAND TOTAL</b>	<b>178,000</b>

Fiscal Year 2019-20	Funding Amount
	Original
<b>State General Funds (7/1/19 to 6/30/20)</b>	
- Non-Perinatal SGF** (08)	12,500
- Perinatal SGF** (09)	1,000
Administration Costs SGF** (603)	7,500
<b>TOTAL</b>	<b>21,000</b>
<b>Drug Medi-Cal Federal Share (7/1/19 to 6/30/20)</b>	
- Non-Perinatal Federal Share (01)	125,000
- Perinatal Federal Share (03)	10,000
Administration Costs (603)	22,000
<b>TOTAL</b>	<b>157,000</b>
<b>GRAND TOTAL</b>	<b>178,000</b>

\*\* State General Fund amounts are based on biannual DMC estimates approved by the Department of Finance. DHCS will revise the amounts through the contract amendment process for each new allocation.

## Special Terms and Conditions

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

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

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

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

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

### Index of Special Terms and Conditions

<ol style="list-style-type: none"> <li>1. Federal Equal Employment Opportunity Requirements</li> <li>2. Travel and Per Diem Reimbursement</li> <li>3. Procurement Rules</li> <li>4. Equipment Ownership / Inventory / Disposition</li> <li>5. Subcontract Requirements</li> <li>6. Income Restrictions</li> <li>7. Audit and Record Retention</li> <li>8. Site Inspection</li> <li>9. Federal Contract Funds</li> <li>10. Intellectual Property Rights</li> <li>11. Air or Water Pollution Requirements</li> <li>12. Prior Approval of Training Seminars, Workshops or Conferences</li> <li>13. Confidentiality of Information</li> <li>14. Documents, Publications, and Written Reports</li> <li>15. Dispute Resolution Process</li> <li>16. Financial and Compliance Audit Requirements</li> </ol>	<ol style="list-style-type: none"> <li>17. Human Subjects Use Requirements</li> <li>18. Novation Requirements</li> <li>19. Debarment and Suspension Certification</li> <li>20. Smoke-Free Workplace Certification</li> <li>21. Covenant Against Contingent Fees</li> <li>22. Payment Withholds</li> <li>23. Performance Evaluation</li> <li>24. Officials Not to Benefit</li> <li>25. Four-Digit Date Compliance</li> <li>26. Prohibited Use of State Funds for Software</li> <li>27. Use of Small, Minority Owned and Women's Businesses</li> <li>28. Alien Ineligibility Certification</li> <li>29. Union Organizing</li> <li>30. Contract Uniformity (Fringe Benefit Allowability)</li> <li>31. Suspension or Stop Work Notification</li> <li>32. Lobbying Restrictions and Disclosure Certification</li> </ol>
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## 1. Federal Equal Opportunity Requirements

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

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



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

## 2. Travel and Per Diem Reimbursement

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

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

## 3. Procurement Rules

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

### a. Equipment/Property definitions

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

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

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

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

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

#### 4. Equipment/Property Ownership / Inventory / Disposition

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

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

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

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

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

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

- (a) Include in the inventory report, equipment and/or property in the Contractor's possession and/or in the possession of a subcontractor (including independent consultants).
- (b) Submit the inventory report to DHCS according to the instructions appearing on the inventory form or issued by the DHCS Program Contract Manager.
- (c) Contact the DHCS Program Contract Manager to learn how to remove, trade-in, sell, transfer or survey off, from the inventory report, expired equipment and/or property that is no longer wanted, usable or has passed its life expectancy. Instructions will be supplied by either the DHCS Program Contract Manager or DHCS' Asset Management Unit.
- b. Title to state equipment and/or property shall not be affected by its incorporation or attachment to any property not owned by the State.
- c. Unless otherwise stipulated, DHCS shall be under no obligation to pay the cost of restoration, or rehabilitation of the Contractor's and/or Subcontractor's facility which may be affected by the removal of any state equipment and/or property.
- d. The Contractor and/or Subcontractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or property.
- (1) In administering this provision, DHCS may require the Contractor and/or Subcontractor to repair or replace, to DHCS' satisfaction, any damaged, lost or stolen state equipment and/or property. In the event of state equipment and/or miscellaneous property theft, Contractor and/or Subcontractor shall immediately file a theft report with the appropriate police agency or the California Highway Patrol and Contractor shall promptly submit one copy of the theft report to the DHCS Program Contract Manager.
- e. Unless otherwise stipulated by the Program funding this Agreement, equipment and/or property purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, shall only be used for performance of this Agreement or another DHCS agreement.

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

g. **Motor Vehicles**

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

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

**Automobile Liability Insurance**

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

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

## 5. Subcontract Requirements

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

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

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

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

## 6. Income Restrictions

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

## 7. Audit and Record Retention

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

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

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

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

## 8. Site Inspection

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

## 9. Federal Contract Funds

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

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

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

## 10. Intellectual Property Rights

### a. Ownership

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



**b. Retained Rights / License Rights**

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

**c. Copyright**

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

**d. Patent Rights**

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

**e. Third-Party Intellectual Property**

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

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

**f. Warranties**

(1) Contractor represents and warrants that:

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

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

**g. Intellectual Property Indemnity**

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

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

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

#### **h. Federal Funding**

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

#### **i. Survival**

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

### **11. Air or Water Pollution Requirements**

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

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

### **12. Prior Approval of Training Seminars, Workshops or Conferences**

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

### 13. Confidentiality of Information

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

### 14. Documents, Publications and Written Reports

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

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

### 15. Dispute Resolution Process

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

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

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

## 16. Financial and Compliance Audit Requirements

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

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

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

## 17. Human Subjects Use Requirements

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

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

## 18. Novation Requirements

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

## 19. Debarment and Suspension Certification

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

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

## 20. Smoke-Free Workplace Certification

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

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

## 21. Covenant Against Contingent Fees

(Applicable only to federally funded agreements.)

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

## 22. Payment Withholds

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

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

## 23. Performance Evaluation

(Not applicable to grant agreements.)

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



**24. Officials Not to Benefit**

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

**25. Four-Digit Date Compliance**

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

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

**26. Prohibited Use of State Funds for Software**

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

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

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

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

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

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

**28. Alien Ineligibility Certification**

(Applicable to sole proprietors entering federally funded agreements.)

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

## 29. Union Organizing

(Applicable only to grant agreements.)

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

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

## 30. Contract Uniformity (Fringe Benefit Allowability)

(Applicable only to nonprofit organizations.)

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

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

## f. Earned/Accrued Compensation

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

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

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

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

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

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

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

**31. Suspension or Stop Work Notification**

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

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

### 32. Lobbying Restrictions and Disclosure Certification

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

#### a. Certification and Disclosure Requirements

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

#### b. Prohibition

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

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

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

**CERTIFICATION REGARDING LOBBYING**

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

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

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

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

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

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

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

California Department of Health Care Services

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

Attachment 2

**CERTIFICATION REGARDING LOBBYING**

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

Approved by OMB  
0348-0046

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

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

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

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001".
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

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



**Exhibit E**  
**Additional Provisions**

**1. Amendment Process**

- A. Both the Contractor and the Department of Health Care Services (DHCS) may agree to amend or renegotiate the contract.
- B. Should either party, during the term of this contract, desire a change or amendment to the terms of this contract, such changes or amendments shall be proposed in writing to the other party, who will respond in writing as to whether the proposed changes/amendments are accepted or rejected. If accepted and after negotiations are concluded, the agreed upon changes shall be made through the DHCS's official contract amendment process. No amendment will be considered binding on either party until it is formally approved by both parties and the Department of General Services (DGS), if DGS approval is required.
- C. Contract amendments will be required to change encumbered amounts for each year of a multi-year contract period, of which the first amendment will be based on the Governor's Budget Act allocation of that specific fiscal year. The signed contract from the Contractor will be due to DHCS within 90 days from the issuance to the Contractor.
- D. Contract amendments may be requested by the Contractor until May 1 of each of the Contract's fiscal years. An amendment proposed by either the Contractor or DHCS shall be forwarded in writing to the other party.
  - 1) The proposed amendment submitted by Contractor shall include the proposed changes, and a statement of the reason and basis for the proposed change.
  - 2) Amendments shall be duly approved by its authorized designee, and signed by a duly authorized representative.
- E. Contractor acknowledges that any newly allocated funds that are in excess of the initial amount for each fiscal year may be forfeited if DHCS does not receive a fully executable contract amendment on or before June 30<sup>th</sup>, 2018.
- F. DHCS may settle costs for substance use disorder services based on the year-end cost settlement report as the final amendment to the approved single State / Direct Provider contract.

**2. Cancellation / Termination**

- A. This contract may be cancelled by DHCS without cause upon 30 calendar days advance written notice to the Contractor.
- B. DHCS reserves the right to cancel or terminate this contract immediately for cause. The Contractor may submit a written request to terminate this contract only if DHCS substantially fails to perform its responsibilities as provided herein.

**Exhibit E**  
**Additional Provisions**

- C. The term “for cause” shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of this Contract.
- D. Contract termination or cancellation shall be effective as of the date indicated in DHCS’ notification to the Contractor. The notice shall stipulate any final performance, invoicing or payment requirements.
- E. Upon receipt of a notice of termination or cancellation, the Contractor shall take immediate steps to stop performance and to cancel or reduce subsequent contract costs.
- F. In the event of early termination or cancellation, the Contractor shall be entitled to payment for all allowable costs authorized under this contract and incurred up to the date of termination or cancellation, including authorized non-cancelable obligations, provided such expenses do not exceed the stated maximum amounts payable.
- G. In the event of changes in law that affect provisions of this Contract, the parties agree to amend the affected provisions to conform to the changes in law retroactive to the effective date of such changes in law. The parties further agree that the terms of this contract are severable and in the event that changes in law render provisions of the contract void, the unaffected provisions and obligations of this contract will remain in full force and effect.
- H. The following additional provisions regarding termination apply only to Exhibit A, Attachment I, Part I, of this Contract:
  - 1) In the event the Federal Department of Health and Human Services (hereinafter referred to as DHHS), or DHCS determines Contractor does not meet the requirements for participation in the Drug Medi-Cal (DMC) Treatment Program, DHCS will terminate payments for services provided pursuant to Exhibit A, Attachment I, Part I, of this contract for cause.
  - 2) All obligations to provide covered services under this contract will automatically terminate on the effective date of any termination of this Contract. Contractor will be responsible for providing or arranging for covered services to beneficiaries until the effective date of termination or expiration of the Contract.

DHCS will remain liable for processing and paying invoices for covered services prior to the expiration or termination until all obligations have been met.
  - 3) In the event Exhibit A, Attachment I, Part I, of this contract is nullified, Contractor shall refer DMC clients to providers who are certified to provide the type(s) of services the client has been receiving.

**Exhibit E**  
**Additional Provisions**

- I. In the event this contract is terminated, Contractor shall deliver its entire fiscal and program records pertaining to the performance of this contract to DHCS, which will retain the records for the required retention period.

**3. Avoidance of Conflicts of Interest by Contractor**

- A. DHCS intends to avoid any real or apparent conflict of interest on the part of the Contractor, employees, officers and directors of the Contractor. Thus, DHCS reserves the right to determine, at its sole discretion, whether any information, assertion or claim received from any source indicates the existence of a real or apparent conflict of interest; and, if a conflict is found to exist, to require the Contractor to submit additional information or a plan for resolving the conflict, subject to DHCS review and prior approval.
- B. Conflicts of interest include, but are not limited to:
  - 1) An instance where the Contractor, or any employee, officer, or director of the Contractor has an interest, financial or otherwise, whereby the use or disclosure of information obtained while performing services under the contract would allow for private or personal benefit or for any purpose that is contrary to the goals and objectives of the Contract.
  - 2) An instance where the Contractor's employees, officers, or directors use their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family, business, or other ties.
- C. If DHCS is or becomes aware of a known or suspected conflict of interest, the Contractor will be given an opportunity to submit additional information or to resolve the conflict. A Contractor with a suspected conflict of interest will have five (5) working days from the date of notification of the conflict by DHCS to provide complete information regarding the suspected conflict. If a conflict of interest is determined to exist by DHCS and cannot be resolved to the satisfaction of DHCS, the conflict will be grounds for terminating the Contract. DHCS may, at its discretion upon receipt of a written request from the Contractor, authorize an extension of the timeline indicated herein.
- D. Contractor acknowledges that state laws on conflict of interest, found in the Political Reform Act, Public contract Code Section 10365.5, and Government Code Section 1090, apply to this Contract.

**4. Domestic Partners**

Pursuant to Public contract Code 10295.3, no state agency may enter into any contract executed or amended after January 1, 2007, for the acquisition of goods or services in the amount of \$100,000 or more with a Contractor who, in the provision of benefits,

**Exhibit E**  
**Additional Provisions**

discriminates between employees with spouses and employees with domestic partners, or discriminates between domestic partners and spouses of those employees.

**5. Force Majeure**

Neither party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts shall include but not be limited to acts of God, fire, flood, earthquake, other natural disaster, nuclear accident, strike, lockout, riot, freight-embargo, related-utility, or governmental statutes or regulations super-imposed after the fact. If a delay or failure in performance by the Contractor arises out of a default of its subcontractor, and if such default of its subcontractor, arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for damages of such delay or failure, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule.

**6. Identification of Contractor versus Subrecipient**

DHCS has classified this Agreement as a procurement contract. Therefore, the Contractor is considered a contractor, and not a subrecipient, for the purposes of U.S. Office of Management and Budget Uniform Guidance pursuant to 2 CFR 200.330

**Exhibit F**  
**Privacy and Information Security Provisions**

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

Exhibit F consists of the following parts:

1. Exhibit F-1, HIPAA Business Associate Addendum, which provides for the privacy and security of PHI.
2. Exhibit F-2 provides for the privacy and security of PI under Civil Code Section 1798.3(a) and 1798.29.
3. Exhibit F-3, Miscellaneous Provision, sets forth additional terms and conditions that extend to the provisions of Exhibit F in its entirety.

**Exhibit F**  
**Privacy and Information Security Provisions**

**F-1**  
**HIPAA Business Associate Addendum**

**1. Recitals.**

- A. A business associate relationship under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), 42 U.S.C. Section 17921 et seq., and their implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") and the Final Omnibus Rule of 2013 between Department and Contractor arises only to the extent that Contractor creates, receives, maintains, transmits, uses or discloses PHI or ePHI on the Department's behalf, or provides services, arranges, performs, or assists in the performance of functions or activities on behalf of the Department that are included in the definition of "business associate" in 45 CFR. 160.103 where the provision of the service involves the disclosure of PHI or ePHI from the Department, including but not limited to, utilization review, quality assurance, or benefit management. To the extent Contractor performs these services, functions, and activities on behalf of Department, Contractor is the Business Associate of the Department, acting on the Department's behalf. The Department and Contractor are each a party to this Agreement and are collectively referred to as the "parties." A business associate is also directly liable and subject to civil penalties for failing to safeguard electronic protected health information in accordance with the HIPAA Security Rule. A "business associate" also is a subcontractor that creates, receives, maintains, or transmits protected health information on behalf of another business associate. Business Associate shall incorporate, when applicable, the relevant provisions of this Addendum into each subcontract or sub-award to such agents, subcontractors and vendors, including the requirement that any security incidents or breaches of unsecured PHI or PI be reported to Business Associate.

**Exhibit F**  
**Privacy and Information Security Provisions**

- B. The Department wishes to disclose to Contractor certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information (“PHI”), including protected health information in electronic media (“ePHI”), under Federal law, to be used or disclosed in the course of providing services and activities as set forth in Section 1.A. of Exhibit F-1 of this Agreement. This information is hereafter referred to as “Department PHI”.
- C. The purpose of this Exhibit F-1 is to protect the privacy and security of the PHI and ePHI that may be created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, and to comply with certain standards and requirements of HIPAA, the HITECH Act, and the HIPAA regulations and the Final Omnibus Rule of 2013, including, but not limited to, the requirement that the Department must enter into a contract containing specific requirements with the Contractor prior to the disclosure of PHI to Contractor, as set forth in 45 CFR Parts 160 and 164 and the HITECH Act and the Final Omnibus Rule of 2013. To the extent that data is both PHI or ePHI and Personally Identifying Information, both Exhibit F-2 and this Exhibit F-1 shall apply.
- D. The terms used in this Exhibit F-1, but not otherwise defined, shall have the same meanings as those terms have in the HIPAA regulations. Any reference to statutory or regulatory language shall be to such language as in effect or as amended.

**2. Definitions.**

- A. Breach shall have the meaning given to such term under HIPAA, the HITECH Act, the HIPAA regulations and the Final Omnibus Rule of 2013.
- B. Business Associate shall have the meaning given to such term under HIPAA, the HITECH Act, the HIPAA regulations and the Final Omnibus Rule of 2013.
- C. Department PHI shall mean Protected Health Information or Electronic Protected Health Information, as defined below, accessed by Contractor in a database maintained by the Department, received by Contractor from the Department or acquired or created by Contractor in connection with performing the functions, activities and services on behalf of the Department as specified in Section 1.A. of Exhibit F-1 of this Agreement. The terms PHI as used in this document shall mean Department PHI.

**Exhibit F**  
**Privacy and Information Security Provisions**

- D. Electronic Health Records shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921 and implementing regulations.
- E. Electronic Protected Health Information (ePHI) means individually identifiable health information transmitted by electronic media or maintained in electronic media, including but not limited to electronic media as set forth under 45 CFR section 160.103.
- F. Individually Identifiable Health Information means health information, including demographic information collected from an individual, that is created or received by a health care provider, health plan, employer, or health care clearinghouse, and relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, that identifies the individual or where there is a reasonable basis to believe the information can be used to identify the individual, as set forth under 45 CFR Section 160.103.
- G. Privacy Rule shall mean the HIPAA Regulations that are found at 45 CFR Parts 160 and 164, subparts A and E.
- H. Protected Health Information (PHI) means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or is transmitted or maintained in any other form or medium, as set forth under 45 CFR Section 160.103 and as defined under HIPAA.
- I. Required by law means a mandate contained in law that compels an entity to make a use or disclosure of PHI that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.



**Exhibit F**  
**Privacy and Information Security Provisions**

- J. Secretary means the Secretary of the U.S. Department of Health and Human Services ("HHS") or the Secretary's designee.
- K. Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of Department PHI, or confidential data utilized by Contractor to perform the services, functions and activities on behalf of Department as set forth in Section 1.A. of Exhibit F-1 of this Agreement; or interference with system operations in an information system that processes, maintains or stores Department PHI.
- L. Security Rule shall mean the HIPAA regulations that are found at 45 CFR Parts 160 and 164.
- M. Unsecured PHI shall have the meaning given to such term under the HITECH Act, 42 U.S.C. Section 17932(h), any guidance issued by the Secretary pursuant to such Act and the HIPAA regulations.

**3. Terms of Agreement.**

**A. Permitted Uses and Disclosures of Department PHI by Contractor.**

Except as otherwise indicated in this Exhibit F-1, Contractor may use or disclose Department PHI only to perform functions, activities, or services specified in Section 1.A of Exhibit F-1 of this Agreement, for, or on behalf of the Department, provided that such use or disclosure would not violate the HIPAA regulations or the limitations set forth in 42 CFR Part 2, or any other applicable law, if done by the Department. Any such use or disclosure, if not for purposes of treatment activities of a health care provider as defined by the Privacy Rule, must, to the extent practicable, be limited to the limited data set, as defined in 45 CFR Section 164.514(e)(2), or, if needed, to the minimum necessary to accomplish the intended purpose of such use or disclosure, in compliance with the HITECH Act and any guidance issued pursuant to such Act, and the HIPAA regulations.

**B. Specific Use and Disclosure Provisions.** Except as otherwise indicated in this Exhibit F-1, Contractor may:

- 1) **Use and Disclose for Management and Administration.** Use and disclose Department PHI for the proper management and administration of the Contractor's business, provided that such disclosures are required by law, or the Contractor obtains

**Exhibit F**  
**Privacy and Information Security Provisions**

reasonable assurances from the person to whom the information is disclosed, in accordance with section D(7) of this Exhibit F-1, that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Contractor of any instances of which it is aware that the confidentiality of the information has been breached.

- 2) **Provision of Data Aggregation Services.** Use Department PHI to provide data aggregation services to the Department to the extent requested by the Department and agreed to by Contractor. Data aggregation means the combining of PHI created or received by the Contractor, as the Business Associate, on behalf of the Department with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of the Department

**C. Prohibited Uses and Disclosures.**

- 1) Contractor shall not disclose Department PHI about an individual to a health plan for payment or health care operations purposes if the Department PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full and the individual requests such restriction, in accordance with 42 U.S.C. Section 17935(a) and 45 CFR Section 164.522(a).
- 2) Contractor shall not directly or indirectly receive remuneration in exchange for Department PHI.

**D. Responsibilities of Contractor.**

Contractor agrees:

- 1) **Nondisclosure.** Not to use or disclose Department PHI other than as permitted or required by this Agreement or as required by law, including but not limited to 42 CFR Part 2.
- 2) **Compliance with the HIPAA Security Rule.** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Department PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of the

**Exhibit F**  
**Privacy and Information Security Provisions**

Department, in compliance with 45 CFR Sections 164.308, 164.310 and 164.312, and to prevent use or disclosure of Department PHI other than as provided for by this Agreement. Contractor shall implement reasonable and appropriate policies and procedures to comply with the standards, implementation specifications and other requirements of 45 CFR Section 164, subpart C, in compliance with 45 CFR Section 164.316. Contractor shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities, and which incorporates the requirements of section 3, Security, below. Contractor will provide the Department with its current and updated policies upon request.

- 3) **Security.** Contractor shall take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI and/or PI, and to protect paper documents containing PHI and/or PI. These steps shall include, at a minimum:
  - a. Complying with all of the data system security precautions listed in Attachment A, Data Security Requirements.
  - b. Achieving and maintaining compliance with the HIPAA Security Rule (45 CFR Parts 160 and 164), as necessary in conducting operations on behalf of DHCS under this Agreement.
  - c. Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III - Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies.
- 4) **Security Officer.** Contractor shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with the Department.
- 5) **Mitigation of Harmful Effects.** To mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Department PHI by Contractor or its subcontractors in violation of the requirements of this Exhibit F.

**Exhibit F**  
**Privacy and Information Security Provisions**

- 6) **Reporting Unauthorized Use or Disclosure.** To report to Department any use or disclosure of Department PHI not provided for by this Exhibit F of which it becomes aware.
  
- 7) **Contractor's Agents and Subcontractors.**
  - a. To enter into written agreements with any agents, including subcontractors and vendors to whom Contractor provides Department PHI, that impose the same restrictions and conditions on such agents, subcontractors and vendors that apply to Contractor with respect to such Department PHI under this Exhibit F, and that require compliance with all applicable provisions of HIPAA, the HITECH Act the HIPAA regulations, and the Final Omnibus Rule of 2013 including the requirement that any agents, subcontractors or vendors implement reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI. As required by HIPAA, the HITECH Act, the HIPAA regulations and the Final Omnibus Rule of 2013, including 45 CFR Sections 164.308 and 164.314, Contractor shall incorporate, when applicable, the relevant provisions of this Exhibit F-1 into each subcontract or sub-award to such agents, subcontractors and vendors, including the requirement that any security incidents or breaches of unsecured PHI be reported to Contractor.
  
  - b. In accordance with 45 CFR Section 164.504(e)(1)(ii), upon Contractor's knowledge of a material breach or violation by its subcontractor of the agreement between Contractor and the subcontractor, Contractor shall:
    - i) Provide an opportunity for the subcontractor to cure the breach or end the violation and terminate the agreement if the subcontractor does not cure the breach or end the violation within the time specified by the Department; or
    - ii) Immediately terminate the agreement if the subcontractor has breached a material term of the agreement and cure is not possible.
  
- 8) **Availability of Information to the Department and Individuals to Provide Access and Information:**

**Exhibit F**  
**Privacy and Information Security Provisions**

- a. To provide access as the Department may require, and in the time and manner designated by the Department (upon reasonable notice and during Contractor's normal business hours) to Department PHI in a Designated Record Set, to the Department (or, as directed by the Department), to an Individual, in accordance with 45 CFR Section 164.524. Designated Record Set means the group of records maintained for the Department health plan under this Agreement that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for the Department health plan for which Contractor is providing services under this Agreement; or those records used to make decisions about individuals on behalf of the Department. Contractor shall use the forms and processes developed by the Department for this purpose and shall respond to requests for access to records transmitted by the Department within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.
  - b. If Contractor maintains an Electronic Health Record with PHI, and an individual requests a copy of such information in an electronic format, Contractor shall provide such information in an electronic format to enable the Department to fulfill its obligations under the HITECH Act, including but not limited to, 42 U.S.C. Section 17935(e) and the HIPAA regulations.
- 9) **Confidentiality of Alcohol and Drug Abuse Patient Records.** Contractor agrees to comply with all confidentiality requirements set forth in Title 42 Code of Federal Regulations, Chapter I, Subchapter A, Part 2. Contractor is aware that criminal penalties may be imposed for a violation of these confidentiality requirements.
- 10) **Amendment of Department PHI.** To make any amendment(s) to Department PHI that were requested by a patient and that the Department directs or agrees should be made to assure compliance with 45 CFR Section 164.526, in the time and manner designated by the Department, with the Contractor being given a minimum of twenty days within which to make the amendment.

**Exhibit F**  
**Privacy and Information Security Provisions**

- 11) **Internal Practices.** To make Contractor's internal practices, books, and records relating to the use and disclosure of Department PHI available to the Department or to the Secretary, for purposes of determining the Department's compliance with the HIPAA regulations. If any information needed for this purpose is in the exclusive possession of any other entity or person and the other entity or person fails or refuses to furnish the information to Contractor, Contractor shall provide written notification to the Department and shall set forth the efforts it made to obtain the information.
  
- 12) **Documentation of Disclosures.** To document and make available to the Department or (at the direction of the Department) to an individual such disclosures of Department PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of such PHI, in accordance with the HITECH Act and its implementing regulations, including but not limited to 45 CFR Section 164.528 and 42 U.S.C. Section 17935(c). If Contractor maintains electronic health records for the Department as of January 1, 2009 and later, Contractor must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations. The electronic accounting of disclosures shall be for disclosures during the three years prior to the request for an accounting.
  
- 13) **Breaches and Security Incidents.** During the term of this Agreement, Contractor agrees to implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and to take the following steps:
  - a. **Initial Notice to the Department.** (1) To notify the Department **immediately by telephone call or email or fax** upon the discovery of a breach of unsecured PHI in electronic media or in any other media if the PHI was, or is reasonably believed to have been, accessed or acquired by an unauthorized person. (2) To notify the Department **within 24 hours by email or fax** of the discovery of any suspected security incident, intrusion or unauthorized access, use or disclosure of PHI in violation of this Agreement or this Exhibit F-1 or potential loss of confidential data affecting this Agreement. A breach shall be treated as discovered by Contractor as of the first day on

**Exhibit F**  
**Privacy and Information Security Provisions**

which the breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the breach) who is an employee, officer or other agent of Contractor.

Notice shall be provided to the Information Protection Unit, Office of HIPAA Compliance. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notice shall be provided by calling the Information Protection Unit (916) 445-4646, (866) 866-0602 or by emailing [privacyofficer@dhcs.ca.gov](mailto:privacyofficer@dhcs.ca.gov). Notice shall be made using the DHCS "Privacy Incident Report" form, including all information known at the time.

Contractor shall use the most current version of this form, which is posted on the DHCS Information Security Officer website ([www.dhcs.ca.gov](http://www.dhcs.ca.gov), then select "Privacy" in the left column and then "Business Partner" near the middle of the page) or use this link:

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

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

- i) Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment.
  - ii) Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
- b. **Investigation and Investigation Report.** To immediately investigate such suspected security incident, security incident, breach, or unauthorized access, use or disclosure of PHI. Within 72 hours of the discovery, Contractor shall submit an updated "Privacy Incident Report" containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the Information Protection Unit.

**Exhibit F**  
**Privacy and Information Security Provisions**

- c. **Complete Report.** To provide a complete report of the investigation to the Department Program Contract Manager and the Information Protection Unit within ten working days of the discovery of the breach or unauthorized use or disclosure. The report shall be submitted on the "Privacy Incident Report" form and shall include an assessment of all known factors relevant to a determination of whether a breach occurred under applicable provisions of HIPAA, the HITECH Act, and the HIPAA regulations. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If the Department requests information in addition to that listed on the "Privacy Incident Report" form, Contractor shall make reasonable efforts to provide the Department with such information. If, because of the circumstances of the incident, Contractor needs more than ten working days from the discovery to submit a complete report, the Department may grant a reasonable extension of time, in which case Contractor shall submit periodic updates until the complete report is submitted. If necessary, a Supplemental Report may be used to submit revised or additional information after the completed report is submitted, by submitting the revised or additional information on an updated "Privacy Incident Report" form. The Department will review and approve the determination of whether a breach occurred and whether individual notifications and a corrective action plan are required.
- d. **Responsibility for Reporting of Breaches.** If the cause of a breach of Department PHI is attributable to Contractor or its agents, subcontractors or vendors, Contractor is responsible for all required reporting of the breach as specified in 42 U.S.C. section 17932 and its implementing regulations, including notification to media outlets and to the Secretary (after obtaining prior written approval of DHCS). If a breach of unsecured Department PHI involves more than 500 residents of the State of California or under its jurisdiction, Contractor shall first notify DHCS, then the Secretary of the breach immediately upon discovery of the breach. If a breach involves more than 500 California residents, Contractor shall also provide, after obtaining written prior approval of DHCS, notice to the Attorney General for the State of California, Privacy Enforcement Section. If Contractor has reason to



**Exhibit F**  
**Privacy and Information Security Provisions**

believe that duplicate reporting of the same breach or incident may occur because its subcontractors, agents, or vendors may report the breach or incident to the Department in addition to Contractor, Contractor shall notify the Department, and the Department and Contractor may take appropriate action to prevent duplicate reporting.

- e. **Responsibility for Notification of Affected Individuals.** If the cause of a breach of Department PHI is attributable to Contractor or its agents, subcontractors or vendors and notification of the affected individuals is required under state or Federal law, Contractor shall bear all costs of such notifications as well as any costs associated with the breach. In addition, the Department reserves the right to require Contractor to notify such affected individuals, which notifications shall comply with the requirements set forth in 42U.S.C. section 17932 and its implementing regulations, including, but not limited to, the requirement that the notifications be made without unreasonable delay and in no event later than 60 calendar days after discovery of the breach. The Department Privacy Officer shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made. The Department will provide its review and approval expeditiously and without unreasonable delay.
  
- f. **Department Contact Information.** To direct communications to the above referenced Department staff, the Contractor shall initiate contact as indicated herein. The Department reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Addendum or the Agreement to which it is incorporated.

**Exhibit F  
Privacy and Information Security Provisions**

<b>Department Program Contract Manager</b>	<b>DHCS Privacy Officer</b>	<b>DHCS Information Security Officer</b>
See the Exhibit A, Scope of Work for Program Contract Manager information	Information Protection Unit c/o: Office of HIPAA Compliance Department of Health Care Services P.O. Box 997413, MS 4722 Sacramento, CA 95899-7413 (916) 445-4646; (866) 866-0602  Email: <a href="mailto:privacyofficer@dhcs.ca.gov">privacyofficer@dhcs.ca.gov</a>  Fax: (916) 440-7680	Information Security Officer DHCS Information Security Office P.O. Box 997413, MS 6400 Sacramento, CA 95899-7413  Email: <a href="mailto:iso@dhcs.ca.gov">iso@dhcs.ca.gov</a>  Telephone: ITSD Service Desk (916) 440-7000; (800) 579-0874  Fax: (916) 440-5537

- 14) **Termination of Agreement.** In accordance with Section 13404(b) of the HITECH Act and to the extent required by the HIPAA regulations, if Contractor knows of a material breach or violation by the Department of this Exhibit F-1, it shall take the following steps:
- a. Provide an opportunity for the Department to cure the breach or end the violation and terminate the Agreement if the Department does not cure the breach or end the violation within the time specified by Contractor or
  - b. Immediately terminate the Agreement if the Department has breached a material term of the Exhibit F-1 and cure is not possible.
- 15) **Sanctions and/or Penalties.** Contractor understands that a failure to comply with the provisions of HIPAA, the HITECH Act and the HIPAA regulations that are applicable to Contractors may result in the imposition of sanctions and/or penalties on Contractor under HIPAA, the HITECH Act and the HIPAA regulations.

**E. Obligations of the Department.**

The Department agrees to:

**Exhibit F**  
**Privacy and Information Security Provisions**

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

**F. Audits, Inspection and Enforcement.**

If Contractor is the subject of an audit, compliance review, or complaint investigation by the Secretary or the Office for Civil Rights, U.S. Department of Health and Human Services, that is related to the performance of its obligations pursuant to this HIPAA Business Associate Exhibit F-1, Contractor shall immediately notify the Department. Upon request from the Department, Contractor shall provide the Department with a copy of any Department PHI that Contractor, as the Business Associate, provides to the Secretary or the Office of Civil Rights concurrently with providing such PHI to the Secretary. Contractor is responsible for any civil penalties assessed due to an audit or investigation of Contractor, in accordance with 42 U.S.C. Section 17934(c).

**Exhibit F**  
**Privacy and Information Security Provisions**

**G. Termination.**

- 1) **Term.** The Term of this Exhibit F-1 shall extend beyond the termination of the Agreement and shall terminate when all Department PHI is destroyed or returned to the Department, in accordance with 45 CFR Section 164.504(e)(2)(ii)(J).
  
- 2) **Termination for Cause.** In accordance with 45 CFR Section 164.504(e)(1)(iii), upon the Department's knowledge of a material breach or violation of this Exhibit F-1 by Contractor, the Department shall:
  - a. Provide an opportunity for Contractor to cure the breach or end the violation and terminate this Agreement if Contractor does not cure the breach or end the violation within the time specified by the Department or
  
  - b. Immediately terminate this Agreement if Contractor has breached a material term of this Exhibit F-1 and cure is not possible.

**Exhibit F**  
**Privacy and Information Security Provisions**

**F-2**  
**Privacy and Security of Personal Information and Personally Identifiable  
Information Not Subject to HIPAA**

**1. Recitals.**

- A. In addition to the Privacy and Security Rules under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) the Department is subject to various other legal and contractual requirements with respect to the personal information (PI) and personally identifiable information (PII) it maintains. These include:
  - 1) The California Information Practices Act of 1977 (California Civil Code §§1798 et seq.).
  - 2) Title 42 CFR, Chapter I, Subchapter A, Part 2.
- B. The purpose of this Exhibit F-2 is to set forth Contractor's privacy and security obligations with respect to PI and PII that Contractor may create, receive, maintain, use, or disclose for, or on behalf of Department, pursuant to this Agreement. Specifically this Exhibit applies to PI and PII which is not Protected Health Information (PHI) as defined by HIPAA and therefore is not addressed in Exhibit F-1 of this Agreement, the HIPAA Business Associate Addendum; however, to the extent that data is both PHI or ePHI and PII, both Exhibit F-1 and this Exhibit F-2 shall apply.
- C. The terms used in this Exhibit F-2, but not otherwise defined, shall have the same meanings as those terms have in the above referenced statute and Agreement. Any reference to statutory, regulatory, or contractual language shall be to such language as in effect or as amended.

**2. Definitions.**

- A. Breach shall have the meaning given to such term under HIPAA, the HITECH Act, the HIPAA regulations, and the Final Omnibus Rule.
- B. Business Associate shall have the meaning given to such term under HIPAA, the HITECH Act, the HIPAA regulations, and the final Omnibus Rule.
- C. Electronic Health Record shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C Section 17921 and implementing regulations.
- D. Electronic Protected Health Information (ePHI) means individually identifiable health information transmitted by electronic media or

**Exhibit F**  
**Privacy and Information Security Provisions**

maintained in electronic media, including but not limited to electronic media as set forth under 45 CFR section 160.103.

- E. Individually Identifiable Health Information means health information, including demographic information collected from an individual, that is created or received by a health care provider, health plan, employer or health care clearinghouse, and relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, that identifies the individual or where there is a reasonable basis to believe the information can be used to identify the individual, as set forth under 45 CFR section 160.103.
- F. Privacy Rule shall mean the HIPAA Regulation that is found at 45 CFR Parts 160 and 164.
- G. Personal Information (PI) shall have the meaning given to such term in California Civil Code section 1798.29.
- H. Protected Health Information (PHI) means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or is transmitted or maintained in any other form or medium, as set forth under 45 CFR section 160.103.
- I. Required by law means a mandate contained in law that compels an entity to make a use or disclosure of PHI that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
- J. Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI or PI, or confidential data that is essential to the ongoing operation of the Business Associate's organization and intended for internal use; or interference with system operations in an information system.
- K. Security Rule shall mean the HIPAA regulation that is found at 45 CFR Parts 160 and 164.

**Exhibit F**  
**Privacy and Information Security Provisions**

**3. Terms of Agreement.**

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

Except as otherwise indicated in this Exhibit F-2, Contractor may use or disclose Department PI only to perform functions, activities or services for or on behalf of the Department pursuant to the terms of this Agreement provided that such use or disclosure would not violate the California Information Practices Act (CIPA) if done by the Department.

**B. Responsibilities of Contractor**

Contractor agrees:

- 1) Nondisclosure.** Not to use or disclose Department PI or PII other than as permitted or required by this Agreement or as required by applicable state and Federal law.
- 2) Safeguards.** To implement appropriate and reasonable administrative, technical, and physical safeguards to protect the security, confidentiality and integrity of Department PI and PII, to protect against anticipated threats or hazards to the security or integrity of Department PI and PII, and to prevent use or disclosure of Department PI or PII other than as provided for by this Agreement. Contractor shall develop and maintain a written information privacy and security program that include administrative, technical and physical safeguards appropriate to the size and complexity of Contractor's operations and the nature and scope of its activities, which incorporate the requirements of section 3, Security, below. Contractor will provide DHCS with its current policies upon request.
- 3) Security.** Contractor shall take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI and/or PI, and to protect paper documents containing PHI and/or PI. These steps shall include, at a minimum:
  - a. Complying with all of the data system security precautions listed in Attachment A, Business Associate Data Security Requirements;
  - b. Providing a level and scope of security that is at least comparable to the level and scope of security established by

**Exhibit F**  
**Privacy and Information Security Provisions**

the Office of Management and Budget in OMB Circular No. A-130, Appendix III- Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies.

- 4) **Mitigation of Harmful Effects.** To mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Department PI or PII by Contractor or its subcontractors in violation of this Exhibit F-2.
- 5) **Contractor's Agents and Subcontractors.** To impose the same restrictions and conditions set forth in this Exhibit F-2 on any subcontractors or other agents with whom Contractor subcontracts any activities under this Agreement that involve the disclosure of Department PI or PII to the subcontractor.
- 6) **Availability of Information to DHCS.** To make Department PI and PII available to the Department for purposes of oversight, inspection, amendment, and response to requests for records, injunctions, judgments, and orders for production of Department PI and PII. If Contractor receives Department PII, upon request by DHCS, Contractor shall provide DHCS with a list of all employees, contractors and agents who have access to Department PII, including employees, contractors and agents of its subcontractors and agents.
- 7) **Cooperation with DHCS.** With respect to Department PI, to cooperate with and assist the Department to the extent necessary to ensure the Department's compliance with the applicable terms of the CIPA including, but not limited to, accounting of disclosures of Department PI, correction of errors in Department PI, production of Department PI, disclosure of a security breach involving Department PI and notice of such breach to the affected individual(s).
- 8) **Confidentiality of Alcohol and Drug Abuse Patient Records.** Contractor agrees to comply with all confidentiality requirements set forth in Title 42 Code of Federal Regulations, Chapter I, Subchapter A, Part 2. Contractor is aware that criminal penalties may be imposed for a violation of these confidentiality requirements.
- 9) **Breaches and Security Incidents.** During the term of this Agreement, Contractor agrees to implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and to take the following steps:



**Exhibit F**  
**Privacy and Information Security Provisions**

- a. Initial Notice to the Department. (1) To notify the Department **immediately by telephone call or email or fax** upon the discovery of a breach of unsecured Department PI or PII in electronic media or in any other media if the PI or PII was, or is reasonably believed to have been, accessed or acquired by an unauthorized person, or upon discovery of a suspected security incident involving Department PII. (2) To notify the Department **within 24 hours by email or fax** of the discovery of any suspected security incident, intrusion or unauthorized access, use or disclosure of Department PI or PII in violation of this Agreement or this Exhibit F-1 or potential loss of confidential data affecting this Agreement. A breach shall be treated as discovered by Contractor as of the first day on which the breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the breach) who is an employee, officer or other agent of Contractor.
- b. Notice shall be provided to the Information Protection Unit, Office of HIPAA Compliance. If the incident occurs after business hours or on a weekend or holiday and involves electronic Department PI or PII, notice shall be provided by calling the Department Information Security Officer. Notice shall be made using the DHCS “Privacy Incident Report” form, including all information known at the time. Contractor shall use the most current version of this form, which is posted on the DHCS Information Security Officer website ([www.dhcs.ca.gov](http://www.dhcs.ca.gov), then select “Privacy” in the left column and then “Business Partner” near the middle of the page) or use this link:  
<http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/DHCSBusinessAssociatesOnly.aspx> .
- c. Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of Department PI or PII, Contractor shall take:
  - i. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and

**Exhibit F**  
**Privacy and Information Security Provisions**

- ii. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
  
- d. Investigation and Investigation Report.** To immediately investigate such suspected security incident, security incident, breach, or unauthorized access, use or disclosure of PHI. Within 72 hours of the discovery, Contractor shall submit an updated "Privacy Incident Report" containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the Department Information Security Officer.
  
- e. Complete Report.** To provide a complete report of the investigation to the Department Program Contract Manager and the Information Protection Unit within ten working days of the discovery of the breach or unauthorized use or disclosure. The report shall be submitted on the "Privacy Incident Report" form and shall include an assessment of all known factors relevant to a determination of whether a breach occurred. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If the Department requests information in addition to that listed on the "Privacy Incident Report" form, Contractor shall make reasonable efforts to provide the Department with such information. If, because of the circumstances of the incident, Contractor needs more than ten working days from the discovery to submit a complete report, the Department may grant a reasonable extension of time, in which case Contractor shall submit periodic updates until the complete report is submitted. If necessary, a Supplemental Report may be used to submit revised or additional information after the completed report is submitted, by submitting the revised or additional information on an updated "Privacy Incident Report" form. The Department will review and approve the determination of whether a breach occurred and whether individual notifications and a corrective action plan are required.
  
- f. Responsibility for Reporting of Breaches.** If the cause of a breach of Department PI or PII is attributable to Contractor or its agents, subcontractors or vendors, Contractor is

**Exhibit F**  
**Privacy and Information Security Provisions**

responsible for all required reporting of the breach as specified in CIPA, section 1798.29. Contractor shall bear all costs of required notifications to individuals as well as any costs associated with the breach. The Privacy Officer shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made. The Department will provide its review and approval expeditiously and without unreasonable delay.

- g.** If Contractor has reason to believe that duplicate reporting of the same breach or incident may occur because its subcontractors, agents or vendors may report the breach or incident to the Department in addition to Contractor, Contractor shall notify the Department, and the Department and Contractor may take appropriate action to prevent duplicate reporting.
  
- h. Department Contact Information.** To direct communications to the above referenced Department staff, the Contractor shall initiate contact as indicated herein. The Department reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Addendum or the Agreement to which it is incorporated.

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

**Exhibit F**  
**Privacy and Information Security Provisions**

**10) Designation of Individual Responsible for Security.**

Contractor shall designate an individual, (e.g., Security Officer), to oversee its data security program who shall be responsible for carrying out the requirements of this Exhibit F-2 and for communicating on security matters with the Department.

**Exhibit F**  
**Privacy and Information Security Provisions**

**F-3**  
**Miscellaneous Terms and Conditions**  
**Applicable to Exhibit F**

- 1) **Confidentiality of Alcohol and Drug Abuse Patient Records.** Contractor agrees to comply with all confidentiality requirements set forth in Title 42 Code of Federal Regulations, Chapter I, Subchapter A, Part 2. Contractor is aware that criminal penalties may be imposed for a violation of these confidentiality requirements.
- 2) **Disclaimer.** The Department makes no warranty or representation that compliance by Contractor with this Exhibit F, HIPAA or the HIPAA regulations will be adequate or satisfactory for Contractor's own purposes or that any information in Contractor's possession or control, or transmitted or received by Contractor, is or will be secure from unauthorized use or disclosure. Contractor is solely responsible for all decisions made by Contractor regarding the safeguarding of the Department PHI, PI and PII.
- 3) **Amendment.** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Exhibit F may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, and the HIPAA regulations, and other applicable state and Federal laws. Upon either party's request, the other party agrees to promptly enter into negotiations concerning an amendment to this Exhibit F embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, and the HIPAA regulations, and other applicable state and Federal laws. The Department may terminate this Agreement upon thirty (30) days written notice in the event:
  - A) Contractor does not promptly enter into negotiations to amend this Exhibit F when requested by the Department pursuant to this section; or
  - B) Contractor does not enter into an amendment providing assurances regarding the safeguarding of Department PHI that the Department deems is necessary to satisfy the standards and requirements of HIPAA and the HIPAA regulations.
- 4) **Judicial or Administrative Proceedings.** Contractor will notify the Department if it is named as a defendant in a criminal proceeding for a violation of HIPAA or other security or privacy law. The Department may terminate this Agreement if Contractor is found guilty of a criminal violation of HIPAA. The Department may terminate this Agreement if a finding or stipulation that the Contractor has violated any standard or requirement of

**Exhibit F**  
**Privacy and Information Security Provisions**

HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Contractor is a party or has been joined. DHCS will consider the nature and seriousness of the violation in deciding whether or not to terminate the Agreement.

- 5) **Assistance in Litigation or Administrative Proceedings.** Contractor shall make itself and any subcontractors, employees, or agents assisting Contractor in the performance of its obligations under this Agreement, available to the Department at no cost to the Department to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Department, its directors, officers or employees based upon claimed violation of HIPAA, or the HIPAA regulations, which involves inactions or actions by the Contractor, except where Contractor or its subcontractor, employee or agent is a named adverse party.
- 6) **No Third-Party Beneficiaries.** Nothing expressed or implied in the terms and conditions of this Exhibit F is intended to confer, nor shall anything herein confer, upon any person other than the Department or Contractor and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- 7) **Interpretation.** The terms and conditions in this Exhibit F shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, and the HIPAA regulations. The parties agree that any ambiguity in the terms and conditions of this Exhibit F shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act and the HIPAA regulations, and, if applicable, any other relevant state and Federal laws.
- 8) **Conflict.** In case of a conflict between any applicable privacy or security rules, laws, regulations or standards the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to PHI, PI and PII from unauthorized disclosure. Further, Contractor must comply within a reasonable period of time with changes to these standards that occur after the effective date of this Agreement.
- 9) **Regulatory References.** A reference in the terms and conditions of this Exhibit F to a section in the HIPAA regulations means the section as in effect or as amended.
- 10) **Survival.** The respective rights and obligations of Contractor under Section 3, Item D of Exhibit F-1, and Section 3, Item B of Exhibit F-2, Responsibilities of Contractor, shall survive the termination or expiration of this Agreement.

**Exhibit F**  
**Privacy and Information Security Provisions**

- 11) **No Waiver of Obligations.** No change, waiver, or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
- 12) **Audits, Inspection and Enforcement.** From time to time, and subject to all applicable Federal and state privacy and security laws and regulations, the Department may conduct a reasonable inspection of the facilities, systems, books and records of Contractor to monitor compliance with this Exhibit F. Contractor shall promptly remedy any violation of any provision of this Exhibit F. The fact that the Department inspects, or fails to inspect, or has the right to inspect, Contractor's facilities, systems and procedures does not relieve Contractor of its responsibility to comply with this Exhibit F. The Department's failure to detect a non-compliant practice, or a failure to report a detected non-compliant practice to Contractor does not constitute acceptance of such practice or a waiver of the Department's enforcement rights under this Agreement, including this Exhibit F.
- 13) **Due Diligence.** Contractor shall exercise due diligence and shall take reasonable steps to ensure that it remains in compliance with this Exhibit F and is in compliance with applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, and other applicable state and Federal law, and that its agents, subcontractors and vendors are in compliance with their obligations as required by this Exhibit F.
- 14) **Term.** The Term of this Exhibit F-1 shall extend beyond the termination of the Agreement and shall terminate when all Department PHI is destroyed or returned to the Department, in accordance with 45 CFR Section 164.504(e)(2)(ii)(I), and when all Department PI and PII is destroyed in accordance with Attachment A.
- 15) **Effect of Termination.** Upon termination or expiration of this Agreement for any reason, Contractor shall return or destroy all Department PHI, PI and PII that Contractor still maintains in any form, and shall retain no copies of such PHI, PI or PII. If return or destruction is not feasible, Contractor shall notify the Department of the conditions that make the return or destruction infeasible, and the Department and Contractor shall determine the terms and conditions under which Contractor may retain the PHI, PI or PII. Contractor shall continue to extend the protections of this Exhibit F to such Department PHI, PI and PII, and shall limit further use of such data to those purposes that make the return or destruction of such data infeasible. This provision shall apply to Department PHI, PI and PII that is in the possession of subcontractors or agents of Contractor.

**Exhibit F**  
**Privacy and Information Security Provisions**

**Attachment I**  
**Business Associate Data Security Requirements**

**I. Personnel Controls.**

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

**II. Technical Security Controls.**

- A. *Workstation/Laptop encryption.*** All workstations and laptops that process and/or store DHCS PHI or PI must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as Advanced



**Exhibit F**  
**Privacy and Information Security Provisions**

Encryption Standard (AES). The encryption solution must be full disk unless approved by the DHCS Information Security Office.

- B. *Server Security.*** Servers containing unencrypted DHCS PHI or PI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
- C. *Minimum Necessary.*** Only the minimum necessary amount of DHCS PHI or PI required to perform necessary business functions may be copied, downloaded, or exported.
- D. *Removable media devices.*** All electronic files that contain DHCS PHI or PI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, smartphones, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.
- E. *Antivirus software.*** All workstations, laptops and other systems that process and/or store DHCS PHI or PI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- F. *Patch Management.*** All workstations, laptops and other systems that process and/or store DHCS PHI or PI must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release.
- G. *User IDs and Password Controls.*** All users must be issued a unique user name for accessing DHCS PHI or PI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password, at maximum within 24 hours. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed every 90 days, preferably every 60 days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:
- Upper case letters (A-Z)
  - Lower case letters (a-z)

**Exhibit F**  
**Privacy and Information Security Provisions**

- Arabic numerals (0-9)
  - Non-alphanumeric characters (punctuation symbols)
- H. *Data Destruction.*** When no longer needed, all DHCS PHI or PI must be cleared, purged, or destroyed consistent with NIST Special Publication 800-88, Guidelines for Media Sanitization such that the PHI or PI cannot be retrieved.
- I. *System Timeout.*** The system providing access to DHCS PHI or PI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- J. *Warning Banners.*** All systems providing access to DHCS PHI or PI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.
- K. *System Logging.*** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for DHCS PHI or PI, or which alters DHCS PHI or PI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If DHCS PHI or PI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.
- L. *Access Controls.*** The system providing access to DHCS PHI or PI must use role based access controls for all user authentications, enforcing the principle of least privilege.
- M. *Transmission encryption.*** All data transmissions of DHCS PHI or PI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing PHI can be encrypted. This requirement pertains to any type of PHI or PI in motion such as website access, file transfer, and E-Mail.
- N. *Intrusion Detection.*** All systems involved in accessing, holding, transporting, and protecting DHCS PHI or PI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

**Exhibit F**  
**Privacy and Information Security Provisions**

**III. Audit Controls.**

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

**IV. Business Continuity / Disaster Recovery Controls**

- A. *Emergency Mode Operation Plan.*** Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic DHCS PHI or PI in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than 24 hours.
- B. *Data Backup Plan.*** Contractor must have established documented procedures to backup DHCS PHI to maintain retrievable exact copies of DHCS PHI or PI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and an estimate of the amount of time needed to restore DHCS PHI or PI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of DHCS data.

**V. Paper Document Controls.**

- A. *Supervision of Data.*** DHCS PHI or PI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. DHCS PHI or PI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.

**Exhibit F**  
**Privacy and Information Security Provisions**

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

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.

<i>Contractor/Bidder Firm Name (Printed)</i> <i>County of Mono</i>		<i>Federal ID Number</i> 95-6005661
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i> <i>Robin K. Roberts, MFT, Director Mono County Behavioral Health</i>		
<i>Date Executed</i>	<i>Executed in the County of</i> <i>Mono</i>	

**CONTRACTOR CERTIFICATION CLAUSES**

1. **STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 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 lesser 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.



## CALIFORNIA CIVIL RIGHTS LAWS CERTIFICATION

Pursuant to Public Contract Code section 2010, if a bidder or proposer executes or renews a contract over \$100,000 on or after January 1, 2017, the bidder or proposer hereby certifies compliance with the following:

1. CALIFORNIA CIVIL RIGHTS LAWS: For contracts over \$100,000 executed or renewed after January 1, 2017, the contractor certifies compliance with the Unruh Civil Rights Act (Section 51 of the Civil Code) and the Fair Employment and Housing Act (Section 12960 of the Government Code); and
2. EMPLOYER DISCRIMINATORY POLICIES: For contracts over \$100,000 executed or renewed after January 1, 2017, if a Contractor has an internal policy against a sovereign nation or peoples recognized by the United States government, the Contractor certifies that such policies are not used in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the Fair Employment and Housing Act (Section 12960 of the Government Code).

### CERTIFICATION

<p>I, the official named below, certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.</p> <p><i>Proposer/Bidder Firm Name (Printed)</i></p> <p><i>County of Mono</i></p>	<p><i>Federal ID Number</i></p> <p>95-6005661</p>
<p><i>By (Authorized Signature)</i></p>	
<p><i>Printed Name and Title of Person Signing</i></p> <p><i>Robin K. Roberts MFT, Director Mono County Behavioral Health</i></p>	
<p><i>Executed in the County and State of Mono, California</i></p>	



OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS

## REGULAR AGENDA REQUEST

Print

**MEETING DATE** August 21, 2018

**Departments: Public Works - Solid Waste**

**TIME REQUIRED**

**SUBJECT** Solid Waste Franchise Agreement  
with Mammoth Disposal Company  
and D&S Waste, Inc.

**PERSONS  
APPEARING  
BEFORE THE  
BOARD**

### AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

An updated Primary Franchise Agreement has been proposed with Mammoth Disposal Company and D&S Waste Removal, Inc., pertaining to collection of solid waste from residential and commercial customers in Unincorporated Mono County through December 31, 2022.

### RECOMMENDED ACTION:

Approve and sign two franchisee agreements for the collection and disposal of solid waste within the unincorporated area of the County, specifically the (1) Primary Franchise Agreement between County of Mono and Mammoth Disposal Company for Collection of Solid Waste from Residential and Commercial Customers in Unincorporated Mono County and the (2) Primary Franchise Agreement between County of Mono and D & S Waste Removal, Inc. for Collection of Solid Waste from Residential and Commercial Customers in Unincorporated Mono County (collectively, "Franchise Agreements").

### FISCAL IMPACT:

Under the existing Franchise Agreements, the County collects from Mammoth Disposal Company and D & S Waste Removal, Inc. (collectively, "Franchisees") approximately \$30,000 annually and \$90,000 annually, respectively, and deposits those amounts into the County's Solid Waste Enterprise Fund to support the County's solid waste programs, including anticipated costs related to the closure of Benton Crossing Landfill at the end of 2022.

**CONTACT NAME:** Justin Nalder

**PHONE/EMAIL:** 760-932-5453 / jnalder@mono.ca.gov

### SEND COPIES TO:

### MINUTE ORDER REQUESTED:

YES  NO

### ATTACHMENTS:

Click to download
<a href="#">Staff Report for Franchise Agreements</a>
<a href="#">Solid Waste Franchise Agreement with Mammoth Disposal</a>

**History**

<b>Time</b>	<b>Who</b>	<b>Approval</b>
8/16/2018 5:20 AM	County Administrative Office	Yes
8/15/2018 9:40 AM	County Counsel	Yes
8/16/2018 6:03 PM	Finance	Yes



# MONO COUNTY DEPARTMENT OF PUBLIC WORKS SOLID WASTE DIVISION

POST OFFICE BOX 457 • 74 NORTH SCHOOL STREET • BRIDGEPORT, CALIFORNIA 93517  
60.932.5440 • FAX 760.932.5441 • [monopw@mono.ca.gov](mailto:monopw@mono.ca.gov) • [www.monocounty.ca.gov](http://www.monocounty.ca.gov)

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**To:** Honorable Chair and Members of the Board of Supervisors

**From:** Justin Nalder, Solid Waste Superintendent

**Date:** August 21, 2018

**Subject:** Solid Waste Franchise Agreement with Mammoth Disposal Company and D&S Waste Removal, Inc.

---

**Recommended Action:**

Approve and sign two franchisee agreements for the collection and disposal of solid waste within the unincorporated area of the County, specifically the (1) Primary Franchise Agreement between County of Mono and Mammoth Disposal Company for Collection of Solid Waste from Residential and Commercial Customers in Unincorporated Mono County and the (2) Primary Franchise Agreement between County of Mono and D & S Waste Removal, Inc. for Collection of Solid Waste from Residential and Commercial Customers in Unincorporated Mono County (collectively, "Franchise Agreements"); provide any desired direction to staff.

**Fiscal Impact:**

Under the existing Franchise Agreements, the County collects from Mammoth Disposal Company and D & S Waste Removal, Inc. (collectively, "Franchisees") approximately \$30,000 annually and \$90,000 annually, respectively, and deposits those amounts into the County's Solid Waste Enterprise Fund to support the County's solid waste programs, including anticipated costs related to the closure of Benton Crossing Landfill at the end of 2022.

**Discussion:**

Franchisees currently provide solid waste collection, handling, and disposal services to customers within the unincorporated area of the County and have developed customer relationships and experience which has enabled them to provide quality services to both residential and commercial customers throughout the region. These services provided are currently outside of the capacity of the County to conduct with in-house resources. Nevertheless, the County is required to provide solid waste collection, handling, and disposal services to its citizens under the provisions of the California Integrated Waste Management Act, California Public Resources Code at Section 4000, *et seq.*, along with other services such as source reduction, recycling, and composting. It is to the County's benefit that these services continue to be provided by Franchisees pursuant to new Franchise Agreements.

Currently, Franchisees are under contract with the County and operating pursuant to a solid waste franchise granted by the County through September 30, 2018. Revised Franchise Agreements have been prepared by the Solid Waste Division with input and consideration of comments provided by Franchisees. The term of the new Franchise Agreements would be through December 31, 2022, which coincides with the closure of Benton Crossing Landfill. Consistent with the previous Franchise Agreements, Franchisees will remain obligated to pay the County a franchise fee equal to four percent (4%) of gross revenues received from their providing solid waste collection, handling, and disposal services to customers in the unincorporated area of the County. Also, the Franchise Agreements continue to charge Franchisees a capacity fee for exporting solid waste for disposal outside of the County; the capacity fee will remain \$74 per ton and paid to the County in conjunction with franchise fees. Per the request of Franchisees, service fee floors (i.e., the minimum amount Franchisees may charge customers for solid waste services) are nearly equal to rates previously set by the County in 2015. Similarly, in response to requests from Franchisees, an adjustment was made to the geographic point at

which Franchisees are exempted from the requirements to transport solid waste to and pay tipping fees associated with disposing of solid waste at the County's Benton Crossing Landfill. Accordingly, Franchisees may collect solid waste from the County's Bridgeport Transfer Station and Walker Transfer Station for hauling outside of the County provided the appropriate capacity fee is paid to the County.

If you have any questions regarding this item, please contact me at (760) 932-5453 or [jnalder@mono.ca.gov](mailto:jnalder@mono.ca.gov).

Respectfully submitted,



Justin Nalder  
Solid Waste Superintendent

- Attachments:
- (1) Primary Franchise Agreement between County of Mono and Mammoth Disposal Company for the Collection of Solid Waste from Residential and Commercial Customers in Unincorporated Mono County
  - (2) Primary Franchise Agreement between County of Mono and D&S Waste Removal, Inc., for the Collection of Solid Waste from Residential and Commercial Customers in Unincorporated Mono County

**PRIMARY FRANCHISE AGREEMENT**

**BETWEEN COUNTY OF MONO**

**AND**

**MAMMOTH DISPOSAL COMPANY**

**FOR COLLECTION OF SOLID WASTE**

**FROM RESIDENTIAL AND COMMERCIAL CUSTOMERS**

**IN UNINCORPORATED MONO COUNTY**

**SEPTEMBER 2018**

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## TABLE OF CONTENTS

---

ARTICLE 1.	DEFINITIONS AND CONTRACT INTERPRETATION .....	2
1.01	Definitions.....	2
1.02	Interpretation and Construction. ....	2
1.03	Integration.....	2
1.04	Severability.....	3
1.05	Interpretation.....	3
1.06	Timely Performance.....	4
ARTICLE 2.	FRANCHISEE’S REPRESENTATIONS AND WARRANTIES .....	4
2.01	Franchisee.....	4
ARTICLE 3.	TERM OF AGREEMENT.....	4
3.01	Term.....	4
3.02	Survival of Certain Provisions.....	5
ARTICLE 4.	COLLECTION .....	5
4.01	Scope of Basic Franchise Services.....	5
4.02	Pickup of Excess and Bulky Waste.....	10
4.03	Service Standards.....	10
4.04	Service Exceptions.....	11
4.05	Customer Service.....	13
4.06	Public Education and Community Relations.....	14
4.07	Customers’ Privacy.....	15
4.08	No Discrimination.....	15
4.09	Franchisee Billing.....	15
4.10	Description of Customers’ Rights.....	16
4.11	Customer Satisfaction Survey.....	16
4.12	Public Performance Review.....	17
4.13	Enforcement of Franchise.....	17
ARTICLE 5.	OPERATIONS.....	17
5.01	Routing.....	17
5.02	Vehicles, Service Assets, and Drivers.....	18
5.03	Public Resources Code Section 49520.....	19
5.04	Personnel.....	20
5.05	Contingency Plan.....	20
5.06	Unpermitted Waste.....	20
5.07	Annual Meetings.....	21
ARTICLE 6.	DIVERSION.....	21
6.01	Diversion Reporting.....	21



6.02	Additional Programs .....	22
ARTICLE 7. SOLID WASTE DISPOSAL.....		22
7.01	Transportation to Designated Disposal Facility.....	22
7.02	Defense and Indemnification; Release.....	25
7.03	Disposal Fees. ....	26
ARTICLE 8. MISCELLANEOUS SERVICE PROVISIONS .....		26
8.01	Emergency Services.....	26
8.02	Title to Solid Waste. ....	26
8.03	Compliance with Applicable Law. ....	26
8.04	Cooperation with Waste Studies.....	28
8.05	Service Materials Belong to County.....	28
8.06	Recycled Materials.....	28
8.07	Responsiveness to County. ....	28
8.08	Commingling of Waste.....	29
ARTICLE 9. DISPUTE RESOLUTION BY INDEPENDENT EXPERT .....		29
9.01	Independent Expert.....	29
ARTICLE 10. RECORDS AND REPORTING.....		30
10.01	Records.....	30
10.02	Reporting.....	31
10.03	Financial Records and Reports.....	31
10.04	Proprietary Reports and Records.....	32
ARTICLE 11. INSURANCE, INDEMNIFICATION AND PERFORMANCE ASSURANCES .....		33
11.01	Insurance.....	33
11.02	Franchisee Defense and Indemnification.....	34
11.03	Letter of Credit.....	35
ARTICLE 12. CRIMINAL ACTIVITY.....		35
12.01	Criminal Activity.....	35
ARTICLE 13. SERVICE FEES.....		37
13.01	Service Fees. Franchisee understands and acknowledges, as follows: .....	37
13.02	Fees Payable by Franchisee.....	40
13.03	Payment of Moneys Due County.....	42
13.04	Fee Disputes.....	42
ARTICLE 14. BREACHES, DEFAULTS, DAMAGES, AND OTHER REMEDIES .....		43
14.01	Certain Breaches and Damages.....	43

14.02 Remedies Upon Default.....	44
14.03 Remedies Not Exclusive.....	45
14.04 Waivers.....	45
14.05 Jurisdiction; Venue.....	46
14.06 Costs.....	46
14.07 Assurance of Performance.....	46
14.08 County Right to Perform Franchise Services.....	47
ARTICLE 15. FRANCHISEE’S OBLIGATIONS UPON EXPIRATION OR TERMINATION.....	50
15.01 Pay Outstanding Amounts.....	50
15.02 Cooperation During Transition.....	50
ARTICLE 16. THE PARTIES.....	50
16.01 Franchisee is Independent Contractor.....	50
16.02 Parties in Interest.....	51
16.03 Binding on Successors.....	51
16.04 Further Assurances.....	51
16.05 Actions of County in Its Governmental Capacity.....	51
16.06 Franchisee’s Obligations Performed at Its Sole Expense.....	51
16.07 Parties’ Representatives.....	51
16.08 Due Diligence.....	52
16.09 Subcontracting.....	52
16.10 No Use of County Name.....	53
ARTICLE 17. ASSIGNMENT AND AMENDMENTS.....	53
17.01 Assignment.....	53
17.02 Amendments.....	54
ARTICLE 18. NOTICES, CONSENTS, APPROVALS, ETC.....	54
18.01 Notices.....	54
18.02 Consents and Approvals.....	55
18.03 Exercise of Discretion by County.....	55
ARTICLE 19. EXECUTION OF AGREEMENT.....	56
19.01 Authority to Execute.....	56

## EXHIBITS

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EXHIBIT R-1: FINDINGS REGARDING DESIGNATED DISPOSAL FACILITY .....	i
EXHIBIT 1.01: DEFINITIONS.....	iv
EXHIBIT 2.01: FRANCHISEE’S REPRESENTATIONS AND WARRANTIES .....	xiv
EXHIBIT 4.01a: SERVICE AREA .....	xvi
EXHIBIT 4.05e: CUSTOMER COMPLAINT AND BILLING DISPUTE RESOLUTION PROTOCOL .....	xvii
EXHIBIT 5.02g: SERVICE ASSET INVENTORY .....	xviii
EXHIBIT 5.06: UNPERMITTED WASTE SCREENING PROTOCOL.....	xix
EXHIBIT 7.01b: CAPACITY FEES .....	xxi
EXHIBIT 10.01a: RECORDS .....	xxii
EXHIBIT 10.02a: QUARTERLY REPORTS .....	xxiv
EXHIBIT 10.02b: ANNUAL REPORTS .....	xxvi
EXHIBIT 12.01e(2): FRANCHISEE OR ANY OF ITS CONTRACT MANAGERS .....	xxx
EXHIBIT 13.01a: SERVICE FEE FLOORS .....	xxxii
EXHIBIT 14.01: COMPENSATORY AND LIQUIDATED DAMAGES .....	xxxiii
EXHIBIT 16.09: COUNTY-APPROVED SUBCONTRACTORS .....	xxxiv

This Agreement (“**Agreement**”) is made and entered into by and between County of Mono, a political subdivision of the State of California (the “**County**”), and Mammoth Disposal Company, a California corporation operating primarily out of Mammoth Lakes, California (the “**Franchisee**”), on the later date of execution by the Parties indicated on the execution page of this Agreement. Hereinafter, the Parties may be referred to individually as a “**Party**” or collectively as the “**Parties**”.

## RECITALS

1. County is responsible for protection of public health and the environment. County is not only authorized but is required to provide solid waste handling services to its citizens under the provisions of the California Integrated Waste Management Act (the “**Act**”), which is set forth in the California Public Resources Code at Section 40000 *et seq.*, including source reduction, recycling, composting, and the collection, transfer and disposal of solid waste within the unincorporated County area.

2. County is liable for its solid waste. County, not any waste hauler, is liable to the State under the Act for any fines up to \$10,000 per day levied for noncompliance with the Act. Local public agencies like County have also generally been held liable under federal Superfund laws for the costs of cleaning up Hazardous and Unpermitted Waste sites that accepted solid waste generated within the jurisdiction of the local public agency. Therefore, County is prudent to provide for terms and conditions of its solid waste processing and disposal in accordance with this Agreement.

3. It is necessary to require Franchisee to deliver solid waste to a solid waste facility owned by County or pay Capacity Fees therefore. In view of the findings contained in Exhibit R-1 to this Agreement, County has determined that in order to sustain its solid waste program, minimize its risk of liability for waste generated within its borders, and continue to provide beneficial solid waste services to its residents and to visitors to the area, it is necessary to require that solid waste collected by franchisees be delivered to a solid waste facility owned and/or operated by County or, in those limited circumstances when it is not feasible to do so, to require that Capacity Fees be paid.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, guaranties, and conditions contained in this Agreement and for other good and valuable consideration, the Parties hereby agree as follows:

## **ARTICLE 1. DEFINITIONS AND CONTRACT INTERPRETATION**

### **1.01 Definitions.**

In this Agreement words have the meanings defined in Exhibit 1.01, which controls in the event of any conflict with the definitions used in the preamble and recitals above.

### **1.02 Interpretation and Construction.**

**a. Gender and Plurality.** Words of the masculine gender include correlative words of the feminine and neuter genders, and vice versa. Words importing the singular number include the plural number, and vice versa, unless the context demands otherwise.

**b. Headings, Font.** Any captions or headings following the Article, Exhibit, Section, subsection, and paragraph numbers and preceding the operative text of this Agreement are for convenience of reference only and do not control or affect the scope, intent, meaning, construction, interpretation or effect of this Agreement. Any underlined, italicized, bold-faced, upper captioned or other font style is for ease of reading and contract administration only and does not imply relative importance or unimportance of any provision of this Agreement.

**c. References to Parts.** References to Sections and Articles refer to Sections and Articles of this Agreement, unless specified otherwise. References to Exhibits refer to Exhibits attached to this Agreement. Reference to “subsections” refers to the subsection contained in the same Section in which the reference occurs, unless otherwise provided.

**d. Examples.** Examples are for purpose of illustration only. If any example is ambiguous or is inconsistent or conflicts with the text that it illustrates, then the text shall govern.

**e. Specifics No Limitation on Generalities.** The mention of any specific duty or liability imposed upon the Franchisee may not be construed as a limitation or restriction of any general liability or duty imposed upon the Franchisee by this Agreement or Applicable Law.

**f. Exhibits.** The Exhibits to this Agreement are part of this Agreement to the same extent and effect as if included in the text of Articles 1 through 19.

### **1.03 Integration.**

This Agreement contains the entire agreement between the Parties with respect to the rights and responsibilities of the Parties under this Agreement, including the enforcement and administration of this Agreement. This Agreement completely and fully supersedes all prior agreements and understandings between the Parties with respect to their rights and responsibilities, including those contained in Procurement Proceedings.

#### 1.04 Severability.

**a. Substitute Provision.** If any clause, sentence, provision, subsection, Section or Article of this Agreement (an “**Agreement Provision**”) is ruled unconstitutional, illegal, invalid, non-binding, or unenforceable by any court of competent jurisdiction, then the Parties will:

- (1) promptly meet and negotiate a substitute for the Agreement Provision and any related amendments, deletions, or additions to other provisions of this Agreement that together effect the Parties’ original intent to the greatest extent allowable under Applicable Law; and
- (2) if necessary or desirable to accomplish the purpose of Subsection (a)(1), apply to the court that declared that invalidity for a judicial construction of the substituted Agreement Provision and any amendments, deletions, or additions to this Agreement.

Franchisee will pay County half of the actual costs of any application within twenty (20) days of certified receipt of County’s request.

**b. Remaining Provisions.** Except as provided in Subsection (c), the unconstitutionality, illegality, invalidity, non-binding nature, or unenforceability of any Agreement Provision will not affect any of the remaining provisions of this Agreement.

**c. Exception.** If any Agreement Provision with respect to County’s direction of Solid Waste to a Designated Disposal Site, including Section 7.01, is ruled unconstitutional, illegal, invalid, non-binding, or unenforceable by any court of competent jurisdiction, then County may in its sole discretion either:

- (1) sever that Agreement Provision and construe and enforce this Agreement in accordance with this Section 1.04; or
- (2) sever that Agreement Provision and, unless Franchisee is complying with that Agreement Provision in actual practice, terminate this Agreement in accordance with Section 14.02(a)(1); or
- (3) accept the ruling without severing that Agreement Provision.

#### 1.05 Interpretation.

This Agreement must be interpreted and construed reasonably and neither for nor against either Party, regardless of the degree to which either Party participated in its drafting. Franchisee acknowledges that it determined to participate in the procurement of this Agreement upon its own choice and initiative and during the course of that procurement County met and conferred with Franchisee and solicited Franchisee’s comments, exceptions, and proposals with respect to provisions in the Agreement. The Parties have negotiated this Agreement at arms length and

with advice of their respective attorneys, and no provision herein is construed against County solely because it prepared this Agreement in its executed form.

## **1.06 Timely Performance**

### **a. Specified Days on Weekdays.**

- (1) **Performance.** Where this Agreement requires that an obligation be performed within a specified number of days, if the last day falls on a weekend or holiday, the obligated Party may perform that obligation on the next weekday following the weekend or holiday. *For example, if Franchisee must provide documentation to County within 2 days of County request on a Friday, Franchisee must give County the documentation by the following Monday.*
- (2) **Counting.** Each calendar day is counted when determining the last day of the specified number of days. *For example, if Franchisee must provide documentation to County within one week of County's request on a Friday, Franchisee must give County the documentation by the next Friday.*

**b. Specified Hours on Any Day.** Where this Agreement requires that an obligation be performed at a specified time, in any of the following events the obligated Party must perform that obligation within the specified time, *even if* the time for performance falls on a weekend or holiday:

- (1) the specified time is measured in hours;
- (2) County specifies the time (*for example, on a Saturday even though performance would otherwise occur on Monday*); or
- (3) County determines that there is a threat to public health or safety.

## **ARTICLE 2. FRANCHISEE'S REPRESENTATIONS AND WARRANTIES**

### **2.01 Franchisee.**

Franchisee represents and warrants as contained in Exhibit 2.01.

## **ARTICLE 3. TERM OF AGREEMENT**

### **3.01 Term.**

**a. Term.** The Term of the Agreement commences on the Commencement Date and expires on December 31, 2022, unless terminated earlier in accordance with Section 14.02(a)(1).

**b. Optional County Extension Right.** County may in its sole discretion extend the Term for up to two (2) additional years commencing on the expiration date provided in Subsection (a) by Notice to Franchisee no later than (i) September 30, 2022 or (ii) another date agreed to by the Parties.

### **3.02 Survival of Certain Provisions.**

The following provisions shall survive the Term:

- (1) all representations and warranties;
- (2) all Indemnities;
- (3) obligations to pay any County Payment Obligations;
- (4) obligations to submit Records and reports, including the final Annual Report; and
- (5) any other rights and obligations of the Parties stated to survive the Term.

## **ARTICLE 4. COLLECTION**

### **4.01 Scope of Basic Franchise Services.**

**a. Service Area and Exclusive Franchised Services.** County grants Franchisee the franchise, right, and privilege to offer to provide Franchise Services to Customers within the Franchise Area, so long as Franchisee is at all times ready, willing, and able to provide Franchise Services and is fully and timely satisfying its Performance Obligations. Franchisee accepts that franchise, right, and privilege in accordance with this Agreement.

**b. Limitations on Right to Provide Franchise Services.** Franchisee's franchise, right, and privilege to provide Franchise Services is limited. Pursuant to the Mono County Code, County may authorize up to one other Person, in addition to Franchisee, to provide Solid Waste services substantially similar to Franchise Services within the Franchise Area. Additionally, Persons, including both the owners or occupants of premises and persons performing services at premises, may themselves transport and dispose of Solid Waste and C&D Waste that they generate in the use and occupancy of those premises or as a by-product of services performed at those premises themselves. For example, landscapers, gardeners, or construction contractors or demolition contractors may collect and transport Yard Waste and C&D Waste they generate in the course of performing their services in dump trucks, end dumps, flatbed trucks, or similar vehicles. Also, owners and occupants of a premises may transport and dispose of Solid Waste that they generate on their own premises. This Section 4.01(b) does not authorize owners or occupants of premises or persons performing services at premises to hire a third party (other than a Franchisee) to transport and dispose of such Solid Waste.



County may contract with Franchisee or with Persons other than Franchisee for Unpermitted Waste collection, transportation, disposal, processing and/or diversion services.

**c. Regularly-Scheduled Franchise Services.**

**1. Residential Solid Waste.**

(i) **Collection.** Franchisee will continue to collect all Solid Waste set out by Persons who are existing customers of Franchisee as of the Commencement Date at the Residential Set-out Site of Residential premises located within the Franchise Area. Franchisee will commence collecting all Solid Waste set out at the Residential Set-out Site of Residential premises located in the Franchise Area within seven (7) days of any Person's request for Collection Service at that premise.

(ii) **Cancellation of Services.** Upon oral or written direction of any existing or new Residential Customer, Franchisee will cease providing Franchise Service immediately or at any other time specified by that Person, without penalty, and refund any pre-paid Service Fees in accordance with Section 4.09(b). Franchisee will notify Customers of cancellation rights, as required by Section 4.10.

(iii) **Containers.** Franchisee will provide all Residential Customers located within the Franchise Area with one (1) or more Carts for the deposit of Solid Waste or Recyclables having nominal capacities of either 35, 64, or 95/96 gallons (or at Customer's request a Bear Cart) ("**Residential Containers**") or, at Customer's request, with a Bin. Franchisee must provide Residential Containers that are clean, water tight, constructed of a material of suitable strength and durability (such as heavy plastic), bear resistant to the satisfaction of County, and tight seamed. Franchisee will return Residential Containers to the Set-out Site after Collection upright, with can lids properly secured. Franchisee will ensure that any Bins that it provides to Residential Customers will comply with all of the requirements applicable to Commercial Containers set forth in Subsection (c)(2)(iii), Subsection (e)(3), and Subsection (e)(4).

Within one month of the Commencement Date and every twelve (12) months thereafter, Franchisee will notify all Residential Customers subscribing to Bins that they can subscribe to Carts. The notice must include a description of Cart service and list the applicable Service Fees. Franchisee will provide County with a draft of the notice for review and approval at least fifteen (15) days prior to its mailing or delivery of such notice to Residential Customers.

(iv) **Frequency.** Franchisee will Collect all Solid Waste set out at the Residential Set-out Site each week, on the same day ("**Regularly-Scheduled Residential Collection Day**"). If Franchisee is unable, for any reason, to Collect all Solid Waste from a Customer on the Regularly-Scheduled Residential Collection Day, then it will Collect that Solid Waste

(1) on the next Service Day; or

- (2) on such other day arranged with the Customer, but in no event later than 72 hours after the time of the missed pick-up and will provide the Customer with a verbal or written Non-Collection Notice.

## 2. **Commercial Solid Waste.**

(i) **Collection.** Franchisee will continue to collect all Solid Waste placed in Carts, debris boxes, Roll-Offs (“**Commercial Containers**”) or other Containers by existing Commercial Customers of Franchisee at the location agreed to between Franchisee and the Customer (“**Commercial Set-out Site**”). Franchisee will commence collecting all Solid Waste placed in Commercial Containers at the Commercial Set-out Site by Persons located within the Franchise Area within seven (7) days of that Person’s request for Collection Service at that premise.

(ii) **Cancellation of Franchise Services.** Upon oral or written direction of any existing or new Commercial Customer, Franchisee will cease providing Franchise Service immediately or at any other time specified by that Customer, without penalty, and refund any pre-paid Service Fees in accordance with Section 4.09(b). Franchisee will notify Customers of cancellation rights, as required by Section 4.10.

(iii) **Containers.** Franchisee will provide all Commercial Customers with Containers of the type ordered by the Commercial Customer. Franchisee will clean and maintain those Containers and keep them in a sanitary condition, free from putrescible residue, and in a manner so as not to promote the harborage, or attraction of vectors or birds, or the creation of nuisances. Franchisee will clean and maintain Containers in accordance with Subsection (e)(3) and Subsection (e)(4). Franchisee will provide Commercial Containers that:

- (1) are durable;
- (2) are constructed from structural steel plate with all welded seams;
- (3) are leak-proof;
- (4) are equipped with a noncombustible lid, uniformly colored, approved by County as providing adequate protection against fire hazard, rodents, and bears; and
- (5) display Franchisee’s name and telephone number in legible lettering no less than two inches (2”) in height as well as language warning against illegal dumping and Unpermitted Waste (including Hazardous Waste) or special waste disposal, as approved by County.

At the time of Customer request for Franchise Service, Franchisee will provide written notice to each Commercial Customer utilizing Bin service of the types of wastes which require special handling and may not be discarded in the debris box and informing the

Customer of the proper methods for disposing of such wastes. Franchisee will submit this notice to County for approval prior to distribution.

(iv) **Frequency.** Franchisee will Collect Solid Waste set out at the Commercial Set-out Site at least once each week, or more frequently as directed by the Commercial Customer, on the day or days written in the Customer's Subscription Order ("**Regularly-Scheduled Commercial Collection Day**") or on such other day as mutually agreed to by Commercial Customer and Franchisee. If Franchisee is unable, for any reason, to Collect Solid Waste from a Customer on the Regularly-Scheduled Commercial Collection Day or other day agreed to by Customer, then it will Collect that Solid Waste

- (1) on the next Service Day following the date of the missed pick up; or
- (2) other day arranged with the Customer, but in no event later than 72 hours after the time of the missed pick-up and will provide the Customer with a verbal or written Non-Collection Notice.

### 3. **Recycling Services.**

(i) **Notice of Determination.** Within 12 months of the execution of this Agreement, Franchisee shall determine and Notify County of the demand from Residential and Commercial Customers necessary to make the collection of Recyclables at Residential Set-out Sites and at Commercial Premises within the unincorporated area of County economically feasible to Franchisee.

(ii) **Provision of Recyclable Service if Economically Feasible.** If Franchisee determines that sufficient demand exists from Residential and Commercial Customers to make the collection of Recyclables economically feasible pursuant to Subsection (c)(3)(i), then County may require Franchisee to provide as part of its Franchise Services and Franchise Obligations, the collection of Recyclables at Residential Set-out Sites and Commercial Premises within the unincorporated area of County.

(iii) **Provision of Recyclable Service if Required by State.** Notwithstanding the foregoing, Franchisee shall collect Recyclables at Residential Set-out Sites and Commercial Premises within the unincorporated area of County as part of its Franchise Services and Franchise Obligations if the State of California or any other regulatory authority requires County to provide such collection services.

(iv) **Recyclable Materials.** Notwithstanding anything contained in Exhibit 1.01, for purposes of this Subsection (c)(3), Recyclables shall be limited to glass, aluminum, plastic, cardboard, and green/yard waste.

#### **d. Collection Schedules.**

1. **Hours.** Franchisee will make its best efforts to Collect all Solid Waste only between 7:00 a.m. and 7:00 p.m., Monday through Saturday except that Franchisee may Collect Solid Waste between those hours on Sunday:

- (1) in areas of County designated for Commercial use;
- (2) if road closures have prevented collection during the previous seven (7) days; or
- (3) with prior approval from the Director.

But in no event shall Franchisee operate in a manner that would constitute a violation of the Mono County Noise ordinance codified at Chapter 10.16 of the Mono County Code.

2. **Changes to Collection Schedule.** Prior to changing the Regularly-Scheduled Collection Day for any Customer, Franchisee will provide fifteen (15) days' oral or written Notice to that Customer.

**e. Changes in Service Levels; Container Exchanges.**

1. **Delivery.** Franchisee will provide Customers with Containers in accordance with Subsection (c)(1)(iii) and Subsection (c)(2)(iii). Within seven (7) days after receiving a request for Franchise Service (including repair or replacement of Containers) or changes in Franchise Service, Franchisee will respond to and fulfill that request.

2. **Pick Up.** No later than the next Regularly-Scheduled Collection Day occurring after direction of a Customer to discontinue Franchise Service, Franchisee will pick up and remove that Customer's Container(s).

3. **Repair and Replacement.** Franchisee will repair or replace Containers or provide locks for Bins within seventy-two (72) hours of a request therefor from a Customer or County. If Franchisee cannot complete a repair within seventy-two (72) hours, then Franchisee will provide the Customer with a replacement Container without surcharge within those 72 hours. Franchisee will offer Container locks at prices from time to time in effect, and Franchisee may charge a monthly "lock charge" for Franchisee's servicing locked Containers. Customers shall not be authorized to provide their own locks.

4. **Cleaning Bins.** Franchisee will steam clean and paint, or replace, Commercial Containers as needed, or upon request of County, for Customers that generate large amounts of putrescible Solid Wastes, including Residential premises, restaurants, grocery stores, cafeterias, and other Containers as directed by County. Franchisee will steam clean and paint all Commercial Containers prior to providing them to the Customer, whether as new Franchise Service subscription or replacement Container for existing Franchise Service. Franchisee will remove graffiti from Containers within 14 days of identification by Franchisee or oral or written notice by County or Customer. Franchisee will remove graffiti comprised of pictures or verbal obscenities within 48 hours (weekends excepted). Promptly upon County's request, Franchisee

will give County a list of dates that Franchisee cleaned, painted, or otherwise repaired Containers.

**f. C&D Waste.** Upon request by any Person, Franchisee will collect C&D Waste which is containerized in debris boxes, roll-offs, or other similar containers and is subject to the Franchise requirements of Section 12.10.020 of the Mono County Code for a price and at a time which are mutually agreed-upon by Franchisee and Person.

#### **4.02 Pickup of Excess and Bulky Waste.**

Upon request of a Residential or Commercial Customer, Franchisee will Collect excess Solid Waste or Bulky Waste at the Residential or Commercial Set-out Site on that Customer's next Regularly-Scheduled Collection Day or other date agreed to between the Customer and Franchisee for a price that is mutually agreed to by Franchisee and Customer. Upon request of a Person who does not receive regular Commercial or Residential Collection from Franchisee, Franchisee will collect Bulky Waste or excess Solid Waste at a location and time and for a price that are mutually agreed to by that Person and Franchisee.

#### **4.03 Service Standards.**

**a. General.** Franchisee will perform all Franchise Services in a prompt, thorough, comprehensive, reliable, courteous, and professional manner so that Customers receive high-quality service at all times. Franchisee must perform Franchise Services regardless of weather conditions and regardless of difficulty of collection, subject to the exceptions set forth in Section 4.04. More detailed specifications for particular aspects of Franchise Services enumerated elsewhere in this Agreement do not relieve Franchisee of its duty and obligation to accomplish all other aspects of Franchise Services in the manner provided in this subsection.

**b. Litter.** Franchisee will clean up litter caused by Franchisee's employees. Franchisee will also clean up all litter within a 10-foot diameter of the Residential Set-out Site when Collecting any Bulky Waste and excess Solid Waste in accordance with Section 4.02. Franchisee will ensure that each Collection Vehicle carries a broom, rake, and shovel at all times for this purpose.

#### **c. Spills and Leaks.**

**1. Solid Waste Spills.** Franchisee will transport Solid Waste only in covered vehicles as required by Section 12.10.050 of the Mono County Code. Franchisee will prevent Solid Waste from escaping, dropping, spilling, blowing, or scattering from Vehicles during Collection and transportation, as further required by Section 12.10.040 of the Mono County Code. Franchisee will not transfer loads from one vehicle to another on any public street, unless necessitated by mechanical failure or accidental damage to a vehicle, or unless otherwise approved by the Director. Franchisee will immediately clean up any Solid Waste that is

dropped, blown, spilled, scattered, or leaked from any Vehicle and/or tracked by any Vehicle onto any alley, street, or public place.

**2. Liquid Leaks.** During Collection and transportation, Franchisee will also prevent oil, hydraulic fluid, paint, or other liquid from leaking out of Vehicles. Franchisee will ensure that each Collection Vehicle carries petroleum-absorbent materials. Franchisee will immediately cover leaked fluids with absorptive materials, remove those materials from the ground, and apply a cleaning agent to cleanse the soiled spot.

**3. Reimbursement.** If Franchisee fails to clean up Solid Waste or leaked liquids within two (2) hours' telephonic or other notice by County, then County may clean up or cause to be cleaned up the Solid Waste or leaked liquids and Franchisee will reimburse County for County's Reimbursement Costs thereof. Franchisee is responsible for paying any fines, civil penalties, or other charges that may be assessed for improperly covering loads or leaking liquids.

**d. Pavement and Utilities.** Franchisee is responsible for damage to pavement and driving surfaces whether Containers are located on public or private property, other than ordinary wear and tear, if the damage is the result of vehicles exceeding the maximum weight limits allowed by Applicable Law or Franchisee's negligent operation of vehicles, *unless* with respect to private property, Customer has executed a damage waiver or indemnity on that Customer's Subscription Order.

Franchisee is responsible for damage to public and private utilities, whether located on public streets or property or private property, if damage is the result of the inattention, carelessness or negligence of Franchisee.

County or the Customer may direct Franchisee to promptly repair or replace damaged driving surfaces or utilities or repair and replace them itself or through a third party, to the satisfaction of the Customer or County, as the case may be. Franchisee will reimburse the Customer for his or her Direct Costs of repair or replacement and County for County Reimbursement Costs of repair or replacement.

#### **4.04 Service Exceptions.**

**a. Excess Weight.** Franchisee is not required to collect a Cart weighing in excess of the manufacturer's recommended weight, as evidenced by warranties or other documentation acceptable to County. Franchisee will provide Customers with weight limitations on the Customer Subscription Order, marked on the Cart, or through some other written means.

**b. Unsafe Condition at Set-out Site.** If Franchisee determines that any condition at or near any Set-out Site presents a health or safety threat to Franchisee's employees or equipment, then Franchisee will attempt to personally provide the Customer whose Set-out Site presents the threat notice of the danger thereof. If Franchisee cannot personally provide Customer with notice, then prior to leaving Customer's premises Franchisee will provide the Customer with a

Non-Collection Notice, describing the threat, and danger. Franchisee may discontinue collection for that Set-out Site until the safety hazard is eliminated.

**c. Hazardous Waste or Unsafe Materials.** If Franchisee determines that Containers contain Hazardous Waste (other than Household Hazardous Waste not discovered and identified by Franchisee acting in accordance with its Hazardous Waste Screening Protocol) or other materials that may present a health or safety threat to Franchisee’s employees, the public, or to Franchisee’s equipment, then Franchisee may refuse to Collect that Container. Franchisee will attempt to personally provide the Customer whose Container contains Hazardous Waste or unsafe material with written information about their proper disposal. If Franchisee cannot personally provide Customer with information, then prior to leaving Customer’s premises it will provide the Customer with a Non-Collection Notice. Franchisee will follow the procedures outlined in the Unpermitted Waste Screening Protocol, as it applies to Hazardous Waste, including providing notice to County Health Department and to the Director.

**d. Customer Delinquency or Nonpayment.** In accordance with Section 12.10.070 of the Mono County Code, Franchisee is not obligated to provide Franchise Services to any Customer who is habitually delinquent in the payment of fees for Franchise Services or who fails or refuses to pay fees for Franchise Services; *provided* that

- (1) Franchisee develops a written policy for addressing nonpayment or delinquency by its Customers that is approved in writing by County; and
- (2) Franchisee terminates or suspends that Customer’s Franchise Services in accordance with the approved policy.

**e. Misplaced Solid Waste.** If Franchisee determines that a Customer has discarded materials into a Container not marked for such materials (i.e. – materials other than Recyclables in a Container marked “Recyclables”, or materials other than Yard Waste in a Container marked “Yard Waste”), then Franchisee may refuse to Collect that Container. Prior to leaving Customer’s premises, Franchisee will provide the Customer with a Non-Collection Notice, describing the proper materials to be placed in each Container. If Franchisee refuses pursuant to this Subsection (e) to Collect Solid Waste on a Regularly-Scheduled Collection Day or another day agreed to by Customer, then Franchisee shall return to that Set-out Site and attempt to Collect that Solid Waste in accordance with Section 4.01(c)(1)(iv) or Section 4.01(c)(2)(iv), as the case may be.

**f. Exposure to Liability for Property Damage.** If Franchisee determines that entering onto the property of a Customer will expose Franchisee to liability for damage to pavement or utilities, then Franchisee may refuse to Collect that Container. Franchisee will provide the Customer with a Non-Collection Notice, describing the risk. If Franchisee refuses pursuant to this Subsection (f) to Collect Solid Waste on a Regularly-Scheduled Collection Day or another day agreed to by Customer, then Franchisee shall return to that Set-out Site and attempt to Collect that Solid Waste in accordance with Section 4.01(c)(1)(iv) or Section 4.01(c)(2)(iv), as the case may be. Franchisee may discontinue collection for that Residential Set-out Site or

Commercial Premise until the Container is placed at a location accessible by Franchisee without liability for damage to property.

**g. Inaccessibility of Bin.** If Franchisee is unable to Collect a Container due to inaccessibility to such Container, then Franchisee will provide the Customer with a Non-Collection Notice, describing the inaccessibility. If Franchisee refuses pursuant to this Subsection (g) to Collect Solid Waste on a Regularly-Scheduled Collection Day or another day agreed to by Customer, then Franchisee shall return to that Set-out Site and attempt to Collect that Solid Waste in accordance with Section 4.01(c)(1)(iv) or Section 4.01(c)(2)(iv), as the case may be.

#### **4.05 Customer Service.**

Franchisee acknowledges that County determined to procure and enter into this Agreement with Franchisee, among other reasons, in order to provide improved Customer service, relations, and satisfaction.

**a. Phone Number.** Franchisee will maintain a toll-free telephone number at least during Office Hours and, if Franchisee provides Residential Collection on Saturday, from 8:00 a.m. to noon on Saturdays (collectively “**Phone Hours**”). Franchisee will list the telephone number under Franchisee’s name in County telephone directories (white pages and yellow pages). Franchisee will provide an answering machine or answering service to take reports of missed pick-ups and other complaints that are received outside of Phone Hours.

**b. Emergency Number.** Franchisee will also maintain an emergency telephone number disclosed to County for use outside Phone Hours. Franchisee will make a representative in a position of authority available at the emergency number outside Phone Hours who will return any emergency call as soon as possible, and in any event within one hour.

**c. Field Supervisor.** Franchisee will provide one qualified individual as on-site supervisor of field operations who shall, at a minimum, be responsible for: (i) checking collection operations; (ii) coordinating improvements to Franchise Service; (iii) resolving field problems; and (iv) responding to complaints of Customers in person or by telephone. Franchisee will fully authorize that supervisor to resolve Customer disputes and handle all aspects of Customer service. Franchisee will provide the name and contact information for that supervisor to County upon or prior to the Commencement Date.

**d. Complaint Records.** Franchisee will enter into a daily log all complaints, including date, time, complainant’s name and address if the complainant is willing to give this information, and the nature, date, and manner of complaint resolution. Franchisee will include copies of daily complaint logs in each Quarterly Report furnished to the Director.

**e. Dispute Resolution Protocol.** Franchisee will comply with the Customer Complaint and Billing Dispute Resolution Protocol which is contained in Exhibit 4.05(e).



#### **4.06 Public Education and Community Relations.**

##### **a. Distribution of Materials.**

**1. Community Relations Materials.** County may, once each Contract Year, prepare community relations materials for distribution to Franchisee's Customers as determined by County to be necessary, in order to address specific Collection needs or problems. Franchisee will provide County with a Customer list and the postage to cover the cost of that mailing or mail County's prepared materials to its Customers within fifteen (15) days of County's request.

**2. Customer Bills.** County may once each Contract Year produce and provide Franchisee with printed inserts, specified as a sheet no larger than 8½ by 11 inches and small promotional items, such as magnets, which Franchisee will include in Customers' bills or otherwise provide to Customers upon County request at no cost to County. In addition, Franchisee will print public information directed by County on Customers' bills.

##### **b. County Review.** Franchisee will submit final drafts of

- (1) community relations materials;
- (2) promotional materials; and
- (3) general Customer correspondence unrelated to individual Customer accounts (such as notice of change to Collection schedules, Unpermitted Waste advisements, etc.)

to County for review and approval at least fifteen (15) days prior to printing, distributing, or mailing the materials or correspondence.

Franchisee will additionally establish a Customer account for County without charge, using the address for Notice provided in Section 18.01, so that County will automatically receive copies of all of Franchisee's general communications with Customers.

##### **c. News Media Relations.**

Franchisee will notify the Director by telephone of all requests for news media interviews or statements related to the Franchise Services within twenty-four (24) hours of Franchisee's receipt of the request. Before responding to any inquiries involving issues other than those relating to descriptions of Collection programs and scope of Franchise Services, Franchisee will discuss Franchisee's proposed response with County. Franchisee will submit copies of Franchisee's draft news releases or proposed trade journal articles to County for prior review and approval at least five (5) County Working Days in advance of release. Franchisee will provide copies of articles resulting from media interviews or news releases to County within (7) days after publication.

#### **4.07 Customers' Privacy.**

Franchisee will strictly observe and protect Customers' rights of privacy. Franchisee will not reveal information identifying individual Customers or the composition or contents of a Customer's waste stream to any Person other than County unless upon the authority of a court of law, by Applicable Law, or by valid authorization of the Customer. This provision will not be construed to preclude Franchisee from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses that may be required by County or Applicable Law. In addition, Franchisee will not market, sell, convey, or donate to any Person any list with the name or address of Customers *except* that Franchisee will provide that list to County or other Persons as directed by County. The rights accorded Customers pursuant to this Section are in addition to any other privacy right accorded Customers pursuant to Applicable Law.

#### **4.08 No Discrimination.**

Franchisee will not discriminate against Customers entitled to Franchise Service on account of Suspect Categories.

#### **4.09 Franchisee Billing.**

**a. Billing.** Franchisee will bill and collect Service Fees. Franchisee acknowledges that County is not obligated to bill or collect Service Fees. Franchisee will not hold County liable for any under-billings to Customers of Service Fees or delinquent Service Fee payments.

**b. Refunds.** Franchisee will refund to Customers any overcharges for Franchise Services the earlier of two (2) weeks from the time that Franchisee discovered the overcharge or Customer notified Franchisee of the overcharge. "**Overcharges**" includes: (i) Franchisee's billing errors; and (ii) refunds for Franchise Services paid in advance by Customers who terminated Franchise Services prior to the end of the billing period.

**c. Customer Disputes.** Franchisee will take Customers' calls and respond to Customers' correspondence with respect to disputes regarding billing or otherwise, or resolving disputes. Franchisee acknowledges that County is not responsible for handling Customer disputes.

**d. Records.** Franchisee will maintain billing records in accordance with Section 10.01.

**e. Uniformity.** Franchisee will charge uniform Service Fees to all Customers, regardless of location and cost of Franchise Service. Notwithstanding the foregoing, Franchisee may discount rates as provided in Section 13.01(a).

**f. Failure to Pay Service Fees.** Franchisee shall contact, by phone, any Customer who has failed to pay an invoice within thirty (30) days of the date of such invoice notifying them of

late payment. If a Customer fails to pay an invoice within sixty (60) days of the date of such invoice, then Franchisee may suspend services to such Customer until all outstanding Service Fees are paid, and may charge Customer a reinstatement fee up to Twenty-Five dollars (\$25.00) to reinstate services to Customer. If a Customer fails to pay an invoice within ninety (90) days of the date of such invoice, then Franchisee may terminate service to such Customer and collect all Containers from Customer, and may charge Customer a reinstatement fee up to One Hundred Seventy-Five dollars (\$175.00) to reinstate services to Customer.

#### **4.10 Description of Customers' Rights.**

Within

- (1) 30 days of the Commencement Date for existing Customers; and
- (2) prior to the provision of Franchise Services to new Customers,

Franchisee will provide Customers with a written Subscription Order. In each Subscription Order and in Customer's first bill of each Contract Year, Franchisee will include a description of the following Customers' Franchise Services and rights under this Agreement, as County may amend from time to time following dated Notice to Franchisee:

- (1) the scope of Franchise Services provided, including but not limited to day of collection and arrangements for the collection of Bulky Waste or excess Solid Waste;
- (2) the Service Fee or other fees (or, rate);
- (3) Holiday schedules;
- (4) the ability of Customers to immediately terminate their Subscription Order upon oral or written notice to Franchisee without penalty in accordance with Section 4.01(c)(1)(ii) and Section (c)(2)(ii), and describing their refund rights for pre-paid but unused Franchise Service in accordance with Section 4.09(b); and
- (5) any other provision of this Agreement or Applicable Law as directed by County.

The Subscription Order may include a waiver of damage liability and/or indemnification in connection with subscriptions for Franchise Services on private driveways, roads, easements, or pavement.

#### **4.11 Customer Satisfaction Survey.**

County may conduct a Customer satisfaction survey for implementation of Franchise Services, including a survey mailed to Customers together with Customers' bills, in the form of a post card or letter returnable to County. Alternatively, Franchisee may provide County with a

Customer list and money to pay the cost of postage, within fifteen (15) days of County's request made pursuant to this section. Franchisee may review and comment upon the form and content of the survey. Franchisee will cooperate with County and its surveyor in the conduct of the survey, including distributing surveys with bills to Customers. Franchisee may obtain a copy of the results of the survey upon request to County.

#### **4.12 Public Performance Review.**

The County Board may conduct a public hearing upon sixty (60) days' Notice to Franchisee at the time that the County Board selects, not more than once during each Contract Year, to review Franchisee's performance and quality of Franchise Service. Franchisee will attend and participate in that hearing. The County Board may use Records and reports required under Article 10, including Records of Customer complaints, as a basis of its reviews. Within thirty (30) days after the conclusion of the public hearing, County will issue a report with respect to the matters raised at the hearings.

#### **4.13 Enforcement of Franchise.**

County may, in its sole discretion, enforce the franchise requirement set forth in Section 12.10.020 of the Mono County Code against third party violators, taking into account the cost of doing so and other factors. Franchisee may independently enforce the semi-exclusive rights granted by this Agreement against third party violators (excluding the other franchisee operating pursuant to a franchise agreement with County), including seeking injunctive relief, and County will use good faith efforts to cooperate in such enforcement actions brought by Franchisee. County will not be liable to Franchisee in any manner, including for any costs or damages such as lost revenues or lost profits, should any Person refuse to subscribe to Franchise Services from Franchisee and/or perform Franchise Services under a franchise agreement with County in competition with Franchisee, and in doing so violate the semi-exclusive grant of franchise given to Franchisee in this Agreement. In that event, Franchisee's sole and exclusive remedy will be to seek an injunction, damages, or other available judicial relief against any such third person or entity that engages in any conduct or activity that violates Franchisee's semi-exclusive rights under this Agreement. If Franchisee becomes aware of any activity by a third party that violates or may violate the provisions of Section 12.10.020 of the Mono County Code, Franchisee will provide Notice to County of such activity.

### **ARTICLE 5. OPERATIONS**

#### **5.01 Routing.**

**a. Route Maps and Account Information.** Within thirty (30) days of the Commencement Date, Franchisee will provide to County route maps or narratives containing the following information ("**Routing Specifications**"):

- (1) a description of each individual route, including starting and end points and street-by-street course;
- (2) Collection day of the week for each individual route; and
- (3) approximate Collection times (a.m. or p.m.) marked at several points along each individual route or noted with the narrative description of the route.

**b. Route Changes.** Franchisee will submit to County, in writing, any proposed change in Routing Specifications not less than fifteen (15) days prior to the proposed date of implementation or as otherwise agreed to by Franchisee and the Director.

**c. Route Audits.** Upon no less than thirty (30) days' Notice to Franchisee, County may conduct audits of Franchisee's Collection routes. Franchisee will cooperate with County in connection therewith, including permitting County employees or other Persons designated by the Director to follow or ride in the Collection Vehicles during the audit. Franchisee will have no responsibility or liability for the salary, wages, benefits or workers compensation claims of any Person designated by the Director to conduct audits.

## **5.02 Vehicles, Service Assets, and Drivers.**

**a. Vehicle Appearance.** Bodies of Vehicles used in Collection or transportation of Solid Waste must have watertight beds of metal or impervious material that can be cleaned as required by Section 12.10.050 of the Mono County Code. Franchisee will utilize packer-type, completely enclosed Vehicles unless another type of Vehicle is required by weather, terrain, or type of Solid Waste to be hauled. Franchisee will paint and label all Vehicles in a consistent, uniform, and professional manner.

**b. Compliance with Applicable Law.** Franchisee will ensure that all Vehicles it uses to provide the Franchise Services comply with all Applicable Law. Franchisee will document, through its maintenance log or otherwise, compliance under Applicable Law applying to each Vehicle and will provide County with copies of inspection reports within ten (10) days of County's request. County may conduct inspections of Vehicles in connection with any Permits issued by County or otherwise. Franchisee will maintain copies of registration certificates and reports and make them available for inspection at its Office during Office Hours upon request by County.

**c. Vehicle Identification.** Franchisee will paint its name, telephone number, and the Vehicle number on all Vehicles in letters and figures not less than twelve inches (12") high for packer trucks and not less than six inches (6") high on other Vehicles, in accordance with Section 12.10.050 of the Mono County Code.

**d. Cleaning, Maintenance, and Availability.** Franchisee will at all times maintain Vehicles in good, clean condition and repair so that they operate properly and safely. If a leak does occur, then Franchisee will immediately clean it up. Franchisee may not leave Vehicles loaded with Solid Waste for over twenty-four (24) consecutive hours. Franchisee will maintain

in readiness at least one (1) spare Vehicle, fully fueled, and ready to dispatch and replace any Vehicle which breaks down on route within reasonable time of break down. Customers will not have to wait for Franchise Service while a disabled Vehicle is repaired.

**e. Equipment.** Franchisee will equip each Collection Vehicle with a fire extinguisher which must be maintained and checked in accordance with manufacturer's warranty and maintenance recommendations.

**f. Re-Refined Oil.** To the extent permitted by equipment warranties and/or available services, Franchisee will give serious consideration to recycling used oil from its Vehicle maintenance operations and to use re-refined oil in its Vehicles, but only to the extent Franchisee receives reasonable assurances satisfactory to Franchisee from the manufacturer of the Vehicle that such use will not damage its equipment, lessen its useful life, add to its expense or result, or be likely to result in potential environmental liability. Should Franchise elect to adopt such a policy, Franchisee will submit copies of re-refined oil invoices and the assurances to County upon County's request.

**g. Service Assets.** Franchisee will prepare a Service Asset Inventory as set forth in Exhibit 5.02g.

**h. Drivers.** Franchisee will ensure that all drivers of Vehicles have in full force and effect a valid license of the appropriate class issued by the California Department of Motor Vehicles. Franchisee will provide suitable operational and safety training for all of its personnel, including those who drive Vehicles or operate other equipment for Collection, which training will include on-the-job-training by supervisors. Franchisee will train sufficient numbers of drivers to drive all Collection routes so as to ensure no lapse of Franchise Services and will use Reasonable Business Efforts to assign the same driver(s) to identified routes in order to encourage accountability and enhance Customer relations. Franchisee will train its drivers to identify and not to collect Unpermitted Waste. Franchisee will implement drug and alcohol testing in accordance with Applicable Law. Franchisee will maintain copies of licenses for all Vehicle operators and full and complete records of training and testing, which Franchisee will make available to County at Franchisee's Office during Office Hours.

### **5.03 Public Resources Code Section 49520.**

Franchisee acknowledges having received a timely notice from County under Public Resources Code Section 49520 prior to entering into this Agreement, which notice precludes Franchisee from asserting the right to continue to provide Franchise Services in the Franchise Area without a franchise agreement as may be required by County, whether in the form of this Agreement or otherwise, now or in the future.

In accordance with Public Resource Code Section 49523, County and Franchisee hereby contract, based upon the mutually satisfactory terms of providing Franchise Services set forth in this Agreement and receipt of compensation therefor, that Franchisee will terminate providing Franchise Services upon expiration or termination of this Agreement even if that expiration or termination occurs prior to the expiration of the 5-year period described in Public Resources

Code Section 49520. Franchisee acknowledges that it does not have the right to make any claim under or pursuant to Public Resources Code Section 49520 but only pursuant to the terms of this Agreement. Franchisee's contracting and acknowledgments in this Agreement do not foreclose County from re-procuring agreements for Franchise Services or Solid Waste Handling Services, including from Franchisee, following termination of this Agreement by exclusive, partially-exclusive, or wholly-exclusive franchise, contract, license, permit, or otherwise, with or without competitive bidding.

#### **5.04 Personnel.**

**a. Nondiscrimination.** Franchisee will not discriminate against any of its personnel on the basis of Suspect Categories. Franchisee will comply with all Applicable Law regarding nondiscrimination, including those prohibiting discrimination in employment.

**b. Compliance with Immigration Law.** Franchisee will keep all records indicating compliance required by the Federal Immigration and Control Act of 1986 and will make those records available for inspection by County at Franchisee's Office promptly upon County direction.

**c. Conduct.** Franchisee will employ only competent, qualified, conscientious, and sober personnel to ensure Franchise Services satisfactory to County. Franchisee will ensure that its employees serve Customers and the public in a courteous, professional, and reliable manner.

#### **5.05 Contingency Plan.**

Franchisee will prepare a contingency plan to provide Vehicles and personnel necessary and sufficient to maintain uninterrupted Franchise Service during

- (1) mechanical breakdowns;
- (2) extreme weather conditions;
- (3) road closures;
- (4) strikes, work stoppages, and other concerted job actions or similar events; and
- (5) emergencies, including natural disasters

including procedures for replacing Vehicles disabled on routes. Franchisee will provide County with a copy of such plan upon request, and within seven (7) days of any modification.

#### **5.06 Unpermitted Waste.**

Franchisee will comply with the Unpermitted Waste screening, identification, and prevention protocol (“**Unpermitted Waste Screening Protocol**”) attached to Exhibit 5.06 or may develop and follow its own Unpermitted Waste Screening Protocol which is at least as stringent as Exhibit 5.06 and which is approved by the Director. If Franchisee delivers Unpermitted Waste to the Designated Disposal Facility or a Diversion Facility, then Franchisee will arrange for proper disposal in accordance with Applicable Law and/or cooperate with the facility owner or operator with respect thereto. Nothing herein shall limit or circumscribe any right Franchisee may have against the generator of such waste for damages incurred by Franchisee's handling and disposal of such waste.

### **5.07 Annual Meetings.**

Franchisee will meet with County at its offices in Bridgeport

- (1) a minimum of once every two Contract Years, as directed by County; and
- (2) at any additional times as directed by County.

The purpose of the meetings may include addressing operational issues and contract compliance, reviewing Quarterly Reports, and resolving any issues or problems related to the performance of Franchise Services.

## **ARTICLE 6. DIVERSION**

### **6.01 Diversion Reporting.**

**a. Reporting and Substantiation of Diverted Materials.** Franchisee will report the amount of Diverted Recyclables to County in its Quarterly Report or when required by the Act. Franchisee will include:

- (1) the date of diversion;
- (2) the quantity (by each type) of Diverted Recyclables expressed in cubic yards, pounds, or tons;
- (3) the community or project where the Diverted Recyclables originated; and
- (4) the name and telephone number of the Diversion Facility to which Franchisee delivered the Diverted Recyclables and a receipt or invoice from that Diversion Facility.

“**Diversion Facility**” means any materials recovery facility, salvager, processing facility or materials end user. “**Diverted Recyclables**” means the net quantity of Recyclables that Franchisee has Collected at Residential and Commercial premises and at construction or



demolition projects and Diverted, including Recyclables in Bulky Waste. The net quantity will be the gross amount of material Collected and delivered to the Diversion Facility, less any quantity of Solid Waste that was contained therein and deducted from payment and/or Diversion and disposed by said Facility. “**Divert,**” “**Diverted,**” “**Diversion**” or other form thereof means to divert from disposal so that the disposal tonnage is not reported as disposed under the State’s disposal reporting system and qualifies as diversion under the Act.

Franchisee will additionally report to County on a quarterly basis the amount of Solid Waste contained within Diverted Recyclables that was separated therefrom. Franchisee’s report will include the date of Collection, the quantity of Solid Waste expressed in cubic yards, pounds or tons, and the community or project where the Solid Waste originated.

**b. Additional Information.** If County questions reports, Records or other documentation that serves as the basis of measuring the quantity or types of Diverted Recyclables (and associated Solid Waste), then Franchisee will respond to County’s questions and provide additional clarifying documentation as soon as possible, but in all events within thirty (30) days from the date County submits questions to Franchisee.

## **6.02 Additional Programs.**

County may direct Franchisee to submit proposals for additional programs, including diversion programs, necessary in County’s opinion to meet any required diversion goal or other goal. If necessary, the Parties will enter into good faith negotiations for at least thirty (30) days following the date County directs Franchisee to submit a program proposal. If the Parties cannot reach agreement within thirty (30) days, then either Party may refer the matter to the Independent Expert for determination in accordance with Section 9.01. County may independently implement programs itself or through a third Person.

## **ARTICLE 7. SOLID WASTE DISPOSAL**

### **7.01 Transportation to Designated Disposal Facility.**

**a. Designated Disposal Facility.** Franchisee will transport and deliver all Solid Waste, except for Recyclables that it Diverts, to the Designated Disposal Facility, including:

- (1) Solid Waste that Franchisee Collects from Residential and Commercial premises in accordance with Section 4.01(c);
- (2) Solid Waste that Franchisee Collects in performing emergency services in accordance with Section 8.01;
- (3) excess or Bulky Waste that Franchisee Collects in accordance with Section 4.02;  
and

(4) C&D Waste that Franchisee Collects in accordance with Section 4.01(f).

County may change the Designated Disposal Facility upon thirty (30) days' Notice to Franchisee. Franchisee will observe and comply with all rules and regulations in effect at the Designated Disposal Facility and follow directions of the operator of the Designated Disposal Facility, including:

- (1) unloading Solid Waste in designated areas;
- (2) accommodating operations and maintenance activities;
- (3) complying with Unpermitted Waste exclusion programs; and
- (4) complying with facility hours of operation, unless otherwise agreed to by the Parties.

Franchisee will at all times operate according to safe industry practices.

**b. Exceptions.** Notwithstanding Subsection (a), Franchisee is *not* obligated to deliver Solid Waste to the Designated Disposal Facility in the following circumstances described in Subsection (b)(1) and Subsection (b)(2):

**1. South of the Junction of Highways 395 and 182: Highway Closures.** Solid Waste generated in those areas of Mono County located south of the junction of Highway 395 and Highway 182 may be diverted from the Designated Disposal Facility if Highway 395 or Benton Crossing Road is closed to all traffic at any point between the location where Franchisee Collected the Solid Waste and the Benton Crossing Landfill by the California Highway Patrol, the California Department of Transportation, the Mono County Department of Public Works, or the Mono County Sheriff's Department *and* Franchisee fully and timely satisfies the following conditions:

(i) **Notice.** Prior to diverting Solid Waste from the Designated Disposal Facility, Franchisee gives the Director (or if the Director is unavailable, another person in the Department of Public Works administrative office) oral notice, followed by Notice, of highway or road closure and Franchisee's inability to deliver Solid Waste to the Designated Disposal Facility;

(ii) **Records.** Franchisee keeps accurate Records with respect to Solid Waste that Franchisee diverts from the Designated Disposal Facility, including:

- (a) the amount and type of Solid Waste, documented by a weight ticket from County's Walker Transfer Station, County's Bridgeport Transfer Station, or issued by a certified weighmaster from another California or Nevada state-certified truck scale approved by the Director, or a gate receipt from the facility to which Franchisee transported and delivered that diverted Solid Waste;

- (b) the type of Vehicle or Container in which Franchisee transported that Solid Waste;
- (c) the date of highway or road closure and diversion;
- (d) the extent of highway closure; and
- (e) County staff person to whom Franchisee gave oral notice.

**(iii) Reporting.** Included in its Quarterly Report submitted to County in accordance with Section 10.02, Franchisee submits a report satisfactory to County with supporting receipts or weight tickets as described above for that Solid Waste diverted during that quarter.

**(iv) Capacity Fees.** Together with its quarterly payment of Franchise Fees payable in accordance with Section 13.02(a), Franchisee pays County the Capacity Fee for that Solid Waste as set forth in Exhibit 7.01b.

**2. North of the Junction of Highways 395 and 182: Any Time.** Solid Waste generated in those areas of the county located north of the junction of Highway 395 and Highway 182 may be diverted from the Designated Disposal Facility if Franchisee fully and timely satisfies the following conditions:

**(i) Records.** Franchisee keeps accurate Records with respect to diverted Solid Waste, including:

- (a) the amount and type of Solid Waste, documented by a weight ticket from County's Walker Transfer Station, County's Bridgeport Transfer Station, or issued by a certified weighmaster from another California or Nevada state-certified truck scale approved by the Director, or a gate receipt from the facility to which Franchisee transported and delivered that diverted Solid Waste; and
- (b) the type of Vehicle or Container in which Franchisee transported that Solid Waste.

**(ii) Reporting.** Included in its Quarterly Report submitted to County in accordance with Section 10.02, Franchisee submits a report satisfactory to County with supporting receipts or weight tickets as described above for that Solid Waste diverted during that quarter.

**(iii) Capacity Fees.** Together with the payment of quarterly Franchise Fees payable in accordance with Section 13.02(a), Franchisee pays County the Capacity Fee for each load hauled out of Mono County during the quarter as set forth in Exhibit 7.01b.

## 7.02 Defense and Indemnification; Release.

**a. Requirement.** Franchisee will defend, release, indemnify and hold harmless at its sole cost and expense with counsel approved by County, County (including Persons described in the definition of “County” in Exhibit 1.01) in any actions that assert or allege Liabilities paid, incurred or suffered by, imposed upon or asserted against, County that result or are claimed to have resulted directly or indirectly from the presence, disposal, escape, migration, leakage, spillage, discharge, release or emission of Unpermitted Waste or petroleum products to, in, on, at, or under any place, site, or facility where Franchisee delivers, stores, processes, recycles, composts, or disposes of Solid Waste to the extent that the Liabilities are caused or alleged to be caused by the following:

**1. Franchisee Negligence or Misconduct:** the wrongful, willful, or negligent act, error or omission, or the misconduct of Franchisee;

**2. Non-Customer Materials:** the collection, delivery, handling, recycling, processing, composting, or disposal by Franchisee of any materials or waste, including Unpermitted Waste, which are generated by Persons other than Customers collected from premises other than Customers’ premises;

**3. Failure to Comply with Unpermitted Waste Protocol:** the failure of Franchisee to undertake Hazardous Waste training procedures required by Applicable Law or the Unpermitted Waste Screening Protocol, whichever is more stringent; and

**4. Franchisee-Identified Unpermitted Waste:** the improper or negligent collection, handling, delivery, processing, recycling, composting, or disposal by Franchisee of Unpermitted Waste that Franchisee inadvertently collects from Customers and that Franchisee identifies as Unpermitted Waste prior to its delivery, processing, recycling, composting, or disposal,

whether:

- (i) in one or more instance;
- (ii) threatened or transpired;
- (iii) Franchisee is negligent or otherwise culpable; or
- (iv) those Liabilities are litigated, settled or reduced to judgment.

**b. Household Hazardous Waste.** The mere presence of Household Hazardous Waste in Solid Waste that is Collected under this Agreement will not constitute negligence in and of itself nor create any liability on the part of Franchisee absent any of the circumstances described in items (1) through (4) listed in Subsection (a).

**c. Cooperation with County's Counsel.** County may retain counsel at its own cost and expense or utilize in-house counsel as co-counsel. Franchisee will direct Franchisee's counsel to assist and cooperate with co-counsel with respect to County's defense.

**d. Waiver.** The indemnity in Subsection (a) is intended to operate as an agreement pursuant to 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364, to insure, protect, hold harmless, and indemnify County from liability in accordance with this Section 7.02.

**e. Unpermitted Waste.** Franchisee hereby releases and will not seek contribution or compensation of any nature from County for Liabilities relating to Unpermitted Waste, including relating to RCRA, CERCLA, or the California Health and Safety Code. Franchisee will not make any claims against or assert an interest in any account, fund or reserve that County may establish or set aside, from the proceeds of the Franchise Fee or otherwise, or maintains to cover Liabilities relating to Unpermitted Waste, which established fund or reserve County is under no obligation to establish or maintain.

### **7.03 Disposal Fees.**

Franchisee will timely pay gate and any other fees charged by the Designated Disposal Facility in accordance with County's existing gate fee schedule and Gate Fee Administration Policy, as County may amend those fees or policy from time to time.

## **ARTICLE 8. MISCELLANEOUS SERVICE PROVISIONS**

### **8.01 Emergency Services.**

Within twenty-four (24) hours of Notice from County, Franchisee will provide emergency services beyond the scope of Franchise Services at the times and to the extent directed by County, including unscheduled gathering, pick up, collection, and disposal of C&D Debris, Bulky Waste, and other debris resulting from natural disasters such as earthquakes and floods. County will compensate Franchisee its Reimbursement Costs for those services.

### **8.02 Title to Solid Waste.**

All Solid Waste, including Recyclables, becomes the property of Franchisee when Collected by the Franchisee, as provided in Section 12.10.060 of the Mono County Code. This Agreement will not affect any other agreement the Parties may reach with respect to Franchise Services, including but not limited designating the Designated Disposal Waste facility.

### **8.03 Compliance with Applicable Law.**

**a. Compliance.** Franchisee will perform all Franchise Services and will cause its Subcontractors to provide goods or services in accordance and compliance with Applicable Law and with this Agreement, whether or not referenced specifically in the text of this Agreement and regardless of whether Performance Obligations are stated less stringently than Applicable Law. If any Performance Obligation is more stringent than Applicable Law, then Franchisee and its Subcontractors must satisfy that Performance Obligation. Nothing in this Agreement is construed to relieve the Franchisee of any obligations imposed by Applicable Law.

Franchisee acknowledges that County is authorized to make all necessary and reasonable rules and regulations regarding all aspects of Solid Waste Handling Services, including Franchise Services. Franchisee agrees to comply with any and all of those rules and regulations.

Provisions of Applicable Law are incorporated in this Agreement by reference as if set forth fully in this Agreement as contractual obligations of Franchisee to County. In addition to or in lieu of prosecuting violations of Applicable Law as misdemeanors, infractions or otherwise in the manner provided under Applicable Law, County may enforce Applicable Law in the same manner as it may enforce Franchisee's other contractual obligations under this Agreement, including specific performance. However, County has no obligation to enforce any Applicable Law.

**b. Referenced Provisions.** Reference in this Agreement to particular provisions or requirements of Applicable Law may not be construed to limit Franchisee's obligation to comply with all provisions of Applicable Law. Reference to statutory provisions of Applicable Law are deemed to include reference to implementing rules and regulations. These references are intended to facilitate Franchisee's satisfaction of its Performance Obligations and County's administration and specific enforcement of this Agreement, and may not be construed to imply lack of obligation to comply with other provisions or requirements of Applicable Law not referred to or cited in this Agreement. If any Applicable Law specifically referenced or cited in this Agreement is amended, supplemented, restated, re-codified, modified, or repealed, then that reference or citation will be deemed to refer to that amendment, supplement, restatement, re-codification, or modification.

**c. Permits.** Franchisee will obtain and maintain throughout the Term all necessary approvals, authorizations, and Permits (including Permits required under Title 12 of the Mono County Code). Franchisee will show proof of approvals, authorizations, and Permits and will demonstrate compliance with the terms and conditions of said approvals, authorizations, and Permits promptly upon the request of County. In particular, Franchisee warrants and represents that it is fully acquainted with the provisions of the Mono County Code. Where County is the permitting agency, it shall cooperate in good faith with Franchisee in issuing such permits in accordance with law.

**d. Fines and Penalties.** Franchisee is responsible for payment of any and all fines and penalties imposed on Franchisee. Franchisee will not seek reimbursement from County or Customers for any fines or penalties. If Franchisee believes that compliance with a Franchise Obligation would violate Applicable Law thus exposing Franchisee to fines and/or penalties,

then Franchisee shall immediately Notify County. If County concurs that Franchisee's compliance would violate Applicable Law, then the Parties shall meet and confer to determine how Franchisee may best comply with the Franchise Obligation and Applicable Law. If County determines in its sole discretion that Franchisee cannot comply with the Franchise Obligation without violating Applicable Law, then County may excuse Franchisee's performance of the Franchise Obligation and provide Franchisee with Notice that such performance is excused.

#### **8.04 Cooperation with Waste Studies.**

Franchisee will cooperate with County on any and all waste composition studies, including modification of routes, separate collection of individual Customer's Solid Waste, and/or delivering targeted loads of Solid Waste to a County-designated location or locations. Franchisee will also cooperate with County on any and all Customer waste assessments, including providing information in its Records on volume and characterization of wastes generated by Customers.

#### **8.05 Service Materials Belong to County.**

Reports prepared by Franchisee in accordance with Article 10, public education and community relations materials prepared in accordance with Section 4.06, and all other work products (whether computerized, written, printed, or photographic) developed by County or Franchisee in connection with Franchise Services, whether developed directly or indirectly by County or Franchisee, may be used by County without limitation or restriction. Franchisee may also continue to use public education and community relations materials and other work product in connection with any project not connected with this Agreement without the prior written consent of County.

#### **8.06 Recycled Materials.**

Franchisee will use Reasonable Business Efforts to procure supplies with post-consumer recycled content.

#### **8.07 Responsiveness to County.**

Franchisee will return telephone calls from County to the person who made that call during County Office Hours no later than the next County Working Day. Franchisee will meet with County during County Office Hours within one (1) week of County's oral or written direction at County offices or other location directed by County. Franchisee will respond to all e-mails from County within two (2) County Working Days of receipt and will respond to other written correspondence from County within seven (7) days of receipt thereof.

## **8.08 Commingling of Waste.**

Franchisee will not commingle Solid Waste it collects from premises located outside of the unincorporated area of Mono County with Solid Waste Collected by Franchisee within the unincorporated area.

## **ARTICLE 9. DISPUTE RESOLUTION BY INDEPENDENT EXPERT**

### **9.01 Independent Expert.**

**a. Selection.** If either Party gives Notice to the other Party of request for dispute resolution by an Independent Expert as authorized by this Article, within ten (10) days after the second Party's receipt of Notice each Party will prepare a separate list of five (5) independent Persons having experience in refuse collection, in numerical order with the first preference at the top, and exchange and compare lists. The Person ranking highest on the two (2) lists by having the lowest total rank order position on the (2) lists will be the Independent Expert. In case of a tie in scores, the Person having the smallest difference between the rankings of the two (2) parties is selected; other ties will be determined by a coin toss. If no Person appears on both lists, then this procedure will be repeated. If selection is not completed after the exchange of three (3) lists or within twenty-one (21) days, whichever comes first, then each Party will select one (1) Person having experience described above and the two (2) Persons so selected will together select an Independent Expert.

**b. Costs.** Parties will share the Independent Expert's costs and fees equally.

**c. Determination Protocol and Standard.** Within ten (10) days of the selection of the Independent Expert, or within ten (10) days of Notice by either Party of request for dispute resolution by an Independent Expert if one has already been selected, both Parties will submit to the Independent Expert a detailed description of the dispute together with a written statement of each Party's position thereon. Parties will simultaneously exchange copies thereof. Both Parties will, in good faith and in writing, promptly provide the Independent Expert with any and all additional information and documentation the Independent Expert requires or requests in order to make its determination and simultaneously provide the other Party with copies thereof. Neither Party will communicate orally with the Independent Expert unless the other Party is privy thereto. Neither Party will communicate in writing with the Independent Expert unless it simultaneously sends copies of the communication to the other Party, in the same manner that it sends the communication to the Independent Expert.

The Independent Expert will make its determination based on the submissions of the Parties, the provisions of this Agreement, its experience with similar services and disputes, and other factual determinations it may make regarding the matter in dispute.

### **d. Binding and Non-Binding Determinations.**

1. Disputes subject to binding determination by the Independent Expert include:



- (i) fee disputes in accordance with Section 13.04(c);
  - (ii) additional programs in accordance with Section 6.02; and
  - (iii) other disputes agreed to by the Parties.
2. Disputes subject to non-binding determination by the Independent Expert include:
- (i) the occurrence and extent of Uncontrollable Circumstances; and
  - (ii) other disputes agreed to by the Parties.

## **ARTICLE 10. RECORDS AND REPORTING**

Franchisee acknowledges that County entered into this Agreement, among other reasons, to provide Customers and County with improved Collection Services. Franchisee further acknowledges that, in order that County may better evaluate Franchisee's performance under this Agreement, Franchisee has obligated itself to maintain Records and timely provide reports in accordance with this Article.

### **10.01 Records.**

**a. Maintenance.** Unless otherwise directed by County, Franchisee will accurately maintain at its Office any and all ledgers, books of account, invoices, Customer lists, billing records, route maps, Customer complaints, canceled checks, logs, correspondence, Customer receipts, and other records or documents evidencing or relating to rates, Franchise Fee, Customers' Franchise Services subscriptions, satisfaction of Performance Obligations, events subject to damages payable under Section 14.01, documentation as County may reasonably require to ascertain the extent of compliance with the Mono County Code, and items listed in Exhibit 10.01a related to Franchise Services provided by Franchisee ("**Records**"). Specific Record requirements are listed on Exhibit 10.01a. Franchisee will maintain Records for the Term plus three (3) years, or any longer period required by Applicable Law. Franchisee will use Reasonable Business Efforts to promptly provide County any additional information relevant to this Agreement that is not specified in this subsection.

**b. County Inspection and Audit.** Upon Notice by County, Franchisee will use Reasonable Business Efforts to provide copies of Records to County or County's designee(s) for inspection or audit at County Administrative Office or County Auditor-Controller Office. Otherwise, Franchisee will make Records available to County or County's designee(s) for inspection or audit at Franchisee's Office during Office Hours. Notwithstanding anything contained herein to the contrary, County shall have no right to audit, inspect, copy, or otherwise review any of Franchisee's confidential, proprietary, or privileged information.

Where County has reason to believe that Records may be lost or discarded due to dissolution, disbandment or termination of Franchisee's business or other reason, County may require that Franchisee give County custody of any or all Records and that those Records and documents be maintained in County Office of the Department of Public Works. In that event, access to said Records will be granted to any Person duly authorized by Franchisee.

## **10.02 Reporting.**

**a. Quarterly.** Franchisee will submit Quarterly Reports to County no later than the fifteen (15<sup>th</sup>) day of the month immediately following the end of each quarter described in Exhibit 10.02a. *For example, for the Quarter ending on March 31, the Quarterly Report is due to County no later than April 15.* Quarterly Reports must be in the form directed or approved by County and contain, at a minimum, the information listed in Exhibit 10.02a, including information needed for County to prepare Quarterly Reports required under Applicable Law with respect to recycling and Diversion of Solid Waste in County, County's compliance with its solid waste facility permits, and quarterly taxes due and payable to the California Department of Tax and Fee Administration.

**b. Annual.** Franchisee will submit Annual Reports to County on or before February 15 of each Contract Year in the form directed or approved by County, totaling the information contained in the Quarterly Reports for the previous Contract Year and containing, at a minimum, the information listed in Exhibit 10.02b.

**c. Additional Information.** Franchisee will use Reasonable Business Efforts to incorporate into reports additional information from Records promptly upon Notice from County.

## **10.03 Financial Records and Reports.**

### **a. Maintenance of Accounting Records.**

**1. Form and Content.** Franchisee will maintain in its Office accurate and complete accounting records containing financial and operational data relating to all costs associated with providing Franchise Services, whether by Franchisee or Subcontractor or Affiliate providing goods or services related to the provision of Franchise Services, prepared on an accrual basis. Franchisee will maintain its accounting records on a basis showing (1) the results of Franchisee's operations under this Agreement separately from operations in other locations, as if Franchisee were an independent entity providing service only to County, as well as (2) the results of Franchisee's operations in all locations, as a corporate entity. With respect to costs associated with goods or services provided by an Affiliate that is a Subcontractor, Franchisee may maintain those records in the office of the Affiliate but will provide County with a copy thereof within ten (10) days of County's request therefor.

**2. County Audit.** County and its auditors and other agents selected by County may conduct on-site audits, reviews, and inspections of Records described in Subsection (a)(1) at Franchisee's Office during Office Hours and make copies of any Records or supporting documentation relevant to this Agreement, including Customer account and billing information, Customer receipts, and Franchise Fee payments. Franchisee will retain said records for the term plus three (3) years and any additional time directed by County to enable County to complete any review or audit commenced during said three (3) years. Notwithstanding anything contained herein to the contrary, County shall have no right to audit, inspect, copy, or otherwise review any of Franchisee's confidential, proprietary, or privileged information.

**b. Financial Statements.** Promptly upon County direction, Franchisee will deliver to County up to three (3) copies of Franchisee's most recent financial statements, including any accompanying statement or opinion by the accountant who prepared them respecting that accountant's compilation, review, or audit, as the case may be. Franchisee will cause the accountant to prepare financial statements on an accrual basis showing (1) the results of Franchisee's operations under this Agreement separately from operations in other locations, as if Franchisee were an independent entity providing service only in the unincorporated area of County, as well as (2) the results of Franchisee's operations in all locations,.

**c. Affiliated Companies.** If Franchisee enters into any Subcontracts with Affiliates, then Franchisee will thereafter disclose said arrangements in Franchisee's financial reports prepared and delivered in accordance with Section 10.03(b). County's inspection rights described in Subsection 10.03(a) extends to said Affiliate or Affiliates.

**d. County Review of Financial Statements.** County and/or its agents and consultants may review the audit plan and work papers of any of the accountants whose opinions on the financial statements Franchisee is obligated to deliver to County in accordance with Subsections 10.03(a), (b), or (c). If that review gives rise to any questions or differences of opinion regarding Franchisee's compliance with this Agreement, then Franchisee and its accountant(s) will meet with County and its consultant, if any, to discuss the issues involved within fourteen (14) days of County's direction.

#### **10.04 Proprietary Reports and Records.**

**a. Notice of Request.** If County receives a request from a third person to review or copy material which Franchisee has marked "confidential," then County will inform Franchisee and allow Franchisee to present arguments and facts to County in support of Franchisee's position that the material is entitled to an exemption from disclosure under the California Public Records Act, Government Code section 6250 *et seq.*, and should not be released.

**b. Notice of Release.** If County determines that the material is *not* entitled to an exemption and that it must be released, then County will inform Franchisee before releasing that material so that Franchisee may seek a court order enjoining that release.

**c. Notice of Legal Action.** If County determines that the material is entitled to an exemption, and the person who requested the information files a legal action seeking its release, then County will inform Franchisee and will not oppose a motion by Franchisee to intervene in the action. Franchisee must either intervene or accept the release of the material. County is not obligated to defend the action and may release the material sought without any liability.

**d. Defense and Indemnification.** Notwithstanding anything contained herein to the contrary, Franchisee 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, County's release, disclosure, or withholding of any material which Franchisee has marked "confidential" under the California Public Records Act.

## **ARTICLE 11. INSURANCE, INDEMNIFICATION AND PERFORMANCE ASSURANCES**

### **11.01 Insurance**

#### **a. Policies.**

**1. Types and Amounts.** Franchisee, at Franchisee's sole cost and expense, will procure from an insurance company or companies admitted to do business in the State of California and subject to the regulation of the California Insurance Commissioner and will maintain in force at all times during the Term the types and amounts of insurance listed in Exhibit 11.01a.

**2. Endorsements.** The policies of insurance required pursuant to Subsection (a)(1) must contain the endorsements listed in Exhibit 11.01a.

**b. Delivery of Proof of Coverage.** As of the Commencement Date, Franchisee will furnish County a certificate for each policy of insurance required under this Section 11.01 in a form and substance satisfactory to County. Each such certificate must show the type and amount of coverage, effective dates and dates of expiration of policies and will have all required endorsements. If County requests, then Franchisee will promptly deliver copies of each policy together with all endorsements to County. Franchisee will furnish renewal certificates to County to demonstrate maintenance of the required coverages throughout the Term of this Agreement.

#### **c. Other Insurance Requirements.**

**1. Subcontractors.** If Franchisee subcontracts to a Subcontractor to provide goods or services related to the provision of Franchise Services, then Franchisee will require all such Subcontractors to provide statutory workers' compensation insurance and employer's liability insurance for all of the Subcontractor's employees engaged in the work. The general liability insurance required by this Section must cover Franchisee's liability for acts of its Subcontractors

or each Subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section 11.01.

**2. Compliance with Policies.** Franchisee will comply with all requirements of the insurers issuing policies and will require its Subcontractors to do so. Carrying insurance does not relieve Franchisee from any Performance Obligation, including those imposed by this Article 11. If any third Person makes a claim against Franchisee or any Subcontractor on account of any occurrence related to this Agreement, then Franchisee will promptly report the facts in writing to the insurance carrier and to County. If Franchisee fails to procure and maintain any insurance required by this Agreement, then County may take out and maintain such insurance as is required hereunder and Franchisee will reimburse County for County's Reimbursement Costs thereof.

**3. Amendments.** If requested by County, and without charge to County, Franchisee will promptly amend the Comprehensive General Liability policy and by endorsement, add the trustee of any bonds or Certificates of Participation, which were or may be in the future, issued by County to finance County's Solid Waste facilities, including transfer stations and landfills, as an additional insured.

## **11.02 Franchisee Defense and Indemnification.**

**a. Permit.** Franchisee will defend with counsel approved by County and indemnify County for actions arising out of its permit in accordance with Chapter 12.08 of the Mono County Code.

### **b. Agreement.**

**1. Defense and Indemnification.** Franchisee will further indemnify, defend with counsel approved by County, protect and hold harmless County from and against all Liabilities paid, incurred or suffered by, or asserted against, County that result or are claimed to have resulted from Franchisee's performance or provision of Franchise Services pursuant to this Agreement, including the following:

- (i) **Franchisee Negligence or Misconduct:** the wrongful, willful, or negligent act, error, or omission, or the misconduct of Franchisee and Persons described in the definition of "Franchisee" in Exhibit 1.01;
- (ii) **Patents, etc.:** any allegation of infringement, violation, or conversion of any patent, licenses, proprietary right, trade secret, or other similar interest, in connection with any Service Assets, including technology, processes, Vehicles, software, machinery, or equipment;
- (iii) **Challenges to Agreement:** legal challenge with respect to the procurement of this Agreement or Parties' execution of this Agreement, County's authority to contract out Franchise Services, or any provision contained within the Agreement regardless of the legal theory advanced or relied upon

by any interested third party, including any appeals necessary to validate that authority or the Agreement; or

- (iv) **Enforcement of Agreement or Applicable Law:** any Liabilities that may be assessed against Franchisee or County in connection with any alleged failure of County to enforce provisions of this Agreement or of Applicable Law as permitted under Section 8.03.

**2. Certain County Negligence Excluded.** Franchisee will not, however, be required to reimburse or indemnify County to the extent any Liabilities are due to the sole negligence or willful misconduct of County and Persons described in the definition of “County” in Exhibit 1.01.

### **11.03 Letter of Credit.**

Franchisee will provide for the issuance of an irrevocable direct pay letter of credit by a bank approved by County for the benefit of County, under which County is authorized to draw, in one or more drawings, an aggregate amount of \$10,000 upon the occurrence of an Event of Default or Franchisee’s failure to timely pay any County Payment Obligation. The expiration date of the Letter of Credit must be no less than the Term or if subject to renewal, provide County with thirty (30) days advance notice of non-renewal. The Letter of Credit will expire on the date on which the Bank receives a certificate from County saying that the Term has expired or this Agreement has been terminated and Franchisee owes County no money hereunder, or that Franchisee has substituted an alternative letter of credit or other security document acceptable to County in County’s sole discretion. The form of the Letter of Credit, including the procedures for and place of demand for payment and drawing certificate attached thereto, is subject to approval of County in its sole discretion. The Letter of Credit must be transferable to any successor or assign of County.

## **ARTICLE 12. CRIMINAL ACTIVITY**

### **12.01 Criminal Activity.**

Franchisee will immediately provide Notice to County upon the occurrence of any of the following events or circumstances listed in Subsection (a) and Subsection (b) (“**Convictions or Pleas**”) with respect to Franchisee or any of its Contract Managers defined below in Subsection (e):

**a. Convictions, etc.:** Franchisee or any of its Contract Managers defined in Subsection 12.01(e), has a criminal conviction, permanent mandatory or prohibitory injunction, or a final judgment or order from a court, municipality, or regulatory agency of competent jurisdiction with respect to the following (“**Criminal Activity**”):

- (1) fraud or other criminal offense, other than offenses constituting infractions, in connection with obtaining, attempting to obtain, procuring, or performing a public or private agreement related to Recyclables or Solid Waste services of any kind (including collection, hauling, transfer, processing, composting, or disposal), including this Agreement;
- (2) bribery or attempting to bribe a public officer or employee of a local, state, or federal agency;
- (3) embezzlement, extortion, racketeering, false claims, false statements, forgery, falsification or destruction of records, obstruction of justice, knowingly receiving stolen property, theft, or misprision (failure to disclose) of a felony;
- (4) unlawful disposal of hazardous, designated, or other waste; or
- (5) violation of securities laws or antitrust laws, including laws relating to price-fixing, bid-rigging and sales and market allocation, and of unfair and anti-competitive trade practice laws, including with respect to inflation of waste collection, hauling, or disposal fees.

**b. Pleas, etc.:** Franchisee or any of its Contract Managers defined in Subsection (e) has pled “guilty” or entered a plea of “*nolo contendere*” or “no contest” to Criminal Activity occurring within County or relating to this Agreement.

**c. Cure.** Upon the occurrence of any Convictions or Pleas, Franchisee immediately will do or cause to be done *both* of the following:

- (1) terminate from employment or remove from office the offending Contract Manager who is an individual, or, with respect to a Contract Manager that is the Franchisee or an Affiliate, the individual or individuals responsible for the Criminal Activity; and
- (2) eliminate the participation by that Contract Manager who is an individual or, with respect to a Contract Manager that is the Franchisee or an Affiliate, the individual or individuals responsible for the Criminal Activity, in any Position of Influence described in Subsection 12.01(e) below.

County in its sole discretion may terminate the Agreement upon 30 days’ Notice to the Franchisee, or may impose other sanctions (which may include financial sanctions, temporary suspensions, or any other conditions deemed appropriate short of termination) as it will deem proper, in the following events:

- (1) Franchisee or any Affiliate fails to comply with the foregoing obligation of this Subsection (c); or
- (2) the Criminal Activity concerns and is related to this Agreement.

Franchisee must be given the opportunity to present to the Director evidence in mitigation during the preceding Notice period and County must consider that evidence.

**d. New Employees.** Franchisee will not allow or cause to be allowed any employee, officer, or director of an Affiliate who is the subject of any Criminal Activity to be hired or transferred from any Affiliate to a position as a Contract Manager.

**e. Definitions.** For purposes of this Section, “**Franchisee or any of its Contract Managers**” means:

- (1) Franchisee and its officers and directors;
- (2) the officers and directors of Franchisee’s parent corporation and of each successive parent corporation’s parent corporation identified in Exhibit 12.01e(2);
- (3) the Franchisee Representative; and
- (4) any other Persons, including Affiliates and Franchisees’ or Affiliates’ employees, officers, or directors, who have the authority or responsibility to directly or indirectly administer, manage, direct, supervise, or oversee Franchise Services or this Agreement, *including* the following: (i) supplying goods or services; (ii) serving as director of the board of directors of Franchisee or an Affiliate; (iii) serving as an officer or employee of Franchisee or an Affiliate; (iv) reviewing or negotiating Franchisee’s contracts (including this Agreement); (v) providing in-house legal services; (vi) providing insurance or other performance security; and (vii) providing processing or disposal, but *excluding* the following: monitoring Franchisee’s performance, supervising Franchisee’s finance and capital budget decisions and articulating general policies and procedures not related to Criminal Activity. This authority and responsibility is defined as “**Position of Influence.**”

## **ARTICLE 13. SERVICE FEES**

### **13.01 Service Fees. Franchisee understands and acknowledges, as follows:**

- (1) Pursuant to Chapter 12.10 of the Mono County Code, up to two (2) solid waste enterprises will be granted exclusive franchises in the form of this Agreement to provide Franchise Services as primary franchisees within the Service Area.
- (2) In authorizing up to two (2) Franchisees within the same Service Area, it is County’s intention to allow for competition and thereby avoid the need to set Service Fees, other than Service Fee floors, for the provision of Franchise Services pursuant to this Agreement.



(3) Notwithstanding the above, County may set Service Fee caps or specific Service Fees as provided in Subsection (b).

**a. Service Fee Floors.** Franchisee will not charge Service Fees for the Franchise Services provided pursuant to this Agreement that are less than those Service Fees listed in Exhibit 13.01a, except as set forth below.

**1. Senior Rates.** Franchisee may charge Service Fees up to twenty percent (20%) below those set forth in Exhibit 13.01a to Residential Customers over the age of 62, provided that those Service Fees are uniform as to all such Customers.

**2. Multiple-service Cart.** Franchisee may charge Service Fees up to twenty percent (20%) below those for Carts set forth in Exhibit 13.01a to Commercial Customers who require multiple Collections each week, provided that the reduced rates are uniform countywide and the Customer is already furnished with the largest Bin that Franchisee has in its Service Asset Inventory.

**b. Service Fee Caps and Specific Service Fees.** County may set Service Fees caps or set specific Service Fees for the provision of Franchise Services if either of the following events occurs:

**1. Franchisee Becomes Sole Provider.** If Franchisee becomes the only primary franchisee, as defined in Section 12.02.020 of the Mono County Code, then subject to subsequent Service Fee adjustment provided in Subsection 13.01(c), Franchisee will charge Service Fees no greater than the Service Fees it charged on the date that Franchisee became the sole primary franchisee, as determined by County. If, however, Franchisee's Service Fees increased by more than five percent (5%) in the 12-month period immediately preceding its becoming the only primary franchisee, then Franchisee will submit to County a written explanation of the basis for the increase(s) made during that 12-month period. Franchisee will provide County with documentation or other information related to those increases within ten (10) days of County's request. Based upon its review of that documentation and other information, the County Board may:

- (1) set Franchisee's Service Fees at the level existing as of the date Franchisee became the sole primary franchisee; or
- (2) set Franchisee's Service Fees at a level that is less than that existing on that date.

**2. Unjustified Service Fee Increase Exceeding 5%.** If, notwithstanding the existence of competition within the Service Area, any Service Fee or Fees charged by Franchisee increase by more than five percent (5%) in any 12-month period, then within ten (10) calendar days of County's request Franchisee will provide County with a written explanation of those increase(s), together with any financial and other records justifying the increase(s). If County determines, in its sole discretion, that the increase(s) are not justified by the information

provided, then County may set Franchisee's Service Fee or Service Fees as provided in Subsection (b)(1).

**c. Service Fee Adjustments.** If Service Fees are set pursuant to Subsection (b)(1) or Subsection (b)(2), then those Service Fees may be adjusted as provided in Subsection (c). Upon written request by Franchisee to the County Board for a Service Fee adjustment submitted no earlier than July 1<sup>st</sup> and no later than October 1<sup>st</sup> prior to the commencement of each new Contract Year, Franchisee's Service Fees for Franchise Services will be adjusted, upward or downward, annually, effective January 1<sup>st</sup> of each Contract Year, in the manner described provided in Subsection (c). The County Board may also (but is not obligated to) act on its own initiative in the event Franchisee declines to request an adjustment to its Service Fees, and adjust Franchisee's Service Fees in the manner described below. Franchisee will provide written notice to each Customer in a form approved by County, of annual increases, whether initiated by Franchisee or by the County Board, at least six (6) weeks prior to their implementation.

### **1. Annual Adjustments.**

(i) **CPI Adjustment.** Seventy-five percent (75%) of Franchisee's Service Fees are subject to adjustment in accordance with the Consumer Price Index – Not Seasonally Adjusted, U.S. City Average for Garbage and Trash Collection ("**CPI**"), as published by the United States Department of Labor, Bureau of Labor Statistics, for the month of September during the most recent 12-month period preceding the upcoming operating year. Thus, if the CPI experienced a net increase of 3% from September, 2005, to September, 2006, then seventy-five percent (75%) of Franchisee's Service Fees would be subject to a three percent (3%) increase effective as of January 1, 2007.

(ii) **PPI Adjustment.** Five percent (5%) of Franchisee's Service Fees are subject to adjustment as described below in accordance with the Producer Price Index – Not Seasonally Adjusted, U.S. City Average for #2 Diesel all items ("**PPI**"), as published by the United States Department of Labor, Bureau of Labor Statistics, for the month of September during the most recent 12-month period preceding the upcoming operating year. Thus, if the PPI experienced a net increase of three percent (3%) between September, 2005, and September, 2006, then five percent (5%) of Franchisee's Service Fees would be subject to a three percent (3%) increase effective as of January 1, 2007.

(iii) **Gate Fee Adjustment.** Twenty percent (20%) of Franchisee's Service Fees are subject to adjustment to reflect increases or decreases in the gate fees charged at the Designated Disposal Site. This portion of Franchisee's Service Fees will apply either generally to the gate fees for solid waste, or for the specific category of waste for which the Franchisee has established a Service Fee, such as white goods, tires, C&D Waste, or others that may be applicable.

The total adjustment of Service Fees under this subsection, whether upward or downward, may not exceed five percent (5%) in any one Contract Year.

If either the CPI or PPI category specified above is discontinued or revised during the Term by the United States Department of Labor, Bureau of Labor Statistics, such other government index or computation with which it is replaced will be used in order to obtain substantially the same result as would be obtained if the category had not been discontinued or revised. County will specify any replacement index to the CPI or PPI category at its sole discretion.

**2. Change in Law Adjustments.** In addition to the adjustments set forth in Subsection (c)(1), Franchisee may request an adjustment to Franchisee's Service Fees where a change in Applicable Law, other than a change to the gate fees charged at the Designated Disposal Facility, results in an increase in Franchisee's Direct costs. Franchisee may request Service Fee adjustments made under this subsection at any time during the course of a Contract Year; *provided, however*, that Franchisee may not request more than one adjustment due to changes in law per Operating Year. For the purposes of this subsection "**Operating Year**" will mean the 12-month period immediately preceding or following the requested adjustment. In its application for a Service Fee adjustment based on a Change in Law, Franchisee must include a statement of the amount of the requested adjustment, the basis therefore, and all financial and other records on which Franchisee relies for its claim that Franchisee's Direct Costs have increased. The Director will review Franchisee's Service Fee application and notify Franchisee if it is complete or whether the Director wishes to review and/or audit any additional documents or information reasonably related to the requested increase before submitting the matter to the County Board for their consideration. The Board will review and consider the requests within a reasonable period of time after the complete submittal by Franchisee and after County has had a reasonable period of time to request, review, and audit any applicable financial records of Franchisee and/or its Affiliates. The Board may grant Franchisee's requested Service Fee adjustment or, based on the information presented, may increase or decrease Franchisee's Service Fees in amounts different from Franchisee's request. The adjusted Service Fees, if approved, will go into effect thirty (30) days after such approval or at such other time as established by the Board.

**d. Resolution of Issues Regarding Service Fee Adjustments.** Any issue regarding Service Fee adjustments, or the computation thereof will be decided by the County Board. The Service Fees in effect at the time any issue or dispute is submitted to the Board will remain in effect pending resolution of any issue or dispute. The effective date of any dispute resolution, whether retroactive or prospective, will reasonably be determined by the Board. In the event that Franchisee and County are unable to reach agreement regarding the adjustment of Service Fees, then either party may terminate this Agreement by sending to the other party a Notice stating the basis therefor, and setting a date of termination that is at six (6) months from the date printed on the Notice, *unless* the Parties agrees to a shorter date.

## **13.02 Fees Payable by Franchisee.**

### **a. Franchise Fee.**

**1. Amount.** In consideration for County's granting Franchisee the franchise described in Section 4.01, Franchisee will pay County the Franchise Fee equal to four percent (4%) of the Gross Revenues received from providing the Franchise Services, commencing with revenues billed for and received after October 1, 2018, but excluding Gross Revenues received from providing the Franchise Services pursuant to an Existing Agreement listed in Exhibit 13.01a.

**2. Payment.** Franchisee will pay the Franchise Fee quarterly, no later than the first day of the second month immediately following the Quarter in which Franchisee rendered Franchise Services, as required by Section 12.10.022 of the Mono County Code (for example, for the quarter ending on March 31, payment is due no later than May 1). With payment, Franchisee will additionally provide:

- (1) documentation in form and detail satisfactory to the Director showing the basis for calculating the Franchise Fee, together with additional information to calculate or verify the Franchise Fee that the Director may determine to be necessary; and
- (2) a representation and warranty as follows: "I represent and warrant, under penalty of perjury of the laws of the State of California, that I am familiar with the financial transactions of Mammoth Disposal Company and am responsible for keeping and maintaining its financial records, including gross receipts thereof, and I have reviewed the [INSERT DATE AND DESCRIPTION OF ACCOMPANYING FRANCHISE PAYMENT ACCOUNTING STATEMENT]. To the best of my knowledge and belief, the statement is true, correct and complete."

Documentation and representations and warranties filed by Franchisee are not deemed conclusive as to the information presented or statements made therein. Franchisee's submission of documentation and representations and warranties does not preclude County from taking additional measures and actions to collect franchise fees actually due and payable.

**3. Late Payment Charges.** If Franchisee does not fully and timely pay its Franchise Fee in accordance with Subsection (a)(2), then Franchisee shall pay a basic penalty of ten percent (10%) of the amount of the unpaid Franchise Fee plus interest equal to one and one half percent (1½ %) of the total of (i) the unpaid monthly charges and (ii) the basic penalty, for each month, or part of a month, that the monthly franchise fee has not been paid.

**4. County Audit.** County may, at its own expense and using a consultant of its choosing, audit the records of Franchisee and Franchisee must provide County with copies of records within two (2) weeks of County's request. If County's audit demonstrates to the satisfaction of County that the Franchise Fee paid by Franchisee to County was understated, then Franchisee will pay County both:

- (1) the amount of the understated Franchise Fee plus the late payment charges provided in Subsection (a)(3) within thirty (30) days following County's submission of the results of the audit to Franchisee, and
- (2) if County's audit demonstrates that the Franchise Fee paid by Franchisee was understated by more than Five Thousand dollars (\$5,000.00) or two percent (2%), whichever is less, County's Reimbursement Cost to conduct the audit.

**5. Annual Review by CPA; Actual Payments.** Within one hundred twenty (120) days following the close of each Contract Year, Franchisee will furnish County with a statement showing and substantiating the amount of the Franchise Fee, both owed and paid. Franchisee will cause that statement to be audited by an independent certified public accountant, acceptable to County, in accordance with generally accepted auditing principles, and including the accountant's statement relative to his or her review. That statement will also be accompanied by the representation and warranty required by item (2) of Subsection (a)(2).

**b. Solid Waste Permit Fee.** Franchisee will pay County any fee for Permits issued by County in the time, manner, and amount required by the Mono County Code or by resolution of the County Board.

### **13.03 Payment of Moneys Due County.**

Franchisee will pay all County Payment Obligations (i) on the date they are due pursuant to this Agreement; or (ii) if no date is provided in this Agreement, within twenty (20) days of County's demand.

If Franchisee has not fully and timely paid a County Payment Obligation within twenty (20) days of their due date, then County may draw on Franchisee's Letter of Credit in accordance with Section 11.03 for the amount of (i) the Payment Obligation, *plus* (ii) the Overdue Rate or, with respect to Franchise Fees, the late-payment charge set forth in Section 13.02.

### **13.04 Fee Disputes.**

**a. County's Notice of Dispute.** If County disputes any amount calculated by Franchisee in accordance with Section 13.02(a), then County will give Franchisee Notice of its dispute together with any request for additional information, identified with reasonable specificity, with respect thereto.

**b. Franchisee's Response.** Within seven (7) days of receiving County's Notice, Franchisee will respond to County's dispute and supply any requested information. If Franchisee does not respond within said time, then it will be deemed to concur with County. If Franchisee concurs or is deemed to concur, then it will promptly amend the disputed invoice.

**c. Dispute Resolution.** If County disagrees with Franchisee's response and County and Franchisee cannot reach agreement during an ensuing 15-day period following the Franchisee's response, then the Parties may agree to submit the matter for binding resolution by the Independent Expert in accordance with Article 9.

## **ARTICLE 14. BREACHES, DEFAULTS, DAMAGES, AND OTHER REMEDIES**

### **14.01 Certain Breaches and Damages.**

**a. Notice and Opportunity to Correct.** County entered into this Agreement with Franchisee in part based on Franchisee's demonstrated abilities, service quality, and responsiveness to Customers' and County's needs. It is County's hope to avoid exercising remedies set forth in this Agreement whenever possible by working with Franchisee informally to resolve Events of Default or other failures to satisfy the obligations set forth in this Agreement. Thus, County may, in its sole discretion, provide verbal notice to Franchisee of any Event of Default or failure by Franchisee to satisfy the obligations set forth in this Agreement of which County becomes aware prior to pursuing other remedies set forth in this Agreement. If Franchisee corrects said Event of Default or failure to the satisfaction of the Director within the number of days provided, then County shall not pursue additional remedies for that occurrence. In addition, Franchisee shall have each of the opportunities to cure and/or correct Events of Default or other failures to satisfy the obligations of this Agreement set forth in Mono County Code section 12.10.023(E).

**b. Franchisee Reports.** In each Quarterly Report, Franchisee will certify to County that it has fully and timely met its Performance Obligations during the preceding Quarter. If Franchisee cannot so certify, then Franchisee will note those failures in its Quarterly Report and within thirty (30) days of submitting its Quarterly Report, pay damages listed in Exhibit 14.01 for each failure occurring after the first six (6) weeks following the Commencement Date.

**c. County Notice.** If County becomes aware at any time that Franchisee has not fully and timely met its Performance Obligations, then County may provide Franchisee with a Notice thereof specifying any damages that Franchisee must pay County in accordance with Exhibit 14.01 within ten (10) days of Notice, *unless* Franchisee contests payment of damages as provided in Subsection (d).

**d. Procedure for Review of Damage Obligations.** Within ten (10) days of the date of the Notice by County described in Subsection (c), Franchisee may contest imposition of damages by submitting documentary evidence to County demonstrating why Franchisee does not owe damages. County will use Reasonable Business Efforts to review Franchisee's evidence and render a written decision to Franchisee confirming or reversing the imposition of damages as soon as reasonably possible after receipt of the evidence. County's decision is final and binding and constitutes final Notice for the purposes of this Subsection (d).

**e. Damages Reasonable.** The Parties acknowledge that County has incurred considerable time and expense procuring this Agreement in order to secure an improved level of

Collection service quality, accountability, and increased Customer satisfaction. Therefore, consistent and reliable Franchise Service and accountability is of utmost importance to County. County has considered and relied on Franchisee's representations as to its quality of service commitment in entering into this Agreement, and Franchisee's breach of its Performance Obligations represents a loss of bargain to County and Customers.

The Parties further recognize that quantified standards of performance and regular reporting to County regarding that performance are necessary and appropriate to ensure consistent and reliable Service, and if Franchisee fails to meet its Performance Obligations then County will suffer damages (including its Customers' inconvenience; anxiety; and frustration, criticism, and complaint by Customers; potential political pressure; lost the County Board and staff time; and loss of bargain secured through time-consuming and expensive procurement) and that it is and will be impracticable and extremely difficult to ascertain and determine the value thereof. In addition, if Franchisee fails to fully and timely satisfy its Performance Obligations or in the Event of Default, then the urgency of protecting public health and safety may necessitate that County enter into emergency or short-term arrangements for services without competitive procurement at prices substantially greater than hereunder, and the monetary loss resulting therefrom is impossible to precisely quantify. Lastly, termination of this Agreement for Franchisee Default and other remedies provided hereunder are, at best, a means of future correction and not remedies that make County whole for past Breaches and Franchisee Defaults. Therefore, the Parties agree that the liquidated damages listed in Exhibit 14.01 represent a reasonable estimate of the amount of said damages, considering all of the circumstances existing on the Commencement Date, including the relationship of the sums to the range of harm to County that reasonably could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. In signing this Agreement, each Party specifically confirms the accuracy of the statements made above and the fact that each Party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Agreement was made.

#### **14.02 Remedies Upon Default.**

**a. Remedy.** Upon the occurrence of an Event of Default, County has the following remedies:

**1. Termination.** County may terminate this Agreement or any portion of Franchisee's Performance Obligations. Prior to termination, County must give Franchisee a Notice stating the reason for the termination. County may terminate the Agreement

- (1) thirty (30) days following the date of the Notice; or
- (2) immediately following the date of the Notice if
  - (i) County determines that protection of public health and safety requires immediate termination;

(ii) Franchisee fails to maintain insurance, bonds, or other assurances of performance required under this Agreement;

(iii) Franchisee Violates law, as set forth in Section 10.12.023(E)(1)(e) of the Mono County Code.

**2. Suspension.** County may suspend all or a portion of this Agreement for up to thirty (30) days. During that 30-day period the Franchisee may demonstrate to the sole satisfaction of County that Franchisee can once again fully perform the Franchise Services. If Franchisee so demonstrates, then County's right to suspend or terminate the Agreement will cease and Franchisee may resume providing Franchise Services. If Franchisee does not so demonstrate, then County may terminate the Agreement and exercise any other rights and remedies under this Agreement. Prior to suspending all or a portion of this Agreement, County must give Franchisee a Notice stating the reasons for the suspension. County may suspend the Agreement, effective fifteen (15) days after the date of the Notice. If County determines that the suspension is necessary for the protection public health and safety, then County need not give Franchisee Notice but may give Franchisee oral notice stating the reasons for the suspension, effective immediately. County will provide Franchisee with Notice confirming oral notice.

**3. Damages.** County may exercise its remedies of damages (including damages in accordance with Section 14.01).

**4. Equitable Relief.** County may exercise any other available remedies at law or in equity (including specific performance and injunctive relief). Franchisee acknowledges that County's remedy of damages for a breach of this Agreement by Franchisee may be inadequate for reasons including: (i) the urgency of timely, continuous and high-quality Solid Waste management service under this Agreement, including collection, transportation and/or transfer for disposal of putrescible wastes which constitute a threat to public health; and (ii) for all of the reasons set forth in Section 14.01(e). Therefore, County is entitled to all available equitable remedies, including specific performance or injunctive relief.

**b. Delivery Obligations.** Franchisee further acknowledges that County's remedy of damages for a breach of Section 7.01 by Franchisee (Failure to Deliver Materials to Designated Disposal Facility) may be inadequate and, consequently, that County is entitled to all available equitable remedies, including specific performance and injunctive relief for all of the reasons set forth in Exhibit R-1.

#### **14.03 Remedies Not Exclusive.**

County's rights and remedies in the Event of Default are not exclusive. Exercise of one remedy, including seeking damages, is not an election of remedies but is cumulative with any other remedies under this Agreement.

#### **14.04 Waivers.**



**a. County Waiver of Breach.** County's waiver of any breach or Event of Default will not be deemed to be a waiver of any other breach or Event of Default including those with respect to the same obligations under this Agreement. County's decision not to demand payment of damages will not be deemed a waiver of any Franchisee failure to satisfy any Performance Obligations. County's subsequent acceptance of any damages or other money paid by Franchisee, including damages, will not be deemed to be a waiver by County of any pre-existing or concurrent breach or Event of Default.

**b. Franchisee Waiver of Certain Defenses.** Franchisee acknowledges that it is solely responsible for providing Franchise Services and by this Agreement irrevocably and unconditionally waives defenses to the payment and satisfaction of its Performance Obligations under this Agreement based upon failure of consideration; contract of adhesion; impossibility or impracticability of performance; commercial frustration of purpose; or the existence, non-existence, occurrence or non-occurrence of any foreseen or unforeseen fact, event, or contingency that may be a basic assumption of Franchisee with regard to any provision of this Agreement. However, Franchisee does not waive any defense of Uncontrollable Circumstances.

#### **14.05 Jurisdiction; Venue.**

- a. Jurisdiction.** The Parties will bring any lawsuits arising out of this Agreement in State or Federal courts within the State of California, which will have exclusive jurisdiction over said lawsuits.
- b. Venue.** Venue will be made and performed in courts sitting in Mono County.
- c. Other.** The site of any other hearing or action, whether arbitration or non-judicial, of whatever nature or kind regarding this Agreement, will be conducted in Mono County.

#### **14.06 Costs.**

Franchisee agrees to pay to County County's Reimbursement Costs reasonably incurred by or on behalf of County enforcing timely payment or performance of Franchisee's obligations under this Agreement.

#### **14.07 Assurance of Performance.**

If Franchisee

- (1) is the subject of any labor unrest (including work stoppage or slowdown, sick-out, picketing, or other concerted job action); or

- (2) appears in the judgment of County to be unable to regularly pay its bills as they become due; or
- (3) is the subject of a civil or criminal judgment or order entered by a federal, state, regional, or local agency for violation of an environmental or tax law,

and County believes in good faith that Franchisee's ability to timely and fully perform Franchise Services has been placed in substantial jeopardy, then County may, at its option and in addition to all other remedies it may have, demand from Franchisee reasonable assurances of timely and full performance under this Agreement. If Franchisee fails or refuses to provide reasonable assurances by the date required by County, then that failure or refusal will constitute an Event of Default in accordance with Section 12.10.023(E)(2)(b) of the Mono County Code.

#### **14.08 County Right to Perform Franchise Services.**

**a. Events.** County may perform, or contract for the performance of, any or all of Franchisee's Performance Obligations, including the collection of Solid Waste or any portion thereof and transportation and delivery to a Solid Waste facility, upon the occurrence of either of the following events, determined by County in its sole discretion:

- (1) Franchisee, due to Uncontrollable Circumstances or for any reason whatsoever, fails, refuses, or is unable for a period of forty-eight (48) hours to Collect and/or to transport, Solid Waste to a Solid Waste facility and County determines there is danger to the public health, safety, or welfare; or
- (2) County suspends any portion of Franchisee's Performance Obligations or terminates this Agreement in accordance with Section 14.02(a)(1).

County has no obligation to continue providing Franchise Services and may at any time, in its sole discretion, cease to provide Franchise Services. However, County's right to provide Franchise Services, including contracting with another Person, will continue until Franchisee can demonstrate to County's satisfaction that Franchisee is ready, willing, and able to resume timely and full Franchise Services.

**b. Notice.** County may give Franchisee oral notice that County is exercising its right to perform Franchise Services, which notice is effective immediately, but must confirm oral notice with Notice within 24 hours thereafter to extend County performance.

**c. Service Assets.** Upon giving Franchisee oral notice, County may take possession of any or all of the Service Assets necessary or convenient in providing Franchise Services, and Franchisee will fully cooperate with County to transfer possession of Service Assets to County. County may use Service Assets to provide all or a portion of Franchise Services. County will have absolute and exclusive control over Service Assets as though County were the absolute owner thereof. However, upon County request, Franchisee will keep Service Assets in good repair and condition, including providing Vehicles with fuel, oil and other maintenance. County

will assume complete responsibility for use of Service Assets while they are in its possession and will maintain Service Assets in the same condition as they were in when Franchisee transferred possession thereof to County (unless Franchisee maintains them as provided in the preceding sentence), and will return Service Assets to Franchisee in the same condition as received, normal wear and tear excepted.

**d. Maintaining Insurance.** During County's possession of Service Assets, Franchisee will maintain in full force and effect all insurance and any Financial Assurances related to self-insured retentions or increased deductibles required in accordance with Section 11.01. By granting County the right to possession and use of Service Assets Franchisee hereby declares as follows:

- (1) County and Customers are permitted users for purposes of liability insurance policies that Franchisee must procure and maintain under this Agreement, and
- (2) County's and Customers' use and possession of Service Assets is not intended to be and is not transfer of ownership for purposes of any liability policies.

Furthermore, if County and Customers have possession and use of Service Assets, Franchisee will execute whatever documentation its liability insurers require in order to ensure that County and Customers are protected and covered by Franchisee's general and automobile policies, including requesting and executing endorsements to those policies. However, Franchisee is not obligated to pay any additional cost of those endorsements unless County reimburses Franchisee for those additional costs. County may pay for any endorsements, additional premiums or other costs. If County takes use and possession of Service Assets, then County may call and confer with Franchisee's insurance broker to determine what, if any, documentation or actions are necessary to achieve protection satisfactory to County. By executing this Agreement, Franchisee directs its insurance broker to cooperate with and take direction from County under those circumstances, which authorization Franchisee may not rescind without County consent.

County has no obligation to continue possession and/or use of Service Assets and may at any time, in its sole discretion, cease possession and/or use.

**e. Franchisee's Personnel.** Upon giving Franchisee oral notice in accordance with Subsection (b), County may immediately engage personnel necessary or convenient for providing all or a portion of Franchise Services, including employees previously or then employed by Franchisee. However, County will not be obligated to hire Franchisee's employees and may use County employees or other Persons to provide all or a portion of Franchise Services, including driving Vehicles. Promptly upon County request, Franchisee will make available to County all Franchisee's management and office personnel necessary or convenient for providing Franchise Services, including Customer services and billing, at the cost, if any, provided in Subsection (h).

**f. Records and Reports.** Upon County request, Franchisee will promptly provide County with immediate access and/or possession of Records, including those related to routing and billing.

**g. Stipulations.** Franchisee agrees and stipulates that County's exercise of rights under this Section 14.08 does not constitute a taking of private property for which County must compensate Franchisee; will not create any liability on the part of County to Franchisee; and does not exempt Franchisee from any Indemnities, which Parties acknowledge are intended to extend to circumstances arising under this Section 14.08. However, Franchisee is not required to indemnify County against claims and damages arising from the negligence of County officers and employees (other than employees of Franchisee at the time County commenced performing said Franchise Services) and agents driving Vehicles.

**h. Rental and Costs.**

**1. Uncontrollable Circumstances.** If the events enumerated in Subsection (a) are due to Uncontrollable Circumstances, then County will pay Franchisee the following costs that Franchisee is not then being compensated for through charging and collecting its Service Fees:

- (1) rental fees for County's use and possession of Service Assets equal to fair market value thereof as determined by an independent appraiser selected by the Parties in the same manner as the Independent Expert in accordance with Article 9;
- (2) Franchisee's Direct Costs of providing Vehicles with fuel, oil and other maintenance in accordance with Subsection (c); and
- (3) Franchisee's Direct Cost of making available to County Franchisee's personnel in accordance with subsection e.

**2. Franchisee Breach or Event of Default.** If the events enumerated in Subsection (a) are not due to Uncontrollable Circumstances, then County will not be obligated to pay the costs enumerated in Subsection (h)(1), and Franchisee will pay County County's Reimbursement Costs incurred in taking over possession of Service Assets and in providing Franchise Services within twenty (20) days of County's submitting an invoice therefor. Franchisee will pay County's Reimbursement Costs for expenditures it incurred due to Franchisee's failure to satisfy Performance Obligations or in an Event of Default.

**i. Ownership.** Any document, including a lease, financing contract, acquisition over time, mortgage or other instrument establishing a security interest to or by the Franchisee ("**Service Asset Document**"), that encumbers or limits the Franchisee's interest in Service Assets, including any replacement or substitute equipment, will:

- (1) allow the Guarantor to assume the Franchisee's obligations and to continue use of Service Assets in performing Franchise Services;

- (2) allow Franchisee's surety to assume the Franchisee's obligations and to continue use of Service Assets in performing Franchise Services during the remaining term of surety's bond; and
- (3) allow County to assume the Franchisee's obligations and to continue use of Service Assets in performing Franchise Services.

## **ARTICLE 15. FRANCHISEE'S OBLIGATIONS UPON EXPIRATION OR TERMINATION**

### **15.01 Pay Outstanding Amounts.**

Franchisee will pay County any County Payment Obligations or other amounts then accrued and payable.

### **15.02 Cooperation During Transition.**

If Franchisee is not awarded an agreement to continue to provide Franchise Services following the expiration or termination of this Agreement, then Franchisee will reasonably cooperate with County and the succeeding Franchisee(s), contractor(s), licensee(s), permittee(s), or other Person(s) providing Solid Waste Handling Services to assure a smooth, efficient, orderly, timely, and effective transition from Franchise Services to those Solid Waste Handling Services, including transfer of Records; complete routing information, route maps, vehicle fleet information, and Customer billing lists, upon request of County; providing other Records and reports required by this Agreement; and coordinating with County and any subsequent Franchisee(s), contractor(s), licensee(s), permittee(s), or other Person(s) with respect to exchanging Containers. Franchisee will not remove a Container from any Customer's premises until the earlier of: (1) the date replacement containers are provided to the Customer, or (2) 3 weeks after the expiration or termination of this Agreement. THIS OBLIGATION OF FRANCHISEE WILL SURVIVE THE TERMINATION OF THIS AGREEMENT.

## **ARTICLE 16. THE PARTIES**

### **16.01 Franchisee is Independent Contractor.**

Franchisee will perform Franchise Services as an independent contractor engaged by County and not as officer, agent, servant, employee, or partner of County nor as a joint venture with County. No employee or agent of Franchisee is deemed to be an employee or agent of County. Franchisee will have the exclusive control over the manner and means of performing Franchise Services and meeting its Performance Obligations and over all Persons performing Franchise Services. Use of the word "direct" in this Agreement signifies County's right to require Franchisee's compliance with County directions, but will not be construed to signify County control over the manner and means of performing Franchise Services. Franchisee is

solely responsible for the acts and omissions of its officers, employees, contractors, subcontractors, and agents, none of which is deemed to be an officer, agent, servant, or employee of County. Neither Franchisee nor its officers, employees, contractors, subcontractors, and agents will obtain any rights to retirement benefits, workers compensation benefits, or any other benefits which accrue to County employees and Franchisee expressly waives any claim it may have or acquire to said benefits.

#### **16.02 Parties in Interest.**

Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons other than the Parties and their representatives, successors, and permitted assigns.

#### **16.03 Binding on Successors.**

The provisions of this Agreement will inure to the benefit of and be binding on the successors and permitted assigns of the Parties.

#### **16.04 Further Assurances.**

Each Party agrees to execute and deliver any instruments and to perform any acts as may be necessary or reasonably requested by the other in order to give full effect to this Agreement.

#### **16.05 Actions of County in Its Governmental Capacity.**

Nothing in this Agreement is interpreted as limiting the rights and obligations of County in its governmental or regulatory capacity.

#### **16.06 Franchisee's Obligations Performed at Its Sole Expense.**

Franchisee will perform Franchise Services solely for the compensation expressly provided for in this Agreement. Franchisee acknowledges that it will not receive any form of payment or other consideration from County for its performance under this Agreement except for the grant of the franchise under this Agreement. Franchisee will instead look solely to its Customers to compensate Franchisee for providing all Franchise Services and satisfying its Performance Obligations.

#### **16.07 Parties' Representatives.**

**a. County Representative.** The County Representative is the Director unless otherwise named by the County Board from time to time upon Notice of County Representative to

Franchisee. The County Representative is authorized to act on behalf of County in the administration of this Agreement and, unless otherwise specified, may take all actions set forth in this Agreement except termination, extension, amendment, and assignment consent, without action by the County Board.

**b. Franchisee Representative.** The Franchisee Representative is Roger Brown, as may be changed from time to time upon Notice of Franchisee Representative to County. The Franchisee Representative is authorized to act on behalf of Franchisee in the performance under this Agreement.

#### **16.08 Due Diligence.**

Franchisee acknowledges that County may be subject to statutory fines or penalties for failure to achieve mandated waste diversion levels and that waste management is a public health and safety concern. It agrees that it will exercise due diligence in performing Franchise Services.

#### **16.09 Subcontracting.**

Franchisee may not Subcontract any portion of the Franchise Services, including the provision of Carts and Containers, set forth in this Agreement. Franchisee may engage any number of Subcontractors providing goods or services that do not comprise Franchise Services or the provision of Carts and Containers (e.g., billing services, equipment, maintenance). Franchisee will not subcontract in a manner that effectuates an assignment of this Agreement, unless the requirements of Section 12.10.023 of the Mono County Code and the provisions of this Agreement (including Section 17.01) related to assignment are met.

Franchisee must direct the work of Franchisee's Subcontractors. Franchisee is solely responsible for paying any compensation due or payable to Franchisee's Subcontractors. County may require Franchisee to remove any Subcontractor for good cause. Subcontractors' failure to satisfy its subcontracted obligations (including violation of Applicable Law) is a failure by Franchisee and County may exercise any or all of the rights and remedies available to County under this Agreement with respect to Franchisee.

**"Subcontractor"** includes any Person, including Affiliates, that provides goods or services that do not comprise Franchise Services or the provision of Carts and Containers but are related to the provision of Franchise Services, whether pursuant to formal, written agreement or merely in fact. **"Subcontract"** means any arrangement, formal or informal, written or otherwise, between Franchisee and a Subcontractor for providing goods or services related to the provision of Franchise Services.

In its Annual Report, Franchisee will disclose to County the name of all Subcontractors, the amount goods or services related to the provision of Franchise Services that each Subcontractor provides to Franchisee, and a description of Franchisee's relationships to each Subcontractor (including ownership interests).

## **16.10 No Use of County Name.**

Franchisee will not do business as or use a corporate, partnership, venture, or other formal name, containing the words “Mono” or “County” or implying County ownership *although* upon County direction, Franchisee will use County’s name in its public relations signage.

## **ARTICLE 17. ASSIGNMENT AND AMENDMENTS**

### **17.01 Assignment.**

**a. County Assignment.** County may assign this Agreement to a joint powers authority, a sanitation district, or other public entity succeeding to the major portion of County’s solid waste management rights and obligations. County may also assign this Agreement to any other Person, with Franchisee’s consent, upon County’s determination that the assignee is financially capable of meeting County’s obligations under this Agreement.

**b. Franchisee Assignment.** Franchisee acknowledges that the experience and expertise of Franchisee are material considerations of County in entering into this Agreement with Franchisee. Franchisee may not Assign this Agreement except in accordance with Section 12.10.23(C) of the Mono County Code. Franchisee may not circumvent County’s Assignment consent rights in practical effect by securing goods or services from a Subcontractor that would be itself subject to “assignment,” where “Subcontractor” is substituted for “Franchisee” in the definition of “Assign” in Subsection 17.01(c).

**c. Assign. “Assign” includes:**

- (1) selling, exchanging, or otherwise transferring effective control of management of the Franchisee (through sale, exchange, or other transfer of outstanding stock or otherwise);
- (2) issuing new stock or selling, exchanging, or otherwise transferring twenty percent (20%) or more of the then outstanding common stock of the Franchisee;
- (3) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance, or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation, or other transaction which results in a change of Ownership or control of Franchisee;
- (4) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment of an execution, being levied against Franchisee, appointment of a receiver taking possession of any of Franchisee’s tangible or intangible property;



- (5) substitution by a surety company providing any performance bond in accordance with Section 11.03 of another Person for Franchisee to perform Franchise Services;
- (6) sale or transfer of fifty percent (50%) or more of the value of assets of Franchisee except for sales or transfers to parents, grandparents, siblings, children, and grandchildren of persons having a shareholder or other equity interest in Franchisee as of the date of this Agreement (“Immediate Family”) or trust created primarily to benefit members of the Immediate Family; and
- (7) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of Ownership or control of Franchisee.

## **17.02 Amendments.**

The Parties may change, modify, supplement, or amend this Agreement only upon written agreement duly authorized and executed by both Parties. However, wherever reports, forms, protocols, or other documents are attached to this Agreement as attachments to an Exhibit, County Representative and Franchisee Representative may edit and revise them upon their agreement or otherwise provided in the related Sections of this Agreement, evidenced in writing *unless* this Agreement specifically requires approval by the County Board pursuant to resolution or otherwise.

## **ARTICLE 18. NOTICES, CONSENTS, APPROVALS, ETC.**

### **18.01 Notices.**

**a. Written.** The Parties must present and express all reports, demands, requests, directions, selections, option exercises, orders, requests, proposals, reviews, comments, acknowledgments, approvals, consents, waivers, certifications, and other communications made to each other under this Agreement in writing. Notice by County to Franchisee of a missed pick-up (i.e., non-collection) or a Customer problem or complaint may be given to Franchisee orally by telephone at Franchisee’s local office with written confirmation sent to Franchisee within twenty-four (24) hours of the oral notification.

**b. Manner.** The Parties must provide Notices at the address provided in Subsection (c), in any of the following manners:

- (1) by e-mail or facsimile promptly followed by delivery described in following items (2), (3) or (4);
- (2) personal delivery to a representative of the Parties, with signed receipt;

(3) deposit in the United States mail, first class postage prepaid (certified mail, return receipt requested); or

(4) deposit with a commercial delivery service providing delivery verification.

**c. Address.**

<p>If to County:</p> <p>Mono County Public Works Department Attn: Solid Waste Superintendent 74 North School Street P.O. Box 457 Bridgeport, CA 93517</p> <p>Telephone: (760) 932-5440 Facsimile: (760) 932-5441</p>	<p>If to Franchisee:</p> <p>Mammoth Disposal Company, Inc. Attn: Roger Brown 59 Commerce Drive P.O. Box 237 Mammoth Lakes, CA 93546</p> <p>Telephone: (760) 934-2011 Facsimile: [PLACEHOLDER]</p>
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The Parties may change their contact information above upon Notice to the other Party.

**18.02 Consents and Approvals.**

The County Representative is authorized to act on behalf of County in the administration of this Agreement and, unless otherwise specified, may take all actions set forth in this Agreement except termination, amendment, extension, and assignment consent, without action by the County Board.

**18.03 Exercise of Discretion by County.**

Recognizing the essential public health and safety protections this Agreement serves, where this Agreement specifically provides that the exercise of any Discretionary Action is in County's sole, exclusive, or absolute discretion, control, or judgment, that exercise of discretion is deemed reasonable and the Franchisee will not question or challenge County's exercise thereof. County will exercise any approval, disapproval, consent, option, discretion, election, opinion, or choice under this Agreement or interpretation of this Agreement in a manner that is reasonable.

**ARTICLE 19. EXECUTION OF AGREEMENT**

**19.01 Authority to Execute.**

County warrants that the officers listed below have been duly authorized by County to execute this Agreement on behalf of County. Franchisee warrants that the individuals listed below have been duly authorized by the Franchisee to execute this Agreement on behalf of the Franchisee.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed and entered as of the last date indicated below:

COUNTY OF MONO:

MAMMOTH DISPOSAL COMPANY:

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form (County Counsel):

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved by Risk Management:

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT R-1: FINDINGS REGARDING DESIGNATED DISPOSAL FACILITY**

In view of the following findings and facts, County has determined that in order to sustain its solid waste program, protect itself from liability for waste generated within its borders, and continue to provide beneficial solid waste services such as education and recycling to its residents and to visitors to the area, it is necessary to require that solid waste collected by franchisees be delivered to a solid waste facility owned by County unless specifically exempted as provided for in this agreement.

### **a. Local Interests.**

(i) County currently operates a comprehensive Solid Waste program which includes six (6) Solid Waste transfer stations, some of which additionally serve as landfills for C&D Waste, and one regional Class III Municipal Solid Waste Landfill.

(ii) At these facilities, County offers recycling services for cardboard, beverage containers, scrap metal, white goods, wood waste, waste tires, used oil and filters, and batteries. In addition, County accepts and processes hazardous materials such as household hazardous waste and universal wastes. County provides these services for free or at a low cost (for tires and white goods) to the public in order to encourage participation and minimize illegal disposal.

(iii) Also, as a part of its solid waste program, County has implemented an aggressive load-checking system at its landfill and transfer stations in order to prevent the improper disposal of liquids and hazardous materials and to help identify and separate recyclables. As a part of this program, County provides information to the public and to waste haulers about recycling and disposal of hazardous and other special wastes.

(iv) A combination of the above services offered by County has resulted in impressive results with respect to recycling, reduction in illegal dumping and disposal, and the safe handling and proper disposal of hazardous materials. For example, in 2017, County accumulated more than 318 tons of scrap metal and white goods at its regional landfill which were then recycled. In 2017 County also collected, 3,854 tons of inert waste and 5,693 tons of wood and green organic waste which were diverted from County's regional landfill, amounting to a combined twenty-nine percent (29%) of all Solid Waste received.

(v) The diversion of recyclable materials through County's solid waste program, and its regional landfill specifically, has enabled County to meet the California Integrated Waste Management Act's mandate that local jurisdictions divert for reuse or recycling fifty percent (50%) of the waste generated within their borders annually or face penalties of up to Ten Thousand dollars (\$10,000.00) per day. Also pursuant to the Integrated Waste Management Act, County has drafted and adopted an Integrated Waste Management Plan which sets forth County's goals with respect to source reduction and recycling and the means to accomplish those goals, of which the programs described above are a critical component.

(vi) County has developed plans and taken aggressive actions to minimize the risk of environmental harm from County's landfill operations which could potentially result from the

generation and migration of landfill gases or leachate. These measures pertain not only to the current operation of the landfill but also to its proper closure and maintenance after closure. For example, County has installed groundwater monitoring wells, conducts quarterly monitoring of landfill gas to identify potential subsurface migration, and sets aside funds each year to pay for closure activities consisting of the permanent sealing of the landfill. Additionally, as required by California law, County will monitor and maintain its landfills for a minimum of thirty (30) years after closure.

(vii) All of the above programs are paid for largely through gate fees generated at County's landfill and transfer stations. The loss of gate fee revenue caused by the transport of Solid Waste to facilities other than those operated by County threatens its entire Solid Waste program and could affect County's compliance with the Integrated Waste Management Act, causing the increased landfilling of recyclable materials and the improper disposal of Unpermitted Waste as well as exposing County to significant fines and penalties.

(viii) Moreover, County has no power or authority to regulate the handling or disposal of Solid Waste outside of its borders to ensure that such waste is properly managed. Yet it remains potentially liable for contamination caused by that waste under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). Again, there is no way for County to control this risk if it has no power or authority to regulate how the waste is managed. County desires to minimize this exposure to CERCLA liability to the maximum extent feasible.

(ix) County's concerns about liability resulting from the disposal of County-generated waste at facilities not operated by County are real: three (3) of the four (4) regional landfills located in the eastern Sierra within a 200-mile radius of Mono County (and the only three (3) which have accepted waste or indicated the willingness to accept waste generated in Mono County in the past) do not have any groundwater or landfill gas monitoring systems in place and lack many of the other basic regulatory and environmental controls that have been implemented at County's facilities.

(x) For all of the above reasons, County has determined that it is necessary that Solid Waste collected by Franchisees be delivered to a Solid Waste facility owned or operated by County.

**b. No Viable Alternatives.**

County has considered alternatives to requiring Franchisees to deliver Solid Waste to a Solid Waste facility owned by County or, alternatively, paying the Capacity Fee for limited out-of-county hauling, but has found that there are no viable alternatives.

(i) County's ability to subsidize solid waste management through additional taxes or property-based fees is constrained practically and under the State constitution.

(ii) County has the power, authority, and direction to establish diversion performance standards at its own Solid Waste facility or facilities. It cannot establish, implement, or enforce

those standards at facilities it does not own, including landfills where some Solid Waste generated in Mono County is presently being disposed.

(iii) Even if County could raise the capital to take over Solid Waste collection from present privately provided services to municipal service, which would allow County to deliver waste to its own Solid Waste and Recyclable Materials management system, under State law, it would be required to give private haulers five (5) years' advance notice of its intent to do so. During those five (5) years, the private haulers would have the continued right to provide service, and the present loss of County gate fee income would continue to imperil County's Solid Waste program.

(iv) Due to its rural character and remote location, it is impractical or impossible to require mandatory collection within Mono County and many County residents continue to self-haul to County's landfill or transfer stations. If those facilities ceased operation as a result of the failure to collect sufficient gate fee revenues to maintain them, then County residents and businesses would be faced with, in many cases, more than a 100-mile drive to dispose of their waste or would be forced to subscribe to Solid Waste Collection services to haul that waste for them. This would likely increase instances of illegal dumping, as well as be impractical for the reasons described in Subsection (b)(v) below. In addition, it would deprive those residents and businesses of the recycling and Unpermitted Waste processing services which are now available at County's facilities.

(v) User generation fees are not an alternative source of County funding. County has many rural areas, resulting in routing and collection inefficiencies for commercial waste haulers that can make collection cost at many remote residences prohibitively expensive for residents of limited financial means. If County required private haulers to collect user generation fees on behalf of County from private customers/subscribers absent mandatory subscription, those customers would unfairly and inequitably bear Solid Waste management costs of all County residents, those who subscribe and those who do not. As subscription rates increased, customers might drop service, thereby triggering an increasing spiral of costs spread over fewer customers/subscribers, and an increase in illegal dumping. Therefore, County faces the practical and political inability to implement user fees in lieu of gate fees at County facilities.

## **EXHIBIT 1.01: DEFINITIONS**

“**Act**” means the California Integrated Waste Management Act set forth in California Public Resources Code at Sections 40000 *et seq.*

“**Affiliate**” or “**Affiliates**” means all businesses (including corporations, limited and general partnerships, and sole proprietorships) which are directly or indirectly related to Franchisee by virtue of direct or indirect Ownership interests or common management, including a business in which Franchisee has a direct or indirect Ownership interest, a business which has a direct or indirect Ownership interest in Franchisee and/or a business which is also Owned, controlled or managed by any business or individual which has a direct or indirect Ownership interest in Franchisee.

“**Agreement**” means this Agreement, including all exhibits and attachments which are incorporated herein by reference, as this Agreement may be amended and supplemented pursuant to Section 17.02.

“**Annual Report**” means the report described in Section 10.02(b).

“**Applicable Law**” means all laws, statutes, rules, regulations, guidelines, Permits, actions, determinations, orders, or requirements of the United States, State of California, County (including its County Code together with rules and regulations promulgated thereunder and County’s Integrated Waste Management Plan), the Local Enforcement Agency, California Highway Patrol, applicable Air Quality Management District, and other regional or local government authorities, agencies, boards, commissions, courts, or other bodies having applicable jurisdiction, that from time to time apply to or govern Franchise Services or the performance of the Parties’ respective obligations under this Agreement, including any of the foregoing which concern health, safety, fire, mitigation monitoring plans, building codes, zoning, and further including:

### **1. Vehicles:**

- (i) Section 43000 *et seq.* of the California Health and Safety Code with respect to air emissions (smog checks);
- (ii) Section 27456b of the California Vehicle Code with respect to tires;
- (iii) Section 34500 *et seq.* of the California Vehicle Code with respect to documentation through its maintenance log or otherwise of a safety compliance report issued pursuant to Division 14.8 of the California Vehicle Code as applicable to each Vehicle, including bi-annual “BIT” inspections conducted by the California Highway Patrol;
- (iv) rules and regulations promulgated under the California Vehicle Code with respect to Vehicle highway lighting, flashing and warning lights, clearance lights, and warning flags;

- (v) rules and regulations of the California Department of Motor Vehicles with respect to Vehicle registration;
- (vi) Vehicle weight limits;
- (vii) the appropriate class of drivers' licenses issued by the California Department of Motor Vehicles;
- (viii) Control Measure for Diesel Particulate Matter from On-Road Heavy-Duty Residential and Commercial Solid Waste Collection Vehicles, 13 CCR § 2020 *et seq.*;
- (ix) 14 CCR §§ 17341, 17342, 17343 and 17344, with respect to equipment construction, safety and parking and identification of operating equipment.

**2. Containers:**

- (i) 14 CCR § 17314 with respect to maintenance and placement of containers;
- (ii) 14 CCR § 17317 with respect to placing identifying name and telephone number on containers.

**3. Labor:**

- (i) drug and alcohol testing;
- (ii) the Occupational Safety and Health Act (29 U.S.C. Section 651 *et seq.*), including the Solid Waste Disposal Facility Criteria promulgated by the U.S. EPA on October 9, 1991 (40 CFR, Parts 257 and 258); and the California Occupational Safety and Health Act (California Labor Code, Division 5, Parts 1-10, Section 6300 *et seq.*), and rules and regulations of California Division of Occupational Safety and Health;
- (iii) the Immigration Reform and Control Act of 1986 (PL.99-603);

**4. Environmental protection:**

- (i) CERCLA;
- (ii) RCRA;
- (iii) Clean Air Act (42 U.S.C. Section 1351 *et seq.*, 42 U.S.C. Section 7401-7642); and the California Clean Air Act (Health & Safety Code Sections 1251 *et seq.* and Health and Safety Code Sections 39000 *et seq.*);



- (iv) California Hazardous Waste Control Act (California Health & Safety Code, Section 25100 *et seq.*);
- (v) California Hazardous Materials Release Response Plan and Inventory Act (California Health & Safety Code, Division 20, Chapter 6.95, Section 25500 *et seq.*);
- (vi) Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code Section 25300 *et seq.*);
- (vii) Emergency Planning and Community Right to Know Act (42 U.S.C. Section 11001 *et seq.*); and

**5. Miscellaneous:**

- (i) County Lobbyist Ordinance;
- (ii) Civil Rights Act of 1964 (Subchapter VI or Chapter 21 of Title 42);
- (iii) California Integrated Waste Management Act; and
- (iv) Mono County Code.

**“Bear Carts”** means wheeled containers having a capacity of either 35, 64, or 95/96 gallons supplied by Franchisee for Collection of Customers’ Solid Waste that provides adequate protection against bears.

**“Bins”** means metal containers supplied by Franchisee for Collection of Commercial or Residential Customers’ Solid Waste (also commonly referred to as “dumpsters”).

**“Board”** or **“County Board”** means the Mono County Board of Supervisors.

**“Bulky Waste”** means Solid Waste that cannot be contained within a Residential Customer’s Cart, such as

- (1) furniture (including chairs, sofas, mattresses and rugs);
- (2) appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, small household appliances, and other similar items commonly known as **“white goods”**);
- (3) large Yard Wastes (including wood waste, tree branches, scrap wood); and
- (4) tires.

**“Capacity Fee(s)”** means those fees as set forth in Exhibit 7.01b.

**“Carts”** means wheeled containers having a capacity of either 35, 64, or 95/96 gallons supplied by Franchisee for Collection of Customers’ Solid Waste.

**“C&D Waste”** means used or discarded construction materials, packaging, and rubble removed from a premises during the construction or renovation of a structure resulting from construction, remodeling, repair, and demolition operations on pavements, houses, commercial buildings, and other structures.

**“CERCLA”** means the Comprehensive Environmental Response, Compensation and Liability Act of 1982 (42 U.S.C. § 9601 *et seq.*).

**“Collect”** or **“Collection”** or other form thereof refers to Solid Waste pickups made by Franchisee as required by and in compliance with the provisions of this Agreement.

**“Commencement Date”** means the later date of execution by the Parties indicated on the execution page of this Agreement.

**“Commercial”** or **“Commercial Premises”** means a premise that is not Residential, including premises where business activity is conducted, including offices, retail sales, services, institutions, wholesale operations, food service, manufacturing and industrial operations, public property, and facilities but excluding businesses conducted upon residential premises that are permitted under applicable zoning regulations and are not the primary use of the property. Commercial Collection Services are described in Section 4.01c(2).

**“Commercial Set-out Site”** is defined in Section 4.01(c)(2)(i).

**“Containers”** means the Carts, Bear Carts, Bins, or Roll-offs from which Franchisee must Collect Solid Waste.

**“Contract Year”** means the calendar year, commencing January 1 and ending December 31.

**“County”** means County of Mono, a political subdivision of the State of California, or any governmental entity which may hereinafter assume waste management obligations of County, including any joint exercise of powers authority or other similar public entity with which County participates or contracts with, established to provide solid waste management services or meet Solid Waste diversion requirements under Applicable Law. For the purposes of Indemnities, “County” also means its officers, employees, agents, franchisees, attorneys, administrators, affiliates, representatives, servants, insurers, heirs, assigns and any successor or successors to County’s interest.

**“County Code”** or **“Code”** means the Mono County Code, including Title 12.

**“County Office Hours”** means 8 a.m. to 5 p.m. on County Working Days.

**“County Payment Obligations”** means monetary amounts due and payable to County, or claims by County for those amounts, including those listed under Sections 13.02 and 14.01, any County Reimbursement Costs, and any amounts accrued and payable upon termination of the Agreement in accordance with Section 15.01.

**“County Reimbursement Costs”** means Direct Costs incurred by County plus ten percent (10%).

**“County Working Days”** means days on which County administrative offices are open to the public.

**“Customer(s)”** means the generators (including owners, tenants, occupants, and/or persons having the care or control of any premises within County) of Solid Waste to which Franchisee is required to provide Franchise Services.

**“Day”** or **“Days”** means calendar days.

**“Delivery Obligations”** means Franchisee’s obligation to deliver Solid Waste to the Designated Disposal Facility as set forth in Section 7.01.

**“Designated Disposal Facility”** means the Benton Crossing Landfill, located at 899 Pit Road in Mono County.

**“Direct Costs”** are actual costs incurred, including staff, equipment, materials, overhead, and other costs reasonably expended in the performance of an activity, certified by an authorized financial officer of the Party submitting a payment demand therefor.

**“Director”** means the Director of County Department of Public Works or his or her designee.

**“Diversion Facility”** is defined in Section 6.01(a).

**“Divert,” “Diverted,” “Diversion”** or other form thereof is defined in Section 6.01(a).

**“Diverted Recyclables”** is defined in Section 6.01(a).

**“Event of Default”** means an Event of Default listed in Section 12.10.023(E)(1) of the Mono County Code, or failure by the Franchisee to deliver solid waste to the Designated Disposal Facility, in accordance with Section 7.01 of this Agreement.

**“Franchise Fee”** means the fee described in Section 13.02(a).

**“Franchise Services”** means all Performance Obligations of Franchisee to Customer under Article 4.

**“Franchise Area”** means the unincorporated area of County of Mono, excluding that portion of County known as “Oasis” and described in Exhibit 4.01a.

**“Franchisee”** means Mammoth Disposal Company and any assignee thereof consented to by County in accordance with Section 17.01. For purposes of Indemnities, Franchisee also means Franchisee’s employees, officers, agents, subcontractors, and consultants performing or responsible for performing Franchise Services; provided that only signatory Mammoth Disposal Company, a California corporation, is obligated to provide indemnities and those employees, officers, agents, subcontractors, and consultants will not be liable therefor as individuals.

**“Franchisee’s Reimbursement Costs”** means the rate listed on Franchisee’s current fee schedule or, if not listed on the fee schedule, then Franchisee’s Direct Costs plus ten percent (10%).

**“Gross Revenues”** means any and all revenue or compensation in any form derived directly or indirectly by Franchisee, its Affiliates, subsidiaries, parents, or any other entity in which Franchisee has a financial interest in collecting, transporting, arranging, handling, and/or disposing of franchised Solid Waste generated in the Franchise Area. Gross Revenues does not include revenue from the sale of Recyclable Materials.

**“Hazardous Waste”** means “hazardous waste” as defined in Section 12.02.020 of the Mono County Code defining Unpermitted Waste.

**“Holidays”** means those days of each year when the Designated Disposal Site is closed, plus any additional days designated by Franchisee as Holidays, with the approval of County.

**“Household Hazardous Waste”** means any Unpermitted Waste generated incidental to owning or maintaining a place of residence, excluding any Unpermitted Waste generated in the course of operation of a business concern at a residence, in accordance with Section 25218.1 of the California Health and Safety Code.

**“Indemnities”** means all defenses and indemnities under this Agreement.

**“Independent Expert”** is the Person selected in accordance with Section 9.01(a).

**“Liabilities”** includes: liabilities, lawsuits, claims, complaints, causes of action, citations, investigations, judgments, demands, clean-up orders, damages (whether in contract or tort), including

- (1) personal injury to or death of, at any time, Franchisee’s employees, Subcontractors, County, or the public;
- (2) property damage of Franchisee, Subcontractors, County, or the public;
- (3) costs and expenses, (including all costs and expenses of litigation, mediation or arbitration, attorneys fees, whether County’s or Franchisee’s staff attorneys or outside attorneys, and court costs);

- (4) losses;
- (5) fines;
- (6) penalties; and
- (7) other detriments of every nature and description whatsoever,

whether under State of California or federal Applicable Law; and **Liabilities** arising from or attributable to any operations, repair, clean-up or detoxification, or preparation and implementation of any removal, remedial, response, closure, post-closure or other plan, regardless of whether undertaken due to government directive or action, such as remediation of surface or ground water contamination and replacement or restoration of natural resources.

**“Non-Collection Notice”** means either:

- (1) Verbal notice by Franchisee to Customer given within twenty-four (24) hours of the non-collection of Solid Waste from a Customer’s Set-out Site on the Regularly-Scheduled Collection Day notifying the Customer of the reason for the non-collection and notifying the Customer of how the non-collection will be remedied (e.g., the manner in which materials should be prepared by the Customer for collection or the date of rescheduled Collection); or
- (2) if directed by County, a 3-part (no carbon required) form with a cardstock backing (or other form approved by County) left by Franchisee for Customers at the times, in the events and in the manner described in Section 4.04 which contains, at a minimum:
  - a. the date and time it is given;
  - b. the complete address of the premises;
  - c. the reason for the non-collection;
  - d. the name of Franchisee’s employee who prepared the notice;
  - e. the manner in which materials should be prepared for collection; and
  - f. printed in English and Spanish.

Franchisee will leave a hard (cardstock) copy with the Customer, will retain one copy, and will transmit one copy to the Director on the next weekday which is not a Holiday.

**“Notice”** or **“Notify”** or other variation thereof means notice given in accordance with Section 18.01.

**“Office”** or **“Franchisee’s Office”** means the administrative office of Franchisee and identified by Franchisee to County.

**“Office Hours”** or **“Franchisee’s Office Hours”** means 8:00 a.m. to 5:00 p.m., Monday through Friday.

**“Overdue Rate”** means ten percent (10%) per annum.

**“Own”** or **“Ownership”** or other forms thereof means constructive ownership under the provisions of Section 318(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 318), as in effect on the date here, except that (i) ten percent (10%) is substituted for fifty percent (50%) in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) is disregarded. Where the Ownership interest is less than ten percent (10%), that interest is disregarded, and percentage interests is determined on the basis of the percentage of voting interest or value which the Ownership interest represents, whichever is greater.

**“Party”** and **“Parties”** refers to County and the Franchisee, individually and together.

**“Performance Obligations”** means Franchisee’s liabilities and obligations under this Agreement.

**“Permits”** means all federal, State, County, other local, and any other governmental unit permits, orders, licenses, approvals, authorizations, consents, and entitlements that are required under Applicable Law to be obtained or maintained by any Person with respect to Franchise Services.

**“Person”** includes any individual, firm, limited liability company, association, organization, partnership, industry, public or private corporation, trust, joint venture, the United States, the State, a County (excluding Mono County), a municipality, special purpose district, or any other entity whatsoever.

**“Procurement Proceedings”** means any memorandums, meetings, correspondence, telephone calls, field trips, draft documents, and the County Board sessions with respect to the planning, development, drafting negotiation and execution of this Agreement.

**“Prompt,” “Promptly,”** and variations thereof mean as soon as possible, but not less than two (2) days, unless otherwise specified.

**“Quarter”** means any of the 3-month periods identified in Exhibit 10.02a.

**“Quarterly Reports”** means reports described in Section 10.02(a).

**“Records”** are defined in Section 10.01(a).

**“Recyclables”** means materials that have been separated by the generator from the Solid Waste stream prior to disposal or which have been separated from the solid waste stream after disposal

for the purpose of creating raw materials from which new products will be made or for the purpose of reusing them as a used or reconstituted product. Recyclables includes Yard Waste.

**“Reasonable Business Efforts”** means those efforts a reasonably prudent business Person would expend under the same or similar circumstances in the exercise of that Person’s business judgment, intending in good faith to take steps calculated to satisfy the obligation which that Person has undertaken to satisfy.

**“Refuse”** means Solid Waste comprised of rubbish, trash, and garbage.

**“Regularly-Scheduled Collection Day”** means Regularly-Scheduled Residential Collection Day and Regularly-Scheduled Commercial Collection Day.

**“Regularly-Scheduled Commercial Collection Day”** is defined in Section 4.01(c)(2)(iv).

**“Regularly-Scheduled Residential Collection Day”** is defined in Section 4.01(c)(1)(iv).

**“Residential”** means any residential premises in Mono County such as single family, duplex, triplex, mobile home, multi-family, apartment, stock cooperative, and condominium residences in the unincorporated area of Mono County, excluding hotels, motels, and automobile courts, that subscribe to Residential Collection Service. Residential Collection Services are described in Section 4.01(c)(1).

**“Residential Set-out Site”** means the edge of the driveway in front of a Residential Premise or, if there is no accessible driveway, such other location as agreed to between the Residential Customer and Franchisee and specified in the Subscription Order.

**“Roll-offs”** means Containers designed for disposal of Solid Waste loaded onto and discharged from tilt-frame trucks or trailers at the Solid Waste generation site by winch or similar means. Such Containers are also commonly referred to as “debris boxes.”

**“Service Asset Documents”** are defined in Section 14.08(h).

**“Service Assets”** means all property of Franchisee used directly or indirectly in performing Franchise Services, including Vehicles, Containers, maintenance equipment and facilities, administrative equipment, and offices and related supplies.

**“Service Day”** means weekdays and Saturday, other than Holidays.

**“Service Fee(s)”** means those fees charged to Customers by Franchisee for Franchise Services.

**“Set-out Site”** means Residential Set-out Site and Commercial Set-out Site.

**“Solid Waste”** means solid waste defined in Chapter 12.02.020 of the Mono County Code that Franchisee is obligated to Collect pursuant to this Agreement, including Refuse, Bulky Waste, and C&D Waste.

**“Solid Waste Handling Services”** has the meaning defined in Section 12.02.020 of the Mono County Code.

**“Subscription Orders”** are described in Section 4.10.

**“Suspect Categories”** means race, color, religion, national origin, ancestry, age, physical handicap, medical condition, marital status, sex/gender, or sexual orientation.

**“Term”** is the period beginning on the Commencement Date and ending on the earlier of the expiration of the Agreement in accordance with Section 3.01 or termination of the Agreement in accordance with Article 14.

**“Uncontrollable Circumstance(s)”** means “uncontrollable circumstances” as defined in Section 12.10.023(E)(6) of the Mono County Code.

**“Unpermitted Waste”** is defined in Section 12.02.020 of the Mono County Code.

**“Unpermitted Waste Screening Protocol”** is prescribed in Section 5.06 and contained in Exhibit 5.06.

**“Vehicles”** means all trucks (including trucks providing Residential and Commercial Collection of Solid Waste, Bulky Waste, and litter pickup; and field supervisors’ and administrators’ vehicles), rolling stock and other vehicles used to provide Franchise Services (including Collection as well as repair and maintenance), whether owned or leased by Franchisee.

**“Violate,” “Violates,” or “Violation”** is defined in Section 12.10.023(E)(1)(c) of County Code.

**“Yard Waste”** is defined in Section 12.02.020 of County Code.



## **EXHIBIT 2.01: FRANCHISEE'S REPRESENTATIONS AND WARRANTIES**

**a. Status.** Franchisee is a corporation duly organized, validly existing and in good standing under the laws of the State of California or the State of Nevada and is qualified to do business in the State of California.

**b. Authority and Authorization.** Franchisee has full legal right, power, and authority to execute and deliver this Agreement and perform its obligations under this Agreement. This Agreement has been duly executed and delivered by Franchisee and constitutes a legal, valid and binding obligation of the Franchisee enforceable against the Franchisee in accordance with its terms.

**c. No conflicts.** Neither the execution nor delivery by the Franchisee of this Agreement, the performance by the Franchisee of its Performance Obligations, nor the fulfillment by the Franchisee of the terms and conditions of this Agreement: (i) conflicts with, violates, or results in a breach of any Applicable Law; (ii) conflicts with, violates, or results in a breach of any term or condition of any judgment, order, or decree of any court, administrative agency, or other governmental authority, or any agreement or instrument to which the Franchisee or any of its Affiliates is a party or by which the Franchisee or any of its Affiliates' properties or assets are bound, or constitutes a default thereunder.

**d. No approvals required.** No approval, authorization, license, permit, order, or consent of, or declaration, registration or filing with any governmental or administrative authority, commission, board, agency, or instrumentality is required for the valid execution and delivery of this Agreement by the Franchisee, except as has been duly obtained from its Board of Directors or other governing body or Person.

**e. No litigation.** As of the Commencement Date, there is no action, suit, proceeding, or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency, or instrumentality pending or, to the best of the Franchisee's knowledge, threatened, against the Franchisee wherein an unfavorable decision, ruling, or finding, in any single case or in the aggregate, would materially adversely affect the performance by the Franchisee of its Performance Obligations or in connection with the transactions contemplated by this Agreement, or which, in any way, would adversely affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by the Franchisee in connection with the transactions contemplated by this Agreement.

**f. Due Diligence.** Franchisee has made an independent investigation, examination, and research satisfactory to it of the conditions and circumstances surrounding the Agreement and best and proper method of providing Franchise Services (including Franchise Service types) and labor, equipment, and materials for the volume of Franchise Services to be provided. Franchisee agrees that it will make no claim against County based on any estimates, statements, or interpretations made by any officer, employee, agent, or consultant of County in connection with the procurement of this Agreement that proves to be in any respect erroneous.

**g. Compliance with Applicable Law.** Franchisee has fully complied with all Applicable Law, including without limitation law relating to conflicts of interest, in the course of procuring this Agreement.

**EXHIBIT 4.01a: SERVICE AREA**

[SEE MAP OR LEGAL DESCRIPTION OF THE SERVICE AREA ATTACHED TO THIS EXHIBIT.]

**EXHIBIT 4.05e: CUSTOMER COMPLAINT AND BILLING DISPUTE RESOLUTION  
PROTOCOL**

Franchisee's Customer complaint and billing dispute resolution protocol is attached to this Agreement.

## **EXHIBIT 5.02g: SERVICE ASSET INVENTORY**

Attached to this Exhibit is an inventory of Service Assets, whether new or used, owned or leased by Franchisee, including:

- (1) maintenance yards and facilities; the Office and any other administrative and customer service offices (together with equipment therein),
- (2) Vehicles described by type (i.e., manufacture and model number for cab, chassis and body; and descriptive notation said as front end loader, compactor, etc.), number, DMV license number, the age of the chassis and body; type of body (open-top, closed etc.); type of fuel used; feed and practical or net capacity, including bins or compartments, as applicable; weight; the date of acquisition; the maintenance and rebuilt status; lease or installment purchase information; warranty information;
- (3) Containers described by volume, size, and specifications; and
- (4) computer hardware and software for billing, required record-keeping, inventory, and maintenance and repair records.

## **EXHIBIT 5.06: UNPERMITTED WASTE SCREENING PROTOCOL**

Franchisee will screen all loads of Solid Waste for Unpermitted Waste by causing its drivers to observe, directly or through mirrors or other mechanism(s), the tipping of Containers into Vehicles at the point of Collection. Franchisee will employ direct visual inspection where necessary and appropriate. Franchisee will conduct on-going training of its drivers, mechanics, dispatchers, and other support personnel in Unpermitted Waste recognition and safety procedures, including notification of County as described below. Franchisee will carry in its Vehicles literature developed by County pertaining to the proper handling of Unpermitted Wastes. Such literature will be left by Franchisee with its Customers upon Customer request, upon identification of Unpermitted Waste, or upon request by County.

Franchisee will additionally comply with the following requirements in handling Unpermitted Waste that is Hazardous Waste:

- (1) Driver will immediately notify its dispatch center (“Dispatch”) and take immediate and appropriate action to contain and isolate said load;
- (2) Dispatch will immediately notify the Franchisee’s field supervisor;
- (3) Dispatch will immediately contact the Environmental Health Division of the Mono County Health Department, or if those offices are closed, County Emergency Communications Center;
- (4) Depending on the amount and identity of the Hazardous Waste involved, Franchisee will at its option either (i) segregate and containerize the Hazardous Waste in preparation for manifesting and transport or (ii) contact a permitted Hazardous Waste transport company to assist therein. Franchisee will ensure that an authorized official of Franchisee is available in person or by telephone at all times to authorize the expenditure of funds, if necessary, for Hazardous Waste cleanup. Franchisee will transport any Hazardous Waste it chooses to transport in accordance with Applicable Law, including but not limited to the following:
  - (i) the regulations of the Department of California Highway Patrol (Title 13, Code of California Regulations or “CCR”);
  - (ii) regulations of the federal Department of Transportation (DOT) (Title 49, Code of Federal Regulations);
  - (iii) regulations of the U.S. Environmental Protection Agency (Title 40, Code of Federal Regulations);
  - (iv) the regulations of the California Occupational Health and Safety Administration (Title 8, CCR); and

(v) the regulations of the California Department of Toxic Substances Control (Title 22, CCR).

- (5) No later than the next County Working Day following its occurrence, Franchisee will orally notify the Director of the incident and its status and/or ultimate disposition. Franchisee will provide a written incident report to the Director within fourteen (14) days. The report will include the following: (i) the date and time of the occurrence; (ii) name of driver; (iii) description of hazardous materials; (iv) origin of the hazardous material (if identifiable); (v) observations made and actions taken by Driver and/or Field Supervisor; (vi) the status and/or ultimate disposition of the material; and (vii) any additional relevant comments.

At least once per Contract Year, Franchisee will provide Notice to its Customers indicating the locations where Unpermitted Waste may be delivered for proper management and processing.

Franchisee will make available to County promptly upon request all Records, including plans and/or other documents maintained by Franchisee with respect to Unpermitted Waste in accordance with Applicable Law.

In lieu of compliance with the above Unpermitted Waste Screening Protocol, Franchisee may provide County with a copy of an Unpermitted Waste Screening Protocol it has developed containing procedures in accordance with applicable law for handling Unpermitted Waste that is hazardous waste that is no less stringent than the Protocol set forth in this Exhibit 5.06. Upon approval by the Director, Franchisee's Unpermitted Waste Screening Protocol shall replace the Protocol set forth herein.

**EXHIBIT 7.01b: CAPACITY FEES**

Capacity Fees shall be as follows:

For loads verified by a weight ticket from County's Walker Transfer Station, County's Bridgeport Transfer Station, or issued by a certified weighmaster from another California or Nevada state certified truck scale satisfactory to the Director, as required by Section 7.01b, Franchisee shall pay County the amount of County's solid waste tipping fee, as established and may be amended by resolution of the County Board of Supervisors.

As of the Commencement Date of this Agreement, the amount of County's solid waste tipping fee is \$74.00 per ton.



## **EXHIBIT 10.01a: RECORDS**

Franchisee will collect, record, and maintain, at a minimum, the information specified in this Exhibit 10.01a, indicating the date and the day of the week of the event reported. Franchisee will provide the following information to County promptly upon written request by County.

1. Tonnage. Franchisee will collect, record, and maintain information regarding the tonnage of:
  - (a) Residential and Commercial Solid Waste;
  - (b) Recyclables;
  - (c) Bulky Waste; and
  - (d) C&D Wastecollected and delivered to the Designated Disposal Facility, including the following information:
  - (a) route numbers;
  - (b) truck numbers;
  - (c) Designated Disposal Facility's certified weight ticket number for each load;
  - (d) weight of each load (gross, tare, and net); and
  - (e) source-jurisdiction allocation or ratio.
  
2. Monetary Amounts. Franchisee will collect, record, and maintain information regarding the following:
  - (a) Service Fees – service fees charged to and collected from Customers.
  - (b) Subscription Orders – each Customer's Subscription Order and account service information (Section 4.10).
  - (c) Customer Billing Records – billing records required by Section 4.09, including Customers' special Service requests for on-call pickup of excess and Bulky Waste.
  - (d) Franchisee's Reimbursement Costs – Franchisee's Reimbursement Costs for emergency clean up.
  - (e) Fees payable to County.
    - (i) Financial records, books, accounts, and warranties corroborating the Franchise Fee owed to County in accordance with Section 13.02, including all documentation required by Section 13.02; and
    - (ii) financial records, books, and accounts corroborating any other County Payment Obligations.

3. Customer Service. Franchisee will collect, record, and maintain information regarding the following:
  - (a) Complaint Records including logged complaints for alleged missed collections; failure to properly replace Containers (Section 4.01(c)(1)(iii) and Section (c)(2)(iii)), failure to clean up litter (Section 4.03(b)), discourtesy (Section 4.03(a)), damaged property, collecting outside permitted hours (Section 4.01(d)(1)), all including time, date, and manner of resolving complaint.
  - (b) Requests for Franchise Services, including record of Customers' telephonic, mailed, faxed or e-mailed requests to commence Franchise Services (Section 4.01(c)(1)(i) and Section (c)(2)(i)); discontinue Franchise Services (Section 4.01(c)(1)(ii) and Section (c)(2)(ii)); deliver, repair or replace, or pick up Containers (Section 4.01(e)); change size or number of Containers; or supply locks (Section 4.01(e)); and any failure to timely commence or provide any of those Services.
  - (c) Copies of Notices to Customers, including notice of Holiday or changed schedules enclosed in Customers' bills (Section 4.01(d)(2) and Section 4.06) and public education and community relations materials (Section 4.06).
  
4. Operations. Franchisee will collect, record, and maintain information regarding the following:
  - (a) Routing Specifications (Section 5.01).
  - (b) Service Asset Inventory (Section 5.02(g)) and Service Asset Documentations (Exhibit 5.02g).
  - (c) Compliance with Applicable Law, including copies of all violations, tire invoices and specifications; Vehicle registration, certifications, reports and maintenance logs; drivers' licenses, training records (including Unpermitted Waste identification and handling), and drug and alcohol testing; records showing compliance with Federal Immigration and Control Act of 1986; and approvals, authorizations, and Permits.
  - (d) Records of Vehicle inspections, including Vehicles' fire extinguisher service records, and warranty and maintenance recommendations.
  - (e) Records of Criminal Activity (Article 12).
  - (f) Any documentation with respect to insolvency, bankruptcy or liquidation described in Mono County Code Section 12.10.023(E)(2)(f), including records with respect to Service Assets, such as any seizures, attachments or levies.
  - (g) Container maintenance (Section 4.01(e)).
  
5. Insurance and Other Performance Assurances. Insurance, performance bonds, letter of credit etc. (Article 11).

## **EXHIBIT 10.02a: QUARTERLY REPORTS**

For the purposes of the Quarterly Reports, the term “quarters” is defined as follows: “First Quarter” consists of January, February, and March; “Second Quarter” consists of April, May, and June; “Third Quarter” consists of July, August, and September; and “Fourth Quarter” consists of October, November, and December. In the Quarterly Report, Franchisee will include, at a minimum, the following information:

- (a) Summary of Records. A summary of the Records for events (including Unpermitted Waste spills or other incidents, Customer complaints, Vehicle inspections, Criminal Activity, or other events) during the previous quarter and a copy of Franchisee’s complaint log, including missed pickups, Non-Collection Notices and a description of how each complaint was resolved.
- (b) Certifications. A certification that Franchisee has met its Performance Obligations including Delivery Obligations (Section 7.01) for the quarter or, alternatively, a description of those Performance Obligations and Delivery Obligations not met during the quarter.
- (c) Summary of Education Efforts. A summary of education efforts undertaken in that quarter and copies of all materials distributed to Customers during the Quarter, including community relations materials (Section 4.06(a)(1)) and promotional materials (Section 4.06(a)(3)).
- (d) Diversion Information. Any information necessary to meet the reporting requirements of the Act, including Solid Waste Collection and disposal tonnages, Recyclables collection and processing tonnages, and the origin thereof.
- (e) Operational Report. A discussion of Service or operational problems and resolution thereof or planned therefore, if requested by County.
- (f) Collection Fee Summaries: Fees invoiced and paid, including (i) service fees charged for each type of service; (ii) service fees collected from Customers; and (iii) Franchise Fees paid to County.

Quarterly Reports may be made on Form 10.02a which is attached to this Exhibit.

**FORM 10.02a**

**MONO COUNTY FRANCHISEE QUARTERLY REPORT**

**Submitted by: \_\_\_\_\_ (Franchisee)**

FOR THE YEAR OF 20\_\_

- 1st Quarter (January, February, March) (due by April 15)
- 2nd Quarter (April, May, June) (due by July 15)
- 3rd Quarter (July, August, September) (due by October 15)
- 4th Quarter (October, November, December) (due by January 15)

<p><b>1. Summary of Records</b></p>	<p>a. Unpermitted Waste Spills:                  b. Vehicle Inspections:                  c. Criminal Activity:                  d. Other Events:                  e. Complaint Log:</p>	<p><input type="checkbox"/> None    <input type="checkbox"/> See Attached  <input type="checkbox"/> None    <input type="checkbox"/> See Attached  <input type="checkbox"/> None    <input type="checkbox"/> See Attached  <input type="checkbox"/> None    <input type="checkbox"/> See Attached  <input type="checkbox"/> None    <input type="checkbox"/> See Attached</p>
<p><b>2. Certifications</b></p>	<p>I represent and warrant, under penalty of perjury, that Mammoth Disposal Company (Franchisee) has met its Performance Obligations, including Delivery Obligations, for the Quarter noted above. <b>OR,</b></p> <p>_____                  Name</p> <p>_____                  Title</p> <p>_____                  Signature</p>	<p>During the Quarter noted above, Mammoth Disposal Company (Franchisee) did <u>not</u> meet all of its Performance Obligations (including Delivery Obligations) and will pay to County liquidated damages for each failure as noted on the attached sheet.</p> <p>_____                  Name</p> <p>_____                  Title</p> <p>_____                  Signature</p>
<p><b>3. Summary of Education Efforts</b></p>	<p>Such as inserts, mailers, magnets, flyers, etc.</p>	<p><input type="checkbox"/> None    <input type="checkbox"/> See Attached</p>
<p><b>4. Diversion Information</b></p>	<p>Information required by the Act, including Solid Waste Collection and disposal tonnages, Recyclables collection and processing tonnages, and origin, in accordance with Section 6.01.</p>	<p><input type="checkbox"/> None    <input type="checkbox"/> See Attached</p>
<p><b>5. Collection Fee Summaries</b>  (fees invoiced and paid)</p>	<p>a. Service fees charged for each type of service                  b. Service fees collected from Customers                  c. Franchise fees paid to County</p>	<p><input type="checkbox"/> See Attached                  \$ _____                  \$ _____</p>

## **EXHIBIT 10.02b: ANNUAL REPORTS**

In the Annual Report, Franchisee will include, at a minimum, a collated summary of the information contained in Quarterly Reports, including reconciliation of any adjustments from prior Quarterly Reports, and the following information and statements:

1. **Service Asset Inventory.** A complete inventory of Service Assets in accordance with Article 5.02g.
2. **Financial Status Statement.** A statement by Franchisee's Chief Executive Officer either: (i) that in the prior Contract Year there have been no material changes in Franchisee's financial status or condition; or (ii) describing any material changes in Franchisee's financial status or condition during that Contract Year.
3. **Pending litigation Statement.** A declaration describing the current status of any criminal or civil litigation pending against Franchisee, Franchisee's parent company, or any subsidiaries of the parent company, if any, which relates to Solid Waste handling, collection, recycling, or disposal, including any Criminal Activity defined in Section 12.01a.
4. **Subcontractors.** The names of all Subcontractors, the scope and amount of services or goods Subcontractors provide to Franchisee, and a description of Franchisee's relationships to each Subcontractor (including Ownership interests) (Section 16.09).

Annual Reports may be made on Form 10.02b which is attached to this Exhibit.

**FORM 10.02b**

**MONO COUNTY FRANCHISEE ANNUAL REPORT FOR 20\_\_\_\_\_**

**Submitted by: \_\_\_\_\_ (Franchisee)**

(Due by February 15)

<p><b>1. Total information contained in Quarterly Reports for the year</b></p>		<input type="checkbox"/> See Attached
<p><b>2. Service Asset Inventory</b></p>		<input type="checkbox"/> See Attached
<p><b>3. Financial Status Statement</b></p>	<p>I represent and warrant, under penalty of perjury, that in the prior Contract Year there have been no material changes in Mammoth Disposal Company's (Franchisee) financial status or condition.</p> <p>_____</p> <p>Name</p> <p>_____</p> <p>Title (CEO or Principal)</p> <p>_____</p> <p>Signature</p>	<p>I represent and warrant, under penalty of perjury, that in the prior Contract Year, those changes to Mammoth Disposal Company's (Franchisee) financial status or condition listed on the attached sheet which is labeled "Material Changes to Mammoth Disposal Company's Financial Status or Condition" have occurred.</p> <p>_____</p> <p>Name</p> <p>_____</p> <p>Title (CEO or Principal)</p> <p>_____</p> <p>Signature</p>
<p><b>4. Pending Litigation Statement</b></p>	<p>A declaration describing the current status of any criminal or civil litigation pending against Franchisee, Franchisee's parent company, or any subsidiaries of the parent company which relates to Solid Waste handling, including any Criminal Activity under Section 12.01(a).</p>	<input type="checkbox"/> None <input type="checkbox"/> See Attached
<p><b>5. Subcontractors</b></p>	<p>Names of all Subcontractors, the scope and amount of Franchise Services, other services, or goods Subcontractors provide to franchisee, and a description of Franchisee's relationships to each Subcontractor (including Ownership interests) (Section 16.09).</p>	<input type="checkbox"/> None <input type="checkbox"/> See Attached

## **EXHIBIT 11.01a: INSURANCE**

1. Workers' Compensation and Employer's Liability. Franchisee will maintain workers' compensation insurance covering its employees in statutory amounts and otherwise in compliance with the laws of the State of California. Franchisee will maintain Employer's Liability insurance in an amount not less than One Million dollars (\$1,000,000.00) per accident or disease.

The Workers' Compensation policy will contain endorsements in substantially the following form:

- (a) "30 days prior written notice will be given to County in the event of cancellation of this policy. Such notice will be sent to:

Mono County Risk Management  
Post Office Box 696  
Bridgeport, California 93517"

- b. "Insurer waives all right of subrogation against County and its officers and employees for losses arising from work performed for County."

2. General Liability and Automobile Liability. Franchisee will maintain comprehensive Commercial General Liability insurance with a combined single limit of not less than Two Million dollars (\$2,000,000.00) per claim or occurrence and Four Million dollars (\$4,000,000.00) aggregate covering all claims and all legal liability for Personal injury, bodily injury, death, and property damage, including the loss of use thereof, arising out of Franchisee's performance of, or its failure to perform services under this Agreement.

Franchisee will also maintain Automobile Liability Insurance for each of Franchisee's vehicles used in the performance of this Agreement, including owned, non-owned, leased or hired vehicles, in the minimum amount of One Million dollars (\$1,000,000.00) combined single limit per accident.

The Commercial General Liability and Automobile Liability insurance required by this section will be written on an "occurrence" (or in the case of Automobile Liability, on an "accident" basis), rather than a "claims made" basis, if such coverage is readily obtainable for a commercially reasonable premium. If it is not so obtainable, Franchisee must arrange for an extended reporting period ("tail coverage") to protect County from claims filed within one year after the expiration or termination of this Agreement relating to incidents that occurred prior to such expiration or termination. The policy may not contain a deductible or self-insured retention of more than ten thousand dollars (\$10,000.00) per occurrence without prior written approval of County. The existence of a self-insured retention or deductible will not affect Franchisee's duty to defend and indemnify County under this Agreement as to Claims below the self-insured retention or deductible level.

The Commercial General Liability policy will contain endorsements in substantially the following form:

- a. “30 days prior written notice will be given to County in the event of cancellation of this policy. Such notice will be sent to:

Mono County Risk Management  
Post Office Box 696  
Bridgeport, California 93517”

- b. “The County, its officers, employees, and agents are additional insureds on this policy.”
- c. “This policy will be considered primary insurance as respects any other valid and collectible insurance maintained by County, including any self-insured retention or program of self-insurance, and any other such insurance will be considered excess insurance only.”
- d. “Inclusion of County as an insured will not affect County’s rights as respects any claim, demand, suit or judgment brought or recovered against Franchisee. This policy will protect Franchisee and County in the same manner as though a separate policy had been issued to each, but this will not operate to increase the insurer’s liability as set forth in the policy beyond the amount shown or to which the insurer would have been liable if only one party had been named as an insured.”

3. Pollution Liability. Franchisee will purchase and thereafter maintain, so long as such insurance is available on a commercially reasonable basis, Pollution Liability insurance in the amount of One Million dollars (\$1,000,000.00) covering liability arising from the sudden and accidental release of pollution in the performance of Franchise Services.

4. Physical Damage. Franchisee will maintain comprehensive (fire, theft and collision) Physical Damage insurance covering the vehicles and the machinery and equipment that is owned by Franchisee and used in providing service to County under this Agreement, with a deductible or self-insured retention of not greater than Fifty Thousand dollars (\$50,000.00). The Physical Damage policy will contain the following endorsements:

- (a) Notice of cancellation, as provided in Exhibit 11.01a(2)(a); and
- (b) Cross liability endorsement, as provided in Exhibit 11.01a(2)(d).



**EXHIBIT 12.01e(2): FRANCHISEE OR ANY OF ITS CONTRACT MANAGERS**

Franchisee Representative identifies the following individuals by name of corporate position as individuals meeting the definition of “Franchisee or any of its Contract Managers.” Upon change in individuals, Franchisee Representative will amend this Exhibit in its next Quarterly Report.

If the Franchisee amends the identification, then the Parties will respectively substitute this amended Exhibit. The dated signature of each Party Representative on such amended form will be deemed evidence that Notice was given in accordance with Section 18.01 and that the new attachment supersedes the prior attachment.

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

Date: \_\_\_\_\_

Franchisee Representative

## EXHIBIT 13.01a: SERVICE FEE FLOORS

Franchisee will not charge Customers Service Fees that are less than those identified below:

RESIDENTIAL RATES <sup>1</sup>		COMMERCIAL RATES <sup>1</sup>							
CANS, CARTS, VOLUME		BINS			DEBRIS BOXES		COMPACTOR		
Size <sup>2</sup>	“A” <sup>3</sup>	Size <sup>2</sup>	“A” <sup>3</sup>	“B” <sup>3</sup>	Size <sup>2</sup>	“B” <sup>3</sup>	Size <sup>2</sup>	“B” <sup>3</sup>	
1 35-gal. Cart	\$17.50	1 cy	\$114.50	\$26.50	10 cy	\$401.00	10 cy	\$368.50	
2 35-gal. Carts	\$23.00	2 cy	\$157.50	\$36.50	20 cy	\$671.50	20 cy	\$735.50	
1 64-gal Cart									
2 64-gal Carts									
1 95-gal. Cart	\$35.00	3 cy	\$203.00	\$46.50	30 cy	\$917.00	30 cy	\$1,105.00	
2 95-gal. Carts	\$48.50	4 cy	\$236.50	\$54.50	40 cy	\$1,278.50	40 cy	\$1,467.00	
1 cubic yard (cy) <sup>4</sup>	\$28.50	6 cy	\$307.50	\$70.50					
1 Bear Cart									

Notes:

1. Rates may be adjusted annually in accordance with the formula set forth in Section 13.01(c)(1).
2. Sizes are nominal values, not precise volumes. Fees for nominal container volumes that fall in between or higher than those listed will be determined by linear interpolation or extrapolation, respectively, and rounded to the nearest three significant figures.
3. Service fee categories identified above are as follows: “A” = cost per month; “B” = cost per dump.
4. Or approximately equivalent to 6 35-gallon cans/carts.

**EXHIBIT 14.01: COMPENSATORY AND LIQUIDATED DAMAGES**

References in the chart below to “per breach per day” refer to the first occurrence and continuation on successive days. For example, failure to correct a missed pickup would result in liquidated damages on the day of the scheduled pickup and each following day until corrected.

1. Compensatory Damages. If County in its sole discretion chooses not to exercise its right to terminate this Agreement in accordance with Section 14.02 in the event Franchisee fails to deliver Solid Waste to the Designated Disposal Facility in accordance with Section 7.01, then the Franchisee will pay County:

- (a) County Reimbursement Costs to provide necessary persons for monitoring of Franchisee’s compliance with said delivery requirements, including following Franchisee’s vehicles on Service routes; and
- (b) The County’s Reimbursement Cost of enforcing or securing specific performance of Franchisee’s delivery obligation; and
- (c) For each ton of Solid Waste collected by Franchisee that Franchisee delivers to a facility or site other than the Designated Disposal Facility (“Undelivered Tons”), as demonstrated by weigh bills at said other facility or site, reports by any monitoring party, or such other evidence as may be deemed satisfactory by County, the Capacity Fee set forth in Exhibit 7.01b. County may estimate the number of Undelivered Tons based on prior disposal records, Customer lists, or other means.

2. Liquidated Damages. The following is a schedule of liquidated damages for additional breaches.

<b>DESCRIPTION OF BREACH</b>	<b>DAMAGES</b>
Failure to correct a missed pick-up [Section 4.01(c)(1)(iv) and Section 4.01(c)(2)(iv)].	Up to \$100 per failure per day.
Failure to return emptied container to its proper location [Section 4.01(c)(1)(iii)].	Up to \$100 per failure per day.
Failure to provide Residential Customers with written notice of the availability of cart or can service [Section 4.01(c)(1)(iii)].	Up to \$100 per failure per day.
Failure to commence or discontinue Franchise Services [Section 4.01(c)(1)(i) and Section 4.01(c)(2)(i)]; or to deliver, repair or replace, or pick up Containers [Section 4.01(c)(1)(iii) and Section 4.01(c)(2)(iii)]; change size or number of Containers [Section 4.01(e)]; supply locks [Section 4.01(e)], or clean, paint, and maintain Containers [Section 4.01(e)].	Up to \$100 per failure per day.
Failure to comply with authorized collection hours [Section 4.01(d)].	Up to \$100 per failure per day.
Failure to provide any Customer with timely notice of change in Collection schedule [Section 4.01(d)].	Up to \$100 per failure.

<b>DESCRIPTION OF BREACH</b>	<b>DAMAGES</b>
Discourteous behavior by Franchisee’s employees reported by or complained of by customers to Franchisee or County [Section 4.03(a)].	Up to \$100 per incident.
Failure to compensate, repair or replace damaged pavements, utilities and/or customer property caused by Franchisee or its personnel [Section 4.03(d)].	Up to \$250 per failure.
Failure to clean up spillage or litter caused by Franchisee [Section 4.03(b) and (c)]. Failure to properly cover materials in Collection Vehicles [Section 4.03(c)] or to maintain or identify Vehicles [Section 5.02].	Up to \$100 per failure per location.
Failure to maintain a toll-free telephone number or required office hours [Section 4.05(a)].	Up to \$100 per failure per day.
Failure to timely respond and resolve each complaint in accordance with the complaint resolution protocol [Section 4.05(e)].	Up to \$250 per failure.
Failure to record a complaint [Section 4.05(d) and Section 10.01]. Failure to provide County access to records of complaints or to provide copies of complaint logs in Quarterly Reports [Section 4.05(d) and Section 10.02].	Up to \$250 per failure.
Failure to timely submit general Customer correspondence and promotional materials, news releases, public education or community relations materials to County for County review [Section 4.06].	Up to \$100 per occurrence and additionally up to \$100 per day for each day prior to retraction or correction of misinformation.
Failure to provide Customers with a written Subscription Order [Section 4.10].	Up to \$100 per failure per day.
Failure to meet with County [Section 5.07]. Failure to return County phone calls, e-mails, or other correspondence from County [Section 8.07].	Up to \$100 per failure per day.
Failure to maintain or timely submit complete Reports and/or documents to County (such as Quarterly and Annual Reports [Section 10.02], Financial Reports [Section 10.03], Route Maps and Route Changes [Section 5.01(a) and (b)], Service Asset Inventory [Section 5.02(g)], Contingency Plan [Section 5.05], Hazardous Waste Screening Protocol [Section 5.06], or Insurance certificates or policies [Article 11].)	Up to \$100 per failure or per day that a Report or document is late.
Failure to perform any other Performance Obligation set forth in this Agreement.	Up to \$100 per failure per day.

**EXHIBIT 16.09: COUNTY-APPROVED SUBCONTRACTORS**

**PRIMARY FRANCHISE AGREEMENT**

**BETWEEN COUNTY OF MONO**

**AND**

**D & S WASTE REMOVAL, INC.**

**FOR COLLECTION OF SOLID WASTE**

**FROM RESIDENTIAL AND COMMERCIAL CUSTOMERS**

**IN UNINCORPORATED MONO COUNTY**

**SEPTEMBER 2018**

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## TABLE OF CONTENTS

---

ARTICLE 1.	DEFINITIONS AND CONTRACT INTERPRETATION .....	2
1.01	Definitions.....	2
1.02	Interpretation and Construction. ....	2
1.03	Integration.....	2
1.04	Severability.....	3
1.05	Interpretation.....	3
1.06	Timely Performance.....	4
ARTICLE 2.	FRANCHISEE’S REPRESENTATIONS AND WARRANTIES .....	4
2.01	Franchisee.....	4
ARTICLE 3.	TERM OF AGREEMENT.....	4
3.01	Term.....	4
3.02	Survival of Certain Provisions.....	5
ARTICLE 4.	COLLECTION .....	5
4.01	Scope of Basic Franchise Services. ....	5
4.02	Pickup of Excess and Bulky Waste.....	9
4.03	Service Standards.....	10
4.04	Service Exceptions.....	11
4.05	Customer Service.....	12
4.06	Public Education and Community Relations.....	13
4.07	Customers’ Privacy.....	14
4.08	No Discrimination.....	15
4.09	Franchisee Billing.....	15
4.10	Description of Customers’ Rights.....	15
4.11	Customer Satisfaction Survey.....	16
4.12	Public Performance Review.....	16
4.13	Enforcement of Franchise.....	17
ARTICLE 5.	OPERATIONS.....	17
5.01	Routing.....	17
5.02	Vehicles, Service Assets, and Drivers.....	18
5.03	Public Resources Code Section 49520.....	19
5.04	Personnel.....	19
5.05	Contingency Plan.....	20
5.06	Unpermitted Waste.....	20
5.07	Annual Meetings.....	20
ARTICLE 6.	DIVERSION.....	21
6.01	Diversion Reporting.....	21



6.02	Additional Programs .....	22
ARTICLE 7. SOLID WASTE DISPOSAL.....		22
7.01	Transportation to Designated Disposal Facility.....	22
7.02	Defense and Indemnification; Release.....	24
7.03	Disposal Fees. ....	25
ARTICLE 8. MISCELLANEOUS SERVICE PROVISIONS .....		26
8.01	Emergency Services.....	26
8.02	Title to Solid Waste. ....	26
8.03	Compliance with Applicable Law. ....	26
8.04	Cooperation with Waste Studies.....	27
8.05	Service Materials Belong to County.....	27
8.06	Recycled Materials.....	28
8.07	Responsiveness to County. ....	28
8.08	Commingling of Waste.....	28
ARTICLE 9. DISPUTE RESOLUTION BY INDEPENDENT EXPERT .....		28
9.01	Independent Expert.....	28
ARTICLE 10. RECORDS AND REPORTING.....		29
10.01	Records.....	29
10.02	Reporting.....	30
10.03	Financial Records and Reports. ....	31
10.04	Proprietary Reports and Records.....	32
ARTICLE 11. INSURANCE, INDEMNIFICATION AND PERFORMANCE ASSURANCES .....		32
11.01	Insurance.....	32
11.02	Franchisee Defense and Indemnification.....	33
11.03	Letter of Credit.....	34
ARTICLE 12. CRIMINAL ACTIVITY.....		35
12.01	Criminal Activity.....	35
ARTICLE 13. SERVICE FEES.....		37
13.01	Service Fees. Franchisee understands and acknowledges, as follows: .....	37
13.02	Fees Payable by Franchisee. ....	40
13.03	Payment of Moneys Due County.....	41
13.04	Fee Disputes.....	41
ARTICLE 14. BREACHES, DEFAULTS, DAMAGES, AND OTHER REMEDIES .....		42
14.01	Certain Breaches and Damages.....	42

14.02 Remedies Upon Default.....	43
14.03 Remedies Not Exclusive.....	44
14.04 Waivers.....	45
14.05 Jurisdiction; Venue.....	45
14.06 Costs.....	45
14.07 Assurance of Performance.....	45
14.08 County Right to Perform Franchise Services.....	46
ARTICLE 15. FRANCHISEE’S OBLIGATIONS UPON EXPIRATION OR TERMINATION.....	49
15.01 Pay Outstanding Amounts.....	49
15.02 Cooperation During Transition.....	49
ARTICLE 16. THE PARTIES.....	49
16.01 Franchisee is Independent Contractor.....	49
16.02 Parties in Interest.....	50
16.03 Binding on Successors.....	50
16.04 Further Assurances.....	50
16.05 Actions of County in Its Governmental Capacity.....	50
16.06 Franchisee’s Obligations Performed at Its Sole Expense.....	50
16.07 Parties’ Representatives.....	50
16.08 Due Diligence.....	51
16.09 Subcontracting.....	51
16.10 No Use of County Name.....	52
ARTICLE 17. ASSIGNMENT AND AMENDMENTS.....	52
17.01 Assignment.....	52
17.02 Amendments.....	53
ARTICLE 18. NOTICES, CONSENTS, APPROVALS, ETC.....	53
18.01 Notices.....	53
18.02 Consents and Approvals.....	54
18.03 Exercise of Discretion by County.....	54
ARTICLE 19. EXECUTION OF AGREEMENT.....	55
19.01 Authority to Execute.....	55

## **EXHIBITS**

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EXHIBIT R-1: FINDINGS REGARDING DESIGNATED DISPOSAL FACILITY .....	i
EXHIBIT 1.01: DEFINITIONS.....	iv
EXHIBIT 2.01: FRANCHISEE’S REPRESENTATIONS AND WARRANTIES .....	xiv
EXHIBIT 4.01a: SERVICE AREA .....	xvi
EXHIBIT 4.05e: CUSTOMER COMPLAINT AND BILLING DISPUTE RESOLUTION PROTOCOL .....	xvii
EXHIBIT 5.02g: SERVICE ASSET INVENTORY .....	xviii
EXHIBIT 5.06: UNPERMITTED WASTE SCREENING PROTOCOL.....	xix
EXHIBIT 7.01b: CAPACITY FEES .....	xxi
EXHIBIT 10.01a: RECORDS .....	xxii
EXHIBIT 10.02a: QUARTERLY REPORTS .....	xxiv
EXHIBIT 10.02b: ANNUAL REPORTS .....	xxvi
EXHIBIT 12.01e(2): FRANCHISEE OR ANY OF ITS CONTRACT MANAGERS .....	xxx
EXHIBIT 13.01a: SERVICE FEE FLOORS .....	xxxii
EXHIBIT 14.01: COMPENSATORY AND LIQUIDATED DAMAGES .....	xxxiii
EXHIBIT 16.09: COUNTY-APPROVED SUBCONTRACTORS .....	xxxiv

This Agreement (“**Agreement**”) is made and entered into by and between County of Mono, a political subdivision of the State of California (the “**County**”), and D & S Waste Removal, Inc., a Nevada corporation operating primarily out of Yerington, Nevada (the “**Franchisee**”), on the later date of execution by the Parties indicated on the execution page of this Agreement. Hereinafter, the Parties may be referred to individually as a “**Party**” or collectively as the “**Parties**”.

## RECITALS

1. County is responsible for protection of public health and the environment. County is not only authorized but is required to provide solid waste handling services to its citizens under the provisions of the California Integrated Waste Management Act (the “**Act**”), which is set forth in the California Public Resources Code at Section 40000 *et seq.*, including source reduction, recycling, composting, and the collection, transfer and disposal of solid waste within the unincorporated County area.

2. County is liable for its solid waste. County, not any waste hauler, is liable to the State under the Act for any fines up to \$10,000 per day levied for noncompliance with the Act. Local public agencies like County have also generally been held liable under federal Superfund laws for the costs of cleaning up Hazardous and Unpermitted Waste sites that accepted solid waste generated within the jurisdiction of the local public agency. Therefore, County is prudent to provide for terms and conditions of its solid waste processing and disposal in accordance with this Agreement.

3. It is necessary to require Franchisee to deliver solid waste to a solid waste facility owned by County or pay Capacity Fees therefore. In view of the findings contained in Exhibit R-1 to this Agreement, County has determined that in order to sustain its solid waste program, minimize its risk of liability for waste generated within its borders, and continue to provide beneficial solid waste services to its residents and to visitors to the area, it is necessary to require that solid waste collected by franchisees be delivered to a solid waste facility owned and/or operated by County or, in those limited circumstances when it is not feasible to do so, to require that Capacity Fees be paid.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, guaranties, and conditions contained in this Agreement and for other good and valuable consideration, the Parties hereby agree as follows:

## **ARTICLE 1. DEFINITIONS AND CONTRACT INTERPRETATION**

### **1.01 Definitions.**

In this Agreement words have the meanings defined in Exhibit 1.01, which controls in the event of any conflict with the definitions used in the preamble and recitals above.

### **1.02 Interpretation and Construction.**

**a. Gender and Plurality.** Words of the masculine gender include correlative words of the feminine and neuter genders, and vice versa. Words importing the singular number include the plural number, and vice versa, unless the context demands otherwise.

**b. Headings, Font.** Any captions or headings following the Article, Exhibit, Section, subsection, and paragraph numbers and preceding the operative text of this Agreement are for convenience of reference only and do not control or affect the scope, intent, meaning, construction, interpretation or effect of this Agreement. Any underlined, italicized, bold-faced, upper captioned or other font style is for ease of reading and contract administration only and does not imply relative importance or unimportance of any provision of this Agreement.

**c. References to Parts.** References to Sections and Articles refer to Sections and Articles of this Agreement, unless specified otherwise. References to Exhibits refer to Exhibits attached to this Agreement. Reference to “subsections” refers to the subsection contained in the same Section in which the reference occurs, unless otherwise provided.

**d. Examples.** Examples are for purpose of illustration only. If any example is ambiguous or is inconsistent or conflicts with the text that it illustrates, then the text shall govern.

**e. Specifics No Limitation on Generalities.** The mention of any specific duty or liability imposed upon the Franchisee may not be construed as a limitation or restriction of any general liability or duty imposed upon the Franchisee by this Agreement or Applicable Law.

**f. Exhibits.** The Exhibits to this Agreement are part of this Agreement to the same extent and effect as if included in the text of Articles 1 through 19.

### **1.03 Integration.**

This Agreement contains the entire agreement between the Parties with respect to the rights and responsibilities of the Parties under this Agreement, including the enforcement and administration of this Agreement. This Agreement completely and fully supersedes all prior agreements and understandings between the Parties with respect to their rights and responsibilities, including those contained in Procurement Proceedings.

#### 1.04 Severability.

**a. Substitute Provision.** If any clause, sentence, provision, subsection, Section or Article of this Agreement (an “**Agreement Provision**”) is ruled unconstitutional, illegal, invalid, non-binding, or unenforceable by any court of competent jurisdiction, then the Parties will:

- (1) promptly meet and negotiate a substitute for the Agreement Provision and any related amendments, deletions, or additions to other provisions of this Agreement that together effect the Parties’ original intent to the greatest extent allowable under Applicable Law; and
- (2) if necessary or desirable to accomplish the purpose of Subsection (a)(1), apply to the court that declared that invalidity for a judicial construction of the substituted Agreement Provision and any amendments, deletions, or additions to this Agreement.

Franchisee will pay County half of the actual costs of any application within twenty (20) days of certified receipt of County’s request.

**b. Remaining Provisions.** Except as provided in Subsection (c), the unconstitutionality, illegality, invalidity, non-binding nature, or unenforceability of any Agreement Provision will not affect any of the remaining provisions of this Agreement.

**c. Exception.** If any Agreement Provision with respect to County’s direction of Solid Waste to a Designated Disposal Site, including Section 7.01, is ruled unconstitutional, illegal, invalid, non-binding, or unenforceable by any court of competent jurisdiction, then County may in its sole discretion either:

- (1) sever that Agreement Provision and construe and enforce this Agreement in accordance with this Section 1.04; or
- (2) sever that Agreement Provision and, unless Franchisee is complying with that Agreement Provision in actual practice, terminate this Agreement in accordance with Section 14.02(a)(1); or
- (3) accept the ruling without severing that Agreement Provision.

#### 1.05 Interpretation.

This Agreement must be interpreted and construed reasonably and neither for nor against either Party, regardless of the degree to which either Party participated in its drafting. Franchisee acknowledges that it determined to participate in the procurement of this Agreement upon its own choice and initiative and during the course of that procurement County met and conferred with Franchisee and solicited Franchisee’s comments, exceptions, and proposals with respect to provisions in the Agreement. The Parties have negotiated this Agreement at arms length and with

advice of their respective attorneys, and no provision herein is construed against County solely because it prepared this Agreement in its executed form.

## **1.06 Timely Performance**

### **a. Specified Days on Weekdays.**

- (1) **Performance.** Where this Agreement requires that an obligation be performed within a specified number of days, if the last day falls on a weekend or holiday, the obligated Party may perform that obligation on the next weekday following the weekend or holiday. *For example, if Franchisee must provide documentation to County within 2 days of County request on a Friday, Franchisee must give County the documentation by the following Monday.*
- (2) **Counting.** Each calendar day is counted when determining the last day of the specified number of days. *For example, if Franchisee must provide documentation to County within one week of County's request on a Friday, Franchisee must give County the documentation by the next Friday.*

**b. Specified Hours on Any Day.** Where this Agreement requires that an obligation be performed at a specified time, in any of the following events the obligated Party must perform that obligation within the specified time, *even if* the time for performance falls on a weekend or holiday:

- (1) the specified time is measured in hours;
- (2) County specifies the time (*for example, on a Saturday even though performance would otherwise occur on Monday*); or
- (3) County determines that there is a threat to public health or safety.

## **ARTICLE 2. FRANCHISEE'S REPRESENTATIONS AND WARRANTIES**

### **2.01 Franchisee.**

Franchisee represents and warrants as contained in Exhibit 2.01.

## **ARTICLE 3. TERM OF AGREEMENT**

### **3.01 Term.**

**a. Term.** The Term of the Agreement commences on the Commencement Date and expires on December 31, 2022, unless terminated earlier in accordance with Section 14.02(a)(1).

**b. Optional County Extension Right.** County may in its sole discretion extend the Term for up to two (2) additional years commencing on the expiration date provided in Subsection (a)

by Notice to Franchisee no later than (i) September 30, 2022 or (ii) another date agreed to by the Parties.

### **3.02 Survival of Certain Provisions.**

The following provisions shall survive the Term:

- (1) all representations and warranties;
- (2) all Indemnities;
- (3) obligations to pay any County Payment Obligations;
- (4) obligations to submit Records and reports, including the final Annual Report; and
- (5) any other rights and obligations of the Parties stated to survive the Term.

## **ARTICLE 4. COLLECTION**

### **4.01 Scope of Basic Franchise Services.**

**a. Service Area and Exclusive Franchised Services.** County grants Franchisee the franchise, right, and privilege to offer to provide Franchise Services to Customers within the Franchise Area, so long as Franchisee is at all times ready, willing, and able to provide Franchise Services and is fully and timely satisfying its Performance Obligations. Franchisee accepts that franchise, right, and privilege in accordance with this Agreement.

**b. Limitations on Right to Provide Franchise Services.** Franchisee's franchise, right, and privilege to provide Franchise Services is limited. Pursuant to the Mono County Code, County may authorize up to one other Person, in addition to Franchisee, to provide Solid Waste services substantially similar to Franchise Services within the Franchise Area. Additionally, Persons, including both the owners or occupants of premises and persons performing services at premises, may themselves transport and dispose of Solid Waste and C&D Waste that they generate in the use and occupancy of those premises or as a by-product of services performed at those premises themselves. For example, landscapers, gardeners, or construction contractors or demolition contractors may collect and transport Yard Waste and C&D Waste they generate in the course of performing their services in dump trucks, end dumps, flatbed trucks, or similar vehicles. Also, owners and occupants of a premises may transport and dispose of Solid Waste that they generate on their own premises. This Section 4.01(b) does not authorize owners or occupants of premises or persons performing services at premises to hire a third party (other than a Franchisee) to transport and dispose of such Solid Waste.

County may contract with Franchisee or with Persons other than Franchisee for Unpermitted Waste collection, transportation, disposal, processing and/or diversion services.



**c. Regularly-Scheduled Franchise Services.**

**1. Residential Solid Waste.**

(i) **Collection.** Franchisee will continue to collect all Solid Waste set out by Persons who are existing customers of Franchisee as of the Commencement Date at the Residential Set-out Site of Residential premises located within the Franchise Area. Franchisee will commence collecting all Solid Waste set out at the Residential Set-out Site of Residential premises located in the Franchise Area within seven (7) days of any Person's request for Collection Service at that premise.

(ii) **Cancellation of Services.** Upon oral or written direction of any existing or new Residential Customer, Franchisee will cease providing Franchise Service immediately or at any other time specified by that Person, without penalty, and refund any pre-paid Service Fees in accordance with Section 4.09(b). Franchisee will notify Customers of cancellation rights, as required by Section 4.10.

(iii) **Containers.** Franchisee will provide all Residential Customers located within the Franchise Area with one (1) or more Carts for the deposit of Solid Waste or Recyclables having nominal capacities of either 35, 64, or 95/96 gallons (or at Customer's request a Bear Cart) ("**Residential Containers**") or, at Customer's request, with a Bin. Franchisee must provide Residential Containers that are clean, water tight, constructed of a material of suitable strength and durability (such as heavy plastic), bear resistant to the satisfaction of County, and tight sealed. Franchisee will return Residential Containers to the Set-out Site after Collection upright, with can lids properly secured. Franchisee will ensure that any Bins that it provides to Residential Customers will comply with all of the requirements applicable to Commercial Containers set forth in Subsection (c)(2)(iii), Subsection (e)(3), and Subsection (e)(4).

Within one month of the Commencement Date and every twelve (12) months thereafter, Franchisee will notify all Residential Customers subscribing to Bins that they can subscribe to Carts. The notice must include a description of Cart service and list the applicable Service Fees. Franchisee will provide County with a draft of the notice for review and approval at least fifteen (15) days prior to its mailing or delivery of such notice to Residential Customers.

(iv) **Frequency.** Franchisee will Collect all Solid Waste set out at the Residential Set-out Site each week, on the same day ("**Regularly-Scheduled Residential Collection Day**"). If Franchisee is unable, for any reason, to Collect all Solid Waste from a Customer on the Regularly-Scheduled Residential Collection Day, then it will Collect that Solid Waste

(1) on the next Service Day; or

(2) on such other day arranged with the Customer, but in no event later than 72 hours after the time of the missed pick-up and will provide the Customer with a verbal or written Non-Collection Notice.

**2. Commercial Solid Waste.**

(i) **Collection.** Franchisee will continue to collect all Solid Waste placed in Carts, debris boxes, Roll-Offs (“**Commercial Containers**”) or other Containers by existing Commercial Customers of Franchisee at the location agreed to between Franchisee and the Customer (“**Commercial Set-out Site**”). Franchisee will commence collecting all Solid Waste placed in Commercial Containers at the Commercial Set-out Site by Persons located within the Franchise Area within seven (7) days of that Person’s request for Collection Service at that premise.

(ii) **Cancellation of Franchise Services.** Upon oral or written direction of any existing or new Commercial Customer, Franchisee will cease providing Franchise Service immediately or at any other time specified by that Customer, without penalty, and refund any pre-paid Service Fees in accordance with Section 4.09(b). Franchisee will notify Customers of cancellation rights, as required by Section 4.10.

(iii) **Containers.** Franchisee will provide all Commercial Customers with Containers of the type ordered by the Commercial Customer. Franchisee will clean and maintain those Containers and keep them in a sanitary condition, free from putrescible residue, and in a manner so as not to promote the harborage, or attraction of vectors or birds, or the creation of nuisances. Franchisee will clean and maintain Containers in accordance with Subsection (e)(3) and Subsection (e)(4). Franchisee will provide Commercial Containers that:

- (1) are durable;
- (2) are constructed from structural steel plate with all welded seams;
- (3) are leak-proof;
- (4) are equipped with a noncombustible lid, uniformly colored, approved by County as providing adequate protection against fire hazard, rodents, and bears; and
- (5) display Franchisee’s name and telephone number in legible lettering no less than two inches (2”) in height as well as language warning against illegal dumping and Unpermitted Waste (including Hazardous Waste) or special waste disposal, as approved by County.

At the time of Customer request for Franchise Service, Franchisee will provide written notice to each Commercial Customer utilizing Bin service of the types of wastes which require special handling and may not be discarded in the debris box and informing the Customer of the proper methods for disposing of such wastes. Franchisee will submit this notice to County for approval prior to distribution.

(iv) **Frequency.** Franchisee will Collect Solid Waste set out at the Commercial Set-out Site at least once each week, or more frequently as directed by the Commercial Customer, on the day or days written in the Customer’s Subscription Order (“**Regularly-Scheduled Commercial Collection Day**”) or on such other day as mutually agreed to by Commercial

Customer and Franchisee. If Franchisee is unable, for any reason, to Collect Solid Waste from a Customer on the Regularly-Scheduled Commercial Collection Day or other day agreed to by Customer, then it will Collect that Solid Waste

- (1) on the next Service Day following the date of the missed pick up; or
- (2) other day arranged with the Customer, but in no event later than 72 hours after the time of the missed pick-up and will provide the Customer with a verbal or written Non-Collection Notice.

### **3. Recycling Services.**

(i) ***Notice of Determination.*** Within 12 months of the execution of this Agreement, Franchisee shall determine and Notify County of the demand from Residential and Commercial Customers necessary to make the collection of Recyclables at Residential Set-out Sites and at Commercial Premises within the unincorporated area of County economically feasible to Franchisee.

(ii) ***Provision of Recyclable Service if Economically Feasible.*** If Franchisee determines that sufficient demand exists from Residential and Commercial Customers to make the collection of Recyclables economically feasible pursuant to Subsection (c)(3)(i), then County may require Franchisee to provide as part of its Franchise Services and Franchise Obligations, the collection of Recyclables at Residential Set-out Sites and Commercial Premises within the unincorporated area of County.

(iii) ***Provision of Recyclable Service if Required by State.*** Notwithstanding the foregoing, Franchisee shall collect Recyclables at Residential Set-out Sites and Commercial Premises within the unincorporated area of County as part of its Franchise Services and Franchise Obligations if the State of California or any other regulatory authority requires County to provide such collection services.

(iv) ***Recyclable Materials.*** Notwithstanding anything contained in Exhibit 1.01, for purposes of this Subsection (c)(3), Recyclables shall be limited to glass, aluminum, plastic, cardboard, and green/yard waste.

#### **d. Collection Schedules.**

1. **Hours.** Franchisee will make its best efforts to Collect all Solid Waste only between 7:00 a.m. and 7:00 p.m., Monday through Saturday except that Franchisee may Collect Solid Waste between those hours on Sunday:

- (1) in areas of County designated for Commercial use;
- (2) if road closures have prevented collection during the previous seven (7) days;  
or

(3) with prior approval from the Director.

But in no event shall Franchisee operate in a manner that would constitute a violation of the Mono County Noise ordinance codified at Chapter 10.16 of the Mono County Code.

**2. Changes to Collection Schedule.** Prior to changing the Regularly-Scheduled Collection Day for any Customer, Franchisee will provide fifteen (15) days' oral or written Notice to that Customer.

**e. Changes in Service Levels; Container Exchanges.**

**1. Delivery.** Franchisee will provide Customers with Containers in accordance with Subsection (c)(1)(iii) and Subsection (c)(2)(iii). Within seven (7) days after receiving a request for Franchise Service (including repair or replacement of Containers) or changes in Franchise Service, Franchisee will respond to and fulfill that request.

**2. Pick Up.** No later than the next Regularly-Scheduled Collection Day occurring after direction of a Customer to discontinue Franchise Service, Franchisee will pick up and remove that Customer's Container(s).

**3. Repair and Replacement.** Franchisee will repair or replace Containers or provide locks for Bins within seventy-two (72) hours of a request therefor from a Customer or County. If Franchisee cannot complete a repair within seventy-two (72) hours, then Franchisee will provide the Customer with a replacement Container without surcharge within those 72 hours. Franchisee will offer Container locks at prices from time to time in effect, and Franchisee may charge a monthly "lock charge" for Franchisee's servicing locked Containers. Customers shall not be authorized to provide their own locks.

**4. Cleaning Bins.** Franchisee will steam clean and paint, or replace, Commercial Containers as needed, or upon request of County, for Customers that generate large amounts of putrescible Solid Wastes, including Residential premises, restaurants, grocery stores, cafeterias, and other Containers as directed by County. Franchisee will steam clean and paint all Commercial Containers prior to providing them to the Customer, whether as new Franchise Service subscription or replacement Container for existing Franchise Service. Franchisee will remove graffiti from Containers within 14 days of identification by Franchisee or oral or written notice by County or Customer. Franchisee will remove graffiti comprised of pictures or verbal obscenities within 48 hours (weekends excepted). Promptly upon County's request, Franchisee will give County a list of dates that Franchisee cleaned, painted, or otherwise repaired Containers.

**f. C&D Waste.** Upon request by any Person, Franchisee will collect C&D Waste which is containerized in debris boxes, roll-offs, or other similar containers and is subject to the Franchise requirements of Section 12.10.020 of the Mono County Code for a price and at a time which are mutually agreed-upon by Franchisee and Person.

**4.02 Pickup of Excess and Bulky Waste.**

Upon request of a Residential or Commercial Customer, Franchisee will Collect excess Solid Waste or Bulky Waste at the Residential or Commercial Set-out Site on that Customer's next Regularly-Scheduled Collection Day or other date agreed to between the Customer and Franchisee for a price that is mutually agreed to by Franchisee and Customer. Upon request of a Person who does not receive regular Commercial or Residential Collection from Franchisee, Franchisee will collect Bulky Waste or excess Solid Waste at a location and time and for a price that are mutually agreed to by that Person and Franchisee.

#### **4.03 Service Standards.**

**a. General.** Franchisee will perform all Franchise Services in a prompt, thorough, comprehensive, reliable, courteous, and professional manner so that Customers receive high-quality service at all times. Franchisee must perform Franchise Services regardless of weather conditions and regardless of difficulty of collection, subject to the exceptions set forth in Section 4.04. More detailed specifications for particular aspects of Franchise Services enumerated elsewhere in this Agreement do not relieve Franchisee of its duty and obligation to accomplish all other aspects of Franchise Services in the manner provided in this subsection.

**b. Litter.** Franchisee will clean up litter caused by Franchisee's employees. Franchisee will also clean up all litter within a 10-foot diameter of the Residential Set-out Site when Collecting any Bulky Waste and excess Solid Waste in accordance with Section 4.02. Franchisee will ensure that each Collection Vehicle carries a broom, rake, and shovel at all times for this purpose.

#### **c. Spills and Leaks.**

**1. Solid Waste Spills.** Franchisee will transport Solid Waste only in covered vehicles as required by Section 12.10.050 of the Mono County Code. Franchisee will prevent Solid Waste from escaping, dropping, spilling, blowing, or scattering from Vehicles during Collection and transportation, as further required by Section 12.10.040 of the Mono County Code. Franchisee will not transfer loads from one vehicle to another on any public street, unless necessitated by mechanical failure or accidental damage to a vehicle, or unless otherwise approved by the Director. Franchisee will immediately clean up any Solid Waste that is dropped, blown, spilled, scattered, or leaked from any Vehicle and/or tracked by any Vehicle onto any alley, street, or public place.

**2. Liquid Leaks.** During Collection and transportation, Franchisee will also prevent oil, hydraulic fluid, paint, or other liquid from leaking out of Vehicles. Franchisee will ensure that each Collection Vehicle carries petroleum-absorbent materials. Franchisee will immediately cover leaked fluids with absorptive materials, remove those materials from the ground, and apply a cleaning agent to cleanse the soiled spot.

**3. Reimbursement.** If Franchisee fails to clean up Solid Waste or leaked liquids within two (2) hours' telephonic or other notice by County, then County may clean up or cause to be cleaned up the Solid Waste or leaked liquids and Franchisee will reimburse County for County's

Reimbursement Costs thereof. Franchisee is responsible for paying any fines, civil penalties, or other charges that may be assessed for improperly covering loads or leaking liquids.

**d. Pavement and Utilities.** Franchisee is responsible for damage to pavement and driving surfaces whether Containers are located on public or private property, other than ordinary wear and tear, if the damage is the result of vehicles exceeding the maximum weight limits allowed by Applicable Law or Franchisee's negligent operation of vehicles, *unless* with respect to private property, Customer has executed a damage waiver or indemnity on that Customer's Subscription Order.

Franchisee is responsible for damage to public and private utilities, whether located on public streets or property or private property, if damage is the result of the inattention, carelessness or negligence of Franchisee.

County or the Customer may direct Franchisee to promptly repair or replace damaged driving surfaces or utilities or repair and replace them itself or through a third party, to the satisfaction of the Customer or County, as the case may be. Franchisee will reimburse the Customer for his or her Direct Costs of repair or replacement and County for County Reimbursement Costs of repair or replacement.

#### **4.04 Service Exceptions.**

**a. Excess Weight.** Franchisee is not required to collect a Cart weighing in excess of the manufacturer's recommended weight, as evidenced by warranties or other documentation acceptable to County. Franchisee will provide Customers with weight limitations on the Customer Subscription Order, marked on the Cart, or through some other written means.

**b. Unsafe Condition at Set-out Site.** If Franchisee determines that any condition at or near any Set-out Site presents a health or safety threat to Franchisee's employees or equipment, then Franchisee will attempt to personally provide the Customer whose Set-out Site presents the threat notice of the danger thereof. If Franchisee cannot personally provide Customer with notice, then prior to leaving Customer's premises Franchisee will provide the Customer with a Non-Collection Notice, describing the threat, and danger. Franchisee may discontinue collection for that Set-out Site until the safety hazard is eliminated.

**c. Hazardous Waste or Unsafe Materials.** If Franchisee determines that Containers contain Hazardous Waste (other than Household Hazardous Waste not discovered and identified by Franchisee acting in accordance with its Hazardous Waste Screening Protocol) or other materials that may present a health or safety threat to Franchisee's employees, the public, or to Franchisee's equipment, then Franchisee may refuse to Collect that Container. Franchisee will attempt to personally provide the Customer whose Container contains Hazardous Waste or unsafe material with written information about their proper disposal. If Franchisee cannot personally provide Customer with information, then prior to leaving Customer's premises it will provide the Customer with a Non-Collection Notice. Franchisee will follow the procedures outlined in the

Unpermitted Waste Screening Protocol, as it applies to Hazardous Waste, including providing notice to County Health Department and to the Director.

**d. Customer Delinquency or Nonpayment.** In accordance with Section 12.10.070 of the Mono County Code, Franchisee is not obligated to provide Franchise Services to any Customer who is habitually delinquent in the payment of fees for Franchise Services or who fails or refuses to pay fees for Franchise Services; *provided* that

- (1) Franchisee develops a written policy for addressing nonpayment or delinquency by its Customers that is approved in writing by County; and
- (2) Franchisee terminates or suspends that Customer's Franchise Services in accordance with the approved policy.

**e. Misplaced Solid Waste.** If Franchisee determines that a Customer has discarded materials into a Container not marked for such materials (i.e. – materials other than Recyclables in a Container marked “Recyclables”, or materials other than Yard Waste in a Container marked “Yard Waste”), then Franchisee may refuse to Collect that Container. Prior to leaving Customer's premises, Franchisee will provide the Customer with a Non-Collection Notice, describing the proper materials to be placed in each Container. If Franchisee refuses pursuant to this Subsection (e) to Collect Solid Waste on a Regularly-Scheduled Collection Day or another day agreed to by Customer, then Franchisee shall return to that Set-out Site and attempt to Collect that Solid Waste in accordance with Section 4.01(c)(1)(iv) or Section 4.01(c)(2)(iv), as the case may be.

**f. Exposure to Liability for Property Damage.** If Franchisee determines that entering onto the property of a Customer will expose Franchisee to liability for damage to pavement or utilities, then Franchisee may refuse to Collect that Container. Franchisee will provide the Customer with a Non-Collection Notice, describing the risk. If Franchisee refuses pursuant to this Subsection (f) to Collect Solid Waste on a Regularly-Scheduled Collection Day or another day agreed to by Customer, then Franchisee shall return to that Set-out Site and attempt to Collect that Solid Waste in accordance with Section 4.01(c)(1)(iv) or Section 4.01(c)(2)(iv), as the case may be. Franchisee may discontinue collection for that Residential Set-out Site or Commercial Premise until the Container is placed at a location accessible by Franchisee without liability for damage to property.

**g. Inaccessibility of Bin.** If Franchisee is unable to Collect a Container due to inaccessibility to such Container, then Franchisee will provide the Customer with a Non-Collection Notice, describing the inaccessibility. If Franchisee refuses pursuant to this Subsection (g) to Collect Solid Waste on a Regularly-Scheduled Collection Day or another day agreed to by Customer, then Franchisee shall return to that Set-out Site and attempt to Collect that Solid Waste in accordance with Section 4.01(c)(1)(iv) or Section 4.01(c)(2)(iv), as the case may be.

#### **4.05 Customer Service.**

Franchisee acknowledges that County determined to procure and enter into this Agreement with Franchisee, among other reasons, in order to provide improved Customer service, relations, and satisfaction.

**a. Phone Number.** Franchisee will maintain a toll-free telephone number at least during Office Hours and, if Franchisee provides Residential Collection on Saturday, from 8:00 a.m. to noon on Saturdays (collectively “**Phone Hours**”). Franchisee will list the telephone number under Franchisee’s name in County telephone directories (white pages and yellow pages). Franchisee will provide an answering machine or answering service to take reports of missed pick-ups and other complaints that are received outside of Phone Hours.

**b. Emergency Number.** Franchisee will also maintain an emergency telephone number disclosed to County for use outside Phone Hours. Franchisee will make a representative in a position of authority available at the emergency number outside Phone Hours who will return any emergency call as soon as possible, and in any event within one hour.

**c. Field Supervisor.** Franchisee will provide one qualified individual as on-site supervisor of field operations who shall, at a minimum, be responsible for: (i) checking collection operations; (ii) coordinating improvements to Franchise Service; (iii) resolving field problems; and (iv) responding to complaints of Customers in person or by telephone. Franchisee will fully authorize that supervisor to resolve Customer disputes and handle all aspects of Customer service. Franchisee will provide the name and contact information for that supervisor to County upon or prior to the Commencement Date.

**d. Complaint Records.** Franchisee will enter into a daily log all complaints, including date, time, complainant’s name and address if the complainant is willing to give this information, and the nature, date, and manner of complaint resolution. Franchisee will include copies of daily complaint logs in each Quarterly Report furnished to the Director.

**e. Dispute Resolution Protocol.** Franchisee will comply with the Customer Complaint and Billing Dispute Resolution Protocol which is contained in Exhibit 4.05(e).

#### **4.06 Public Education and Community Relations.**

##### **a. Distribution of Materials.**

**1. Community Relations Materials.** County may, once each Contract Year, prepare community relations materials for distribution to Franchisee’s Customers as determined by County to be necessary, in order to address specific Collection needs or problems. Franchisee will provide County with a Customer list and the postage to cover the cost of that mailing or mail County’s prepared materials to its Customers within fifteen (15) days of County’s request.

**2. Customer Bills.** County may once each Contract Year produce and provide Franchisee with printed inserts, specified as a sheet no larger than 8½ by 11 inches and small promotional items, such as magnets, which Franchisee will include in Customers’ bills or



otherwise provide to Customers upon County request at no cost to County. In addition, Franchisee will print public information directed by County on Customers' bills.

**b. County Review.** Franchisee will submit final drafts of

- (1) community relations materials;
- (2) promotional materials; and
- (3) general Customer correspondence unrelated to individual Customer accounts (such as notice of change to Collection schedules, Unpermitted Waste advisements, etc.)

to County for review and approval at least fifteen (15) days prior to printing, distributing, or mailing the materials or correspondence.

Franchisee will additionally establish a Customer account for County without charge, using the address for Notice provided in Section 18.01, so that County will automatically receive copies of all of Franchisee's general communications with Customers.

**c. News Media Relations.**

Franchisee will notify the Director by telephone of all requests for news media interviews or statements related to the Franchise Services within twenty-four (24) hours of Franchisee's receipt of the request. Before responding to any inquiries involving issues other than those relating to descriptions of Collection programs and scope of Franchise Services, Franchisee will discuss Franchisee's proposed response with County. Franchisee will submit copies of Franchisee's draft news releases or proposed trade journal articles to County for prior review and approval at least five (5) County Working Days in advance of release. Franchisee will provide copies of articles resulting from media interviews or news releases to County within (7) days after publication.

**4.07 Customers' Privacy.**

Franchisee will strictly observe and protect Customers' rights of privacy. Franchisee will not reveal information identifying individual Customers or the composition or contents of a Customer's waste stream to any Person other than County unless upon the authority of a court of law, by Applicable Law, or by valid authorization of the Customer. This provision will not be construed to preclude Franchisee from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses that may be required by County or Applicable Law. In addition, Franchisee will not market, sell, convey, or donate to any Person any list with the name or address of Customers *except* that Franchisee will provide that list to County or other Persons as directed by County. The rights accorded Customers pursuant to this Section are in addition to any other privacy right accorded Customers pursuant to Applicable Law.

#### **4.08 No Discrimination.**

Franchisee will not discriminate against Customers entitled to Franchise Service on account of Suspect Categories.

#### **4.09 Franchisee Billing.**

**a. Billing.** Franchisee will bill and collect Service Fees. Franchisee acknowledges that County is not obligated to bill or collect Service Fees. Franchisee will not hold County liable for any under-billings to Customers of Service Fees or delinquent Service Fee payments.

**b. Refunds.** Franchisee will refund to Customers any overcharges for Franchise Services the earlier of two (2) weeks from the time that Franchisee discovered the overcharge or Customer notified Franchisee of the overcharge. “**Overcharges**” includes: (i) Franchisee’s billing errors; and (ii) refunds for Franchise Services paid in advance by Customers who terminated Franchise Services prior to the end of the billing period.

**c. Customer Disputes.** Franchisee will take Customers’ calls and respond to Customers’ correspondence with respect to disputes regarding billing or otherwise, or resolving disputes. Franchisee acknowledges that County is not responsible for handling Customer disputes.

**d. Records.** Franchisee will maintain billing records in accordance with Section 10.01.

**e. Uniformity.** Franchisee will charge uniform Service Fees to all Customers, regardless of location and cost of Franchise Service. Notwithstanding the foregoing, Franchisee may discount rates as provided in Section 13.01(a).

**f. Failure to Pay Service Fees.** Franchisee shall contact, by phone, any Customer who has failed to pay an invoice within thirty (30) days of the date of such invoice notifying them of late payment. If a Customer fails to pay an invoice within sixty (60) days of the date of such invoice, then Franchisee may suspend services to such Customer until all outstanding Service Fees are paid, and may charge Customer a reinstatement fee up to Twenty-Five dollars (\$25.00) to reinstate services to Customer. If a Customer fails to pay an invoice within ninety (90) days of the date of such invoice, then Franchisee may terminate service to such Customer and collect all Containers from Customer, and may charge Customer a reinstatement fee up to One Hundred Seventy-Five dollars (\$175.00) to reinstate services to Customer.

#### **4.10 Description of Customers’ Rights.**

Within

(1) 30 days of the Commencement Date for existing Customers; and

(2) prior to the provision of Franchise Services to new Customers,

Franchisee will provide Customers with a written Subscription Order. In each Subscription Order and in Customer's first bill of each Contract Year, Franchisee will include a description of the following Customers' Franchise Services and rights under this Agreement, as County may amend from time to time following dated Notice to Franchisee:

- (1) the scope of Franchise Services provided, including but not limited to day of collection and arrangements for the collection of Bulky Waste or excess Solid Waste;
- (2) the Service Fee or other fees (or, rate);
- (3) Holiday schedules;
- (4) the ability of Customers to immediately terminate their Subscription Order upon oral or written notice to Franchisee without penalty in accordance with Section 4.01(c)(1)(ii) and Section (c)(2)(ii), and describing their refund rights for pre-paid but unused Franchise Service in accordance with Section 4.09(b); and
- (5) any other provision of this Agreement or Applicable Law as directed by County.

The Subscription Order may include a waiver of damage liability and/or indemnification in connection with subscriptions for Franchise Services on private driveways, roads, easements, or pavement.

#### **4.11 Customer Satisfaction Survey.**

County may conduct a Customer satisfaction survey for implementation of Franchise Services, including a survey mailed to Customers together with Customers' bills, in the form of a post card or letter returnable to County. Alternatively, Franchisee may provide County with a Customer list and money to pay the cost of postage, within fifteen (15) days of County's request made pursuant to this section. Franchisee may review and comment upon the form and content of the survey. Franchisee will cooperate with County and its surveyor in the conduct of the survey, including distributing surveys with bills to Customers. Franchisee may obtain a copy of the results of the survey upon request to County.

#### **4.12 Public Performance Review.**

The County Board may conduct a public hearing upon sixty (60) days' Notice to Franchisee at the time that the County Board selects, not more than once during each Contract Year, to review Franchisee's performance and quality of Franchise Service. Franchisee will attend and participate in that hearing. The County Board may use Records and reports required under Article 10, including Records of Customer complaints, as a basis of its reviews. Within thirty (30) days after

the conclusion of the public hearing, County will issue a report with respect to the matters raised at the hearings.

#### **4.13 Enforcement of Franchise.**

County may, in its sole discretion, enforce the franchise requirement set forth in Section 12.10.020 of the Mono County Code against third party violators, taking into account the cost of doing so and other factors. Franchisee may independently enforce the semi-exclusive rights granted by this Agreement against third party violators (excluding the other franchisee operating pursuant to a franchise agreement with County), including seeking injunctive relief, and County will use good faith efforts to cooperate in such enforcement actions brought by Franchisee. County will not be liable to Franchisee in any manner, including for any costs or damages such as lost revenues or lost profits, should any Person refuse to subscribe to Franchise Services from Franchisee and/or perform Franchise Services under a franchise agreement with County in competition with Franchisee, and in doing so violate the semi-exclusive grant of franchise given to Franchisee in this Agreement. In that event, Franchisee's sole and exclusive remedy will be to seek an injunction, damages, or other available judicial relief against any such third person or entity that engages in any conduct or activity that violates Franchisee's semi-exclusive rights under this Agreement. If Franchisee becomes aware of any activity by a third party that violates or may violate the provisions of Section 12.10.020 of the Mono County Code, Franchisee will provide Notice to County of such activity.

### **ARTICLE 5. OPERATIONS**

#### **5.01 Routing.**

**a. Route Maps and Account Information.** Within thirty (30) days of the Commencement Date, Franchisee will provide to County route maps or narratives containing the following information ("**Routing Specifications**"):

- (1) a description of each individual route, including starting and end points and street-by-street course;
- (2) Collection day of the week for each individual route; and
- (3) approximate Collection times (a.m. or p.m.) marked at several points along each individual route or noted with the narrative description of the route.

**b. Route Changes.** Franchisee will submit to County, in writing, any proposed change in Routing Specifications not less than fifteen (15) days prior to the proposed date of implementation or as otherwise agreed to by Franchisee and the Director.

**c. Route Audits.** Upon no less than thirty (30) days' Notice to Franchisee, County may conduct audits of Franchisee's Collection routes. Franchisee will cooperate with County in

connection therewith, including permitting County employees or other Persons designated by the Director to follow or ride in the Collection Vehicles during the audit. Franchisee will have no responsibility or liability for the salary, wages, benefits or workers compensation claims of any Person designated by the Director to conduct audits.

## **5.02 Vehicles, Service Assets, and Drivers.**

**a. Vehicle Appearance.** Bodies of Vehicles used in Collection or transportation of Solid Waste must have watertight beds of metal or impervious material that can be cleaned as required by Section 12.10.050 of the Mono County Code. Franchisee will utilize packer-type, completely enclosed Vehicles unless another type of Vehicle is required by weather, terrain, or type of Solid Waste to be hauled. Franchisee will paint and label all Vehicles in a consistent, uniform, and professional manner.

**b. Compliance with Applicable Law.** Franchisee will ensure that all Vehicles it uses to provide the Franchise Services comply with all Applicable Law. Franchisee will document, through its maintenance log or otherwise, compliance under Applicable Law applying to each Vehicle and will provide County with copies of inspection reports within ten (10) days of County's request. County may conduct inspections of Vehicles in connection with any Permits issued by County or otherwise. Franchisee will maintain copies of registration certificates and reports and make them available for inspection at its Office during Office Hours upon request by County.

**c. Vehicle Identification.** Franchisee will paint its name, telephone number, and the Vehicle number on all Vehicles in letters and figures not less than twelve inches (12") high for packer trucks and not less than six inches (6") high on other Vehicles, in accordance with Section 12.10.050 of the Mono County Code.

**d. Cleaning, Maintenance, and Availability.** Franchisee will at all times maintain Vehicles in good, clean condition and repair so that they operate properly and safely. If a leak does occur, then Franchisee will immediately clean it up. Franchisee may not leave Vehicles loaded with Solid Waste for over twenty-four (24) consecutive hours. Franchisee will maintain in readiness at least one (1) spare Vehicle, fully fueled, and ready to dispatch and replace any Vehicle which breaks down on route within reasonable time of break down. Customers will not have to wait for Franchise Service while a disabled Vehicle is repaired.

**e. Equipment.** Franchisee will equip each Collection Vehicle with a fire extinguisher which must be maintained and checked in accordance with manufacturer's warranty and maintenance recommendations.

**f. Re-Refined Oil.** To the extent permitted by equipment warranties and/or available services, Franchisee will give serious consideration to recycling used oil from its Vehicle maintenance operations and to use re-refined oil in its Vehicles, but only to the extent Franchisee receives reasonable assurances satisfactory to Franchisee from the manufacturer of the Vehicle that such use will not damage its equipment, lessen its useful life, add to its expense or result, or be likely to result in potential environmental liability. Should Franchise elect to adopt such a

policy, Franchisee will submit copies of re-refined oil invoices and the assurances to County upon County's request.

**g. Service Assets.** Franchisee will prepare a Service Asset Inventory as set forth in Exhibit 5.02g.

**h. Drivers.** Franchisee will ensure that all drivers of Vehicles have in full force and effect a valid license of the appropriate class issued by the California Department of Motor Vehicles. Franchisee will provide suitable operational and safety training for all of its personnel, including those who drive Vehicles or operate other equipment for Collection, which training will include on-the-job-training by supervisors. Franchisee will train sufficient numbers of drivers to drive all Collection routes so as to ensure no lapse of Franchise Services and will use Reasonable Business Efforts to assign the same driver(s) to identified routes in order to encourage accountability and enhance Customer relations. Franchisee will train its drivers to identify and not to collect Unpermitted Waste. Franchisee will implement drug and alcohol testing in accordance with Applicable Law. Franchisee will maintain copies of licenses for all Vehicle operators and full and complete records of training and testing, which Franchisee will make available to County at Franchisee's Office during Office Hours.

### **5.03 Public Resources Code Section 49520.**

Franchisee acknowledges having received a timely notice from County under Public Resources Code Section 49520 prior to entering into this Agreement, which notice precludes Franchisee from asserting the right to continue to provide Franchise Services in the Franchise Area without a franchise agreement as may be required by County, whether in the form of this Agreement or otherwise, now or in the future.

In accordance with Public Resource Code Section 49523, County and Franchisee hereby contract, based upon the mutually satisfactory terms of providing Franchise Services set forth in this Agreement and receipt of compensation therefor, that Franchisee will terminate providing Franchise Services upon expiration or termination of this Agreement even if that expiration or termination occurs prior to the expiration of the 5-year period described in Public Resources Code Section 49520. Franchisee acknowledges that it does not have the right to make any claim under or pursuant to Public Resources Code Section 49520 but only pursuant to the terms of this Agreement. Franchisee's contracting and acknowledgments in this Agreement do not foreclose County from re-procuring agreements for Franchise Services or Solid Waste Handling Services, including from Franchisee, following termination of this Agreement by exclusive, partially-exclusive, or wholly-exclusive franchise, contract, license, permit, or otherwise, with or without competitive bidding.

### **5.04 Personnel.**

**a. Nondiscrimination.** Franchisee will not discriminate against any of its personnel on the basis of Suspect Categories. Franchisee will comply with all Applicable Law regarding nondiscrimination, including those prohibiting discrimination in employment.

**b. Compliance with Immigration Law.** Franchisee will keep all records indicating compliance required by the Federal Immigration and Control Act of 1986 and will make those records available for inspection by County at Franchisee's Office promptly upon County direction.

**c. Conduct.** Franchisee will employ only competent, qualified, conscientious, and sober personnel to ensure Franchise Services satisfactory to County. Franchisee will ensure that its employees serve Customers and the public in a courteous, professional, and reliable manner.

#### **5.05 Contingency Plan.**

Franchisee will prepare a contingency plan to provide Vehicles and personnel necessary and sufficient to maintain uninterrupted Franchise Service during

- (1) mechanical breakdowns;
- (2) extreme weather conditions;
- (3) road closures;
- (4) strikes, work stoppages, and other concerted job actions or similar events; and
- (5) emergencies, including natural disasters

including procedures for replacing Vehicles disabled on routes. Franchisee will provide County with a copy of such plan upon request, and within seven (7) days of any modification.

#### **5.06 Unpermitted Waste.**

Franchisee will comply with the Unpermitted Waste screening, identification, and prevention protocol ("**Unpermitted Waste Screening Protocol**") attached to Exhibit 5.06 or may develop and follow its own Unpermitted Waste Screening Protocol which is at least as stringent as Exhibit 5.06 and which is approved by the Director. If Franchisee delivers Unpermitted Waste to the Designated Disposal Facility or a Diversion Facility, then Franchisee will arrange for proper disposal in accordance with Applicable Law and/or cooperate with the facility owner or operator with respect thereto. Nothing herein shall limit or circumscribe any right Franchisee may have against the generator of such waste for damages incurred by Franchisee's handling and disposal of such waste.

#### **5.07 Annual Meetings.**

Franchisee will meet with County at its offices in Bridgeport

- (1) a minimum of once every two Contract Years, as directed by County; and
- (2) at any additional times as directed by County.

The purpose of the meetings may include addressing operational issues and contract compliance, reviewing Quarterly Reports, and resolving any issues or problems related to the performance of Franchise Services.

## **ARTICLE 6. DIVERSION**

### **6.01 Diversion Reporting.**

**a. Reporting and Substantiation of Diverted Materials.** Franchisee will report the amount of Diverted Recyclables to County in its Quarterly Report or when required by the Act. Franchisee will include:

- (1) the date of diversion;
- (2) the quantity (by each type) of Diverted Recyclables expressed in cubic yards, pounds, or tons;
- (3) the community or project where the Diverted Recyclables originated; and
- (4) the name and telephone number of the Diversion Facility to which Franchisee delivered the Diverted Recyclables and a receipt or invoice from that Diversion Facility.

“**Diversion Facility**” means any materials recovery facility, salvager, processing facility or materials end user. “**Diverted Recyclables**” means the net quantity of Recyclables that Franchisee has Collected at Residential and Commercial premises and at construction or demolition projects and Diverted, including Recyclables in Bulky Waste. The net quantity will be the gross amount of material Collected and delivered to the Diversion Facility, less any quantity of Solid Waste that was contained therein and deducted from payment and/or Diversion and disposed by said Facility. “**Divert,**” “**Diverted,**” “**Diversion**” or other form thereof means to divert from disposal so that the disposal tonnage is not reported as disposed under the State’s disposal reporting system and qualifies as diversion under the Act.

Franchisee will additionally report to County on a quarterly basis the amount of Solid Waste contained within Diverted Recyclables that was separated therefrom. Franchisee’s report will include the date of Collection, the quantity of Solid Waste expressed in cubic yards, pounds or tons, and the community or project where the Solid Waste originated.

**b. Additional Information.** If County questions reports, Records or other documentation that serves as the basis of measuring the quantity or types of Diverted Recyclables (and associated Solid Waste), then Franchisee will respond to County’s questions and provide additional clarifying



documentation as soon as possible, but in all events within thirty (30) days from the date County submits questions to Franchisee.

## **6.02 Additional Programs.**

County may direct Franchisee to submit proposals for additional programs, including diversion programs, necessary in County's opinion to meet any required diversion goal or other goal. If necessary, the Parties will enter into good faith negotiations for at least thirty (30) days following the date County directs Franchisee to submit a program proposal. If the Parties cannot reach agreement within thirty (30) days, then either Party may refer the matter to the Independent Expert for determination in accordance with Section 9.01. County may independently implement programs itself or through a third Person.

## **ARTICLE 7. SOLID WASTE DISPOSAL**

### **7.01 Transportation to Designated Disposal Facility.**

**a. Designated Disposal Facility.** Franchisee will transport and deliver all Solid Waste, except for Recyclables that it Diverts, to the Designated Disposal Facility, including:

- (1) Solid Waste that Franchisee Collects from Residential and Commercial premises in accordance with Section 4.01(c);
- (2) Solid Waste that Franchisee Collects in performing emergency services in accordance with Section 8.01;
- (3) excess or Bulky Waste that Franchisee Collects in accordance with Section 4.02; and
- (4) C&D Waste that Franchisee Collects in accordance with Section 4.01(f).

County may change the Designated Disposal Facility upon thirty (30) days' Notice to Franchisee. Franchisee will observe and comply with all rules and regulations in effect at the Designated Disposal Facility and follow directions of the operator of the Designated Disposal Facility, including:

- (1) unloading Solid Waste in designated areas;
- (2) accommodating operations and maintenance activities;
- (3) complying with Unpermitted Waste exclusion programs; and
- (4) complying with facility hours of operation, unless otherwise agreed to by the Parties.

Franchisee will at all times operate according to safe industry practices.

**b. Exceptions.** Notwithstanding Subsection (a), Franchisee is *not* obligated to deliver Solid Waste to the Designated Disposal Facility in the following circumstances described in Subsection (b)(1) and Subsection (b)(2):

**1. South of the Junction of Highways 395 and 182: Highway Closures.** Solid Waste generated in those areas of Mono County located south of the junction of Highway 395 and Highway 182 may be diverted from the Designated Disposal Facility if Highway 395 or Benton Crossing Road is closed to all traffic at any point between the location where Franchisee Collected the Solid Waste and the Benton Crossing Landfill by the California Highway Patrol, the California Department of Transportation, the Mono County Department of Public Works, or the Mono County Sheriff's Department *and* Franchisee fully and timely satisfies the following conditions:

(i) **Notice.** Prior to diverting Solid Waste from the Designated Disposal Facility, Franchisee gives the Director (or if the Director is unavailable, another person in the Department of Public Works administrative office) oral notice, followed by Notice, of highway or road closure and Franchisee's inability to deliver Solid Waste to the Designated Disposal Facility;

(ii) **Records.** Franchisee keeps accurate Records with respect to Solid Waste that Franchisee diverts from the Designated Disposal Facility, including:

- (a) the amount and type of Solid Waste, documented by a weight ticket from County's Walker Transfer Station, County's Bridgeport Transfer Station, or issued by a certified weighmaster from another California or Nevada state-certified truck scale approved by the Director, or a gate receipt from the facility to which Franchisee transported and delivered that diverted Solid Waste;
- (b) the type of Vehicle or Container in which Franchisee transported that Solid Waste;
- (c) the date of highway or road closure and diversion;
- (d) the extent of highway closure; and
- (e) County staff person to whom Franchisee gave oral notice.

(iii) **Reporting.** Included in its Quarterly Report submitted to County in accordance with Section 10.02, Franchisee submits a report satisfactory to County with supporting receipts or weight tickets as described above for that Solid Waste diverted during that quarter.

(iv) **Capacity Fees.** Together with its quarterly payment of Franchise Fees payable in accordance with Section 13.02(a), Franchisee pays County the Capacity Fee for that Solid Waste as set forth in Exhibit 7.01b.

**2. North of the Junction of Highways 395 and 182: Any Time.** Solid Waste generated in those areas of the county located north of the junction of Highway 395 and Highway 182 may be diverted from the Designated Disposal Facility if Franchisee fully and timely satisfies the following conditions:

(i) **Records.** Franchisee keeps accurate Records with respect to diverted Solid Waste, including:

- (a) the amount and type of Solid Waste, documented by a weight ticket from County's Walker Transfer Station, County's Bridgeport Transfer Station, or issued by a certified weighmaster from another California or Nevada state-certified truck scale approved by the Director, or a gate receipt from the facility to which Franchisee transported and delivered that diverted Solid Waste; and
- (b) the type of Vehicle or Container in which Franchisee transported that Solid Waste.

(ii) **Reporting.** Included in its Quarterly Report submitted to County in accordance with Section 10.02, Franchisee submits a report satisfactory to County with supporting receipts or weight tickets as described above for that Solid Waste diverted during that quarter.

(iii) **Capacity Fees.** Together with the payment of quarterly Franchise Fees payable in accordance with Section 13.02(a), Franchisee pays County the Capacity Fee for each load hauled out of Mono County during the quarter as set forth in Exhibit 7.01b.

## **7.02 Defense and Indemnification; Release.**

**a. Requirement.** Franchisee will defend, release, indemnify and hold harmless at its sole cost and expense with counsel approved by County, County (including Persons described in the definition of "County" in Exhibit 1.01) in any actions that assert or allege Liabilities paid, incurred or suffered by, imposed upon or asserted against, County that result or are claimed to have resulted directly or indirectly from the presence, disposal, escape, migration, leakage, spillage, discharge, release or emission of Unpermitted Waste or petroleum products to, in, on, at, or under any place, site, or facility where Franchisee delivers, stores, processes, recycles, composts, or disposes of Solid Waste to the extent that the Liabilities are caused or alleged to be caused by the following:

**1. Franchisee Negligence or Misconduct:** the wrongful, willful, or negligent act, error or omission, or the misconduct of Franchisee;

**2. Non-Customer Materials:** the collection, delivery, handling, recycling, processing, composting, or disposal by Franchisee of any materials or waste, including Unpermitted Waste, which are generated by Persons other than Customers collected from premises other than Customers' premises;

**3. Failure to Comply with Unpermitted Waste Protocol:** the failure of Franchisee to undertake Hazardous Waste training procedures required by Applicable Law or the Unpermitted Waste Screening Protocol, whichever is more stringent; and

**4. Franchisee-Identified Unpermitted Waste:** the improper or negligent collection, handling, delivery, processing, recycling, composting, or disposal by Franchisee of Unpermitted Waste that Franchisee inadvertently collects from Customers and that Franchisee identifies as Unpermitted Waste prior to its delivery, processing, recycling, composting, or disposal,

whether:

- (i) in one or more instance;
- (ii) threatened or transpired;
- (iii) Franchisee is negligent or otherwise culpable; or
- (iv) those Liabilities are litigated, settled or reduced to judgment.

**b. Household Hazardous Waste.** The mere presence of Household Hazardous Waste in Solid Waste that is Collected under this Agreement will not constitute negligence in and of itself nor create any liability on the part of Franchisee absent any of the circumstances described in items (1) through (4) listed in Subsection (a).

**c. Cooperation with County's Counsel.** County may retain counsel at its own cost and expense or utilize in-house counsel as co-counsel. Franchisee will direct Franchisee's counsel to assist and cooperate with co-counsel with respect to County's defense.

**d. Waiver.** The indemnity in Subsection (a) is intended to operate as an agreement pursuant to 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364, to insure, protect, hold harmless, and indemnify County from liability in accordance with this Section 7.02.

**e. Unpermitted Waste.** Franchisee hereby releases and will not seek contribution or compensation of any nature from County for Liabilities relating to Unpermitted Waste, including relating to RCRA, CERCLA, or the California Health and Safety Code. Franchisee will not make any claims against or assert an interest in any account, fund or reserve that County may establish or set aside, from the proceeds of the Franchise Fee or otherwise, or maintains to cover Liabilities relating to Unpermitted Waste, which established fund or reserve County is under no obligation to establish or maintain.

### **7.03 Disposal Fees.**

Franchisee will timely pay gate and any other fees charged by the Designated Disposal Facility in accordance with County's existing gate fee schedule and Gate Fee Administration Policy, as County may amend those fees or policy from time to time.

## **ARTICLE 8. MISCELLANEOUS SERVICE PROVISIONS**

### **8.01 Emergency Services.**

Within twenty-four (24) hours of Notice from County, Franchisee will provide emergency services beyond the scope of Franchise Services at the times and to the extent directed by County, including unscheduled gathering, pick up, collection, and disposal of C&D Debris, Bulky Waste, and other debris resulting from natural disasters such as earthquakes and floods. County will compensate Franchisee its Reimbursement Costs for those services.

### **8.02 Title to Solid Waste.**

All Solid Waste, including Recyclables, becomes the property of Franchisee when Collected by the Franchisee, as provided in Section 12.10.060 of the Mono County Code. This Agreement will not affect any other agreement the Parties may reach with respect to Franchise Services, including but not limited designating the Designated Disposal Waste facility.

### **8.03 Compliance with Applicable Law.**

**a. Compliance.** Franchisee will perform all Franchise Services and will cause its Subcontractors to provide goods or services in accordance and compliance with Applicable Law and with this Agreement, whether or not referenced specifically in the text of this Agreement and regardless of whether Performance Obligations are stated less stringently than Applicable Law. If any Performance Obligation is more stringent than Applicable Law, then Franchisee and its Subcontractors must satisfy that Performance Obligation. Nothing in this Agreement is construed to relieve the Franchisee of any obligations imposed by Applicable Law.

Franchisee acknowledges that County is authorized to make all necessary and reasonable rules and regulations regarding all aspects of Solid Waste Handling Services, including Franchise Services. Franchisee agrees to comply with any and all of those rules and regulations.

Provisions of Applicable Law are incorporated in this Agreement by reference as if set forth fully in this Agreement as contractual obligations of Franchisee to County. In addition to or in lieu of prosecuting violations of Applicable Law as misdemeanors, infractions or otherwise in the manner provided under Applicable Law, County may enforce Applicable Law in the same manner as it may enforce Franchisee's other contractual obligations under this Agreement, including specific performance. However, County has no obligation to enforce any Applicable Law.

**b. Referenced Provisions.** Reference in this Agreement to particular provisions or requirements of Applicable Law may not be construed to limit Franchisee's obligation to comply with all provisions of Applicable Law. Reference to statutory provisions of Applicable Law are deemed to include reference to implementing rules and regulations. These references are intended to facilitate Franchisee's satisfaction of its Performance Obligations and County's administration and specific enforcement of this Agreement, and may not be construed to imply lack of obligation to comply with other provisions or requirements of Applicable Law not referred to or cited in this Agreement. If any Applicable Law specifically referenced or cited in this Agreement is amended, supplemented, restated, re-codified, modified, or repealed, then that reference or citation will be deemed to refer to that amendment, supplement, restatement, re-codification, or modification.

**c. Permits.** Franchisee will obtain and maintain throughout the Term all necessary approvals, authorizations, and Permits (including Permits required under Title 12 of the Mono County Code). Franchisee will show proof of approvals, authorizations, and Permits and will demonstrate compliance with the terms and conditions of said approvals, authorizations, and Permits promptly upon the request of County. In particular, Franchisee warrants and represents that it is fully acquainted with the provisions of the Mono County Code. Where County is the permitting agency, it shall cooperate in good faith with Franchisee in issuing such permits in accordance with law.

**d. Fines and Penalties.** Franchisee is responsible for payment of any and all fines and penalties imposed on Franchisee. Franchisee will not seek reimbursement from County or Customers for any fines or penalties. If Franchisee believes that compliance with a Franchise Obligation would violate Applicable Law thus exposing Franchisee to fines and/or penalties, then Franchisee shall immediately Notify County. If County concurs that Franchisee's compliance would violate Applicable Law, then the Parties shall meet and confer to determine how Franchisee may best comply with the Franchise Obligation and Applicable Law. If County determines in its sole discretion that Franchisee cannot comply with the Franchise Obligation without violating Applicable Law, then County may excuse Franchisee's performance of the Franchise Obligation and provide Franchisee with Notice that such performance is excused.

#### **8.04 Cooperation with Waste Studies.**

Franchisee will cooperate with County on any and all waste composition studies, including modification of routes, separate collection of individual Customer's Solid Waste, and/or delivering targeted loads of Solid Waste to a County-designated location or locations. Franchisee will also cooperate with County on any and all Customer waste assessments, including providing information in its Records on volume and characterization of wastes generated by Customers.

#### **8.05 Service Materials Belong to County.**

Reports prepared by Franchisee in accordance with Article 10, public education and community relations materials prepared in accordance with Section 4.06, and all other work products (whether computerized, written, printed, or photographic) developed by County or

Franchisee in connection with Franchise Services, whether developed directly or indirectly by County or Franchisee, may be used by County without limitation or restriction. Franchisee may also continue to use public education and community relations materials and other work product in connection with any project not connected with this Agreement without the prior written consent of County.

#### **8.06 Recycled Materials.**

Franchisee will use Reasonable Business Efforts to procure supplies with post-consumer recycled content.

#### **8.07 Responsiveness to County.**

Franchisee will return telephone calls from County to the person who made that call during County Office Hours no later than the next County Working Day. Franchisee will meet with County during County Office Hours within one (1) week of County's oral or written direction at County offices or other location directed by County. Franchisee will respond to all e-mails from County within two (2) County Working Days of receipt and will respond to other written correspondence from County within seven (7) days of receipt thereof.

#### **8.08 Commingling of Waste.**

Franchisee will not commingle Solid Waste it collects from premises located outside of the unincorporated area of Mono County with Solid Waste Collected by Franchisee within the unincorporated area.

### **ARTICLE 9. DISPUTE RESOLUTION BY INDEPENDENT EXPERT**

#### **9.01 Independent Expert.**

**a. Selection.** If either Party gives Notice to the other Party of request for dispute resolution by an Independent Expert as authorized by this Article, within ten (10) days after the second Party's receipt of Notice each Party will prepare a separate list of five (5) independent Persons having experience in refuse collection, in numerical order with the first preference at the top, and exchange and compare lists. The Person ranking highest on the two (2) lists by having the lowest total rank order position on the (2) lists will be the Independent Expert. In case of a tie in scores, the Person having the smallest difference between the rankings of the two (2) parties is selected; other ties will be determined by a coin toss. If no Person appears on both lists, then this procedure will be repeated. If selection is not completed after the exchange of three (3) lists or within twenty-one (21) days, whichever comes first, then each Party will select one (1) Person having experience described above and the two (2) Persons so selected will together select an Independent Expert.

**b. Costs.** Parties will share the Independent Expert's costs and fees equally.

**c. Determination Protocol and Standard.** Within ten (10) days of the selection of the Independent Expert, or within ten (10) days of Notice by either Party of request for dispute resolution by an Independent Expert if one has already been selected, both Parties will submit to the Independent Expert a detailed description of the dispute together with a written statement of each Party's position thereon. Parties will simultaneously exchange copies thereof. Both Parties will, in good faith and in writing, promptly provide the Independent Expert with any and all additional information and documentation the Independent Expert requires or requests in order to make its determination and simultaneously provide the other Party with copies thereof. Neither Party will communicate orally with the Independent Expert unless the other Party is privy thereto. Neither Party will communicate in writing with the Independent Expert unless it simultaneously sends copies of the communication to the other Party, in the same manner that it sends the communication to the Independent Expert.

The Independent Expert will make its determination based on the submissions of the Parties, the provisions of this Agreement, its experience with similar services and disputes, and other factual determinations it may make regarding the matter in dispute.

**d. Binding and Non-Binding Determinations.**

1. Disputes subject to binding determination by the Independent Expert include:
  - (i) fee disputes in accordance with Section 13.04(c);
  - (ii) additional programs in accordance with Section 6.02; and
  - (iii) other disputes agreed to by the Parties.
2. Disputes subject to non-binding determination by the Independent Expert include:
  - (i) the occurrence and extent of Uncontrollable Circumstances; and
  - (ii) other disputes agreed to by the Parties.

**ARTICLE 10. RECORDS AND REPORTING**

Franchisee acknowledges that County entered into this Agreement, among other reasons, to provide Customers and County with improved Collection Services. Franchisee further acknowledges that, in order that County may better evaluate Franchisee's performance under this Agreement, Franchisee has obligated itself to maintain Records and timely provide reports in accordance with this Article.

**10.01 Records.**



**a. Maintenance.** Unless otherwise directed by County, Franchisee will accurately maintain at its Office any and all ledgers, books of account, invoices, Customer lists, billing records, route maps, Customer complaints, canceled checks, logs, correspondence, Customer receipts, and other records or documents evidencing or relating to rates, Franchise Fee, Customers' Franchise Services subscriptions, satisfaction of Performance Obligations, events subject to damages payable under Section 14.01, documentation as County may reasonably require to ascertain the extent of compliance with the Mono County Code, and items listed in Exhibit 10.01a related to Franchise Services provided by Franchisee ("**Records**"). Specific Record requirements are listed on Exhibit 10.01a. Franchisee will maintain Records for the Term plus three (3) years, or any longer period required by Applicable Law. Franchisee will use Reasonable Business Efforts to promptly provide County any additional information relevant to this Agreement that is not specified in this subsection.

**b. County Inspection and Audit.** Upon Notice by County, Franchisee will use Reasonable Business Efforts to provide copies of Records to County or County's designee(s) for inspection or audit at County Administrative Office or County Auditor-Controller Office. Otherwise, Franchisee will make Records available to County or County's designee(s) for inspection or audit at Franchisee's Office during Office Hours. Notwithstanding anything contained herein to the contrary, County shall have no right to audit, inspect, copy, or otherwise review any of Franchisee's confidential, proprietary, or privileged information.

Where County has reason to believe that Records may be lost or discarded due to dissolution, disbandment or termination of Franchisee's business or other reason, County may require that Franchisee give County custody of any or all Records and that those Records and documents be maintained in County Office of the Department of Public Works. In that event, access to said Records will be granted to any Person duly authorized by Franchisee.

## **10.02 Reporting.**

**a. Quarterly.** Franchisee will submit Quarterly Reports to County no later than the fifteen (15<sup>th</sup>) day of the month immediately following the end of each quarter described in Exhibit 10.02a. *For example, for the Quarter ending on March 31, the Quarterly Report is due to County no later than April 15.* Quarterly Reports must be in the form directed or approved by County and contain, at a minimum, the information listed in Exhibit 10.02a, including information needed for County to prepare Quarterly Reports required under Applicable Law with respect to recycling and Diversion of Solid Waste in County, County's compliance with its solid waste facility permits, and quarterly taxes due and payable to the California Department of Tax and Fee Administration.

**b. Annual.** Franchisee will submit Annual Reports to County on or before February 15 of each Contract Year in the form directed or approved by County, totaling the information contained in the Quarterly Reports for the previous Contract Year and containing, at a minimum, the information listed in Exhibit 10.02b.

**c. Additional Information.** Franchisee will use Reasonable Business Efforts to incorporate into reports additional information from Records promptly upon Notice from County.

### **10.03 Financial Records and Reports.**

#### **a. Maintenance of Accounting Records.**

**1. Form and Content.** Franchisee will maintain in its Office accurate and complete accounting records containing financial and operational data relating to all costs associated with providing Franchise Services, whether by Franchisee or Subcontractor or Affiliate providing goods or services related to the provision of Franchise Services, prepared on an accrual basis. Franchisee will maintain its accounting records on a basis showing (1) the results of Franchisee's operations under this Agreement separately from operations in other locations, as if Franchisee were an independent entity providing service only to County, as well as (2) the results of Franchisee's operations in all locations, as a corporate entity. With respect to costs associated with goods or services provided by an Affiliate that is a Subcontractor, Franchisee may maintain those records in the office of the Affiliate but will provide County with a copy thereof within ten (10) days of County's request therefor.

**2. County Audit.** County and its auditors and other agents selected by County may conduct on-site audits, reviews, and inspections of Records described in Subsection (a)(1) at Franchisee's Office during Office Hours and make copies of any Records or supporting documentation relevant to this Agreement, including Customer account and billing information, Customer receipts, and Franchise Fee payments. Franchisee will retain said records for the term plus three (3) years and any additional time directed by County to enable County to complete any review or audit commenced during said three (3) years. Notwithstanding anything contained herein to the contrary, County shall have no right to audit, inspect, copy, or otherwise review any of Franchisee's confidential, proprietary, or privileged information.

**b. Financial Statements.** Promptly upon County direction, Franchisee will deliver to County up to three (3) copies of Franchisee's most recent financial statements, including any accompanying statement or opinion by the accountant who prepared them respecting that accountant's compilation, review, or audit, as the case may be. Franchisee will cause the accountant to prepare financial statements on an accrual basis showing (1) the results of Franchisee's operations under this Agreement separately from operations in other locations, as if Franchisee were an independent entity providing service only in the unincorporated area of County, as well as (2) the results of Franchisee's operations in all locations,.

**c. Affiliated Companies.** If Franchisee enters into any Subcontracts with Affiliates, then Franchisee will thereafter disclose said arrangements in Franchisee's financial reports prepared and delivered in accordance with Section 10.03(b). County's inspection rights described in Subsection 10.03(a) extends to said Affiliate or Affiliates.

**d. County Review of Financial Statements.** County and/or its agents and consultants may review the audit plan and work papers of any of the accountants whose opinions on the

financial statements Franchisee is obligated to deliver to County in accordance with Subsections 10.03(a), (b), or (c). If that review gives rise to any questions or differences of opinion regarding Franchisee's compliance with this Agreement, then Franchisee and its accountant(s) will meet with County and its consultant, if any, to discuss the issues involved within fourteen (14) days of County's direction.

#### **10.04 Proprietary Reports and Records.**

**a. Notice of Request.** If County receives a request from a third person to review or copy material which Franchisee has marked "confidential," then County will inform Franchisee and allow Franchisee to present arguments and facts to County in support of Franchisee's position that the material is entitled to an exemption from disclosure under the California Public Records Act, Government Code section 6250 *et seq.*, and should not be released.

**b. Notice of Release.** If County determines that the material is *not* entitled to an exemption and that it must be released, then County will inform Franchisee before releasing that material so that Franchisee may seek a court order enjoining that release.

**c. Notice of Legal Action.** If County determines that the material is entitled to an exemption, and the person who requested the information files a legal action seeking its release, then County will inform Franchisee and will not oppose a motion by Franchisee to intervene in the action. Franchisee must either intervene or accept the release of the material. County is not obligated to defend the action and may release the material sought without any liability.

**d. Defense and Indemnification.** Notwithstanding anything contained herein to the contrary, Franchisee 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, County's release, disclosure, or withholding of any material which Franchisee has marked "confidential" under the California Public Records Act.

### **ARTICLE 11. INSURANCE, INDEMNIFICATION AND PERFORMANCE ASSURANCES**

#### **11.01 Insurance**

##### **a. Policies.**

**1. Types and Amounts.** Franchisee, at Franchisee's sole cost and expense, will procure from an insurance company or companies admitted to do business in the State of California and subject to the regulation of the California Insurance Commissioner and will maintain in force at all times during the Term the types and amounts of insurance listed in Exhibit 11.01a.

**2. Endorsements.** The policies of insurance required pursuant to Subsection (a)(1) must contain the endorsements listed in Exhibit 11.01a.

**b. Delivery of Proof of Coverage.** As of the Commencement Date, Franchisee will furnish County a certificate for each policy of insurance required under this Section 11.01 in a form and substance satisfactory to County. Each such certificate must show the type and amount of coverage, effective dates and dates of expiration of policies and will have all required endorsements. If County requests, then Franchisee will promptly deliver copies of each policy together with all endorsements to County. Franchisee will furnish renewal certificates to County to demonstrate maintenance of the required coverages throughout the Term of this Agreement.

**c. Other Insurance Requirements.**

**1. Subcontractors.** If Franchisee subcontracts to a Subcontractor to provide goods or services related to the provision of Franchise Services, then Franchisee will require all such Subcontractors to provide statutory workers' compensation insurance and employer's liability insurance for all of the Subcontractor's employees engaged in the work. The general liability insurance required by this Section must cover Franchisee's liability for acts of its Subcontractors or each Subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section 11.01.

**2. Compliance with Policies.** Franchisee will comply with all requirements of the insurers issuing policies and will require its Subcontractors to do so. Carrying insurance does not relieve Franchisee from any Performance Obligation, including those imposed by this Article 11. If any third Person makes a claim against Franchisee or any Subcontractor on account of any occurrence related to this Agreement, then Franchisee will promptly report the facts in writing to the insurance carrier and to County. If Franchisee fails to procure and maintain any insurance required by this Agreement, then County may take out and maintain such insurance as is required hereunder and Franchisee will reimburse County for County's Reimbursement Costs thereof.

**3. Amendments.** If requested by County, and without charge to County, Franchisee will promptly amend the Comprehensive General Liability policy and by endorsement, add the trustee of any bonds or Certificates of Participation, which were or may be in the future, issued by County to finance County's Solid Waste facilities, including transfer stations and landfills, as an additional insured.

**11.02 Franchisee Defense and Indemnification.**

**a. Permit.** Franchisee will defend with counsel approved by County and indemnify County for actions arising out of its permit in accordance with Chapter 12.08 of the Mono County Code.

**b. Agreement.**

**1. Defense and Indemnification.** Franchisee will further indemnify, defend with counsel approved by County, protect and hold harmless County from and against all Liabilities paid, incurred or suffered by, or asserted against, County that result or are claimed to have resulted from Franchisee's performance or provision of Franchise Services pursuant to this Agreement, including the following:

- (i) **Franchisee Negligence or Misconduct:** the wrongful, willful, or negligent act, error, or omission, or the misconduct of Franchisee and Persons described in the definition of "Franchisee" in Exhibit 1.01;
- (ii) **Patents, etc.:** any allegation of infringement, violation, or conversion of any patent, licenses, proprietary right, trade secret, or other similar interest, in connection with any Service Assets, including technology, processes, Vehicles, software, machinery, or equipment;
- (iii) **Challenges to Agreement:** legal challenge with respect to the procurement of this Agreement or Parties' execution of this Agreement, County's authority to contract out Franchise Services, or any provision contained within the Agreement regardless of the legal theory advanced or relied upon by any interested third party, including any appeals necessary to validate that authority or the Agreement; or
- (iv) **Enforcement of Agreement or Applicable Law:** any Liabilities that may be assessed against Franchisee or County in connection with any alleged failure of County to enforce provisions of this Agreement or of Applicable Law as permitted under Section 8.03.

**2. Certain County Negligence Excluded.** Franchisee will not, however, be required to reimburse or indemnify County to the extent any Liabilities are due to the sole negligence or willful misconduct of County and Persons described in the definition of "County" in Exhibit 1.01.

### **11.03 Letter of Credit.**

Franchisee will provide for the issuance of an irrevocable direct pay letter of credit by a bank approved by County for the benefit of County, under which County is authorized to draw, in one or more drawings, an aggregate amount of \$10,000 upon the occurrence of an Event of Default or Franchisee's failure to timely pay any County Payment Obligation. The expiration date of the Letter of Credit must be no less than the Term or if subject to renewal, provide County with thirty (30) days advance notice of non-renewal. The Letter of Credit will expire on the date on which the Bank receives a certificate from County saying that the Term has expired or this Agreement has been terminated and Franchisee owes County no money hereunder, or that Franchisee has substituted an alternative letter of credit or other security document acceptable to County in County's sole discretion. The form of the Letter of Credit, including the procedures for and place of demand for payment and drawing certificate attached thereto, is subject to approval of County

in its sole discretion. The Letter of Credit must be transferable to any successor or assign of County.

## **ARTICLE 12. CRIMINAL ACTIVITY**

### **12.01 Criminal Activity.**

Franchisee will immediately provide Notice to County upon the occurrence of any of the following events or circumstances listed in Subsection (a) and Subsection (b) (“**Convictions or Pleas**”) with respect to Franchisee or any of its Contract Managers defined below in Subsection (e):

**a. Convictions, etc.:** Franchisee or any of its Contract Managers defined in Subsection 12.01(e), has a criminal conviction, permanent mandatory or prohibitory injunction, or a final judgment or order from a court, municipality, or regulatory agency of competent jurisdiction with respect to the following (“**Criminal Activity**”):

- (1) fraud or other criminal offense, other than offenses constituting infractions, in connection with obtaining, attempting to obtain, procuring, or performing a public or private agreement related to Recyclables or Solid Waste services of any kind (including collection, hauling, transfer, processing, composting, or disposal), including this Agreement;
- (2) bribery or attempting to bribe a public officer or employee of a local, state, or federal agency;
- (3) embezzlement, extortion, racketeering, false claims, false statements, forgery, falsification or destruction of records, obstruction of justice, knowingly receiving stolen property, theft, or misprision (failure to disclose) of a felony;
- (4) unlawful disposal of hazardous, designated, or other waste; or
- (5) violation of securities laws or antitrust laws, including laws relating to price-fixing, bid-rigging and sales and market allocation, and of unfair and anti-competitive trade practice laws, including with respect to inflation of waste collection, hauling, or disposal fees.

**b. Pleas, etc.:** Franchisee or any of its Contract Managers defined in Subsection (e) has pled “guilty” or entered a plea of “*nolo contendere*” or “no contest” to Criminal Activity occurring within County or relating to this Agreement.

**c. Cure.** Upon the occurrence of any Convictions or Pleas, Franchisee immediately will do or cause to be done *both* of the following:

- (1) terminate from employment or remove from office the offending Contract Manager who is an individual, or, with respect to a Contract Manager that is the Franchisee or an Affiliate, the individual or individuals responsible for the Criminal Activity; and
- (2) eliminate the participation by that Contract Manager who is an individual or, with respect to a Contract Manager that is the Franchisee or an Affiliate, the individual or individuals responsible for the Criminal Activity, in any Position of Influence described in Subsection 12.01(e) below.

County in its sole discretion may terminate the Agreement upon 30 days' Notice to the Franchisee, or may impose other sanctions (which may include financial sanctions, temporary suspensions, or any other conditions deemed appropriate short of termination) as it will deem proper, in the following events:

- (1) Franchisee or any Affiliate fails to comply with the foregoing obligation of this Subsection (c); or
- (2) the Criminal Activity concerns and is related to this Agreement.

Franchisee must be given the opportunity to present to the Director evidence in mitigation during the preceding Notice period and County must consider that evidence.

**d. New Employees.** Franchisee will not allow or cause to be allowed any employee, officer, or director of an Affiliate who is the subject of any Criminal Activity to be hired or transferred from any Affiliate to a position as a Contract Manager.

**e. Definitions.** For purposes of this Section, “**Franchisee or any of its Contract Managers**” means:

- (1) Franchisee and its officers and directors;
- (2) the officers and directors of Franchisee’s parent corporation and of each successive parent corporation’s parent corporation identified in Exhibit 12.01e(2);
- (3) the Franchisee Representative; and
- (4) any other Persons, including Affiliates and Franchisees’ or Affiliates’ employees, officers, or directors, who have the authority or responsibility to directly or indirectly administer, manage, direct, supervise, or oversee Franchise Services or this Agreement, *including* the following: (i) supplying goods or services; (ii) serving as director of the board of directors of Franchisee or an Affiliate; (iii) serving as an officer or employee of Franchisee or an Affiliate; (iv) reviewing or negotiating Franchisee’s contracts (including this Agreement); (v) providing in-house legal services; (vi) providing insurance or other performance security; and (vii) providing processing or disposal, but *excluding* the following: monitoring

Franchisee's performance, supervising Franchisee's finance and capital budget decisions and articulating general policies and procedures not related to Criminal Activity. This authority and responsibility is defined as "**Position of Influence.**"

## **ARTICLE 13. SERVICE FEES**

### **13.01 Service Fees. Franchisee understands and acknowledges, as follows:**

- (1) Pursuant to Chapter 12.10 of the Mono County Code, up to two (2) solid waste enterprises will be granted exclusive franchises in the form of this Agreement to provide Franchise Services as primary franchisees within the Service Area.
- (2) In authorizing up to two (2) Franchisees within the same Service Area, it is County's intention to allow for competition and thereby avoid the need to set Service Fees, other than Service Fee floors, for the provision of Franchise Services pursuant to this Agreement.
- (3) Notwithstanding the above, County may set Service Fee caps or specific Service Fees as provided in Subsection (b).

**a. Service Fee Floors.** Franchisee will not charge Service Fees for the Franchise Services provided pursuant to this Agreement that are less than those Service Fees listed in Exhibit 13.01a, except as set forth below.

**1. Senior Rates.** Franchisee may charge Service Fees up to twenty percent (20%) below those set forth in Exhibit 13.01a to Residential Customers over the age of 62, provided that those Service Fees are uniform as to all such Customers.

**2. Multiple-service Cart.** Franchisee may charge Service Fees up to twenty percent (20%) below those for Carts set forth in Exhibit 13.01a to Commercial Customers who require multiple Collections each week, provided that the reduced rates are uniform countywide and the Customer is already furnished with the largest Bin that Franchisee has in its Service Asset Inventory.

**b. Service Fee Caps and Specific Service Fees.** County may set Service Fees caps or set specific Service Fees for the provision of Franchise Services if either of the following events occurs:

**1. Franchisee Becomes Sole Provider.** If Franchisee becomes the only primary franchisee, as defined in Section 12.02.020 of the Mono County Code, then subject to subsequent Service Fee adjustment provided in Subsection 13.01(c), Franchisee will charge Service Fees no greater than the Service Fees it charged on the date that Franchisee became the sole primary franchisee, as determined by County. If, however, Franchisee's Service Fees increased by more than five percent (5%) in the 12-month period immediately preceding its becoming the only primary franchisee, then Franchisee will submit to County a written explanation of the basis for



the increase(s) made during that 12-month period. Franchisee will provide County with documentation or other information related to those increases within ten (10) days of County's request. Based upon its review of that documentation and other information, the County Board may:

- (1) set Franchisee's Service Fees at the level existing as of the date Franchisee became the sole primary franchisee; or
- (2) set Franchisee's Service Fees at a level that is less than that existing on that date.

**2. Unjustified Service Fee Increase Exceeding 5%.** If, notwithstanding the existence of competition within the Service Area, any Service Fee or Fees charged by Franchisee increase by more than five percent (5%) in any 12-month period, then within ten (10) calendar days of County's request Franchisee will provide County with a written explanation of those increase(s), together with any financial and other records justifying the increase(s). If County determines, in its sole discretion, that the increase(s) are not justified by the information provided, then County may set Franchisee's Service Fee or Service Fees as provided in Subsection (b)(1).

**c. Service Fee Adjustments.** If Service Fees are set pursuant to Subsection (b)(1) or Subsection (b)(2), then those Service Fees may be adjusted as provided in Subsection (c). Upon written request by Franchisee to the County Board for a Service Fee adjustment submitted no earlier than July 1<sup>st</sup> and no later than October 1<sup>st</sup> prior to the commencement of each new Contract Year, Franchisee's Service Fees for Franchise Services will be adjusted, upward or downward, annually, effective January 1<sup>st</sup> of each Contract Year, in the manner described provided in Subsection (c). The County Board may also (but is not obligated to) act on its own initiative in the event Franchisee declines to request an adjustment to its Service Fees, and adjust Franchisee's Service Fees in the manner described below. Franchisee will provide written notice to each Customer in a form approved by County, of annual increases, whether initiated by Franchisee or by the County Board, at least six (6) weeks prior to their implementation.

### **1. Annual Adjustments.**

**(i) CPI Adjustment.** Seventy-five percent (75%) of Franchisee's Service Fees are subject to adjustment in accordance with the Consumer Price Index – Not Seasonally Adjusted, U.S. City Average for Garbage and Trash Collection ("CPI"), as published by the United States Department of Labor, Bureau of Labor Statistics, for the month of September during the most recent 12-month period preceding the upcoming operating year. Thus, if the CPI experienced a net increase of 3% from September, 2005, to September, 2006, then seventy-five percent (75%) of Franchisee's Service Fees would be subject to a three percent (3%) increase effective as of January 1, 2007.

**(ii) PPI Adjustment.** Five percent (5%) of Franchisee's Service Fees are subject to adjustment as described below in accordance with the Producer Price Index – Not Seasonally Adjusted, U.S. City Average for #2 Diesel all items ("PPI"), as published by the United States Department of Labor, Bureau of Labor Statistics, for the month of September during the most

recent 12-month period preceding the upcoming operating year. Thus, if the PPI experienced a net increase of three percent (3%) between September, 2005, and September, 2006, then five percent (5%) of Franchisee's Service Fees would be subject to a three percent (3%) increase effective as of January 1, 2007.

(iii) ***Gate Fee Adjustment.*** Twenty percent (20%) of Franchisee's Service Fees are subject to adjustment to reflect increases or decreases in the gate fees charged at the Designated Disposal Site. This portion of Franchisee's Service Fees will apply either generally to the gate fees for solid waste, or for the specific category of waste for which the Franchisee has established a Service Fee, such as white goods, tires, C&D Waste, or others that may be applicable.

The total adjustment of Service Fees under this subsection, whether upward or downward, may not exceed five percent (5%) in any one Contract Year.

If either the CPI or PPI category specified above is discontinued or revised during the Term by the United States Department of Labor, Bureau of Labor Statistics, such other government index or computation with which it is replaced will be used in order to obtain substantially the same result as would be obtained if the category had not been discontinued or revised. County will specify any replacement index to the CPI or PPI category at its sole discretion.

**2. Change in Law Adjustments.** In addition to the adjustments set forth in Subsection (c)(1), Franchisee may request an adjustment to Franchisee's Service Fees where a change in Applicable Law, other than a change to the gate fees charged at the Designated Disposal Facility, results in an increase in Franchisee's Direct costs. Franchisee may request Service Fee adjustments made under this subsection at any time during the course of a Contract Year; *provided, however,* that Franchisee may not request more than one adjustment due to changes in law per Operating Year. For the purposes of this subsection "**Operating Year**" will mean the 12-month period immediately preceding or following the requested adjustment. In its application for a Service Fee adjustment based on a Change in Law, Franchisee must include a statement of the amount of the requested adjustment, the basis therefore, and all financial and other records on which Franchisee relies for its claim that Franchisee's Direct Costs have increased. The Director will review Franchisee's Service Fee application and notify Franchisee if it is complete or whether the Director wishes to review and/or audit any additional documents or information reasonably related to the requested increase before submitting the matter to the County Board for their consideration. The Board will review and consider the requests within a reasonable period of time after the complete submittal by Franchisee and after County has had a reasonable period of time to request, review, and audit any applicable financial records of Franchisee and/or its Affiliates. The Board may grant Franchisee's requested Service Fee adjustment or, based on the information presented, may increase or decrease Franchisee's Service Fees in amounts different from Franchisee's request. The adjusted Service Fees, if approved, will go into effect thirty (30) days after such approval or at such other time as established by the Board.

**d. Resolution of Issues Regarding Service Fee Adjustments.** Any issue regarding Service Fee adjustments, or the computation thereof will be decided by the County Board. The Service Fees in effect at the time any issue or dispute is submitted to the Board will remain in

effect pending resolution of any issue or dispute. The effective date of any dispute resolution, whether retroactive or prospective, will reasonably be determined by the Board. In the event that Franchisee and County are unable to reach agreement regarding the adjustment of Service Fees, then either party may terminate this Agreement by sending to the other party a Notice stating the basis therefor, and setting a date of termination that is at six (6) months from the date printed on the Notice, *unless* the Parties agrees to a shorter date.

## **13.02 Fees Payable by Franchisee.**

### **a. Franchise Fee.**

**1. Amount.** In consideration for County's granting Franchisee the franchise described in Section 4.01, Franchisee will pay County the Franchise Fee equal to four percent (4%) of the Gross Revenues received from providing the Franchise Services, commencing with revenues billed for and received after October 1, 2018, but excluding Gross Revenues received from providing the Franchise Services pursuant to an Existing Agreement listed in Exhibit 13.01a.

**2. Payment.** Franchisee will pay the Franchise Fee quarterly, no later than the first day of the second month immediately following the Quarter in which Franchisee rendered Franchise Services, as required by Section 12.10.022 of the Mono County Code (for example, for the quarter ending on March 31, payment is due no later than May 1). With payment, Franchisee will additionally provide:

- (1) documentation in form and detail satisfactory to the Director showing the basis for calculating the Franchise Fee, together with additional information to calculate or verify the Franchise Fee that the Director may determine to be necessary; and
- (2) a representation and warranty as follows: "I represent and warrant, under penalty of perjury of the laws of the State of California, that I am familiar with the financial transactions of D & S Waste Removal, Inc. and am responsible for keeping and maintaining its financial records, including gross receipts thereof, and I have reviewed the [INSERT DATE AND DESCRIPTION OF ACCOMPANYING FRANCHISE PAYMENT ACCOUNTING STATEMENT]. To the best of my knowledge and belief, the statement is true, correct and complete."

Documentation and representations and warranties filed by Franchisee are not deemed conclusive as to the information presented or statements made therein. Franchisee's submission of documentation and representations and warranties does not preclude County from taking additional measures and actions to collect franchise fees actually due and payable.

**3. Late Payment Charges.** If Franchisee does not fully and timely pay its Franchise Fee in accordance with Subsection (a)(2), then Franchisee shall pay a basic penalty of ten percent (10%) of the amount of the unpaid Franchise Fee plus interest equal to one and one half percent

(1½ %) of the total of (i) the unpaid monthly charges and (ii) the basic penalty, for each month, or part of a month, that the monthly franchise fee has not been paid.

**4. County Audit.** County may, at its own expense and using a consultant of its choosing, audit the records of Franchisee and Franchisee must provide County with copies of records within two (2) weeks of County's request. If County's audit demonstrates to the satisfaction of County that the Franchise Fee paid by Franchisee to County was understated, then Franchisee will pay County both:

- (1) the amount of the understated Franchise Fee plus the late payment charges provided in Subsection (a)(3) within thirty (30) days following County's submission of the results of the audit to Franchisee, and
- (2) if County's audit demonstrates that the Franchise Fee paid by Franchisee was understated by more than Five Thousand dollars (\$5,000.00) or two percent (2%), whichever is less, County's Reimbursement Cost to conduct the audit.

**5. Annual Review by CPA; Actual Payments.** Within one hundred twenty (120) days following the close of each Contract Year, Franchisee will furnish County with a statement showing and substantiating the amount of the Franchise Fee, both owed and paid. Franchisee will cause that statement to be audited by an independent certified public accountant, acceptable to County, in accordance with generally accepted auditing principles, and including the accountant's statement relative to his or her review. That statement will also be accompanied by the representation and warranty required by item (2) of Subsection (a)(2).

**b. Solid Waste Permit Fee.** Franchisee will pay County any fee for Permits issued by County in the time, manner, and amount required by the Mono County Code or by resolution of the County Board.

### **13.03 Payment of Moneys Due County.**

Franchisee will pay all County Payment Obligations (i) on the date they are due pursuant to this Agreement; or (ii) if no date is provided in this Agreement, within twenty (20) days of County's demand.

If Franchisee has not fully and timely paid a County Payment Obligation within twenty (20) days of their due date, then County may draw on Franchisee's Letter of Credit in accordance with Section 11.03 for the amount of (i) the Payment Obligation, *plus* (ii) the Overdue Rate or, with respect to Franchise Fees, the late-payment charge set forth in Section 13.02.

### **13.04 Fee Disputes.**

**a. County's Notice of Dispute.** If County disputes any amount calculated by Franchisee in accordance with Section 13.02(a), then County will give Franchisee Notice of its dispute

together with any request for additional information, identified with reasonable specificity, with respect thereto.

**b. Franchisee's Response.** Within seven (7) days of receiving County's Notice, Franchisee will respond to County's dispute and supply any requested information. If Franchisee does not respond within said time, then it will be deemed to concur with County. If Franchisee concurs or is deemed to concur, then it will promptly amend the disputed invoice.

**c. Dispute Resolution.** If County disagrees with Franchisee's response and County and Franchisee cannot reach agreement during an ensuing 15-day period following the Franchisee's response, then the Parties may agree to submit the matter for binding resolution by the Independent Expert in accordance with Article 9.

## **ARTICLE 14. BREACHES, DEFAULTS, DAMAGES, AND OTHER REMEDIES**

### **14.01 Certain Breaches and Damages.**

**a. Notice and Opportunity to Correct.** County entered into this Agreement with Franchisee in part based on Franchisee's demonstrated abilities, service quality, and responsiveness to Customers' and County's needs. It is County's hope to avoid exercising remedies set forth in this Agreement whenever possible by working with Franchisee informally to resolve Events of Default or other failures to satisfy the obligations set forth in this Agreement. Thus, County may, in its sole discretion, provide verbal notice to Franchisee of any Event of Default or failure by Franchisee to satisfy the obligations set forth in this Agreement of which County becomes aware prior to pursuing other remedies set forth in this Agreement. If Franchisee corrects said Event of Default or failure to the satisfaction of the Director within the number of days provided, then County shall not pursue additional remedies for that occurrence. In addition, Franchisee shall have each of the opportunities to cure and/or correct Events of Default or other failures to satisfy the obligations of this Agreement set forth in Mono County Code section 12.10.023(E).

**b. Franchisee Reports.** In each Quarterly Report, Franchisee will certify to County that it has fully and timely met its Performance Obligations during the preceding Quarter. If Franchisee cannot so certify, then Franchisee will note those failures in its Quarterly Report and within thirty (30) days of submitting its Quarterly Report, pay damages listed in Exhibit 14.01 for each failure occurring after the first six (6) weeks following the Commencement Date.

**c. County Notice.** If County becomes aware at any time that Franchisee has not fully and timely met its Performance Obligations, then County may provide Franchisee with a Notice thereof specifying any damages that Franchisee must pay County in accordance with Exhibit 14.01 within ten (10) days of Notice, *unless* Franchisee contests payment of damages as provided in Subsection (d).

**d. Procedure for Review of Damage Obligations.** Within ten (10) days of the date of the Notice by County described in Subsection (c), Franchisee may contest imposition of damages

by submitting documentary evidence to County demonstrating why Franchisee does not owe damages. County will use Reasonable Business Efforts to review Franchisee's evidence and render a written decision to Franchisee confirming or reversing the imposition of damages as soon as reasonably possible after receipt of the evidence. County's decision is final and binding and constitutes final Notice for the purposes of this Subsection (d).

**e. Damages Reasonable.** The Parties acknowledge that County has incurred considerable time and expense procuring this Agreement in order to secure an improved level of Collection service quality, accountability, and increased Customer satisfaction. Therefore, consistent and reliable Franchise Service and accountability is of utmost importance to County. County has considered and relied on Franchisee's representations as to its quality of service commitment in entering into this Agreement, and Franchisee's breach of its Performance Obligations represents a loss of bargain to County and Customers.

The Parties further recognize that quantified standards of performance and regular reporting to County regarding that performance are necessary and appropriate to ensure consistent and reliable Service, and if Franchisee fails to meet its Performance Obligations then County will suffer damages (including its Customers' inconvenience; anxiety; and frustration, criticism, and complaint by Customers; potential political pressure; lost the County Board and staff time; and loss of bargain secured through time-consuming and expensive procurement) and that it is and will be impracticable and extremely difficult to ascertain and determine the value thereof. In addition, if Franchisee fails to fully and timely satisfy its Performance Obligations or in the Event of Default, then the urgency of protecting public health and safety may necessitate that County enter into emergency or short-term arrangements for services without competitive procurement at prices substantially greater than hereunder, and the monetary loss resulting therefrom is impossible to precisely quantify. Lastly, termination of this Agreement for Franchisee Default and other remedies provided hereunder are, at best, a means of future correction and not remedies that make County whole for past Breaches and Franchisee Defaults. Therefore, the Parties agree that the liquidated damages listed in Exhibit 14.01 represent a reasonable estimate of the amount of said damages, considering all of the circumstances existing on the Commencement Date, including the relationship of the sums to the range of harm to County that reasonably could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. In signing this Agreement, each Party specifically confirms the accuracy of the statements made above and the fact that each Party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Agreement was made.

## **14.02 Remedies Upon Default.**

**a. Remedy.** Upon the occurrence of an Event of Default, County has the following remedies:

**1. Termination.** County may terminate this Agreement or any portion of Franchisee's Performance Obligations. Prior to termination, County must give Franchisee a Notice stating the reason for the termination. County may terminate the Agreement

- (1) thirty (30) days following the date of the Notice; or
- (2) immediately following the date of the Notice if
  - (i) County determines that protection of public health and safety requires immediate termination;
  - (ii) Franchisee fails to maintain insurance, bonds, or other assurances of performance required under this Agreement;
  - (iii) Franchisee Violates law, as set forth in Section 10.12.023(E)(1)(e) of the Mono County Code.

**2. Suspension.** County may suspend all or a portion of this Agreement for up to thirty (30) days. During that 30-day period the Franchisee may demonstrate to the sole satisfaction of County that Franchisee can once again fully perform the Franchise Services. If Franchisee so demonstrates, then County's right to suspend or terminate the Agreement will cease and Franchisee may resume providing Franchise Services. If Franchisee does not so demonstrate, then County may terminate the Agreement and exercise any other rights and remedies under this Agreement. Prior to suspending all or a portion of this Agreement, County must give Franchisee a Notice stating the reasons for the suspension. County may suspend the Agreement, effective fifteen (15) days after the date of the Notice. If County determines that the suspension is necessary for the protection public health and safety, then County need not give Franchisee Notice but may give Franchisee oral notice stating the reasons for the suspension, effective immediately. County will provide Franchisee with Notice confirming oral notice.

**3. Damages.** County may exercise its remedies of damages (including damages in accordance with Section 14.01).

**4. Equitable Relief.** County may exercise any other available remedies at law or in equity (including specific performance and injunctive relief). Franchisee acknowledges that County's remedy of damages for a breach of this Agreement by Franchisee may be inadequate for reasons including: (i) the urgency of timely, continuous and high-quality Solid Waste management service under this Agreement, including collection, transportation and/or transfer for disposal of putrescible wastes which constitute a threat to public health; and (ii) for all of the reasons set forth in Section 14.01(e). Therefore, County is entitled to all available equitable remedies, including specific performance or injunctive relief.

**b. Delivery Obligations.** Franchisee further acknowledges that County's remedy of damages for a breach of Section 7.01 by Franchisee (Failure to Deliver Materials to Designated Disposal Facility) may be inadequate and, consequently, that County is entitled to all available equitable remedies, including specific performance and injunctive relief for all of the reasons set forth in Exhibit R-1.

#### **14.03 Remedies Not Exclusive.**

County's rights and remedies in the Event of Default are not exclusive. Exercise of one remedy, including seeking damages, is not an election of remedies but is cumulative with any other remedies under this Agreement.

#### **14.04 Waivers.**

**a. County Waiver of Breach.** County's waiver of any breach or Event of Default will not be deemed to be a waiver of any other breach or Event of Default including those with respect to the same obligations under this Agreement. County's decision not to demand payment of damages will not be deemed a waiver of any Franchisee failure to satisfy any Performance Obligations. County's subsequent acceptance of any damages or other money paid by Franchisee, including damages, will not be deemed to be a waiver by County of any pre-existing or concurrent breach or Event of Default.

**b. Franchisee Waiver of Certain Defenses.** Franchisee acknowledges that it is solely responsible for providing Franchise Services and by this Agreement irrevocably and unconditionally waives defenses to the payment and satisfaction of its Performance Obligations under this Agreement based upon failure of consideration; contract of adhesion; impossibility or impracticability of performance; commercial frustration of purpose; or the existence, non-existence, occurrence or non-occurrence of any foreseen or unforeseen fact, event, or contingency that may be a basic assumption of Franchisee with regard to any provision of this Agreement. However, Franchisee does not waive any defense of Uncontrollable Circumstances.

#### **14.05 Jurisdiction; Venue.**

- a. Jurisdiction.** The Parties will bring any lawsuits arising out of this Agreement in State or Federal courts within the State of California, which will have exclusive jurisdiction over said lawsuits.
- b. Venue.** Venue will be made and performed in courts sitting in Mono County.
- c. Other.** The site of any other hearing or action, whether arbitration or non-judicial, of whatever nature or kind regarding this Agreement, will be conducted in Mono County.

#### **14.06 Costs.**

Franchisee agrees to pay to County County's Reimbursement Costs reasonably incurred by or on behalf of County enforcing timely payment or performance of Franchisee's obligations under this Agreement.

#### **14.07 Assurance of Performance.**



If Franchisee

- (1) is the subject of any labor unrest (including work stoppage or slowdown, sick-out, picketing, or other concerted job action); or
- (2) appears in the judgment of County to be unable to regularly pay its bills as they become due; or
- (3) is the subject of a civil or criminal judgment or order entered by a federal, state, regional, or local agency for violation of an environmental or tax law,

and County believes in good faith that Franchisee's ability to timely and fully perform Franchise Services has been placed in substantial jeopardy, then County may, at its option and in addition to all other remedies it may have, demand from Franchisee reasonable assurances of timely and full performance under this Agreement. If Franchisee fails or refuses to provide reasonable assurances by the date required by County, then that failure or refusal will constitute an Event of Default in accordance with Section 12.10.023(E)(2)(b) of the Mono County Code.

#### **14.08 County Right to Perform Franchise Services.**

**a. Events.** County may perform, or contract for the performance of, any or all of Franchisee's Performance Obligations, including the collection of Solid Waste or any portion thereof and transportation and delivery to a Solid Waste facility, upon the occurrence of either of the following events, determined by County in its sole discretion:

- (1) Franchisee, due to Uncontrollable Circumstances or for any reason whatsoever, fails, refuses, or is unable for a period of forty-eight (48) hours to Collect and/or to transport, Solid Waste to a Solid Waste facility and County determines there is danger to the public health, safety, or welfare; or
- (2) County suspends any portion of Franchisee's Performance Obligations or terminates this Agreement in accordance with Section 14.02(a)(1).

County has no obligation to continue providing Franchise Services and may at any time, in its sole discretion, cease to provide Franchise Services. However, County's right to provide Franchise Services, including contracting with another Person, will continue until Franchisee can demonstrate to County's satisfaction that Franchisee is ready, willing, and able to resume timely and full Franchise Services.

**b. Notice.** County may give Franchisee oral notice that County is exercising its right to perform Franchise Services, which notice is effective immediately, but must confirm oral notice with Notice within 24 hours thereafter to extend County performance.

**c. Service Assets.** Upon giving Franchisee oral notice, County may take possession of any or all of the Service Assets necessary or convenient in providing Franchise Services, and

Franchisee will fully cooperate with County to transfer possession of Service Assets to County. County may use Service Assets to provide all or a portion of Franchise Services. County will have absolute and exclusive control over Service Assets as though County were the absolute owner thereof. However, upon County request, Franchisee will keep Service Assets in good repair and condition, including providing Vehicles with fuel, oil and other maintenance. County will assume complete responsibility for use of Service Assets while they are in its possession and will maintain Service Assets in the same condition as they were in when Franchisee transferred possession thereof to County (unless Franchisee maintains them as provided in the preceding sentence), and will return Service Assets to Franchisee in the same condition as received, normal wear and tear excepted.

**d. Maintaining Insurance.** During County's possession of Service Assets, Franchisee will maintain in full force and effect all insurance and any Financial Assurances related to self-insured retentions or increased deductibles required in accordance with Section 11.01. By granting County the right to possession and use of Service Assets Franchisee hereby declares as follows:

- (1) County and Customers are permitted users for purposes of liability insurance policies that Franchisee must procure and maintain under this Agreement, and
- (2) County's and Customers' use and possession of Service Assets is not intended to be and is not transfer of ownership for purposes of any liability policies.

Furthermore, if County and Customers have possession and use of Service Assets, Franchisee will execute whatever documentation its liability insurers require in order to ensure that County and Customers are protected and covered by Franchisee's general and automobile policies, including requesting and executing endorsements to those policies. However, Franchisee is not obligated to pay any additional cost of those endorsements unless County reimburses Franchisee for those additional costs. County may pay for any endorsements, additional premiums or other costs. If County takes use and possession of Service Assets, then County may call and confer with Franchisee's insurance broker to determine what, if any, documentation or actions are necessary to achieve protection satisfactory to County. By executing this Agreement, Franchisee directs its insurance broker to cooperate with and take direction from County under those circumstances, which authorization Franchisee may not rescind without County consent.

County has no obligation to continue possession and/or use of Service Assets and may at any time, in its sole discretion, cease possession and/or use.

**e. Franchisee's Personnel.** Upon giving Franchisee oral notice in accordance with Subsection (b), County may immediately engage personnel necessary or convenient for providing all or a portion of Franchise Services, including employees previously or then employed by Franchisee. However, County will not be obligated to hire Franchisee's employees and may use County employees or other Persons to provide all or a portion of Franchise Services, including driving Vehicles. Promptly upon County request, Franchisee will make available to County all Franchisee's management and office personnel necessary or convenient for providing Franchise Services, including Customer services and billing, at the cost, if any, provided in Subsection (h).

**f. Records and Reports.** Upon County request, Franchisee will promptly provide County with immediate access and/or possession of Records, including those related to routing and billing.

**g. Stipulations.** Franchisee agrees and stipulates that County's exercise of rights under this Section 14.08 does not constitute a taking of private property for which County must compensate Franchisee; will not create any liability on the part of County to Franchisee; and does not exempt Franchisee from any Indemnities, which Parties acknowledge are intended to extend to circumstances arising under this Section 14.08. However, Franchisee is not required to indemnify County against claims and damages arising from the negligence of County officers and employees (other than employees of Franchisee at the time County commenced performing said Franchise Services) and agents driving Vehicles.

**h. Rental and Costs.**

**1. Uncontrollable Circumstances.** If the events enumerated in Subsection (a) are due to Uncontrollable Circumstances, then County will pay Franchisee the following costs that Franchisee is not then being compensated for through charging and collecting its Service Fees:

- (1) rental fees for County's use and possession of Service Assets equal to fair market value thereof as determined by an independent appraiser selected by the Parties in the same manner as the Independent Expert in accordance with Article 9;
- (2) Franchisee's Direct Costs of providing Vehicles with fuel, oil and other maintenance in accordance with Subsection (c); and
- (3) Franchisee's Direct Cost of making available to County Franchisee's personnel in accordance with subsection e.

**2. Franchisee Breach or Event of Default.** If the events enumerated in Subsection (a) are not due to Uncontrollable Circumstances, then County will not be obligated to pay the costs enumerated in Subsection (h)(1), and Franchisee will pay County County's Reimbursement Costs incurred in taking over possession of Service Assets and in providing Franchise Services within twenty (20) days of County's submitting an invoice therefor. Franchisee will pay County's Reimbursement Costs for expenditures it incurred due to Franchisee's failure to satisfy Performance Obligations or in an Event of Default.

**i. Ownership.** Any document, including a lease, financing contract, acquisition over time, mortgage or other instrument establishing a security interest to or by the Franchisee ("**Service Asset Document**"), that encumbers or limits the Franchisee's interest in Service Assets, including any replacement or substitute equipment, will:

- (1) allow the Guarantor to assume the Franchisee's obligations and to continue use of Service Assets in performing Franchise Services;

(2) allow Franchisee's surety to assume the Franchisee's obligations and to continue use of Service Assets in performing Franchise Services during the remaining term of surety's bond; and

(3) allow County to assume the Franchisee's obligations and to continue use of Service Assets in performing Franchise Services.

## **ARTICLE 15. FRANCHISEE'S OBLIGATIONS UPON EXPIRATION OR TERMINATION**

### **15.01 Pay Outstanding Amounts.**

Franchisee will pay County any County Payment Obligations or other amounts then accrued and payable.

### **15.02 Cooperation During Transition.**

If Franchisee is not awarded an agreement to continue to provide Franchise Services following the expiration or termination of this Agreement, then Franchisee will reasonably cooperate with County and the succeeding Franchisee(s), contractor(s), licensee(s), permittee(s), or other Person(s) providing Solid Waste Handling Services to assure a smooth, efficient, orderly, timely, and effective transition from Franchise Services to those Solid Waste Handling Services, including transfer of Records; complete routing information, route maps, vehicle fleet information, and Customer billing lists, upon request of County; providing other Records and reports required by this Agreement; and coordinating with County and any subsequent Franchisee(s), contractor(s), licensee(s), permittee(s), or other Person(s) with respect to exchanging Containers. Franchisee will not remove a Container from any Customer's premises until the earlier of: (1) the date replacement containers are provided to the Customer, or (2) 3 weeks after the expiration or termination of this Agreement. THIS OBLIGATION OF FRANCHISEE WILL SURVIVE THE TERMINATION OF THIS AGREEMENT.

## **ARTICLE 16. THE PARTIES**

### **16.01 Franchisee is Independent Contractor.**

Franchisee will perform Franchise Services as an independent contractor engaged by County and not as officer, agent, servant, employee, or partner of County nor as a joint venture with County. No employee or agent of Franchisee is deemed to be an employee or agent of County. Franchisee will have the exclusive control over the manner and means of performing Franchise Services and meeting its Performance Obligations and over all Persons performing Franchise Services. Use of the word "direct" in this Agreement signifies County's right to require Franchisee's compliance with County directions, but will not be construed to signify County control over the manner and means of performing Franchise Services. Franchisee is solely

responsible for the acts and omissions of its officers, employees, contractors, subcontractors, and agents, none of which is deemed to be an officer, agent, servant, or employee of County. Neither Franchisee nor its officers, employees, contractors, subcontractors, and agents will obtain any rights to retirement benefits, workers compensation benefits, or any other benefits which accrue to County employees and Franchisee expressly waives any claim it may have or acquire to said benefits.

#### **16.02 Parties in Interest.**

Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons other than the Parties and their representatives, successors, and permitted assigns.

#### **16.03 Binding on Successors.**

The provisions of this Agreement will inure to the benefit of and be binding on the successors and permitted assigns of the Parties.

#### **16.04 Further Assurances.**

Each Party agrees to execute and deliver any instruments and to perform any acts as may be necessary or reasonably requested by the other in order to give full effect to this Agreement.

#### **16.05 Actions of County in Its Governmental Capacity.**

Nothing in this Agreement is interpreted as limiting the rights and obligations of County in its governmental or regulatory capacity.

#### **16.06 Franchisee's Obligations Performed at Its Sole Expense.**

Franchisee will perform Franchise Services solely for the compensation expressly provided for in this Agreement. Franchisee acknowledges that it will not receive any form of payment or other consideration from County for its performance under this Agreement except for the grant of the franchise under this Agreement. Franchisee will instead look solely to its Customers to compensate Franchisee for providing all Franchise Services and satisfying its Performance Obligations.

#### **16.07 Parties' Representatives.**

**a. County Representative.** The County Representative is the Director unless otherwise named by the County Board from time to time upon Notice of County Representative to

Franchisee. The County Representative is authorized to act on behalf of County in the administration of this Agreement and, unless otherwise specified, may take all actions set forth in this Agreement except termination, extension, amendment, and assignment consent, without action by the County Board.

**b. Franchisee Representative.** The Franchisee Representative is Roger Brown, as may be changed from time to time upon Notice of Franchisee Representative to County. The Franchisee Representative is authorized to act on behalf of Franchisee in the performance under this Agreement.

#### **16.08 Due Diligence.**

Franchisee acknowledges that County may be subject to statutory fines or penalties for failure to achieve mandated waste diversion levels and that waste management is a public health and safety concern. It agrees that it will exercise due diligence in performing Franchise Services.

#### **16.09 Subcontracting.**

Franchisee may not Subcontract any portion of the Franchise Services, including the provision of Carts and Containers, set forth in this Agreement. Franchisee may engage any number of Subcontractors providing goods or services that do not comprise Franchise Services or the provision of Carts and Containers (e.g., billing services, equipment, maintenance). Franchisee will not subcontract in a manner that effectuates an assignment of this Agreement, unless the requirements of Section 12.10.023 of the Mono County Code and the provisions of this Agreement (including Section 17.01) related to assignment are met.

Franchisee must direct the work of Franchisee's Subcontractors. Franchisee is solely responsible for paying any compensation due or payable to Franchisee's Subcontractors. County may require Franchisee to remove any Subcontractor for good cause. Subcontractors' failure to satisfy its subcontracted obligations (including violation of Applicable Law) is a failure by Franchisee and County may exercise any or all of the rights and remedies available to County under this Agreement with respect to Franchisee.

**"Subcontractor"** includes any Person, including Affiliates, that provides goods or services that do not comprise Franchise Services or the provision of Carts and Containers but are related to the provision of Franchise Services, whether pursuant to formal, written agreement or merely in fact. **"Subcontract"** means any arrangement, formal or informal, written or otherwise, between Franchisee and a Subcontractor for providing goods or services related to the provision of Franchise Services.

In its Annual Report, Franchisee will disclose to County the name of all Subcontractors, the amount goods or services related to the provision of Franchise Services that each Subcontractor provides to Franchisee, and a description of Franchisee's relationships to each Subcontractor (including ownership interests).

## **16.10 No Use of County Name.**

Franchisee will not do business as or use a corporate, partnership, venture, or other formal name, containing the words “Mono” or “County” or implying County ownership *although* upon County direction, Franchisee will use County’s name in its public relations signage.

## **ARTICLE 17. ASSIGNMENT AND AMENDMENTS**

### **17.01 Assignment.**

**a. County Assignment.** County may assign this Agreement to a joint powers authority, a sanitation district, or other public entity succeeding to the major portion of County’s solid waste management rights and obligations. County may also assign this Agreement to any other Person, with Franchisee’s consent, upon County’s determination that the assignee is financially capable of meeting County’s obligations under this Agreement.

**b. Franchisee Assignment.** Franchisee acknowledges that the experience and expertise of Franchisee are material considerations of County in entering into this Agreement with Franchisee. Franchisee may not Assign this Agreement except in accordance with Section 12.10.23(C) of the Mono County Code. Franchisee may not circumvent County’s Assignment consent rights in practical effect by securing goods or services from a Subcontractor that would be itself subject to “assignment,” where “Subcontractor” is substituted for “Franchisee” in the definition of “Assign” in Subsection 17.01(c).

**c. Assign. “Assign” includes:**

- (1) selling, exchanging, or otherwise transferring effective control of management of the Franchisee (through sale, exchange, or other transfer of outstanding stock or otherwise);
- (2) issuing new stock or selling, exchanging, or otherwise transferring twenty percent (20%) or more of the then outstanding common stock of the Franchisee;
- (3) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance, or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation, or other transaction which results in a change of Ownership or control of Franchisee;
- (4) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment of an execution, being levied against Franchisee, appointment of a receiver taking possession of any of Franchisee’s tangible or intangible property;

- (5) substitution by a surety company providing any performance bond in accordance with Section 11.03 of another Person for Franchisee to perform Franchise Services;
- (6) sale or transfer of fifty percent (50%) or more of the value of assets of Franchisee except for sales or transfers to parents, grandparents, siblings, children, and grandchildren of persons having a shareholder or other equity interest in Franchisee as of the date of this Agreement (“Immediate Family”) or trust created primarily to benefit members of the Immediate Family; and
- (7) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of Ownership or control of Franchisee.

## **17.02 Amendments.**

The Parties may change, modify, supplement, or amend this Agreement only upon written agreement duly authorized and executed by both Parties. However, wherever reports, forms, protocols, or other documents are attached to this Agreement as attachments to an Exhibit, County Representative and Franchisee Representative may edit and revise them upon their agreement or otherwise provided in the related Sections of this Agreement, evidenced in writing *unless* this Agreement specifically requires approval by the County Board pursuant to resolution or otherwise.

## **ARTICLE 18. NOTICES, CONSENTS, APPROVALS, ETC.**

### **18.01 Notices.**

**a. Written.** The Parties must present and express all reports, demands, requests, directions, selections, option exercises, orders, requests, proposals, reviews, comments, acknowledgments, approvals, consents, waivers, certifications, and other communications made to each other under this Agreement in writing. Notice by County to Franchisee of a missed pick-up (i.e., non-collection) or a Customer problem or complaint may be given to Franchisee orally by telephone at Franchisee’s local office with written confirmation sent to Franchisee within twenty-four (24) hours of the oral notification.

**b. Manner.** The Parties must provide Notices at the address provided in Subsection (c), in any of the following manners:

- (1) by e-mail or facsimile promptly followed by delivery described in following items (2), (3) or (4);
- (2) personal delivery to a representative of the Parties, with signed receipt;



- (3) deposit in the United States mail, first class postage prepaid (certified mail, return receipt requested); or
- (4) deposit with a commercial delivery service providing delivery verification.

**c. Address.**

<p>If to County:</p> <p>Mono County Public Works Department          Attn: Solid Waste Superintendent          74 North School Street          P.O. Box 457          Bridgeport, CA 93517</p> <p>Telephone: (760) 932-5440          Facsimile: (760) 932-5441</p>	<p>If to Franchisee:</p> <p>D &amp; S Waste Removal, Inc.          Attn: Darrol Brown          3 U.S. Highway 95A East          P.O. Box 834          Yerington, NV 98447</p> <p>Telephone: (775) 463-3090          Facsimile: [PLACEHOLDER]</p>
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The Parties may change their contact information above upon Notice to the other Party.

**18.02 Consents and Approvals.**

The County Representative is authorized to act on behalf of County in the administration of this Agreement and, unless otherwise specified, may take all actions set forth in this Agreement except termination, amendment, extension, and assignment consent, without action by the County Board.

**18.03 Exercise of Discretion by County.**

Recognizing the essential public health and safety protections this Agreement serves, where this Agreement specifically provides that the exercise of any Discretionary Action is in County’s sole, exclusive, or absolute discretion, control, or judgment, that exercise of discretion is deemed reasonable and the Franchisee will not question or challenge County’s exercise thereof. County will exercise any approval, disapproval, consent, option, discretion, election, opinion, or choice under this Agreement or interpretation of this Agreement in a manner that is reasonable.

**ARTICLE 19. EXECUTION OF AGREEMENT**

**19.01 Authority to Execute.**

County warrants that the officers listed below have been duly authorized by County to execute this Agreement on behalf of County. Franchisee warrants that the individuals listed below have been duly authorized by the Franchisee to execute this Agreement on behalf of the Franchisee.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed and entered as of the last date indicated below:

COUNTY OF MONO:

D & S WASTE REMOVAL, INC.:

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form (County Counsel):

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved by Risk Management:

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT R-1: FINDINGS REGARDING DESIGNATED DISPOSAL FACILITY**

In view of the following findings and facts, County has determined that in order to sustain its solid waste program, protect itself from liability for waste generated within its borders, and continue to provide beneficial solid waste services such as education and recycling to its residents and to visitors to the area, it is necessary to require that solid waste collected by franchisees be delivered to a solid waste facility owned by County unless specifically exempted as provided for in this agreement.

### **a. Local Interests.**

(i) County currently operates a comprehensive Solid Waste program which includes six (6) Solid Waste transfer stations, some of which additionally serve as landfills for C&D Waste, and one regional Class III Municipal Solid Waste Landfill.

(ii) At these facilities, County offers recycling services for cardboard, beverage containers, scrap metal, white goods, wood waste, waste tires, used oil and filters, and batteries. In addition, County accepts and processes hazardous materials such as household hazardous waste and universal wastes. County provides these services for free or at a low cost (for tires and white goods) to the public in order to encourage participation and minimize illegal disposal.

(iii) Also, as a part of its solid waste program, County has implemented an aggressive load-checking system at its landfill and transfer stations in order to prevent the improper disposal of liquids and hazardous materials and to help identify and separate recyclables. As a part of this program, County provides information to the public and to waste haulers about recycling and disposal of hazardous and other special wastes.

(iv) A combination of the above services offered by County has resulted in impressive results with respect to recycling, reduction in illegal dumping and disposal, and the safe handling and proper disposal of hazardous materials. For example, in 2017, County accumulated more than 318 tons of scrap metal and white goods at its regional landfill which were then recycled. In 2017 County also collected, 3,854 tons of inert waste and 5,693 tons of wood and green organic waste which were diverted from County's regional landfill, amounting to a combined twenty-nine percent (29%) of all Solid Waste received.

(v) The diversion of recyclable materials through County's solid waste program, and its regional landfill specifically, has enabled County to meet the California Integrated Waste Management Act's mandate that local jurisdictions divert for reuse or recycling fifty percent (50%) of the waste generated within their borders annually or face penalties of up to Ten Thousand dollars (\$10,000.00) per day. Also pursuant to the Integrated Waste Management Act, County has drafted and adopted an Integrated Waste Management Plan which sets forth County's goals with respect to source reduction and recycling and the means to accomplish those goals, of which the programs described above are a critical component.

(vi) County has developed plans and taken aggressive actions to minimize the risk of environmental harm from County's landfill operations which could potentially result from the

generation and migration of landfill gases or leachate. These measures pertain not only to the current operation of the landfill but also to its proper closure and maintenance after closure. For example, County has installed groundwater monitoring wells, conducts quarterly monitoring of landfill gas to identify potential subsurface migration, and sets aside funds each year to pay for closure activities consisting of the permanent sealing of the landfill. Additionally, as required by California law, County will monitor and maintain its landfills for a minimum of thirty (30) years after closure.

(vii) All of the above programs are paid for largely through gate fees generated at County's landfill and transfer stations. The loss of gate fee revenue caused by the transport of Solid Waste to facilities other than those operated by County threatens its entire Solid Waste program and could affect County's compliance with the Integrated Waste Management Act, causing the increased landfilling of recyclable materials and the improper disposal of Unpermitted Waste as well as exposing County to significant fines and penalties.

(viii) Moreover, County has no power or authority to regulate the handling or disposal of Solid Waste outside of its borders to ensure that such waste is properly managed. Yet it remains potentially liable for contamination caused by that waste under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). Again, there is no way for County to control this risk if it has no power or authority to regulate how the waste is managed. County desires to minimize this exposure to CERCLA liability to the maximum extent feasible.

(ix) County's concerns about liability resulting from the disposal of County-generated waste at facilities not operated by County are real: three (3) of the four (4) regional landfills located in the eastern Sierra within a 200-mile radius of Mono County (and the only three (3) which have accepted waste or indicated the willingness to accept waste generated in Mono County in the past) do not have any groundwater or landfill gas monitoring systems in place and lack many of the other basic regulatory and environmental controls that have been implemented at County's facilities.

(x) For all of the above reasons, County has determined that it is necessary that Solid Waste collected by Franchisees be delivered to a Solid Waste facility owned or operated by County.

**b. No Viable Alternatives.**

County has considered alternatives to requiring Franchisees to deliver Solid Waste to a Solid Waste facility owned by County or, alternatively, paying the Capacity Fee for limited out-of-county hauling, but has found that there are no viable alternatives.

(i) County's ability to subsidize solid waste management through additional taxes or property-based fees is constrained practically and under the State constitution.

(ii) County has the power, authority, and direction to establish diversion performance standards at its own Solid Waste facility or facilities. It cannot establish, implement, or enforce those standards at facilities it does not own, including landfills where some Solid Waste generated in Mono County is presently being disposed.

(iii) Even if County could raise the capital to take over Solid Waste collection from present privately provided services to municipal service, which would allow County to deliver waste to its own Solid Waste and Recyclable Materials management system, under State law, it would be required to give private haulers five (5) years' advance notice of its intent to do so. During those five (5) years, the private haulers would have the continued right to provide service, and the present loss of County gate fee income would continue to imperil County's Solid Waste program.

(iv) Due to its rural character and remote location, it is impractical or impossible to require mandatory collection within Mono County and many County residents continue to self-haul to County's landfill or transfer stations. If those facilities ceased operation as a result of the failure to collect sufficient gate fee revenues to maintain them, then County residents and businesses would be faced with, in many cases, more than a 100-mile drive to dispose of their waste or would be forced to subscribe to Solid Waste Collection services to haul that waste for them. This would likely increase instances of illegal dumping, as well as be impractical for the reasons described in Subsection (b)(v) below. In addition, it would deprive those residents and businesses of the recycling and Unpermitted Waste processing services which are now available at County's facilities.

(v) User generation fees are not an alternative source of County funding. County has many rural areas, resulting in routing and collection inefficiencies for commercial waste haulers that can make collection cost at many remote residences prohibitively expensive for residents of limited financial means. If County required private haulers to collect user generation fees on behalf of County from private customers/subscribers absent mandatory subscription, those customers would unfairly and inequitably bear Solid Waste management costs of all County residents, those who subscribe and those who do not. As subscription rates increased, customers might drop service, thereby triggering an increasing spiral of costs spread over fewer customers/subscribers, and an increase in illegal dumping. Therefore, County faces the practical and political inability to implement user fees in lieu of gate fees at County facilities.

## **EXHIBIT 1.01: DEFINITIONS**

“**Act**” means the California Integrated Waste Management Act set forth in California Public Resources Code at Sections 40000 *et seq.*

“**Affiliate**” or “**Affiliates**” means all businesses (including corporations, limited and general partnerships, and sole proprietorships) which are directly or indirectly related to Franchisee by virtue of direct or indirect Ownership interests or common management, including a business in which Franchisee has a direct or indirect Ownership interest, a business which has a direct or indirect Ownership interest in Franchisee and/or a business which is also Owned, controlled or managed by any business or individual which has a direct or indirect Ownership interest in Franchisee.

“**Agreement**” means this Agreement, including all exhibits and attachments which are incorporated herein by reference, as this Agreement may be amended and supplemented pursuant to Section 17.02.

“**Annual Report**” means the report described in Section 10.02(b).

“**Applicable Law**” means all laws, statutes, rules, regulations, guidelines, Permits, actions, determinations, orders, or requirements of the United States, State of California, County (including its County Code together with rules and regulations promulgated thereunder and County’s Integrated Waste Management Plan), the Local Enforcement Agency, California Highway Patrol, applicable Air Quality Management District, and other regional or local government authorities, agencies, boards, commissions, courts, or other bodies having applicable jurisdiction, that from time to time apply to or govern Franchise Services or the performance of the Parties’ respective obligations under this Agreement, including any of the foregoing which concern health, safety, fire, mitigation monitoring plans, building codes, zoning, and further including:

### **1. Vehicles:**

- (i) Section 43000 *et seq.* of the California Health and Safety Code with respect to air emissions (smog checks);
- (ii) Section 27456b of the California Vehicle Code with respect to tires;
- (iii) Section 34500 *et seq.* of the California Vehicle Code with respect to documentation through its maintenance log or otherwise of a safety compliance report issued pursuant to Division 14.8 of the California Vehicle Code as applicable to each Vehicle, including bi-annual “BIT” inspections conducted by the California Highway Patrol;
- (iv) rules and regulations promulgated under the California Vehicle Code with respect to Vehicle highway lighting, flashing and warning lights, clearance lights, and warning flags;

- (v) rules and regulations of the California Department of Motor Vehicles with respect to Vehicle registration;
- (vi) Vehicle weight limits;
- (vii) the appropriate class of drivers' licenses issued by the California Department of Motor Vehicles;
- (viii) Control Measure for Diesel Particulate Matter from On-Road Heavy-Duty Residential and Commercial Solid Waste Collection Vehicles, 13 CCR § 2020 *et seq.*;
- (ix) 14 CCR §§ 17341, 17342, 17343 and 17344, with respect to equipment construction, safety and parking and identification of operating equipment.

**2. Containers:**

- (i) 14 CCR § 17314 with respect to maintenance and placement of containers;
- (ii) 14 CCR § 17317 with respect to placing identifying name and telephone number on containers.

**3. Labor:**

- (i) drug and alcohol testing;
- (ii) the Occupational Safety and Health Act (29 U.S.C. Section 651 *et seq.*), including the Solid Waste Disposal Facility Criteria promulgated by the U.S. EPA on October 9, 1991 (40 CFR, Parts 257 and 258); and the California Occupational Safety and Health Act (California Labor Code, Division 5, Parts 1-10, Section 6300 *et seq.*), and rules and regulations of California Division of Occupational Safety and Health;
- (iii) the Immigration Reform and Control Act of 1986 (PL.99-603);

**4. Environmental protection:**

- (i) CERCLA;
- (ii) RCRA;
- (iii) Clean Air Act (42 U.S.C. Section 1351 *et seq.*, 42 U.S.C. Section 7401-7642); and the California Clean Air Act (Health & Safety Code Sections 1251 *et seq.* and Health and Safety Code Sections 39000 *et seq.*);
- (iv) California Hazardous Waste Control Act (California Health & Safety Code, Section 25100 *et seq.*);

- (v) California Hazardous Materials Release Response Plan and Inventory Act (California Health & Safety Code, Division 20, Chapter 6.95, Section 25500 *et seq.*);
- (vi) Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code Section 25300 *et seq.*);
- (vii) Emergency Planning and Community Right to Know Act (42 U.S.C. Section 11001 *et seq.*); and

**5. Miscellaneous:**

- (i) County Lobbyist Ordinance;
- (ii) Civil Rights Act of 1964 (Subchapter VI or Chapter 21 of Title 42);
- (iii) California Integrated Waste Management Act; and
- (iv) Mono County Code.

**“Bear Carts”** means wheeled containers having a capacity of either 35, 64, or 95/96 gallons supplied by Franchisee for Collection of Customers’ Solid Waste that provides adequate protection against bears.

**“Bins”** means metal containers supplied by Franchisee for Collection of Commercial or Residential Customers’ Solid Waste (also commonly referred to as “dumpsters”).

**“Board”** or **“County Board”** means the Mono County Board of Supervisors.

**“Bulky Waste”** means Solid Waste that cannot be contained within a Residential Customer’s Cart, such as

- (1) furniture (including chairs, sofas, mattresses and rugs);
- (2) appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, small household appliances, and other similar items commonly known as **“white goods”**);
- (3) large Yard Wastes (including wood waste, tree branches, scrap wood); and
- (4) tires.

**“Capacity Fee(s)”** means those fees as set forth in Exhibit 7.01b.



“**Carts**” means wheeled containers having a capacity of either 35, 64, or 95/96 gallons supplied by Franchisee for Collection of Customers’ Solid Waste.

“**C&D Waste**” means used or discarded construction materials, packaging, and rubble removed from a premises during the construction or renovation of a structure resulting from construction, remodeling, repair, and demolition operations on pavements, houses, commercial buildings, and other structures.

“**CERCLA**” means the Comprehensive Environmental Response, Compensation and Liability Act of 1982 (42 U.S.C. § 9601 *et seq.*).

“**Collect**” or “**Collection**” or other form thereof refers to Solid Waste pickups made by Franchisee as required by and in compliance with the provisions of this Agreement.

“**Commencement Date**” means the later date of execution by the Parties indicated on the execution page of this Agreement.

“**Commercial**” or “**Commercial Premises**” means a premise that is not Residential, including premises where business activity is conducted, including offices, retail sales, services, institutions, wholesale operations, food service, manufacturing and industrial operations, public property, and facilities but excluding businesses conducted upon residential premises that are permitted under applicable zoning regulations and are not the primary use of the property. Commercial Collection Services are described in Section 4.01c(2).

“**Commercial Set-out Site**” is defined in Section 4.01(c)(2)(i).

“**Containers**” means the Carts, Bear Carts, Bins, or Roll-offs from which Franchisee must Collect Solid Waste.

“**Contract Year**” means the calendar year, commencing January 1 and ending December 31.

“**County**” means County of Mono, a political subdivision of the State of California, or any governmental entity which may hereinafter assume waste management obligations of County, including any joint exercise of powers authority or other similar public entity with which County participates or contracts with, established to provide solid waste management services or meet Solid Waste diversion requirements under Applicable Law. For the purposes of Indemnities, “**County**” also means its officers, employees, agents, franchisees, attorneys, administrators, affiliates, representatives, servants, insurers, heirs, assigns and any successor or successors to County’s interest.

“**County Code**” or “**Code**” means the Mono County Code, including Title 12.

“**County Office Hours**” means 8 a.m. to 5 p.m. on County Working Days.

“**County Payment Obligations**” means monetary amounts due and payable to County, or claims by County for those amounts, including those listed under Sections 13.02 and 14.01, any County

Reimbursement Costs, and any amounts accrued and payable upon termination of the Agreement in accordance with Section 15.01.

**“County Reimbursement Costs”** means Direct Costs incurred by County plus ten percent (10%).

**“County Working Days”** means days on which County administrative offices are open to the public.

**“Customer(s)”** means the generators (including owners, tenants, occupants, and/or persons having the care or control of any premises within County) of Solid Waste to which Franchisee is required to provide Franchise Services.

**“Day”** or **“Days”** means calendar days.

**“Delivery Obligations”** means Franchisee’s obligation to deliver Solid Waste to the Designated Disposal Facility as set forth in Section 7.01.

**“Designated Disposal Facility”** means the Benton Crossing Landfill, located at 899 Pit Road in Mono County.

**“Direct Costs”** are actual costs incurred, including staff, equipment, materials, overhead, and other costs reasonably expended in the performance of an activity, certified by an authorized financial officer of the Party submitting a payment demand therefor.

**“Director”** means the Director of County Department of Public Works or his or her designee.

**“Diversion Facility”** is defined in Section 6.01(a).

**“Divert,” “Diverted,” “Diversion”** or other form thereof is defined in Section 6.01(a).

**“Diverted Recyclables”** is defined in Section 6.01(a).

**“Event of Default”** means an Event of Default listed in Section 12.10.023(E)(1) of the Mono County Code, or failure by the Franchisee to deliver solid waste to the Designated Disposal Facility, in accordance with Section 7.01 of this Agreement.

**“Franchise Fee”** means the fee described in Section 13.02(a).

**“Franchise Services”** means all Performance Obligations of Franchisee to Customer under Article 4.

**“Franchise Area”** means the unincorporated area of County of Mono, excluding that portion of County known as “Oasis” and described in Exhibit 4.01a.

**“Franchisee”** means D & S Waste Removal, Inc. and any assignee thereof consented to by County in accordance with Section 17.01. For purposes of Indemnities, Franchisee also means

Franchisee's employees, officers, agents, subcontractors, and consultants performing or responsible for performing Franchise Services; provided that only signatory D & S Waste Removal, Inc., a Nevada corporation, is obligated to provide indemnities and those employees, officers, agents, subcontractors, and consultants will not be liable therefor as individuals.

**“Franchisee’s Reimbursement Costs”** means the rate listed on Franchisee’s current fee schedule or, if not listed on the fee schedule, then Franchisee’s Direct Costs plus ten percent (10%).

**“Gross Revenues”** means any and all revenue or compensation in any form derived directly or indirectly by Franchisee, its Affiliates, subsidiaries, parents, or any other entity in which Franchisee has a financial interest in collecting, transporting, arranging, handling, and/or disposing of franchised Solid Waste generated in the Franchise Area. Gross Revenues does not include revenue from the sale of Recyclable Materials.

**“Hazardous Waste”** means “hazardous waste” as defined in Section 12.02.020 of the Mono County Code defining Unpermitted Waste.

**“Holidays”** means those days of each year when the Designated Disposal Site is closed, plus any additional days designated by Franchisee as Holidays, with the approval of County.

**“Household Hazardous Waste”** means any Unpermitted Waste generated incidental to owning or maintaining a place of residence, excluding any Unpermitted Waste generated in the course of operation of a business concern at a residence, in accordance with Section 25218.1 of the California Health and Safety Code.

**“Indemnities”** means all defenses and indemnities under this Agreement.

**“Independent Expert”** is the Person selected in accordance with Section 9.01(a).

**“Liabilities”** includes: liabilities, lawsuits, claims, complaints, causes of action, citations, investigations, judgments, demands, clean-up orders, damages (whether in contract or tort), including

- (1) personal injury to or death of, at any time, Franchisee’s employees, Subcontractors, County, or the public;
- (2) property damage of Franchisee, Subcontractors, County, or the public;
- (3) costs and expenses, (including all costs and expenses of litigation, mediation or arbitration, attorneys fees, whether County’s or Franchisee’s staff attorneys or outside attorneys, and court costs);
- (4) losses;
- (5) fines;

(6) penalties; and

(7) other detriments of every nature and description whatsoever,

whether under State of California or federal Applicable Law; and **Liabilities** arising from or attributable to any operations, repair, clean-up or detoxification, or preparation and implementation of any removal, remedial, response, closure, post-closure or other plan, regardless of whether undertaken due to government directive or action, such as remediation of surface or ground water contamination and replacement or restoration of natural resources.

**“Non-Collection Notice”** means either:

- (1) Verbal notice by Franchisee to Customer given within twenty-four (24) hours of the non-collection of Solid Waste from a Customer’s Set-out Site on the Regularly-Scheduled Collection Day notifying the Customer of the reason for the non-collection and notifying the Customer of how the non-collection will be remedied (e.g., the manner in which materials should be prepared by the Customer for collection or the date of rescheduled Collection); or
- (2) if directed by County, a 3-part (no carbon required) form with a cardstock backing (or other form approved by County) left by Franchisee for Customers at the times, in the events and in the manner described in Section 4.04 which contains, at a minimum:
  - a. the date and time it is given;
  - b. the complete address of the premises;
  - c. the reason for the non-collection;
  - d. the name of Franchisee’s employee who prepared the notice;
  - e. the manner in which materials should be prepared for collection; and
  - f. printed in English and Spanish.

Franchisee will leave a hard (cardstock) copy with the Customer, will retain one copy, and will transmit one copy to the Director on the next weekday which is not a Holiday.

**“Notice”** or **“Notify”** or other variation thereof means notice given in accordance with Section 18.01.

**“Office”** or **“Franchisee’s Office”** means the administrative office of Franchisee and identified by Franchisee to County.

**“Office Hours”** or **“Franchisee’s Office Hours”** means 8:00 a.m. to 5:00 p.m., Monday through Friday.

**“Overdue Rate”** means ten percent (10%) per annum.

**“Own”** or **“Ownership”** or other forms thereof means constructive ownership under the provisions of Section 318(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 318), as in effect on the date here, except that (i) ten percent (10%) is substituted for fifty percent (50%) in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) is disregarded. Where the Ownership interest is less than ten percent (10%), that interest is disregarded, and percentage interests is determined on the basis of the percentage of voting interest or value which the Ownership interest represents, whichever is greater.

**“Party”** and **“Parties”** refers to County and the Franchisee, individually and together.

**“Performance Obligations”** means Franchisee’s liabilities and obligations under this Agreement.

**“Permits”** means all federal, State, County, other local, and any other governmental unit permits, orders, licenses, approvals, authorizations, consents, and entitlements that are required under Applicable Law to be obtained or maintained by any Person with respect to Franchise Services.

**“Person”** includes any individual, firm, limited liability company, association, organization, partnership, industry, public or private corporation, trust, joint venture, the United States, the State, a County (excluding Mono County), a municipality, special purpose district, or any other entity whatsoever.

**“Procurement Proceedings”** means any memorandums, meetings, correspondence, telephone calls, field trips, draft documents, and the County Board sessions with respect to the planning, development, drafting negotiation and execution of this Agreement.

**“Prompt,” “Promptly,”** and variations thereof mean as soon as possible, but not less than two (2) days, unless otherwise specified.

**“Quarter”** means any of the 3-month periods identified in Exhibit 10.02a.

**“Quarterly Reports”** means reports described in Section 10.02(a).

**“Records”** are defined in Section 10.01(a).

**“Recyclables”** means materials that have been separated by the generator from the Solid Waste stream prior to disposal or which have been separated from the solid waste stream after disposal for the purpose of creating raw materials from which new products will be made or for the purpose of reusing them as a used or reconstituted product. Recyclables includes Yard Waste.

**“Reasonable Business Efforts”** means those efforts a reasonably prudent business Person would expend under the same or similar circumstances in the exercise of that Person’s business judgment,

intending in good faith to take steps calculated to satisfy the obligation which that Person has undertaken to satisfy.

**“Refuse”** means Solid Waste comprised of rubbish, trash, and garbage.

**“Regularly-Scheduled Collection Day”** means Regularly-Scheduled Residential Collection Day and Regularly-Scheduled Commercial Collection Day.

**“Regularly-Scheduled Commercial Collection Day”** is defined in Section 4.01(c)(2)(iv).

**“Regularly-Scheduled Residential Collection Day”** is defined in Section 4.01(c)(1)(iv).

**“Residential”** means any residential premises in Mono County such as single family, duplex, triplex, mobile home, multi-family, apartment, stock cooperative, and condominium residences in the unincorporated area of Mono County, excluding hotels, motels, and automobile courts, that subscribe to Residential Collection Service. Residential Collection Services are described in Section 4.01(c)(1).

**“Residential Set-out Site”** means the edge of the driveway in front of a Residential Premise or, if there is no accessible driveway, such other location as agreed to between the Residential Customer and Franchisee and specified in the Subscription Order.

**“Roll-offs”** means Containers designed for disposal of Solid Waste loaded onto and discharged from tilt-frame trucks or trailers at the Solid Waste generation site by winch or similar means. Such Containers are also commonly referred to as “debris boxes.”

**“Service Asset Documents”** are defined in Section 14.08(h).

**“Service Assets”** means all property of Franchisee used directly or indirectly in performing Franchise Services, including Vehicles, Containers, maintenance equipment and facilities, administrative equipment, and offices and related supplies.

**“Service Day”** means weekdays and Saturday, other than Holidays.

**“Service Fee(s)”** means those fees charged to Customers by Franchisee for Franchise Services.

**“Set-out Site”** means Residential Set-out Site and Commercial Set-out Site.

**“Solid Waste”** means solid waste defined in Chapter 12.02.020 of the Mono County Code that Franchisee is obligated to Collect pursuant to this Agreement, including Refuse, Bulky Waste, and C&D Waste.

**“Solid Waste Handling Services”** has the meaning defined in Section 12.02.020 of the Mono County Code.

**“Subscription Orders”** are described in Section 4.10.

**“Suspect Categories”** means race, color, religion, national origin, ancestry, age, physical handicap, medical condition, marital status, sex/gender, or sexual orientation.

**“Term”** is the period beginning on the Commencement Date and ending on the earlier of the expiration of the Agreement in accordance with Section 3.01 or termination of the Agreement in accordance with Article 14.

**“Uncontrollable Circumstance(s)”** means “uncontrollable circumstances” as defined in Section 12.10.023(E)(6) of the Mono County Code.

**“Unpermitted Waste”** is defined in Section 12.02.020 of the Mono County Code.

**“Unpermitted Waste Screening Protocol”** is prescribed in Section 5.06 and contained in Exhibit 5.06.

**“Vehicles”** means all trucks (including trucks providing Residential and Commercial Collection of Solid Waste, Bulky Waste, and litter pickup; and field supervisors’ and administrators’ vehicles), rolling stock and other vehicles used to provide Franchise Services (including Collection as well as repair and maintenance), whether owned or leased by Franchisee.

**“Violate,” “Violates,” or “Violation”** is defined in Section 12.10.023(E)(1)(c) of County Code.

**“Yard Waste”** is defined in Section 12.02.020 of County Code.

## **EXHIBIT 2.01: FRANCHISEE’S REPRESENTATIONS AND WARRANTIES**

**a. Status.** Franchisee is a corporation duly organized, validly existing and in good standing under the laws of the State of California or the State of Nevada and is qualified to do business in the State of California.

**b. Authority and Authorization.** Franchisee has full legal right, power, and authority to execute and deliver this Agreement and perform its obligations under this Agreement. This Agreement has been duly executed and delivered by Franchisee and constitutes a legal, valid and binding obligation of the Franchisee enforceable against the Franchisee in accordance with its terms.

**c. No conflicts.** Neither the execution nor delivery by the Franchisee of this Agreement, the performance by the Franchisee of its Performance Obligations, nor the fulfillment by the Franchisee of the terms and conditions of this Agreement: (i) conflicts with, violates, or results in a breach of any Applicable Law; (ii) conflicts with, violates, or results in a breach of any term or condition of any judgment, order, or decree of any court, administrative agency, or other governmental authority, or any agreement or instrument to which the Franchisee or any of its Affiliates is a party or by which the Franchisee or any of its Affiliates’ properties or assets are bound, or constitutes a default thereunder.

**d. No approvals required.** No approval, authorization, license, permit, order, or consent of, or declaration, registration or filing with any governmental or administrative authority, commission, board, agency, or instrumentality is required for the valid execution and delivery of this Agreement by the Franchisee, except as has been duly obtained from its Board of Directors or other governing body or Person.

**e. No litigation.** As of the Commencement Date, there is no action, suit, proceeding, or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency, or instrumentality pending or, to the best of the Franchisee’s knowledge, threatened, against the Franchisee wherein an unfavorable decision, ruling, or finding, in any single case or in the aggregate, would materially adversely affect the performance by the Franchisee of its Performance Obligations or in connection with the transactions contemplated by this Agreement, or which, in any way, would adversely affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by the Franchisee in connection with the transactions contemplated by this Agreement.

**f. Due Diligence.** Franchisee has made an independent investigation, examination, and research satisfactory to it of the conditions and circumstances surrounding the Agreement and best and proper method of providing Franchise Services (including Franchise Service types) and labor, equipment, and materials for the volume of Franchise Services to be provided. Franchisee agrees that it will make no claim against County based on any estimates, statements, or interpretations made by any officer, employee, agent, or consultant of County in connection with the procurement of this Agreement that proves to be in any respect erroneous.



**g. Compliance with Applicable Law.** Franchisee has fully complied with all Applicable Law, including without limitation law relating to conflicts of interest, in the course of procuring this Agreement.

**EXHIBIT 4.01a: SERVICE AREA**

[SEE MAP OR LEGAL DESCRIPTION OF THE SERVICE AREA ATTACHED TO THIS EXHIBIT.]

**EXHIBIT 4.05e: CUSTOMER COMPLAINT AND BILLING DISPUTE RESOLUTION  
PROTOCOL**

Franchisee's Customer complaint and billing dispute resolution protocol is attached to this Agreement.

## **EXHIBIT 5.02g: SERVICE ASSET INVENTORY**

Attached to this Exhibit is an inventory of Service Assets, whether new or used, owned or leased by Franchisee, including:

- (1) maintenance yards and facilities; the Office and any other administrative and customer service offices (together with equipment therein),
- (2) Vehicles described by type (i.e., manufacture and model number for cab, chassis and body; and descriptive notation said as front end loader, compactor, etc.), number, DMV license number, the age of the chassis and body; type of body (open-top, closed etc.); type of fuel used; feed and practical or net capacity, including bins or compartments, as applicable; weight; the date of acquisition; the maintenance and rebuilt status; lease or installment purchase information; warranty information;
- (3) Containers described by volume, size, and specifications; and
- (4) computer hardware and software for billing, required record-keeping, inventory, and maintenance and repair records.

## **EXHIBIT 5.06: UNPERMITTED WASTE SCREENING PROTOCOL**

Franchisee will screen all loads of Solid Waste for Unpermitted Waste by causing its drivers to observe, directly or through mirrors or other mechanism(s), the tipping of Containers into Vehicles at the point of Collection. Franchisee will employ direct visual inspection where necessary and appropriate. Franchisee will conduct on-going training of its drivers, mechanics, dispatchers, and other support personnel in Unpermitted Waste recognition and safety procedures, including notification of County as described below. Franchisee will carry in its Vehicles literature developed by County pertaining to the proper handling of Unpermitted Wastes. Such literature will be left by Franchisee with its Customers upon Customer request, upon identification of Unpermitted Waste, or upon request by County.

Franchisee will additionally comply with the following requirements in handling Unpermitted Waste that is Hazardous Waste:

- (1) Driver will immediately notify its dispatch center (“Dispatch”) and take immediate and appropriate action to contain and isolate said load;
- (2) Dispatch will immediately notify the Franchisee’s field supervisor;
- (3) Dispatch will immediately contact the Environmental Health Division of the Mono County Health Department, or if those offices are closed, County Emergency Communications Center;
- (4) Depending on the amount and identity of the Hazardous Waste involved, Franchisee will at its option either (i) segregate and containerize the Hazardous Waste in preparation for manifesting and transport or (ii) contact a permitted Hazardous Waste transport company to assist therein. Franchisee will ensure that an authorized official of Franchisee is available in person or by telephone at all times to authorize the expenditure of funds, if necessary, for Hazardous Waste cleanup. Franchisee will transport any Hazardous Waste it chooses to transport in accordance with Applicable Law, including but not limited to the following:
  - (i) the regulations of the Department of California Highway Patrol (Title 13, Code of California Regulations or “CCR”);
  - (ii) regulations of the federal Department of Transportation (DOT) (Title 49, Code of Federal Regulations);
  - (iii) regulations of the U.S. Environmental Protection Agency (Title 40, Code of Federal Regulations);
  - (iv) the regulations of the California Occupational Health and Safety Administration (Title 8, CCR); and

(v) the regulations of the California Department of Toxic Substances Control (Title 22, CCR).

- (5) No later than the next County Working Day following its occurrence, Franchisee will orally notify the Director of the incident and its status and/or ultimate disposition. Franchisee will provide a written incident report to the Director within fourteen (14) days. The report will include the following: (i) the date and time of the occurrence; (ii) name of driver; (iii) description of hazardous materials; (iv) origin of the hazardous material (if identifiable); (v) observations made and actions taken by Driver and/or Field Supervisor; (vi) the status and/or ultimate disposition of the material; and (vii) any additional relevant comments.

At least once per Contract Year, Franchisee will provide Notice to its Customers indicating the locations where Unpermitted Waste may be delivered for proper management and processing.

Franchisee will make available to County promptly upon request all Records, including plans and/or other documents maintained by Franchisee with respect to Unpermitted Waste in accordance with Applicable Law.

In lieu of compliance with the above Unpermitted Waste Screening Protocol, Franchisee may provide County with a copy of an Unpermitted Waste Screening Protocol it has developed containing procedures in accordance with applicable law for handling Unpermitted Waste that is hazardous waste that is no less stringent than the Protocol set forth in this Exhibit 5.06. Upon approval by the Director, Franchisee's Unpermitted Waste Screening Protocol shall replace the Protocol set forth herein.

**EXHIBIT 7.01b: CAPACITY FEES**

Capacity Fees shall be as follows:

For loads verified by a weight ticket from County's Walker Transfer Station, County's Bridgeport Transfer Station, or issued by a certified weighmaster from another California or Nevada state certified truck scale satisfactory to the Director, as required by Section 7.01b, Franchisee shall pay County the amount of County's solid waste tipping fee, as established and may be amended by resolution of the County Board of Supervisors.

As of the Commencement Date of this Agreement, the amount of County's solid waste tipping fee is \$74.00 per ton.

## **EXHIBIT 10.01a: RECORDS**

Franchisee will collect, record, and maintain, at a minimum, the information specified in this Exhibit 10.01a, indicating the date and the day of the week of the event reported. Franchisee will provide the following information to County promptly upon written request by County.

1. Tonnage. Franchisee will collect, record, and maintain information regarding the tonnage of:
  - (a) Residential and Commercial Solid Waste;
  - (b) Recyclables;
  - (c) Bulky Waste; and
  - (d) C&D Wastecollected and delivered to the Designated Disposal Facility, including the following information:
  - (a) route numbers;
  - (b) truck numbers;
  - (c) Designated Disposal Facility's certified weight ticket number for each load;
  - (d) weight of each load (gross, tare, and net); and
  - (e) source-jurisdiction allocation or ratio.
  
2. Monetary Amounts. Franchisee will collect, record, and maintain information regarding the following:
  - (a) Service Fees – service fees charged to and collected from Customers.
  - (b) Subscription Orders – each Customer's Subscription Order and account service information (Section 4.10).
  - (c) Customer Billing Records – billing records required by Section 4.09, including Customers' special Service requests for on-call pickup of excess and Bulky Waste.
  - (d) Franchisee's Reimbursement Costs – Franchisee's Reimbursement Costs for emergency clean up.
  - (e) Fees payable to County.
    - (i) Financial records, books, accounts, and warranties corroborating the Franchise Fee owed to County in accordance with Section 13.02, including all documentation required by Section 13.02; and
    - (ii) financial records, books, and accounts corroborating any other County Payment Obligations.
  
3. Customer Service. Franchisee will collect, record, and maintain information regarding the following:



- (a) Complaint Records including logged complaints for alleged missed collections; failure to properly replace Containers (Section 4.01(c)(1)(iii) and Section (c)(2)(iii)), failure to clean up litter (Section 4.03(b)), discourtesy (Section 4.03(a)), damaged property, collecting outside permitted hours (Section 4.01(d)(1)), all including time, date, and manner of resolving complaint.
  - (b) Requests for Franchise Services, including record of Customers' telephonic, mailed, faxed or e-mailed requests to commence Franchise Services (Section 4.01(c)(1)(i) and Section (c)(2)(i)); discontinue Franchise Services (Section 4.01(c)(1)(ii) and Section (c)(2)(ii)); deliver, repair or replace, or pick up Containers (Section 4.01(e)); change size or number of Containers; or supply locks (Section 4.01(e)); and any failure to timely commence or provide any of those Services.
  - (c) Copies of Notices to Customers, including notice of Holiday or changed schedules enclosed in Customers' bills (Section 4.01(d)(2) and Section 4.06) and public education and community relations materials (Section 4.06).
4. Operations. Franchisee will collect, record, and maintain information regarding the following:
- (a) Routing Specifications (Section 5.01).
  - (b) Service Asset Inventory (Section 5.02(g)) and Service Asset Documentations (Exhibit 5.02g).
  - (c) Compliance with Applicable Law, including copies of all violations, tire invoices and specifications; Vehicle registration, certifications, reports and maintenance logs; drivers' licenses, training records (including Unpermitted Waste identification and handling), and drug and alcohol testing; records showing compliance with Federal Immigration and Control Act of 1986; and approvals, authorizations, and Permits.
  - (d) Records of Vehicle inspections, including Vehicles' fire extinguisher service records, and warranty and maintenance recommendations.
  - (e) Records of Criminal Activity (Article 12).
  - (f) Any documentation with respect to insolvency, bankruptcy or liquidation described in Mono County Code Section 12.10.023(E)(2)(f), including records with respect to Service Assets, such as any seizures, attachments or levies.
  - (g) Container maintenance (Section 4.01(e)).
5. Insurance and Other Performance Assurances. Insurance, performance bonds, letter of credit etc. (Article 11).

## **EXHIBIT 10.02a: QUARTERLY REPORTS**

For the purposes of the Quarterly Reports, the term “quarters” is defined as follows: “First Quarter” consists of January, February, and March; “Second Quarter” consists of April, May, and June; “Third Quarter” consists of July, August, and September; and “Fourth Quarter” consists of October, November, and December. In the Quarterly Report, Franchisee will include, at a minimum, the following information:

- (a) Summary of Records. A summary of the Records for events (including Unpermitted Waste spills or other incidents, Customer complaints, Vehicle inspections, Criminal Activity, or other events) during the previous quarter and a copy of Franchisee’s complaint log, including missed pickups, Non-Collection Notices and a description of how each complaint was resolved.
- (b) Certifications. A certification that Franchisee has met its Performance Obligations including Delivery Obligations (Section 7.01) for the quarter or, alternatively, a description of those Performance Obligations and Delivery Obligations not met during the quarter.
- (c) Summary of Education Efforts. A summary of education efforts undertaken in that quarter and copies of all materials distributed to Customers during the Quarter, including community relations materials (Section 4.06(a)(1)) and promotional materials (Section 4.06(a)(3)).
- (d) Diversion Information. Any information necessary to meet the reporting requirements of the Act, including Solid Waste Collection and disposal tonnages, Recyclables collection and processing tonnages, and the origin thereof.
- (e) Operational Report. A discussion of Service or operational problems and resolution thereof or planned therefore, if requested by County.
- (f) Collection Fee Summaries: Fees invoiced and paid, including (i) service fees charged for each type of service; (ii) service fees collected from Customers; and (iii) Franchise Fees paid to County.

Quarterly Reports may be made on Form 10.02a which is attached to this Exhibit.

## FORM 10.02a

# MONO COUNTY FRANCHISEE QUARTERLY REPORT

Submitted by: \_\_\_\_\_ (Franchisee)

FOR THE YEAR OF 20\_\_

- 1st Quarter (January, February, March) (due by April 15)
- 2nd Quarter (April, May, June) (due by July 15)
- 3rd Quarter (July, August, September) (due by October 15)
- 4th Quarter (October, November, December) (due by January 15)

<b>1. Summary of Records</b>	<p>a. Unpermitted Waste Spills:</p> <p>b. Vehicle Inspections:</p> <p>c. Criminal Activity:</p> <p>d. Other Events:</p> <p>e. Complaint Log:</p>	<p><input type="checkbox"/> None    <input type="checkbox"/> See Attached</p> <p><input type="checkbox"/> None    <input type="checkbox"/> See Attached</p> <p><input type="checkbox"/> None    <input type="checkbox"/> See Attached</p> <p><input type="checkbox"/> None    <input type="checkbox"/> See Attached</p> <p><input type="checkbox"/> None    <input type="checkbox"/> See Attached</p>
<b>2. Certifications</b>	<p>I represent and warrant, under penalty of perjury, that D &amp; S Waste Removal, Inc. (Franchisee) has met its Performance Obligations, including Delivery Obligations, for the Quarter noted above.    <b>OR,</b></p> <p>_____</p> <p>Name</p> <p>_____</p> <p>Title</p> <p>_____</p> <p>Signature</p>	<p>During the Quarter noted above, D &amp; S Waste Removal, Inc. (Franchisee) did <u>not</u> meet all of its Performance Obligations (including Delivery Obligations) and will pay to County liquidated damages for each failure as noted on the attached sheet.</p> <p>_____</p> <p>Name</p> <p>_____</p> <p>Title</p> <p>_____</p> <p>Signature</p>
<b>3. Summary of Education Efforts</b>	Such as inserts, mailers, magnets, flyers, etc.	<p><input type="checkbox"/> None    <input type="checkbox"/> See Attached</p>
<b>4. Diversion Information</b>	Information required by the Act, including Solid Waste Collection and disposal tonnages, Recyclables collection and processing tonnages, and origin, in accordance with Section 6.01.	<p><input type="checkbox"/> None    <input type="checkbox"/> See Attached</p>
<b>5. Collection Fee Summaries</b> (fees invoiced and paid)	<p>a. Service fees charged for each type of service</p> <p>b. Service fees collected from Customers</p> <p>c. Franchise fees paid to County</p>	<p><input type="checkbox"/> See Attached</p> <p>\$ _____</p> <p>\$ _____</p>

## **EXHIBIT 10.02b: ANNUAL REPORTS**

In the Annual Report, Franchisee will include, at a minimum, a collated summary of the information contained in Quarterly Reports, including reconciliation of any adjustments from prior Quarterly Reports, and the following information and statements:

1. **Service Asset Inventory.** A complete inventory of Service Assets in accordance with Article 5.02g.
2. **Financial Status Statement.** A statement by Franchisee's Chief Executive Officer either: (i) that in the prior Contract Year there have been no material changes in Franchisee's financial status or condition; or (ii) describing any material changes in Franchisee's financial status or condition during that Contract Year.
3. **Pending litigation Statement.** A declaration describing the current status of any criminal or civil litigation pending against Franchisee, Franchisee's parent company, or any subsidiaries of the parent company, if any, which relates to Solid Waste handling, collection, recycling, or disposal, including any Criminal Activity defined in Section 12.01a.
4. **Subcontractors.** The names of all Subcontractors, the scope and amount of services or goods Subcontractors provide to Franchisee, and a description of Franchisee's relationships to each Subcontractor (including Ownership interests) (Section 16.09).

Annual Reports may be made on Form 10.02b which is attached to this Exhibit.

**FORM 10.02b**

**MONO COUNTY FRANCHISEE ANNUAL REPORT FOR 20\_\_\_\_\_**

Submitted by: \_\_\_\_\_ (Franchisee)

(Due by February 15)

<p><b>1. Total information contained in Quarterly Reports for the year</b></p>		<input type="checkbox"/> See Attached
<p><b>2. Service Asset Inventory</b></p>		<input type="checkbox"/> See Attached
<p><b>3. Financial Status Statement</b></p>	<p>I represent and warrant, under penalty of perjury, that in the prior Contract Year there have been no material changes in D &amp; S Waste Removal, Inc.'s (Franchisee) financial status or condition.</p> <p>_____</p> <p>Name</p> <p>_____</p> <p>Title (CEO or Principal)</p> <p>_____</p> <p>Signature</p>	<p>I represent and warrant, under penalty of perjury, that in the prior Contract Year, those changes to D &amp; S Waste Removal, Inc.'s (Franchisee) financial status or condition listed on the attached sheet which is labeled "Material Changes to D &amp; S Waste Removal, Inc.'s Financial Status or Condition" have occurred.</p> <p>_____</p> <p>Name</p> <p>_____</p> <p>Title (CEO or Principal)</p> <p>_____</p> <p>Signature</p>
<p><b>4. Pending Litigation Statement</b></p>	<p>A declaration describing the current status of any criminal or civil litigation pending against Franchisee, Franchisee's parent company, or any subsidiaries of the parent company which relates to Solid Waste handling, including any Criminal Activity under Section 12.01(a).</p>	<input type="checkbox"/> None <input type="checkbox"/> See Attached
<p><b>5. Subcontractors</b></p>	<p>Names of all Subcontractors, the scope and amount of Franchise Services, other services, or goods Subcontractors provide to franchisee, and a description of Franchisee's relationships to each Subcontractor (including Ownership interests) (Section 16.09).</p>	<input type="checkbox"/> None <input type="checkbox"/> See Attached

## **EXHIBIT 11.01a: INSURANCE**

1. Workers' Compensation and Employer's Liability. Franchisee will maintain workers' compensation insurance covering its employees in statutory amounts and otherwise in compliance with the laws of the State of California. Franchisee will maintain Employer's Liability insurance in an amount not less than One Million dollars (\$1,000,000.00) per accident or disease.

The Workers' Compensation policy will contain endorsements in substantially the following form:

- (a) "30 days prior written notice will be given to County in the event of cancellation of this policy. Such notice will be sent to:  
  
Mono County Risk Management  
Post Office Box 696  
Bridgeport, California 93517"
- b. "Insurer waives all right of subrogation against County and its officers and employees for losses arising from work performed for County."

2. General Liability and Automobile Liability. Franchisee will maintain comprehensive Commercial General Liability insurance with a combined single limit of not less than Two Million dollars (\$2,000,000.00) per claim or occurrence and Four Million dollars (\$4,000,000.00) aggregate covering all claims and all legal liability for Personal injury, bodily injury, death, and property damage, including the loss of use thereof, arising out of Franchisee's performance of, or its failure to perform services under this Agreement.

Franchisee will also maintain Automobile Liability Insurance for each of Franchisee's vehicles used in the performance of this Agreement, including owned, non-owned, leased or hired vehicles, in the minimum amount of One Million dollars (\$1,000,000.00) combined single limit per accident.

The Commercial General Liability and Automobile Liability insurance required by this section will be written on an "occurrence" (or in the case of Automobile Liability, on an "accident" basis), rather than a "claims made" basis, if such coverage is readily obtainable for a commercially reasonable premium. If it is not so obtainable, Franchisee must arrange for an extended reporting period ("tail coverage") to protect County from claims filed within one year after the expiration or termination of this Agreement relating to incidents that occurred prior to such expiration or termination. The policy may not contain a deductible or self-insured retention of more than ten thousand dollars (\$10,000.00) per occurrence without prior written approval of County. The existence of a self-insured retention or deductible will not affect Franchisee's duty to defend and indemnify County under this Agreement as to Claims below the self-insured retention or deductible level.

The Commercial General Liability policy will contain endorsements in substantially the following form:

- a. “30 days prior written notice will be given to County in the event of cancellation of this policy. Such notice will be sent to:

Mono County Risk Management  
Post Office Box 696  
Bridgeport, California 93517”

- b. “The County, its officers, employees, and agents are additional insureds on this policy.”
- c. “This policy will be considered primary insurance as respects any other valid and collectible insurance maintained by County, including any self-insured retention or program of self-insurance, and any other such insurance will be considered excess insurance only.”
- d. “Inclusion of County as an insured will not affect County’s rights as respects any claim, demand, suit or judgment brought or recovered against Franchisee. This policy will protect Franchisee and County in the same manner as though a separate policy had been issued to each, but this will not operate to increase the insurer’s liability as set forth in the policy beyond the amount shown or to which the insurer would have been liable if only one party had been named as an insured.”

3. Pollution Liability. Franchisee will purchase and thereafter maintain, so long as such insurance is available on a commercially reasonable basis, Pollution Liability insurance in the amount of One Million dollars (\$1,000,000.00) covering liability arising from the sudden and accidental release of pollution in the performance of Franchise Services.

4. Physical Damage. Franchisee will maintain comprehensive (fire, theft and collision) Physical Damage insurance covering the vehicles and the machinery and equipment that is owned by Franchisee and used in providing service to County under this Agreement, with a deductible or self-insured retention of not greater than Fifty Thousand dollars (\$50,000.00). The Physical Damage policy will contain the following endorsements:

- (a) Notice of cancellation, as provided in Exhibit 11.01a(2)(a); and
- (b) Cross liability endorsement, as provided in Exhibit 11.01a(2)(d).

**EXHIBIT 12.01e(2): FRANCHISEE OR ANY OF ITS CONTRACT MANAGERS**

Franchisee Representative identifies the following individuals by name of corporate position as individuals meeting the definition of “Franchisee or any of its Contract Managers.” Upon change in individuals, Franchisee Representative will amend this Exhibit in its next Quarterly Report.

If the Franchisee amends the identification, then the Parties will respectively substitute this amended Exhibit. The dated signature of each Party Representative on such amended form will be deemed evidence that Notice was given in accordance with Section 18.01 and that the new attachment supersedes the prior attachment.

By: \_\_\_\_\_  
Franchisee Representative

Date: \_\_\_\_\_



**EXHIBIT 13.01a: SERVICE FEE FLOORS**

Franchisee will not charge Customers Service Fees that are less than those identified below:

RESIDENTIAL RATES <sup>1</sup>		COMMERCIAL RATES <sup>1</sup>							
CANS, CARTS, VOLUME		BINS			DEBRIS BOXES		COMPACTOR		
Size <sup>2</sup>	“A” <sup>3</sup>	Size <sup>2</sup>	“A” <sup>3</sup>	“B” <sup>3</sup>	Size <sup>2</sup>	“B” <sup>3</sup>	Size <sup>2</sup>	“B” <sup>3</sup>	
1 35-gal. Cart	\$17.50	1 cy	\$114.50	\$26.50	10 cy	\$401.00	10 cy	\$368.50	
2 35-gal. Carts	\$23.00	2 cy	\$157.50	\$36.50	20 cy	\$671.50	20 cy	\$735.50	
1 64-gal Cart									
2 64-gal Carts									
1 95-gal. Cart	\$35.00	3 cy	\$203.00	\$46.50	30 cy	\$917.00	30 cy	\$1,105.00	
2 95-gal. Carts	\$48.50	4 cy	\$236.50	\$54.50	40 cy	\$1,278.50	40 cy	\$1,467.00	
1 cubic yard (cy) <sup>4</sup>	\$28.50	6 cy	\$307.50	\$70.50					
1 Bear Cart									

Notes:

1. Rates may be adjusted annually in accordance with the formula set forth in Section 13.01(c)(1).
2. Sizes are nominal values, not precise volumes. Fees for nominal container volumes that fall in between or higher than those listed will be determined by linear interpolation or extrapolation, respectively, and rounded to the nearest three significant figures.
3. Service fee categories identified above are as follows: “A” = cost per month; “B” = cost per dump.
4. Or approximately equivalent to 6 35-gallon cans/carts.

**EXHIBIT 14.01: COMPENSATORY AND LIQUIDATED DAMAGES**

References in the chart below to “per breach per day” refer to the first occurrence and continuation on successive days. For example, failure to correct a missed pickup would result in liquidated damages on the day of the scheduled pickup and each following day until corrected.

1. Compensatory Damages. If County in its sole discretion chooses not to exercise its right to terminate this Agreement in accordance with Section 14.02 in the event Franchisee fails to deliver Solid Waste to the Designated Disposal Facility in accordance with Section 7.01, then the Franchisee will pay County:

- (a) County Reimbursement Costs to provide necessary persons for monitoring of Franchisee’s compliance with said delivery requirements, including following Franchisee’s vehicles on Service routes; and
- (b) The County’s Reimbursement Cost of enforcing or securing specific performance of Franchisee’s delivery obligation; and
- (c) For each ton of Solid Waste collected by Franchisee that Franchisee delivers to a facility or site other than the Designated Disposal Facility (“Undelivered Tons”), as demonstrated by weigh bills at said other facility or site, reports by any monitoring party, or such other evidence as may be deemed satisfactory by County, the Capacity Fee set forth in Exhibit 7.01b. County may estimate the number of Undelivered Tons based on prior disposal records, Customer lists, or other means.

2. Liquidated Damages. The following is a schedule of liquidated damages for additional breaches.

<b>DESCRIPTION OF BREACH</b>	<b>DAMAGES</b>
Failure to correct a missed pick-up [Section 4.01(c)(1)(iv) and Section 4.01(c)(2)(iv)].	Up to \$100 per failure per day.
Failure to return emptied container to its proper location [Section 4.01(c)(1)(iii)].	Up to \$100 per failure per day.
Failure to provide Residential Customers with written notice of the availability of cart or can service [Section 4.01(c)(1)(iii)].	Up to \$100 per failure per day.
Failure to commence or discontinue Franchise Services [Section 4.01(c)(1)(i) and Section 4.01(c)(2)(i)]; or to deliver, repair or replace, or pick up Containers [Section 4.01(c)(1)(iii) and Section 4.01(c)(2)(iii)]; change size or number of Containers [Section 4.01(e)]; supply locks [Section 4.01(e)], or clean, paint, and maintain Containers [Section 4.01(e)].	Up to \$100 per failure per day.
Failure to comply with authorized collection hours [Section 4.01(d)].	Up to \$100 per failure per day.
Failure to provide any Customer with timely notice of change in Collection schedule [Section 4.01(d)].	Up to \$100 per failure.

<b>DESCRIPTION OF BREACH</b>	<b>DAMAGES</b>
Discourteous behavior by Franchisee's employees reported by or complained of by customers to Franchisee or County [Section 4.03(a)].	Up to \$100 per incident.
Failure to compensate, repair or replace damaged pavements, utilities and/or customer property caused by Franchisee or its personnel [Section 4.03(d)].	Up to \$250 per failure.
Failure to clean up spillage or litter caused by Franchisee [Section 4.03(b) and (c)]. Failure to properly cover materials in Collection Vehicles [Section 4.03(c)] or to maintain or identify Vehicles [Section 5.02].	Up to \$100 per failure per location.
Failure to maintain a toll-free telephone number or required office hours [Section 4.05(a)].	Up to \$100 per failure per day.
Failure to timely respond and resolve each complaint in accordance with the complaint resolution protocol [Section 4.05(e)].	Up to \$250 per failure.
Failure to record a complaint [Section 4.05(d) and Section 10.01]. Failure to provide County access to records of complaints or to provide copies of complaint logs in Quarterly Reports [Section 4.05(d) and Section 10.02].	Up to \$250 per failure.
Failure to timely submit general Customer correspondence and promotional materials, news releases, public education or community relations materials to County for County review [Section 4.06].	Up to \$100 per occurrence and additionally up to \$100 per day for each day prior to retraction or correction of misinformation.
Failure to provide Customers with a written Subscription Order [Section 4.10].	Up to \$100 per failure per day.
Failure to meet with County [Section 5.07]. Failure to return County phone calls, e-mails, or other correspondence from County [Section 8.07].	Up to \$100 per failure per day.
Failure to maintain or timely submit complete Reports and/or documents to County (such as Quarterly and Annual Reports [Section 10.02], Financial Reports [Section 10.03], Route Maps and Route Changes [Section 5.01(a) and (b)], Service Asset Inventory [Section 5.02(g)], Contingency Plan [Section 5.05], Hazardous Waste Screening Protocol [Section 5.06], or Insurance certificates or policies [Article 11].)	Up to \$100 per failure or per day that a Report or document is late.
Failure to perform any other Performance Obligation set forth in this Agreement.	Up to \$100 per failure per day.

**EXHIBIT 16.09: COUNTY-APPROVED SUBCONTRACTORS**



OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS

## REGULAR AGENDA REQUEST

Print

**MEETING DATE** August 21, 2018

**Departments: Board of Supervisors**

**TIME REQUIRED**

**SUBJECT** Letter to Los Angeles Congressional  
Representatives

**PERSONS  
APPEARING  
BEFORE THE  
BOARD**

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### AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

Letter to Los Angeles Congressional representatives Tony Cardenas, Nanette Diaz Barragan, Judy Chu, Jimmy Gomez and Maxine Waters responding to their letter dated July 26, 2018 concerning the additional export of water from Long Valley and Little Round Valleys by the Los Angeles Department of Water and Power.

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### RECOMMENDED ACTION:

Approve proposed letter as drafted or as revised following Board discussion.

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### FISCAL IMPACT:

None.

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**CONTACT NAME:** Jason Canger

**PHONE/EMAIL:** 760-924-1712 / jcanger@mono.ca.gov

---

### SEND COPIES TO:

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### MINUTE ORDER REQUESTED:

YES  NO

---

### ATTACHMENTS:

Click to download

[Letter to LA Congressional Reps](#)

[Letter from LA Congressional Delegation](#)

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### History

Time	Who	Approval
8/17/2018 5:32 AM	County Administrative Office	Yes
8/16/2018 3:20 PM	County Counsel	Yes

8/16/2018 6:05 PM

Finance

Yes



Jennifer Halferty - District One    Fred Stump - District Two    Bob Gardner - District Three  
John Peters - District Four    Stacy Corless - District Five

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## BOARD OF SUPERVISORS COUNTY OF MONO

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P.O. BOX 715, BRIDGEPORT, CALIFORNIA 93517  
(760) 932-5538 • FAX (760) 932-5531  
*Shannon Kendall, Clerk of the Board*

August 21, 2018

**Via U.S. Mail and Email**

Honorable Tony Cardenas  
United States Congressman, 29th District of  
California  
1510 Longworth House Office Building  
Washington, DC 20515

Honorable Judy Chu  
United States Congresswoman, 27th District of  
California  
2423 Rayburn House Office Building  
Washington, DC 20515

Honorable Nanette Diaz Barragan  
United States Congresswoman, 44th District of  
California  
1320 Longworth House Office Building  
Washington, DC 20515

Honorable Jimmy Gomez  
United States Congressman, 34th District of  
California  
1226 Longworth House Office Building  
Washington, DC 20515

Honorable Maxine Waters  
United States Congresswoman, 43rd District of  
California  
2221 Rayburn House Office Building  
Washington, DC 20515

RE: LADWP's Reduction in Water to Mono County Pasture, Wetland and Meadow Habitat

Dear Honorable United States Representatives:

The Mono County Board of Supervisors sincerely appreciates the July 26, 2018, letter from your delegation on this important environmental issue and appreciates you providing a voice for your Los Angeles constituents. We recognize the challenging position of elected officials and are committed to addressing underlying issues and finding common ground.

In the spirit of honest dialogue, the County feels compelled to clarify and respond to several points included in your letter. Many of these same points were also made in a letter which the Los Angeles Department of Water and Power (LADWP) sent to environmental organizations (Sierra Club, Audubon, Friends of the Inyo), the California Resources Agency and other state and federal representatives in response to their expressions of concern regarding the drastic and unanalyzed water reductions in Mono County this year. Mono County responded to LADWP's letters separately, and wishes now to provide you with a similar response.

Honorable Congressional Representatives

RE: LADWP's Reduction in Water to Mono County Pasture, Wetland and Meadow Habitat

August 21, 2018

Page 2 of 4

Your letter states that continued irrigation of pastures, meadows and wetlands in Mono County is not consistent with a new climate reality. We understand that climate change is and will continue to impact water supply availability throughout the State. Sound science and long-term water planning are needed in order to adjust to these changing climate realities – and we all must adapt. However, LADWP's change to more than 70 years of water supply and management practices in Mono County, affecting over 6000 acres of pasture, wetland and meadow habitat, occurred without environmental review or planning. ***Habitat and species, including the Bi-State Sage Grouse, currently being considered for listing under the Endangered Species Act, have already been severely impacted.***

And the practice of transporting water hundreds of miles from Mono and Inyo Counties is not considered the most responsible nor reasonable climate adaptation strategy in the eyes of many. Indeed meadows, such as those now dry, sequester carbon and, when irrigated, contribute to groundwater recharge, enhancing the natural reservoir which is increasingly important storage as high elevation snow fields diminish. In addition to these factors, we believe that all opportunities to conserve water and increase its efficient use should be explored and fully exhausted before additional export from distant and fragile environments is undertaken – and particularly if that export is implemented without prior environmental review.

Your letter further explains that the irrigation of these lands no longer aligns with the best interest of Los Angeles area families and states that continued irrigation will cost \$30 per year per family. Setting aside for the moment whether such a cost is accurate, we urge you to consider not only the financial burden to ratepayers but the environmental costs of LADWP's actions. If the cost to ratepayers is your primary consideration, however, then ***the County would encourage you to investigate the cost to ratepayers of LADWP's environmental litigation and court-ordered restoration and mitigation projects in the Eastern Sierra.*** These costs far outweigh the costs of implementing additional water conservation and efficiency measures that could save the amount of water under discussion, protect valuable habitat in Mono County for the bi-state sage grouse and preserve Los Angeles' relationship with Mono and Inyo Counties. In addition, we would encourage you to consider creative solutions to address the very real burden on LA ratepayers from the City's reliance on imported water, such as the *Water Affordability Act of 2018*, introduced by U.S. Senator Kamala Harris – which would provide funding for urban water users to help defray increasing water costs.

The statement in your letter that LADWP is currently diverting water to protect sage grouse and working with local environmental organizations fails to recognize that this summer, LADWP eliminated most of the water historically provided to the sage grouse, and is only now providing back small amounts in response to concerns expressed by the California Resources Agency, Sierra Club, Audubon Society, Mono County and others. ***To be clear, there is no science or agency/environmental organization approval that supports the conclusion that the reduced amount of water that LADWP is currently supplying to sage grouse habitat is sufficient to prevent harm to that species.*** As of this writing, the historically green meadows and wetlands are brown and dry and invasive plant species have begun to take hold creating fuel for hotter and more catastrophic wildfires. Meadow forage used by sage grouse chicks has vanished and visitors to the Eastern Sierra from Los Angeles and around the world observe these changes as they pass through Mono County on State Scenic Highway 395 traveling to Mammoth Lakes, Mono Lake, and Yosemite National Park.

Another point we wish to address is your letter's characterization of the water supplied to lessees over the last several decades as "free water," or "surplus," and the representation that it was provided on an "ad hoc" basis. The County believes this to be a misunderstanding of the historic practices. The water is not "free" but is supplied pursuant to the terms of agricultural leases, for which lessees pay rent rates to Los



Honorable Congressional Representatives

RE: LADWP's Reduction in Water to Mono County Pasture, Wetland and Meadow Habitat

August 21, 2018

Page 3 of 4

Angeles based on the local value of irrigated (as opposed to non-irrigated) pasture. In fact, without the water, LADWP offered to reduce the rents by 75% this year. It is correct that the leases do not guarantee a specific amount of water and that amounts have varied at times based on hydrologic conditions. Indeed, in wet years such as 2017, the lessees graciously agreed to receive and spread additional water which was of no benefit to them in order to prevent harm to LADWP's water and power infrastructure from excess flows.

In reality, these lands are irrigated pastures, meadows and wetlands which support sensitive wildlife species, and have been so for more than 100 years. This habitat is viewed locally as de facto mitigation for natural habitat lost by LADWP water and power operations through the creation of Crowley Lake, as well as the numerous other impacts throughout Mono and Inyo Counties caused by water export to Los Angeles. ***The suggestion that these meadow systems, and the habitat they support, is now revocable is highly troubling.***

We appreciate your commitment to the City of Los Angeles and its residents, and thus understand the context within which letter was drafted. However, we would be remiss if we, on behalf of our constituents and the hundreds of thousands of visitors from the Los Angeles area to Mono County each year, did not take this opportunity to correct and clarify the record. Moreover, we see water management practices in the region as a shared responsibility of the residents of the Eastern Sierra and Los Angeles. This issue presents a unique opportunity for both regions to work collaboratively to address the impact of climate change on water supply availability. Los Angeles' elected officials and residents surely would not stand for another municipality limiting its water resources in the sudden and drastic way that LADWP has implemented its new water management policies in the Eastern Sierra. To the contrary, they would push back and explore opportunities to mutually address the underlying issues and find common ground to resolve the matter collaboratively. We respectfully urge you to consider the County's collective actions to date through such a lens and help us find the common ground with LADWP so as to resolve this situation in a reasonable and informed manner. If you have any questions regarding this matter, please contact Mono County Administrative Officer Leslie Chapman at (760) 932-5414 or [lchapman@mono.ca.gov](mailto:lchapman@mono.ca.gov).

Sincerely,

Bob Gardner, Chair  
Mono County Board of Supervisors

cc: U.S. Senator Dianne Feinstein  
U.S. Senator Kamala Harris  
U.S. Congressman Paul Cook  
U.S. Congressman Jim Costa  
California State Senator Tom Berryhill  
California State Senator Bob Hertzberg  
California State Senator Jeff Stone  
California State Senator Ben Allen  
California State Senator Henry Stern  
California State Assembly Speaker Anthony Rendon

Honorable Congressional Representatives

RE: LADWP's Reduction in Water to Mono County Pasture, Wetland and Meadow Habitat

August 21, 2018

Page 4 of 4

California State Assemblymember Frank Bigelow  
California State Assemblymember Eduardo Garcia  
California State Assemblymember James Gallagher  
California State Assemblymember Wendy Carillo  
California State Assemblymember Laura Friedman  
Secretary John Laird, California Natural Resources Agency  
Director Charlton Bonham, California Department of Fish and Wildlife  
Los Angeles Mayor Eric Garcetti  
Mel Levine, President, LADWP Board of Commissioners  
Aura Vasquez, Commissioner, LADWP Board of Commissioners  
Jill Banks Barad, Commissioner, LADWP Board of Commissioners  
Christina Noonan, Commissioner, LADWP Board of Commissioners  
Nancy Sutley, Chief Sustainability Officer, LADWP  
Los Angeles City Council



**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-0529**

July 26, 2018

Board of Supervisors  
County of Mono  
Attn: Shannon Kendall, Clerk of the Board  
P.O. Box 715  
Bridgeport, CA 93517

RE: LADWP's Future Water Management Practices – A Reflection of Our Shared Responsibility

Dear Honorable Supervisors,

As fellow elected officials, we are charged with representing our communities and finding common ground where possible when stakeholders have divergent interests. As representatives of Mono County, you have voiced concerns on behalf of your constituents regarding the Los Angeles Department of Water and Power's (LADWP) decision to discontinue providing free water supplies to commercial ranchers in your community.

Representing the voice of our Los Angeles constituents, we write to address your concerns and explain why continuing this practice does not reflect our new climate reality and no longer aligns with the best interests of Los Angeles families. Ultimately, we hope that your county can relate to the purposeful and thoughtful process behind this important, but necessary and responsible decision.

As you know, commercial ranchers in your community have historically leased land from LADWP for grazing. Decades ago, LADWP began offering free water to the commercial ranchers to flood irrigate the grazing lands when the department had more water than it could accommodate in the Los Angeles Aqueduct. At LADWP's discretion, free water has since been offered to the commercial ranchers on an ad hoc basis when supplies were available. It was never a guarantee tied to the leases. The amounts have differed each year based on hydrological conditions and LADWP operational needs.

Due to continued weather extremes that have affected all our communities, as well as half of the Los Angeles Aqueduct water supplies continuing to flow into Mono and Inyo counties for environmental purposes, Los Angeles no longer has that surplus water available to provide for free water to the commercial ranchers. LADWP management has recommended offering to renew the leases for another 20 years – providing the ranchers a first right of refusal offer versus taking the leases to a competitive bid or exploring alternate uses for the land.

In Los Angeles, we must ultimately assess all water management practices through the lens of Los Angeles ratepayers. LADWP's mission is to deliver safe, reliable and cost-effective water to four million Los Angeles city residents and businesses. If LADWP continued to provide free water to Mono County commercial ranchers, LADWP would have to spend approximately \$18 million to purchase the amount of water requested and the lost hydropower it generates – a cost burden of approximately \$30 for each family per year. We cannot ask that Los Angeles families pay for free water for the commercial ranchers.

As we have all experienced in our communities, California's water supply challenges are mounting and have shifted with a new climate reality. We collectively must examine how we use every drop of water, and we're proud of the progress that Southern California has made in conservation. Los Angeles ratepayers have risen to the challenge. Los Angeles now uses the same amount of water today as it did 40 years ago, despite a population increase of more than one million people, and has one of the lowest per capita usage rates for large U.S. cities. The city is currently on pace to further reduce its water use by 25% by 2035.

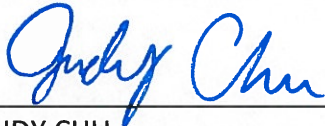
We place a high importance on environmental stewardship in all regions, and Mono County is no exception. The water LADWP has provided to commercial ranchers is separate and unrelated to the water LADWP continues to provide to serve the region's environment. LADWP is currently diverting water to protect the Sage Grouse habitat, while simultaneously working with local environmental organizations to ensure the habitat will continue to be protected in the future.

Faced with a new climate reality and diminishing water supplies, updating water management practices is a responsibility we must all bear as we strive for a sustainable future. We hope that we can forge a positive path forward for the public we serve.

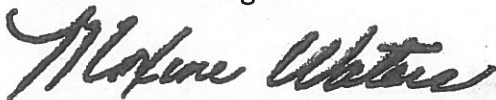
Sincerely,



TONY CÁRDENAS  
Member of Congress



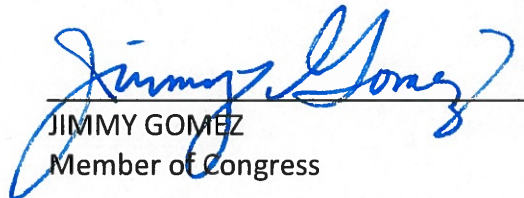
JUDY CHU  
Member of Congress



MAXINE WATERS  
Member of Congress



NANETTE DIAZ BARRAGÁN  
Member of Congress



JIMMY GOMEZ  
Member of Congress

CC: U.S. Senator Dianne Feinstein  
U.S. Congressman Paul Cook  
U.S. Congressman Jim Costa  
Mayor Eric Garcetti  
California State Senator Tom Berryhill  
California State Senator Bob Hertzberg  
California State Senator Jeff Stone  
California State Senator Ben Allen  
California State Senator Henry Stern  
California State Assembly Speaker Anthony Rendon  
California State Assemblymember Frank Bigelow  
California State Assemblymember Eduardo Garcia  
California State Assemblymember James Gallagher  
California State Assemblymember Wendy Carillo  
California State Assemblymember Laura Friedman  
Secretary John Laird, California Natural Resources Agency  
Director Charlton Bonham, California Department of Fish and Wildlife  
Secretary Karen Ross, California Department of Food and Agriculture  
Supervisor Fred Stump, Mono County District 2  
Supervisor Bob Gardner, Mono County District 3  
Supervisor John Peters, Mono County District 4  
Supervisor Stacy Corless, Mono Count District 5  
Stacey Simon, County Counsel, Mono County



**OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS**

## **REGULAR AGENDA REQUEST**

Print

**MEETING DATE** August 21, 2018

**Departments: Board of Supervisors**

**TIME REQUIRED**

**SUBJECT** Letter of Support for Hazardous Fuel  
Reduction by Mammoth Lakes Fire  
Safe Council

**PERSONS  
APPEARING  
BEFORE THE  
BOARD**

---

### **AGENDA DESCRIPTION:**

(A brief general description of what the Board will hear, discuss, consider, or act upon)

In July, the Mammoth Community Water District (District) submitted a pre-application to the Sierra Nevada Conservancy (SNC) to request additional funding for the Lakes Basin Hazardous Fuels Reduction Project, a 661 acre fuels reduction project located in the Mammoth Lakes Basin. Mammoth Lakes Fire Safe Council was awarded \$500,000 in grant funding for this project in June, 2018 and the District is seeking to receive the remainder of the funding necessary for project completion.

---

### **RECOMMENDED ACTION:**

Review and approve letter in support of hazardous fuels reduction project in Mammoth Lakes Basin to Sierra Nevada Conservancy.

---

### **FISCAL IMPACT:**

None.

---

**CONTACT NAME:** Scheereen Dedman

**PHONE/EMAIL:** x5538 / sdedman@mono.ca.gov

---

### **SEND COPIES TO:**

---

### **MINUTE ORDER REQUESTED:**

YES  NO

---

### **ATTACHMENTS:**

Click to download

[Staff Report](#)

[Letter](#)

---

History

<b>Time</b>	<b>Who</b>	<b>Approval</b>
8/17/2018 10:20 AM	County Administrative Office	Yes
8/17/2018 9:41 AM	County Counsel	Yes
8/17/2018 9:29 AM	Finance	Yes



Jennifer Halferty ~ District One    Fred Stump ~ District Two    Bob Gardner ~ District Three  
John Peters ~ District Four    Stacy Corless ~ District Five

---

## **BOARD OF SUPERVISORS COUNTY OF MONO**

---

P.O. BOX 715, BRIDGEPORT, CALIFORNIA 93517  
(760) 932-5533 • FAX (760) 932-5531  
*Shannon Kendall, Clerk of the Board*

**August 21, 2018**

To: Mono County Board of Supervisors

From: Scheereen Dedman, Senior Deputy Clerk

Re: Letter of Support for Hazardous Fuel Reduction by Mammoth Lakes Fire Safe Council

### **Recommendation**

Review and approve letter in support of hazardous fuels reduction project in Mammoth Lakes Basin to Sierra Nevada Conservancy.

### **Fiscal Impact**

None.

### **Discussion**

In July, the Mammoth Community Water District (District) submitted a pre-application to the Sierra Nevada Conservancy (SNC) to request additional funding for the Lakes Basin Hazardous Fuels Reduction Project, a 661 acre fuels reduction project located in the Mammoth Lakes Basin. Mammoth Lakes Fire Safe Council was awarded \$500,000 in grant funding for this project in June, 2018 and the District is seeking to receive the remainder of the funding necessary for project completion.





Jennifer Halferty ~ District One    Fred Stump ~ District Two    Bob Gardner ~ District Three  
John Peters ~ District Four    Stacy Corless ~ District Five

---

## **BOARD OF SUPERVISORS COUNTY OF MONO**

---

P.O. BOX 715, BRIDGEPORT, CALIFORNIA 93517  
(760) 932-5533 • FAX (760) 932-5531  
*Shannon Kendall, Clerk of the Board*

August 21, 2018

Sierra Nevada Conservancy  
351 Pacu Lane, Suite 200  
Bishop, CA 93514

To Whom It May Concern:

The Board of Supervisors of the County of Mono is in support of the Mammoth Community Water District and their combined efforts with the Mammoth Fire Safe Council to reduce hazardous fuels in the Mammoth Lakes Basin area.

It is our understanding that the goal of this project is to reduce the likelihood of adverse wildfire impacts to recreation residences, resorts, and other developments, and to improve public and firefighter safety in the event of a wildfire. This project is focused on 661 acres and will reduce potential fire severity and provide defensible space around recreation sites, structures, and along primary roads, and at Mammoth Pass.

Mono County supports the Mammoth Community Water District seeking funds to assist the Mammoth Lakes Fire Safe Council's to limit the threat of wildfires from moving into the urban interface, and to provide defensible space and fuel breaks that will minimize the secondary and long-lasting damage to the watershed, property, and forest lands in and around the Lakes Basin.

We thank you for considering this project.

Sincerely,

---

Bob Gardner, Chair  
Mono County Board of Supervisors



**OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS**

**REGULAR AGENDA REQUEST**

Print

**MEETING DATE** August 21, 2018

**TIME REQUIRED**

**SUBJECT** Reds Meadow Fuels Reduction  
Project Letter

**PERSONS  
APPEARING  
BEFORE THE  
BOARD**

**AGENDA DESCRIPTION:**

(A brief general description of what the Board will hear, discuss, consider, or act upon)

Inyo National Forest, Mammoth Ranger District, is proposing to undertake the Red's Meadow Hazardous Fuels Reduction Program. The proposed action is included, as well as information for submitting comments.

**RECOMMENDED ACTION:**

**FISCAL IMPACT:**

**CONTACT NAME:**

**PHONE/EMAIL:** /

**SEND COPIES TO:**

**MINUTE ORDER REQUESTED:**

YES  NO

**ATTACHMENTS:**

<p>Click to download</p> <p> <a href="#">Letter</a></p>
---

**History**

Time	Who	Approval
8/16/2018 5:30 AM	County Administrative Office	Yes
8/16/2018 9:51 AM	County Counsel	Yes
8/16/2018 6:21 PM	Finance	Yes

**File Code: 1950**

**Date: 08/08/2018**

Dear Interested Party,

The United States Forest Service, Mammoth Ranger District of the Inyo National Forest is proposing to undertake the Red's Meadow Hazardous Fuels Reduction Project. The area in and around Red's Meadow as well as east along highway 203 is densely forested and susceptible to high severity crown fires. These conditions are hazardous to visitors as there is only one ingress and egress into the area which could easily be blocked or become inaccessible in the advent of a wildfire. High fuel loads and the potential resulting high severity wildfire pose a significant threat to the safety of visitors and firefighters, as well as campgrounds, resorts, and trailheads. In addition, a high severity fire would damage the San Joaquin watershed, and adversely impact the San Joaquin River. Such a fire could result in flooding, sedimentation of the river, mortality of trout, and reduce recreation opportunities. Existing dense stand conditions are also detrimental to forest health, resulting in increased mortality due to drought and pest and pathogen outbreaks.

The Red's Meadow Hazardous Fuels Reduction Project would address the above issues by thinning standing and surface fuels in order to reduce fuel loads and potential wildfire severity on 2,149 acres within the project area (see enclosed map). Treatments will be designed to create defensible space around roads to improve ingress and egress, and reduce fuels around campgrounds, resorts, and developed recreation areas. This will reduce the likelihood of high severity fire, reduce the hazard to fire fighters and visitors, and improve the likelihood of buildings being protected from wildfire. It will also improve forest health by increasing residual tree vigor as a result of increased growing space following thinning, and reduce the impact of wildfire to the San Joaquin watershed.

In general, treatments are designed to reduce tree densities, ladder fuels, and surface fuels in order to reduce the likelihood of crown fires, and reduce intensity of surface fires.

Fuels reduction treatments will include:

- Thinning of select trees up to 30 inches in diameter, and conifers encroaching in meadows or stands of aspens
  - Thinning of trees which are dead or dying from insect outbreaks or are infected by pathogens
- Retaining larger more vigorous fire resistant and resilient trees
- Ground-based equipment will be used to remove trees in areas with slopes less than 30%
- Hand labor, suspension systems, or aerial methods (cable / helicopter logging), may occur on steeper slopes
- Boles of trees greater than 8 inches in diameter may be sold as fuel wood or as sawlogs to be processed by contractors or the public
- Slash and residual material will be disposed of thorough: chipping, piling and burning, removal from the area, or other means
- Broadcast burning of units to reduce surface fuel loading may occur

**\*For a detailed list of treatments see attached proposed action document\***



The proposed action is enclosed in this letter under "Proposed Action for Red's Meadow". For further information on the project as it progresses please check Inyo National Forest Schedule of Proposed Action (SOPA) or contact Eric Vane, North Zone Vegetation Management Planner, at the Mammoth Ranger Station at 2400 Highway 203, phone (760) 924-5509, or email [ericdvane@fs.fed.us](mailto:ericdvane@fs.fed.us).

#### How to Comment and Timeframe

The proposed action is currently available for public response. With this letter we would like to invite your input regarding issues, opportunities, concerns, and suggestions for the proposed project.

This project is a hazardous fuel reduction project as defined by the Healthy Forest Restoration Act (HFRA), section 101(2), that is subject to comment pursuant to 36 CFR 218, subparts A and C. Only those who submit timely project-specific written comments during this public comment period, are eligible to file an objection. There will be no other opportunity for written public comment. Individuals or representatives of an entity submitting comments must sign the comments or verify identity upon request.

Written comments may be submitted by fax (760-924-5537) or by hand-delivery to the Mammoth Ranger Station at 2400 Highway 203, during normal business hours (Monday- Friday 8:00 A.M – 4:30 P.M). Electronic comments may also be sent to [ericdvane@fs.fed.us](mailto:ericdvane@fs.fed.us) in the following acceptable formats: plain text (.txt), rich text (.rtf), Adobe (.pdf), or word (.doc). They can also be mailed to Gordon Martin, c/o Eric Vane, Mammoth Ranger Station, P.O. Box 148, Mammoth Lakes, CA, 93546. Comments must be postmarked no later than September 7, 2018. Only those individuals or organizations who submit specific written comments during this scoping period will have standing to file an objection.

We will also be hosting a public meeting to discuss this project at the Mammoth Ranger Station (2400 Highway 203, Mammoth Lakes, CA) in the auditorium at 6:00 P.M on August 21, 2018.

Please contact Eric Vane, Fuels Planner, at the Mammoth Ranger Station at 2400 Highway 203, phone (760)924-5509, or email [ericdvane@fs.fed.us](mailto:ericdvane@fs.fed.us) for more specific information about how to provide comments on the project.

Sincerely,



Gordon P. Martin  
District Ranger

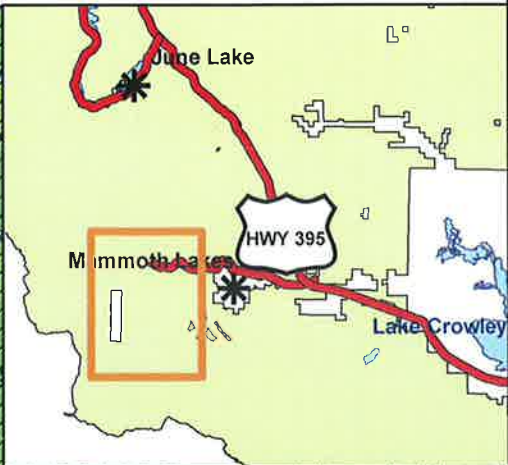
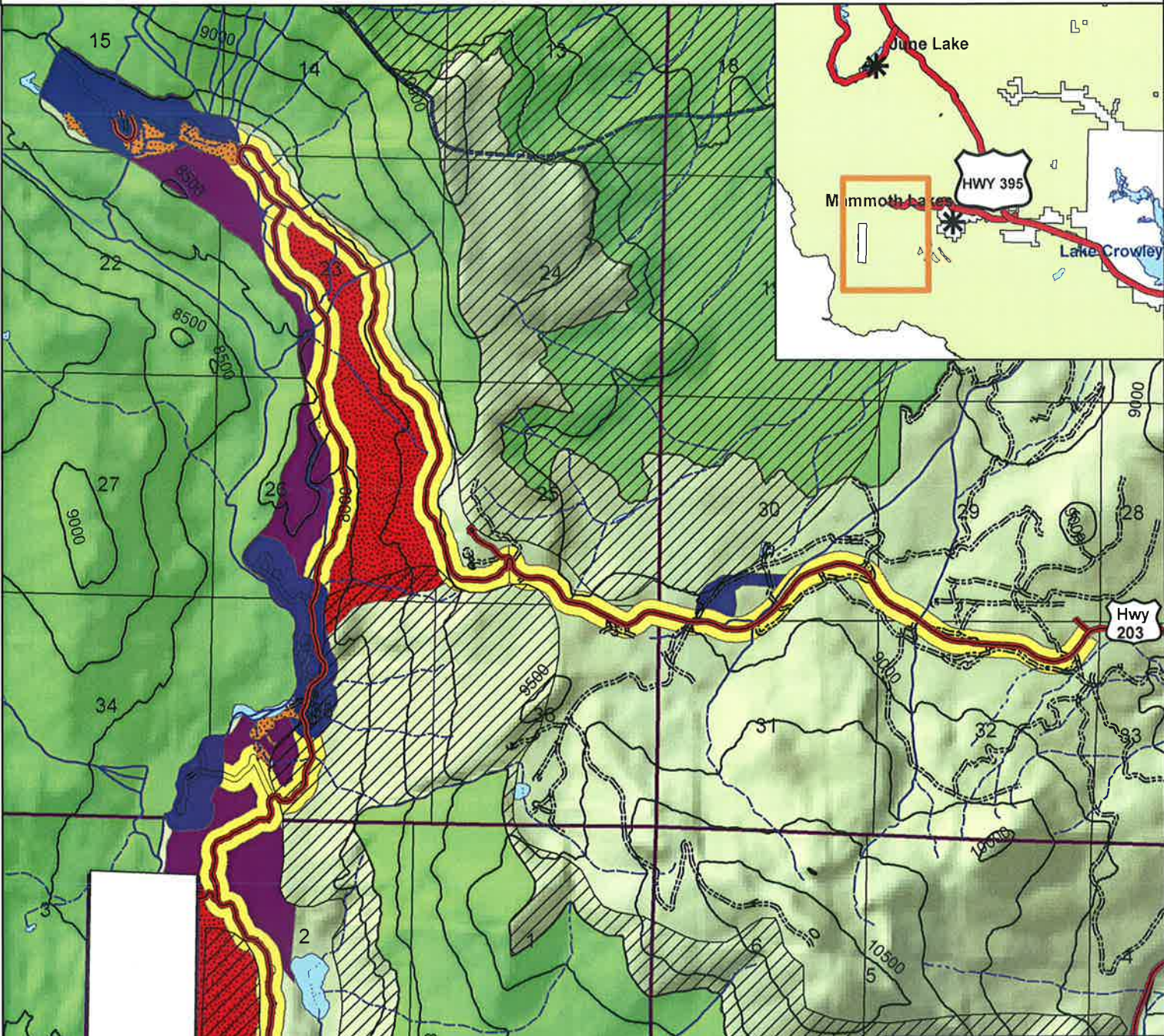
## Proposed Action for Red's Meadow

1. Roadside Fuelbreak – 727 acres – the goal of this treatment is to reduce fuel loads to create defensible space around the Red's meadow road to allow safe ingress and egress for public and firefighting resources in the event of a wildfire.
  - a. 24 inch diameter cap on live trees, remove dead and dying trees red fir (no diameter cap)
    - i. Removal of ladder fuels from below dominant and co-dominant overstory trees
    - ii. Raise canopy base height to reduce likelihood of surface fire becoming a crown fire
    - iii. Thin overstory trees to reduce crown continuity and decrease likelihood of active crown fire
    - iv. Retain clumps of trees to screen man-made objects and create more natural looking conditions
  - b. Allow for public fuelwood collection where terrain and location is appropriate
  - c. Allow for mechanized equipment on slopes less than 30%
  - d. Allow for commercial timber sales to reduce cost of treatments and removal of fuels
  - e. Reduce surface fuels by removing current dead and downed trees up to 12 inches diameter at breast height DBH and activity fuels
    - i. Dispose of fuels through piling and burning, chipping, and/ or removing from the site
  - f. Broadcast burning (intentionally igniting surface fuels across the proposed area in a controlled manner to reduce surface fuel loads) will be allowed
  
2. Infrastructure Fuelbreak – 408.5 acres – the goal of treatments is to create defensible space around infrastructure and campgrounds in Red's Meadow to improve the likelihood of structures surviving wildfire and improving fire fighters safety and ability to protect structures.
  - a. 16 inch diameter cap on live trees
  - b. No diameter cap dead and dying trees
  - c. Remove ladder fuels, and thin understory trees to reduce potential wildfire severity, and reduce the potential for crown fire
  - d. Strategically retain clumps of trees for screening in-between buildings roads and campsites to maintain aesthetics where it does not compromise fuels treatments
    - i. Retain clumps of trees upslope from structures where there could be a hazard for avalanche propagation
  - e. Allow for mechanized treatments on slopes less than 30%
  - f. All activity fuels (material produced as a result of fuels reduction activity) will be piled and burned, chipped, and or removed from the site
  - g. Broadcast burning will be allowed
  
3. Meadow/Riparian Restoration - 53 acres – the goal of treatments is to remove encroaching conifers from meadows and riparian areas to restore hydrologic function.
  - a. Remove conifers less than 150 years old
  - b. No use of mechanized equipment will be allowed in wet meadows or riparian areas

- c. Dispose of fuels by piling and burning in areas which will not be damaged by this activity, or piling and burning outside of meadow restoration units
    - i. Chipping and removal from site will also be acceptable
  - d. Broadcast burning would be allowed
4. Forest Thinning – 334 acres – The goal of these treatments is to reduce the chance of active crown fires, and reduce potential fire severity to allow for more effective and safer conditions for wildland firefighters combatting wildfire.
- a. 30 inch diameter cap for live trees. No diameter cap on dead and dying trees
  - b. Use a variable density thin strategy to reduce stand density while retaining natural forest conditions
    - i. In general focus on removal of smaller diameter trees (<18 inches),
    - ii. Create clumps (<1/4 acre in size) where tree crowns are interlocking on up to 5 – 10% of the landscape,
    - iii. Create gaps (<1/2 acre in size) where all trees less than 24 inches DBH are removed on up to 10 % of the landscape
    - iv. Thin residual matrix so that crowns are not touching
    - v. Increase canopy base height through the removal of smaller diameter trees and ladder fuels
  - c. Allow for mechanized equipment on slopes less than 30%
  - d. Allow for commercial timber sales to reduce cost of treatments and removal of fuels
  - e. Activity fuels will be removed by piling and burning, chipping, and/ or removal from the site
  - f. Broadcast burning will be allowed
5. Understory Burn/ Hand thin – 627 acres – The goal of these treatments is to reduce fuels and improve forest health in areas which are too steep for mechanical treatment.
- a. 12 inch diameter cap on live trees, no diameter cap on dead and dying trees
  - b. All trees less than 12 inches in diameter will be assessed for thinning. At least 25 trees per acre (TPA) less than 12 inches DBH will be retained, ideally where they do not function as ladder fuels.
  - c. Following thinning activities, activity fuels will be piled and burned, chipped, and or removed from the site.
  - d. Broadcast burning and jackpot burning (Selectively igniting naturally occurring build-ups of surface fuels to reduce surface fuel loading) may occur following fuels reduction treatments or where current conditions allow for it
  - e. Mechanized equipment may be allowed for the disposal of activity fuels such as a tracked chipper.

# Reds Meadow: Proposed Treatments

0 0.4 0.8 1.6 Miles



**Devils Post Pile**

Treatment	Acres
Forest Thinning	333.5
Infrastructure Fuelbreak	408.5
Meadow Restoration	52.9
Roadside Fuelbreak	727.1
Understory Burn/ Hand Thin	627.4
<b>Total</b>	<b>2149.4</b>

**Legend**

**Treatment**

- Forest Thinning
- Infrastructure Fuelbreak
- Meadow Restoration
- Roadside Fuelbreak
- Understory Burn/ Hand Thin

**Mechanical Treatment Allowed**

- No

**Ownership**

- National Park Service
- USDA Forest Service
- Inventoried Roadless Areas
- Wilderness



**OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS**

**REGULAR AGENDA REQUEST**

Print

**MEETING DATE** August 21, 2018

**TIME REQUIRED**

**SUBJECT** Fish Enhancement Budget Potential  
Deductions Letter

**PERSONS  
APPEARING  
BEFORE THE  
BOARD**

**AGENDA DESCRIPTION:**

(A brief general description of what the Board will hear, discuss, consider, or act upon)

A letter from Pine Cliff Resorts in June Lake regarding the potential decrease of the County fish enhancement budget.

**RECOMMENDED ACTION:**

**FISCAL IMPACT:**

**CONTACT NAME:**

**PHONE/EMAIL:** /

**SEND COPIES TO:**

**MINUTE ORDER REQUESTED:**

YES  NO

**ATTACHMENTS:**

<p>Click to download</p> <p> <a href="#">Letter</a></p>
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**History**

Time	Who	Approval
8/16/2018 6:19 AM	County Administrative Office	Yes
8/16/2018 9:43 AM	County Counsel	Yes
8/16/2018 3:30 PM	Finance	Yes





# Pine Cliff Resort

*by the shore of  
June Lake, CA*  
P.O. Box 38 · 93529  
(760) 648-7558

**JULY 27, 2018**

**BOARD OF SUPERVISORS  
C/O CLERK OF THE BOARD  
P.O. BOX 715  
BRIDGEPORT, CA. 93517**

**TO WHOM IT MAY CONCERN:**

**RELATIVE TO YOUR NOTICE CONCERNING THE 2018-19 MONO COUNTY  
BUDGET REGARDING THE POTENTIAL DEDUCTIONS IN FISH  
ENHANCEMENT WE WILL RESPOND SHORT AND SWEET:**

- 1.) **OUR BUSINESS IS A "FISHING CAMPGROUND", HERE TO SERVE THE PUBLIC, GIVE THE PEOPLE A WONDERFUL CAMPING EXPERIENCE. WE HAVE BEEN ESTABLISHED SINCE 1955.**
- 2.) **OUR CLIENTS ARE THOSE WHO ENJOY THE OUTDOORS, FISHING, TRAIL WALKS, GET TOGETHERS WITH THEIR FRIENDS AND FAMILY. WE ARE IN OUR 4<sup>TH</sup>. GENERATION. THEY REPRESENT ALL OF OUR BUSINESS. WE ARE A DESTINATION RESORT. ALL OF OUR GUESTS ARE HERE TO FISH IN THE LAKES, MAINLY. SOME DO THE TRAILS WITH THE UPPER LAKES TO CATCH FISH, HOPEFULLY IN THE LAKES OR UPPER LAKES THEY WILL CATCH SOME NICE SIZE FISH TO BRAG ABOUT.**
- 3.) **IN THE PAST YEARS OUR GUESTS LET US KNOW THAT THE FISHING WAS SLOW TO NONE. NOT RIGHT. WE ARE A BUSINESS AND HERE TO SURRIVE. FISHING BEING SLOW TO NEL DOS NOT ENHANCING OUR REVENUE.**

- 4.) WITH NO FISH OR VERY MINIMUL STOCKING WE WOULD NOT HAVE A BUSINESS. EVERYTHING WOULD FOLD UP IN THAT WE ARE A RECREATIONAL, SEASONAL ESTABLISHMENT. HAVE BEEN SINCE 1955. LET'S NOT SEE THIS DEMINISH FOR PINE CLIFF RESORT AND THE OTHER OLD ESTABLISHED CAMPING AREAS.
- 5.) THERE ARE TRAIL KEEPERS IN INYO COUNTY, WHY CAN NOT THE FOREST SERVICE OR THE ENVIRONMENTALIST MAINTAIN THE "TRAILS" IN MONO COUNTY ?. THEY ARE BEING PAID TO DO SO. WE AS INDIVIDUAL OWNERS CAN NOT POSSIBILITY MAINTAIN THE LAKES AND TRAILS. THERE ARE ESTABLISHMENTS WITHIN THE COUNTY WHO SHOULD LOOK OUT FOR US. WE ARE A RECREATIONAL AREA. THE STATE OF CALIORNIA SHOULD BE CONCERNED FOR OUR WELL BEING.
- 6.) WITHOUT FISHING IN THE SUMMER, THERE WOULD BE NOTHING BUT MILES AND MILES OF DESERT AREA. IT WOULD PROBABLY AFFECT OUT WINTER TOURISM AS WELL.
- 7.) DO YOU WANT MONO COUNTY TO BE EXTINCT? KEEP IT UP AND IT WILL HAPPEN.
- 8.) WE HAVE HAD ENOUGH NEGATIVE HAPPENINGS WITH FIRES, EVACUATIONS AND SMOKE OVER THE PAST FEW YEARS. WE DO NOT NEED ANY MORE, WITH OUR FISH GOING ELSEWHERE.

CORDIALLY,

*Steve - Sandra*

STEVE QUINLOG, GENERAL MANAGER  
SANDRA MILLER, OWNER



**OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS**

**REGULAR AGENDA REQUEST**

Print

**MEETING DATE** August 21, 2018

**Departments: Community Development**

**TIME REQUIRED** 9:30 AM (30 minutes)

**PERSONS APPEARING BEFORE THE BOARD** Wendy Sugmura

**SUBJECT** Public Hearing - CalTrans Speed Survey

**AGENDA DESCRIPTION:**

(A brief general description of what the Board will hear, discuss, consider, or act upon)

The California Department of Transportation (Caltrans) has conducted a speed zone survey on State Route 120, west of the junction of US 395, from post mile 0.0 to 12.05. This section of SR 120 is currently posted at 50 mph. It is Caltrans recommendation that the 50 mph speed limit be removed and to post this area at 55 mph.

**RECOMMENDED ACTION:**

Receive information from Caltrans concerning the speed survey and possible speed increase on State Route 120. Provide direction to Caltrans District 9 and/or county staff.

**FISCAL IMPACT:**

None.

**CONTACT NAME:**

**PHONE/EMAIL:** /

**SEND COPIES TO:**

**MINUTE ORDER REQUESTED:**

YES  NO

**ATTACHMENTS:**

Click to download
<a href="#">Staff Report</a>
<a href="#">CalTrans Letter</a>

**History**

Time	Who	Approval
8/17/2018 5:41 AM	County Administrative Office	Yes

8/16/2018 12:09 PM

County Counsel

Yes

8/16/2018 6:18 PM

Finance

Yes

# Mono County Community Development Department

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PO Box 347  
Mammoth Lakes, CA 93546  
760.924.1800, fax 924.1801  
commdev@mono.ca.gov

## Planning Division

PO Box 8  
Bridgeport, CA 93517  
760.932.5420, fax 932.5431  
[www.monocounty.ca.gov](http://www.monocounty.ca.gov)

August 21, 2018

To: The Honorable Mono County Board of Supervisors

From: Gerry Le Francois for Wendy Sugimura, Community Development Director

Re: Public Hearing on purposed speed limit increase on State Route 120

### RECOMMENDATION

Receive information from Caltrans concerning the speed survey and possible speed increase on State Route 120. Provide direction to Caltrans District 9 and/or county staff.

### FISCAL IMPACT

Not Applicable

### BACKGROUND and DISUSSION

The California Department of Transportation (Caltrans) has conducted a speed zone survey on State Route 120, west of the junction of US 395, from post mile 0.0 to 12.05. This section of SR 120 is currently posted at 50 mph. It is Caltrans recommendation that the 50 mph speed limit be removed and to post this area at 55 mph.

*As required by Section Vehicle Code Section 22354.5 (b) The city council or board of supervisors of a city or county through which any portion of a state highway subject to subdivision (a) extends may conduct a public hearing on the proposed increase or decrease at a convenient location as near as possible to that portion of state highway. The Department of Transportation shall take into consideration the results of the public hearing in determining whether to increase or decrease the speed limit.*

### ATTACHMENTS

1. Letter of June 19, 2018 from Caltrans regarding SR 120 Speed Survey

**DEPARTMENT OF TRANSPORTATION**

DISTRICT 9  
500 SOUTH MAIN STREET  
BISHOP, CA 93514  
PHONE (760) 872-0650  
FAX (760) 872-5215  
TTY 711 (760)872-0650  
www.dot.ca.gov



*Making Conservation  
a California Way of Life.*

June 19, 2018

Stacy Corless, Chairperson  
Board of Supervisors  
Mono County  
PO Box 715  
Bridgeport, CA 93517

Dear Chairperson Corless:

The California Department of Transportation (Caltrans) has conducted a speed zone survey on State Route 120, west of the junction of US 395, from post mile 0.0 to 12.05. This is the Tioga Pass Road and it is currently posted at 50 mph. The results of the speed study supports the removal of the 50 mph speed zone. It is Caltrans recommendation that the 50 mph speed limit be removed and to post this area at 55 mph.

*As required by Section 22354.5 (b) The city council or board of supervisors of a city or county through which any portion of a state highway subject to subdivision (a) extends may conduct a public hearing on the proposed increase or decrease at a convenient location as near as possible to that portion of state highway. The Department of Transportation shall take into consideration the results of the public hearing in determining whether to increase or decrease the speed limit.*

Caltrans is proposing to change the speed zone as describe above. We are asking for input from the Mono County Board of Supervisors. If the Board would like to hold a public hearing on this issue, please contact Bradley Larson with the time, date and location of the hearing. If the Board does not wish to hold a public hearing, please let me know so we can move forward with this change. If you would like me to speak to the Board or would like more information, please call me at (760) 872-5224. If I do not hear back from you by August 19, 2018 I will assume you do not wish to hold a hearing and I will proceed with the change to the transition zone. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "BRAD LARSON", with a long horizontal line extending to the right.

BRADLEY LARSON PE  
Transportation Engineer  
District 9  
Traffic Operations



**OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS**

**REGULAR AGENDA REQUEST**

Print

**MEETING DATE** August 21, 2018

**Departments: Economic Development**

**TIME REQUIRED** 20 minutes

**PERSONS APPEARING BEFORE THE BOARD** Wendy Schneider

**SUBJECT** Trails Maintenance 2018 Grant Program Report

**AGENDA DESCRIPTION:**

(A brief general description of what the Board will hear, discuss, consider, or act upon)

Presentation and report by Wendy Schneider, Executive Director of Friends of the Inyo, regarding the FY17-18 Trails Maintenance Grant Program. Due to the size of the document, the PowerPoint presentation can be found as a Supporting Document at <https://monocounty.ca.gov/bos/page/board-supervisors-11>.

**RECOMMENDED ACTION:**

None (informational only). Provide any desired direction to staff.

**FISCAL IMPACT:**

None at this time. Friends of the Inyo was allocated a \$23,805 grant from the general fund in FY17-18 for Mono County trails maintenance projects. For FY18-19, the non-profit organization has requested a grant allocation of \$27,500.

**CONTACT NAME:** Wendy Schneider

**PHONE/EMAIL:** (310) 849-3662 / wendy@friendsoftheinyo.org

**SEND COPIES TO:**

**MINUTE ORDER REQUESTED:**

YES  NO

**ATTACHMENTS:**

<p>Click to download</p> <p> <a href="#">Scope of work</a></p>
--

**History**

Time	Who	Approval
8/16/2018 5:48 AM	County Administrative Office	Yes
8/10/2018 4:36 PM	County Counsel	Yes

8/16/2018 6:06 PM

Finance

Yes





**FRIENDS  
OF THE INYO** SINCE 1986

Caring for the Eastern Sierra

## **Friends of the Inyo 2019 Scope of Work Proposal**

Mono County Trails

*Connecting Local Communities, Economies, and Public Lands with Stewardship*

### **Trails Support Mono County's Economy**

People come from all over the world to walk or ride Mono County's trails. Lundy Canyon's wildflowers, Mammoth's lakes, and Convict's stunning geology are world-famous—yet all of these incredible places are renowned only because they are accessible by trail. Our vast network of hiking trails links the County's visitors to the destinations they traveled across the country or across the world to see.

Travel and recreation constitute an integral part of Mono County's economy. Thirty-eight percent of all jobs in Mono County are classified in the travel/recreation sector, and the recreation industry has grown by 31% in the last decade<sup>1</sup>. Trail maintenance is a critical means of safeguarding recreational access to our public lands, and sustaining this vital and growing component of Mono County's economy.

### **Current Need**

The dramatic winter of 2016-17 brought record snowfall and spring runoff, felling trees, washing away bridges, and eroding trails throughout Mono County. Violent storms in April and July 2018 added to the damage when massive debris slides obliterated trails. At the same time, the Inyo and Humboldt-Toiyabe National Forests struggle with increases in visitation and decreases in funding and staff capacity. The combination of heavy use, deferred maintenance, and damaging weather has produced three primary needs on trails within Mono County: intensive work on specific trail projects, routine maintenance on all system trails and use areas, and increased public engagement. This project will address all three needs.

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<sup>1</sup> Center for Economic Development. 2018. Mono County Economic and Demographic Profile. California State University, Chico.



# FRIENDS OF THE INYO

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## Proposal

In collaboration with the Inyo and Humboldt-Toiyabe National Forests and Mono County, Friends of the Inyo (FOI) proposes the following work for Mono County Trails in 2019. The majority of the work will be completed in June and July 2019 as weather allows. We will coordinate specific details for these projects in spring 2019.

### **Four-Person Stewardship Crew - 12 days**

**\$12,672**

Friends of the Inyo's Stewardship Crew will dedicate up to 12 days to completing intensive, large-scale trail maintenance projects in Mono County. In 2019, this work will include rebuilding trails that have washed out, clearing massive debris flows and hazardous logs from trails, and installing rock structures and creek crossings.

Proposed areas of focus include the Robinson Creek, Lundy Canyon, and Lee Vining Creek Trails. As time allows, the crew may complete projects on the Convict Lake, McGee Creek, Bloody Canyon, Virginia Lakes, and Green Creek Trails, as well as trails departing from the June Lake Loop. The crew may also return to complete work on projects left unfinished after volunteer events.

### **Mono County Trail Ambassador - 15 days**

**\$3,960**

Friends of the Inyo's Trail Ambassadors are a dynamic, mobile task force, keeping the Inyo National Forest's most popular trails safe and open with regular stewardship. While the Stewardship Crew focuses on completing intensive, highly technical trail work projects, the Trail Ambassadors accomplish important routine maintenance (brushing, cleaning water bars, repairing rock structures, restoring informal trails, mitigating erosion) across hundreds of miles of popular trails. This routine maintenance throughout the County is essential to keep trails resilient to heavy use and typical weather events. Additionally, Trail Ambassadors' flexible schedules allow them to respond to new challenges as they arise. In 2018, Trail Ambassadors joined an emergency crew to rebuild the Pine Creek Pass and Piute Pass Trails after they washed out in heavy storms, repairing both trails within a few days of the damage.

During the summer of 2019, the Mono County Trail Ambassador will patrol and maintain over 100 miles of trails on the Inyo National Forest in Mono County, with a particular focus beyond the Mammoth area. The Trail Ambassador will identify and complete crucial work that does not require the resources of the Stewardship Crew and can be accomplished efficiently by a one- or two-person team.



# FRIENDS OF THE INYO

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## **Volunteer Trail Work Events - 3 days**

**\$3,168**

Volunteer trail stewardship events make a tangible difference for trails in Mono County. In 2018, 66 volunteers contributed 253 hours of service at a value of over \$6,000. Volunteers picked up trash, cleared brush and rocks, crosscut downed logs, rehabilitated damaged water bars, and restored informal trails. These events also help to build a culture of stewardship within our communities as volunteers share their work with interested visitors along the trail. In 2019, we plan to collaborate with the Mono Lake Committee's Outdoor Experiences Program to teach Los Angeles youth about the importance of stewardship on public lands at a volunteer event in the Mono Basin. We hope to work with the Bridgeport Indian Colony's Natural Resources Internship Program to teach trail work techniques to tribal youth in the Twin Lakes area. Finally, we look forward to building on past successes in June Lake to hold the tenth annual June Lake Trails Day. In addition to these events, Trail Ambassadors will lead regular trail stewardship projects for visiting youth groups, connecting young people to their public lands and educating them about the importance of environmental stewardship.

Friends of the Inyo anticipates another successful series of volunteer events in 2019, and will provide all tools, a professional volunteer management team, liability insurance, and agency coordination.

## **Stewardship Director - 100 hours**

**\$5,000**

The Stewardship Director is essential to the success of this proposal. This position coordinates with agency and county staff and local partners to identify and prioritize projects, organizes community outreach to ensure attendance at volunteer events, directs event logistics, ensures crew and participant safety, and prepares and presents reports detailing project deliverables.

## **Travel**

**\$1,150**

## **Tools & Supplies**

**\$1,550**

## **Total**

**\$27,500**



# FRIENDS OF THE INYO

SINCE 1986

Caring for the Eastern Sierra

## Proposed Budget to Mono County for 2018-19 Funding

Item	Rate (\$)	Quantity (h or mi)	Total
Stewardship Crew - Lundy Canyon Trail rebuild - 5 days	132	40	\$5,280
Stewardship Crew - Robinson Creek Trail rebuild and check step installation - 4 days	132	32	\$4,224
Stewardship Crew - Lee Vining Creek Trail rebuild - 3 days	132	24	\$3,168
<i>Subtotal: Stewardship Crew</i>	<i>132</i>	<i>120</i>	<i>\$12,672</i>
Volunteer trail work events, scouting, and follow-up - 3 days	132	24	\$3,168
Trail Ambassador - 15 days of trail patrols and maintenance in Mono County, with a focus beyond the Mammoth area	33	120	\$3,960
Stewardship Program Director - planning, partner coordination, community outreach, events, publications, reporting	50	100	\$5,000
Travel	.545/ mile	2,110	\$1,150
Tools and supplies			\$1,550
		<b>Total</b>	<b>\$27,500</b>



# FRIENDS OF THE INYO

SINCE 1986

Caring for the Eastern Sierra

## **Project Timeline**

This timeline is subject to change depending on weather and other conditions. FOI will develop a specific schedule of work in May 2019.

May:	Planning and scouting for trail projects Outreach for volunteer events
June:	Trail work; volunteer projects with Mono Lake Committee Outdoor Experiences Program and Bridgeport Indian Colony Tribal Youth Internship Program
June 22 <sup>th</sup> :	June Lake Trails Day
July:	Continued trail work
August:	Program Director presentation to Board of Supervisors

Following completion of projects in July, FOI will provide Mono County with a thorough report of accomplishments. The report will contain a narrative of projects completed, before-and-after photos, and quantitative measures such as pounds of trash collected, miles of trail maintained, signs installed, water bars cleaned, logs removed, etc.

With support from Mono County, FOI will continue our work to enhance trails in Mono County while cultivating locally driven stewardship programs for public lands. FOI is grateful for Mono County's support of our programs and of projects to enhance access to public lands for visitors and local communities.



**OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS**

**REGULAR AGENDA REQUEST**

Print

**MEETING DATE** August 21, 2018

**Departments: Economic Development**

**TIME REQUIRED** 10 minutes

**PERSONS  
APPEARING  
BEFORE THE  
BOARD**

Janet Hunt, Executive Director, June  
Lake Jam Fest

**SUBJECT** Community Event Marketing Fund  
Recipient Report - June Lake Jam  
Fest

**AGENDA DESCRIPTION:**

(A brief general description of what the Board will hear, discuss, consider, or act upon)

Presentation by Janet Hunt, Executive Director of the June Lake Jam Fest regarding the growth and success of the annual June Lake Jam Fest. As a recipient of Mono County's Community Event Marketing Fund, Ms. Hunt would like to express her appreciation of the Board's support on behalf of local non-profit Mono Arts Council, and to share event attendee demographics and benefit to local lodging sector and community.

**RECOMMENDED ACTION:**

None (informational only). Provide any desired direction to staff.

**FISCAL IMPACT:**

None at this time. The Mono County Community Event Marketing Fund (CEMF) of \$20,000 is a reimbursement grant program designed to assist local non-profits in driving overnight visitation to their tourism-based events. Mono Arts Council received a \$4,000 CEMF grant in FY17-18 to promote the 2018 June Lake Jam Fest.

**CONTACT NAME:** Alicia Vennos

**PHONE/EMAIL:** 760-924-1743 / [avennos@mono.ca.gov](mailto:avennos@mono.ca.gov)

**SEND COPIES TO:**

**MINUTE ORDER REQUESTED:**

YES  NO

**ATTACHMENTS:**

<p><a href="#">Click to download</a></p> <p>No Attachments Available</p>
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History

Time

Who

Approval

8/16/2018 6:11 AM	County Administrative Office	Yes
8/10/2018 4:36 PM	County Counsel	Yes
8/16/2018 6:04 PM	Finance	Yes



**OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS**

**REGULAR AGENDA REQUEST**

Print

**MEETING DATE** August 21, 2018

**Departments: Economic Development**

**TIME REQUIRED** 10 minutes

**PERSONS  
APPEARING  
BEFORE THE  
BOARD**

Marianne O'Connor, Southern Mono  
Historical Society/Hayden Cabin  
Museum

**SUBJECT** Community Grant Fund Recipient  
Report - Southern Mono Historical  
Society

**AGENDA DESCRIPTION:**

(A brief general description of what the Board will hear, discuss, consider, or act upon)

Presentation by Marianne O'Connor of the Southern Mono Historical Society (SMHS) regarding the Jazz by the Creek event and the Hayden Cabin Museum Roof Repair project. As a recipient of Mono County's community grant programs, Ms. O'Connor would like to extend her appreciation to the Board of Supervisors on behalf of SMHS, and to share the results/progress of the funded programs.

**RECOMMENDED ACTION:**

None (informational only). Provide any desired direction to staff.

**FISCAL IMPACT:**

None at this time. In FY17-18, the Southern Mono Historical Society received \$2,000 from Mono County's Community Event Marketing Fund to help advertise the Jazz by the Creek fundraising event to markets outside the Eastern Sierra; and \$1,000 from the Historical Societies Grant Fund towards the Hayden Cabin Museum roof repair.

**CONTACT NAME:** Alicia Vennos

**PHONE/EMAIL:** 760-924-1743 / [avennos@mono.ca.gov](mailto:avennos@mono.ca.gov)

**SEND COPIES TO:**

**MINUTE ORDER REQUESTED:**

YES  NO

**ATTACHMENTS:**

<p><a href="#">Click to download</a></p> <p>No Attachments Available</p>
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History

Time

Who

Approval



8/16/2018 6:12 AM	County Administrative Office	Yes
8/10/2018 4:36 PM	County Counsel	Yes
8/16/2018 6:10 PM	Finance	Yes



OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS

## REGULAR AGENDA REQUEST

Print

**MEETING DATE** August 21, 2018

**Departments: Finance, CAO, County Counsel**

**TIME REQUIRED** 90 minutes (30 minutes presentation;  
1 hour discussion) **PERSONS APPEARING** Janet Dutcher, Leslie Chapman,  
Stacey Simon

**SUBJECT** Financing Arrangement for  
Construction of the Proposed Mono  
County Civic Center **BEFORE THE BOARD**

### AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

Present information about the Certificate of Participation debt-financing structure and review the anticipated debt transaction recommended for the Mono County Civic Center project. Introduce proposed financing team and discuss each of their roles. Review next steps involved for obtaining debt proceeds to fund construction costs. Financing specialists will be available to answer any questions the Board or the public may have and to provide additional information, as requested.

### RECOMMENDED ACTION:

Receive presentation and other relevant information.

### FISCAL IMPACT:

None at this time.

**CONTACT NAME:** Janet Dutcher

**PHONE/EMAIL:** 916-798-8394 / janetdutcher@gmail.com

### SEND COPIES TO:

### MINUTE ORDER REQUESTED:

YES  NO

### ATTACHMENTS:

Click to download
<input type="checkbox"/> <a href="#">Staff report</a>
<input type="checkbox"/> <a href="#">Brandis Tallman LLC Statement of Qualificiatons</a>
<input type="checkbox"/> <a href="#">Nixon Peabody LLP Statement of Qualifications</a>
<input type="checkbox"/> <a href="#">Presentation</a>

**History**

<b>Time</b>	<b>Who</b>	<b>Approval</b>
8/17/2018 7:12 AM	County Administrative Office	Yes
8/16/2018 1:46 PM	County Counsel	Yes
8/17/2018 9:29 AM	Finance	Yes



# DEPARTMENT OF FINANCE

## COUNTY OF MONO

---

Gerald A. Frank  
Assistant Finance Director  
Treasurer-Tax Collector

Janet Dutcher, CPA, CGFM  
Finance Director

Stephanie Butters  
Assistant Finance Director  
Auditor-Controller

P.O. Box 495  
Bridgeport, California 93517  
(760) 932-5480  
Fax (760) 932-5481

P.O. Box 556  
Bridgeport, California 93517  
(760) 932-5490  
Fax (760) 932-5491

**Date:** August 21, 2018

**To:** Honorable Board of Supervisors

**From:** Janet Dutcher, Leslie Chapman, Stacey Simon

**Subject:** Financing arrangement for construction of the propose Mono County Civic Center

**Actions Requested:**

Receive presentation and other relevant information

**Background:**

After careful research, cash flow modeling and evaluation of alternatives for housing our South County offices, the Board directed staff to initiate construction of a County Civic Center building on the Mammoth Community Federal Land Exchange (McFlex) property. On August 7, 2018, the Board approved entry into a proposed contract with the selected design-build-entity, Roebbelen Contracting. At that same meeting, the Board approved Resolution R18-48 declaring its official intent to reimburse itself for capital costs incurred on this project from debt proceeds received later. The project team has begun regular meetings. Planning and pre-construction work is underway. The contractor has initiated their work.

**Discussion:**

Finance recommends using the Certificates of Participation (COP) debt-financing structure to fund this \$20.5 million project. We will present information at this meeting describing the Certificates of Participation transaction. We will also show the components of financing including: par amount, capitalized interest, issuance cost, premium (or discount) and the resulting project account funding. Sizing of the proposed debt will illustrate a baseline using recent market rates and comparing this to what happens if the market changes by 25 basis points (0.25%) or 50 basis points (0.50%). This part of the presentation will conclude with a list of steps Finance proposes taking over the next four to six months, ending with issuance of COP tax-exempt bonds.

A successful bond financing requires a team of finance specialists who provide legal and technical assistance and a municipal financial advisor who represents the County's best interest independent of underwriting of the bond issue. Staff recommend using the following team of finance professionals:

- Bond, Tax and Disclosure Counsel: Rudy S. Salo, of Nixon Peabody LLP. Statement of Qualifications attached.
- Underwriting Services: Jeff Land, of Brandis Tallman LLC. Statement of Qualifications attached.

- Municipal Financial Advisor: David Leifer and Bobby Cheung, both of KNN Public Finance. This firm works with more than half of the 58 California counties. They serve as financial advisors, and transaction review and pricing consultant, among other relevant services. This firm was recommended to us by several other counties.

Rudy Salo and Jeff Land will be at this meeting to answer any questions from the Board or the public and to provide additional information, as requested.

**Fiscal Impact:**

None at this time.

BRANDIS TALLMAN LLC

# MONO COUNTY CERTIFICATES OF PARTICIPATION



Statement of  
Qualifications  
August 1, 2018



22 Battery Street  
Suite 500  
San Francisco, CA 94111

Phone: 415-912-5630  
Fax: 415-912-5636  
[www.brandistallman.com](http://www.brandistallman.com)

August 1, 2018

Leslie Chapman, County Administrative Officer  
Janet Dutcher, Director of Finance  
Mono County  
PO Box 556  
Bridgeport, CA 93517

**RE: Statement of Qualifications for Underwriting Services**

The following document is our Statement of Qualifications to serve as underwriter for the County of Mono's (the "County") issuance of Certificates of Participation in the approximate amount of \$20,500,000 to finance construction of the South County Administrative Facilities.

Brandis Tallman LLC ("Brandis Tallman") previously worked with the County on its CalPERS Side Fund Loan as well as a refinancing of the County's 2001 Solid Waste Certificates of Participation. Based on this positive working relationship, the County contacted Brandis Tallman in January of 2017 to begin running financing models for the contemplated South County Administrative Facilities. Over the last two years of assisting County staff, we've learned a great deal about the background of this project and the County's goals for this financing. Our involvement has included providing multiple numerical iterations and an informational financing presentation to the County Board of Supervisors. During this process, Brandis Tallman was requested to provide an in-depth financial analysis on the option of purchasing the Mammoth Mall as an alternative to constructing the South County Administrative Facilities. That financing model included a detailed calculation of the Mammoth Mall rent-rolls to determine the eligible tax-exempt portion of the potential financing.

We appreciate this opportunity to be of continued service to the County.

Very truly yours,

BRANDIS TALLMAN LLC

A handwritten signature in black ink, appearing to read "Jeff Land".

Jeff Land

A handwritten signature in black ink, appearing to read "Rick Brandis".

Rick Brandis



# Mono County 2018 Certificates of Participation Statement of Qualifications for Underwriting Services

## TABLE OF CONTENTS

### Contents

Brandis Tallman Introduction.....	1
Relevant Experience.....	1
Innovative Ideas.....	2
Credit Rating & Bond Insurance.....	2
Scope of Services.....	3
Marketing Strategy.....	4
References.....	6
Not-to-Exceed Underwriter’s Discount.....	6

### Appendix: Transaction List (2015 – Current/In Process Transactions)

**DISCLOSURE:** We prepared the attached materials that consist of factual or general information (as defined in the SEC’s Municipal Advisor Rules). We are not hereby providing any advice or making any recommendation as to action concerning the structure, timing or terms of any issuance of municipal securities or financial products. To the extent that we provided any alternatives, options, calculations or examples in the attached information, such information is not intended to express any view that the County could achieve the particular results, and the alternatives, options, calculation or examples do not constitute a recommendation that you should effect any municipal securities transaction.

Brandis Tallman is providing this information in the regulatory framework of MSRB Rule G-23 as an underwriter or placement agent and not as a financial advisor. The primary role of an underwriter or placement agent is to purchase securities for resale to investors in an arm’s-length commercial transaction. Serving in this role, we have financial and other interests that differ from those of the County. Brandis Tallman is acting in its own interests, and not as the County’s municipal advisor and does not owe a fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934. The County should consult with its own financial, legal, accounting, tax and other advisors, as applicable, to the extent you deem appropriate.



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**i. BRANDIS TALLMAN LLC INTRODUCTION**

Brandis Tallman is a full service investment banking firm that provides bond underwriting for California public agencies. We are active in the municipal bond market on a daily basis, providing our clients with access to the capital marketplace. We are currently involved in underwriting certificates of participation, lease revenue bonds, general obligation bonds, tax allocation bonds, special tax bonds, limited obligation improvement bonds, multi-family housing and taxable municipal debt obligations (including POBs). We prioritize staying educated and current on the industry’s regulatory requirements to keep our clients in compliance with the changing environment.

Founded in 2002, Brandis Tallman specializes in serving small- to medium-sized California public agencies, and crafting case -specific and cost-effective financing structures, specifically suited to the municipal clients of our firm. The principals of Brandis Tallman have a combined 55 years of experience of underwriting California municipal bonds. Over the last five years, we have funded over \$290 million of California Lease Financing transactions, we’ve also acted as co-underwriter for the State of California Public Works Board Lease Revenue Bonds. We actively participate in every stage of the transaction to provide the best possible service to our client. Part of our firm’s culture and philosophy is to think outside of the box to provide innovative structuring ideas to enhance the benefits of a debt issuance.

The members of Brandis Tallman assigned to this transaction will make themselves available for all necessary meetings throughout the process. We often assist our clients in drafting staff reports and giving informational presentations. We truly enjoy meeting our clients and value our relationship with them.

**ii. RELEVANT EXPERIENCE**

One factor that sets us apart from other firms is our in-depth experience working with agencies that may lack name recognition in the market, or who are in rural areas of historically low growth but on the cusp of growth. We become closely acquainted with the economics and demographics of the area, and the policies and operations of the issuer which include in-depth familiarity with historical assessed values, tax collection and delinquency status, and top taxpayers, as well as audits and budgets. This enables us to proficiently convey to our investors our client’s strengths and explain any weaknesses in an effort to obtain the best credit ratings and lowest possible interest rates in the market. Lesser-known agencies need their story told, and that is what Brandis Tallman does. As part of our service, we spend time educating the market, something we’ve done for rural and/or smaller counties, cities, special districts and school districts throughout the years.

The following is a list of our county clients in the State of California:

- Amador County
- Calaveras County
- Colusa County
- Inyo County
- Kern County
- Mono County
- Nevada County
- Sierra County
- Sonoma County
- Tuolumne County
- Trinity County

The following is a select list of transactions of similar size to the County’s proposed Certificates of Participation.

City of Brisbane Successor Agency Tax Allocation Bond Refinancing	\$17,600,000
Cajon Valley Union School District Lease Financing (Taxable NCREBs)	\$19,455,000
City of El Cajon Successor Agency Tax Allocation Bond Refinancing	\$38,815,000
City of Fremont Refunding Revenue Bonds	\$17,750,000
City of Greenfield Successor Agency Tax Allocation Bond Refinancing	\$17,915,000
City of Healdsburg Wastewater Revenue Refunding Bonds	\$26,625,000
City of Healdsburg Successor Agency Tax Allocation Bond Refinancing	\$17,150,000
Lake Elsinore Unified School District Special Tax Refunding Bonds	\$22,639,100
City of Livermore CFD No. 99-1 Special Tax Refunding Bonds	\$15,655,000
City of Madera Successor Agency 2018 Tax Allocation Refunding Bonds	\$38,255,000
Perris Joint Powers Authority Local Agency Revenue Bonds	\$22,175,000
Pleasant Hill Recreation and Park District 2017 General Obligation Bonds	\$17,485,000
City of Rancho Cordova Certificates of Participation (City Hall Project)	\$20,565,000
City of Reedley Public Financing Authority Water Revenue Bonds	\$15,250,000
Sonoma County Energy Lease Refunding	\$17,225,000
City of Temecula Refunding of 2001 and 2008 Certificates of Participation	\$26,835,000
City of Woodland Financing Authority Water Revenue Bonds	\$20,000,000

Please see Appendix A for our transaction list from 2015 to-date. Transactions related to certificates of participation and real property/equipment leases are highlighted.

**iii. INNOVATIVE IDEAS**

We have found that every client has different goals and expectations depending partly on the type of bond issued. Certificates of Participation require an agency to encumber a real property asset as collateral for the financing. Since the County is issuing Certificates of Participation, they will need to put up one of their real property assets with greater or equal value to the issue size. We realize that some agencies only have high-valued real property assets available, leaving the bond issue over-collateralized. To mitigate this general issue, we have worked with bond counsels to provide a solution to the over-collateralization. One strategy developed was to allow the asset securing the bond issue to be used as security for additional transactions in the future on “parity” with the original issue, potentially saving agencies from having to encumber multiple assets when one large asset has enough value to cover multiple bond issues.

We structured this type of flexibility to allow for “parity” debt on certificates of participation/lease financing for the City of Pismo Beach, Santa Ynez Valley Union High School District and the Clovis Veterans Memorial District.

**iv. CREDIT RATING & BOND INSURANCE**

Active participation in the credit rating process is essential to tell the issuer’s story and preempt questions from the rating agency. This strategy results in a smooth, efficient rating process with the best possible rating outcome. Because of our experience and expertise underwriting debt, we will be able to walk the County

through the rating process and prepare staff for the credit presentation with the rating agency. Our hands-on involvement in every step of the financing process, especially the due diligence and disclosure process, will ensure that the County's credit strengths are highlighted when the County presents their story to the rating agency.

Bond insurance increases the transaction's rating and lowers the overall interest rates. As a compliment to bond insurance, we typically pursue a surety bond from bond insurers to fulfill the reserve requirement. A surety bond is a great tool for any transaction as it significantly lowers the borrowing cost to the agency. Our process includes soliciting bond insurance and surety bond bids from all of the active bond insurers and analyzing the cost/benefit in order to prove advantages/necessity for obtaining insurance. We summarize and present the bid results to the issuer in order to make an informed decision on selecting the winning insurer.

**v. SCOPE OF SERVICES**

As underwriter, we shall perform all the duties and services specifically set forth herein and shall provide such other services as the County deems necessary or advisable, or are reasonable and necessary to accomplish the intent of the County in a manner consistent with the standards and practices of underwriters prevailing at the time such services are rendered to the Issuer.

The County may, with the concurrence of Brandis Tallman, expand this scope of services to include any additional services not specifically identified within the terms herein.

- A. *Develop the Financing Schedule and Monitor the Transaction Process*- Brandis Tallman shall assist the County's financing team in preparing a schedule and detailed description of the interconnected responsibilities of each team member and will update this schedule, with refinements, as necessary, as the work progresses. We will work with the financing team for the successful implementation of the timetable that is adopted and shall be active and responsive in all activities leading to the successful and on-time closing. The schedule and responsibilities will be monitored and carried out in accordance with the County's plans and goals.
- B. *Compute Sizing and Design Structure of Debt Issue* - Brandis Tallman shall take the lead role and work with the County's financing team to design and structure the financing to be consistent with the County's objectives, reflecting current conditions in the capital markets. Brandis Tallman will perform numerical iterations to provide examples of financing scenarios, prepare sources and uses of funds, debt service schedules and cash flow projections that may include a variety of scenarios for project fund sizing and funding options. Brandis Tallman will prepare pro-formas and structure debt consistent with existing covenants and requirements. We will also give costs of issuance feedback and assist with procurement of additional service providers (trustee, verification agent) as needed.
- C. *Structure Financing Terms*- Brandis Tallman will structure rates and terms that are reflective of the municipal bond market at the time and that are acceptable to the County. Our goal is to achieve the best possible financing terms (which usually translates into the lowest cost of borrowing). These terms will be weighed and considered against what the investors will accept (and at what price) and what works best for the County. Financing terms can include serial versus term bonds, final maturity, call provisions, parity/additional debt considerations and reserve requirements.

- D. *Attend Board of Supervisor Meetings* - Brandis Tallman will attend (as appropriate) all pertinent meetings including financing team meetings, study sessions and County Board of Supervisor meetings. We believe in-person, hands-on meetings work best and we strive to be an easily accessible, vocal and valued member of the bond team. We will follow all of the County's policies and procedures throughout our work with the County.
- E. *Prepare Rating/Bond Insurer Presentations*- Brandis Tallman will take the lead role with the financing team to prepare a presentation of the County's financing to rating agencies and bond insurers. We will coordinate the rating call, facilitate questions and answers, review the draft rating report and coordinate the final rating receipt. We will provide feedback on which rating agency/agencies to apply for and enumerate the cost/benefit of obtaining more than one rating. We will also accept bond insurance and reserve fund surety bids and analyze the cost/benefit of purchasing bond insurance or a surety bond.
- F. *Perform Detailed Review of Official Statement*- Generally, U.S. Securities and Exchange Commission ("SEC"), Municipal Securities Rulemaking Board ("MSRB"), and the Government Finance Officers Association ("GFOA") guidelines encourage full disclosure so that potential investors have sufficient data to analyze the proposed financing. As part of the due diligence process, Brandis Tallman will identify any underwriting concerns that could disrupt a financing. Brandis Tallman shall review the Official Statement ("OS") and perform all necessary due diligence to insure that the County's OS is compiled in a manner consistent with industry standards, typically including the following matters:
- Legal authority for the financing
  - Security for the financing
  - Restrictions on additional financings
  - Purpose and funds for which the financing is being issued
  - Governmental and financial management system
  - Revenue sources: historic, current and projected
  - Outstanding financings and planned future financings
  - Economic base
  - Annual financial statements and budget
  - Legal opinions regarding tax exemption
  - Such other matters as the context may require (dependent on type of bond being issued)

At Brandis Tallman we take great pride in our thorough, detailed, and timely contribution toward drafting and review of the Preliminary Official Statement ("POS"). We believe our attention to detail translates into a better description of the credit to investors which leads to more demand and lower rates.

- G. *Provide Pre-Closing and Closing Assistance* – We will assist bond counsel and the financing team in the closing process, including drafting a closing memorandum, arranging for or monitoring the progress of final delivery of the securities, and settlement of the costs of issuance.

**vi. MARKETING STRATEGY**

A sound marketing strategy is critical to the success of any public offering bond sale. Such a plan will take into account the ready market for a particular credit and will integrate the market components that will help to lower the overall borrowing cost. In most cases, the most effective way to accomplish this is to target in-state retail, i.e. individual investors first, and thereby have the interest rate levels set by the less price- and yield-sensitive retail demand, which minimizes costs to issuers.

Our marketing strategy will (A) establish strong demand from local and in-state retail investors through an aggressive pre-marketing effort and a retail order period; (B) target institutional buyers, in-state and nationally, that are dedicated to California municipal bonds; (C) educate the largest institutions with the most buying power (national bond funds and insurance companies) on the quality and security of the bonds; (D) establish demand among large national bond funds; (E) on the sale date, use the retail yield levels to obtain more aggressive orders from institutional buyers; and (F) provide regular summaries of current municipal bond market conditions, trends in the market, and how these may favorably or unfavorably affect the proposed financing. These steps are more fully discussed below.

- A. *Establish Strong Local and In-State Retail Demand* – The retail/individual investor is the key to a successful tax-exempt bond financing. Because of the double tax exemption (State and Federal) carried by the bonds and the less aggressive pricing demands of retail investors, California retail buyers as a group will generally accept lower interest rates than any other major buying segment. Brandis Tallman provides a large retail customer base experienced in purchasing certificates of participation. Our staff has worked with several thousand retail accounts over the past 16 years. Our retail distribution includes professional managed accounts, i.e. investment advisors who purchase municipal securities on behalf of high net worth individuals, such as Harvey Capital, Bel Air Investment Advisors, Gurtain Bond Management, and Banyan Tree Investments. Due to the high state income tax, the ability to maximize penetration of the California retail market is crucial to achieving the lowest possible interest rates for our municipal clients.
- B. *Establish Strong Orders Among California Institutions* – Although retail buyers will offer more attractive interest rates, institutional investors have more buying power and may be necessary to fill in the maturities of the issue where retail is less interested. Because of the bonds’ state tax exemption, the most aggressive buyers among institutions will be California bank trust departments and dedicated California bond funds. These investors include Franklin Templeton Funds (both Cal Tax-Free and High Yield funds), Wells Capital Management, American Century, and Capital Research Group.
- C. *Educate Institutions with the Most Buying Power* – To access and educate these buyers, Brandis Tallman distributes research and data to institutional credit analysts. Institutions value the information supplied to them by investment banking firms in conjunction with an offering, since analysts tend to ask more questions and request more information than retail investors. Brandis Tallman will speak with major buyers in the California marketplace and educate them about areas in California that may not be well-known, but that may provide excellent living and economic conditions to their residents. As part of our institutional marketing strategy, we coordinate site visits as needed, because a first-hand tour of the project site best conveys the security and credit quality to the institutional investor. An internet roadshow is sent to those who can’t tour the area. The more informed the investor is, the more aggressive we can be when pricing the transaction for the municipal client.

- D. Establish Demand Among Large National Bond Funds and Insurance Companies* – Large national institutions such as bond funds and insurance companies represent the most demanding investors in the market, but also those with the most buying power. Brandis Tallman has a strong relationship with these investors. We will obtain continuous feedback in order to determine who will be a buyer of bonds at the lowest yields on the sale date. These investors include Allstate Insurance, Schwab Funds, Guggenheim Investments, Pimco, Nuveen, MacKay Shields, and Vanguard Funds.
- E. Use Retail Demand to Obtain More Attractive Institutional Yield Levels* – Our marketing begins with retail distribution because retail buyers accept lower interest rates than institutional investors. By establishing the foundation for the financing on solid demand from retail investors in a retail pre-order period, we can set aggressive interest rate standards for institutional investors on the sale date. It is essential for institutions to feel the competition from the retail sector in order for a market pricing to be more aggressive. Inevitably, institutions need to meet the objectives of their portfolios, and they will compete with retail investors for municipal paper. Brandis Tallman’s strong retail and institutional distribution capabilities will thus work together to provide the lowest borrowing cost available.
- F. Provide Regular Updates on Municipal Bond Market Conditions* - We have assembled a sales staff who are specialists in selling California municipal securities, and who provide experienced, high quality service to municipal bond investors. We pride ourselves on our commitment to both the municipal agency and the investor by continuing to educate investors about the issuer’s debt. We explain the key credit factors that highlight an investor’s security. Investor communication also generates market feedback for us on a particular issue, as well as providing color on market conditions. As a matter of practice, Brandis Tallman will supply periodic sales comparables and weekly market commentaries to the issuer leading up to the sale of the bonds.

The above marketing plan works in conjunction with a hands-on approach to due diligence. Brandis Tallman puts the full force of the company behind each municipal client. Our experienced brokers represent both institutional and retail portfolios and average over 19 years of experience selling California municipal bonds.

Brandis Tallman’s policy is to underwrite unsold balances of 50% of an original issue; we have honored this commitment on every bond issue, closing every transaction successfully since the firm’s inception in 2002. Our distribution capability and clearing arrangement allows us to underwrite up to \$100 million on any single transaction.

**vii. REFERENCES**

Colusa County  
Peggy Scroggins, Auditor Controller  
Phone: 530-458-0407  
[pscroggins@countyofcolusa.org](mailto:pscroggins@countyofcolusa.org)

City of Chula Vista  
David Bilby, Finance Director  
Phone: 619-409-3818  
Email: [dbilby@chulavistaca.gov](mailto:dbilby@chulavistaca.gov)

Tuolumne County  
Debi Bautista, Auditor Controller  
Phone: 209-533-5552  
[dbautista@co.tuolumne.ca.us](mailto:dbautista@co.tuolumne.ca.us)

**viii. NOT-TO-EXCEED UNDERWRITER'S DISCOUNT**

As previously described, we have been actively working with the County on this project since the beginning of 2017, and we look forward to providing that same level of detailed service in preparing the County to issue Certificates of Participation. Our not-to-exceed underwriter's discount will be \$10.00.

Below, please find recent market comparables related to underwriter's discounts.

Date: July 12, 2018  
Issuer: City of Pico Rivera  
Underlying Credit Rating: AA-  
Par Amount: \$14,695,000  
Structure: Certificates of Participation  
Underwriter's Discount: \$8.00

Date: June 28, 2018  
Issuer: Tuolumne County  
Underlying Credit Rating: AA  
Par Amount: \$4,900,000  
Structure: Judgement Obligation Bonds  
Underwriter's Discount: \$10.20

Date: June 14, 2018  
Issuer: Orange Unified School District  
Underlying Credit Rating: AA-  
Par Amount: \$9,620,000  
Structure: Certificates of Participation  
Underwriter's Discount: \$6.00

Date: May 2, 2018  
Issuer: Pioneer Union Elementary School District  
Underlying Credit Rating: A+  
Par Amount: \$9,170,000  
Structure: Certificates of Participation  
Underwriter's Discount: \$9.50

Date: April 11, 2018  
Issuer: Greenfield Union School District  
Underlying Credit Rating: A-  
Par Amount: \$8,500,000  
Structure: Certificates of Participation  
Underwriter's Discount: \$7.50

# APPENDIX A



## LIST OF TRANSACTIONS (2015 - Current/In Process Transactions)

<u>Issue Date</u>	<u>Agency/Description</u>	<u>Amount</u>
	= Lease/COP Financing	
Sept. 2018 In Process	Successor Agency to the Woodland Redevelopment Agency Refunding Tax Allocation Bonds, Series 2018	\$6,408,000
8/30/2018 In Process	Perris Public Financing Authority Subordinate Tax Allocation Revenue Refunding Bonds, Series 2018	\$15,540,000
8/16/2018 In Process	Keyes Union School District 2018 Financing Lease	\$1,075,000
Aug. 2018 In Process	Trinity County 2018 Lease Refunding of Series 2005 Certificates of Participation	\$2,715,000
Aug. 2018 In Process	Yosemite Alpine Community Services District Taxable Installment Sale Agreement	\$355,280
8/15/2018 In Process	City of Stockton Community Facilities District No. 2018-1 (Arch Road/Newcastle Road) 2018 Special Tax Bond	\$4,000,000
8/8/2018 In Process	Madera County Office of Education 2018 Lease	\$4,000,000
8/8/2018 In Process	Ventura Port District 2018 Installment Purchase Agreement (Marina Project Financing)	\$4,666,167
7/31/2018	Olivehurst Public Utility District Plumas Lake CFD No. 2002-1 Special Tax Refunding Bonds	\$7,716,000
7/25/2018	Round Valley Unified School District 2018 Financing Lease	\$2,300,000
7/17/2018 In Process In Process	Successor Agency to the Former Madera Redevelopment Agency 2018 Tax Allocation Refunding Bonds, Series 2018A 2018 Tax Allocation Refunding Bonds, Series 2018B (Taxable)	\$31,445,000 \$4,065,000
7/10/2018	Borrego Water District 2018 Refunding Installment Purchase Agreement	\$3,157,535
7/10/2018	Borrego Water District 2018 Capital Projects Financing	\$5,586,000
6/29/2018	Cosumnes Community Services District Taxable Fire Truck Reimbursement Equipment Lease Financing	\$1,310,000
6/28/2018	Bonsall Unified School District 2018 Refunding Certificates of Participation	\$1,306,000
6/27/2018	Successor Agency to the Dissolved Arroyo Grande Redevelopment Agency 2018 Taxable Tax Allocation Refunding Bonds	\$5,305,000





# APPENDIX A



<u>Issue Date</u>	<u>Agency/Description</u>	<u>Amount</u>
6/26/2018	Cordova Recreation and Park District 2018 Lease Agreement	\$2,460,346
6/14/2018	Del Paso Manor Water District 2018 Installment Purchase Contract	\$4,827,000
5/18/2018	El Dorado Hills Community Services District 2018 Energy Project Financing	\$2,325,000
5/15/2018	Cordova Recreation and Park District 2018 Certificates of Participation	\$5,435,000
5/10/2018	Mother Lode Union School District 2018 Lease-Purchase	\$3,828,283
5/3/2018	Cloverdale Unified School District 2018 Certificates of Participation	\$1,683,000
4/10/2018	Perris Joint Powers Authority Local Agency Revenue Bonds IA 2-CFD No 2014-1 (Avelina) 2018 Series A	\$4,410,000
3/21/2018	Bonsall Unified School District 2018 General Obligation Refunding Bonds	\$1,917,000
2/28/2018	Lincoln Unified School District General Obligation Refunding Bonds (2006B) General Obligation Refunding Bonds (2007C)	\$5,782,000 \$857,000
2/28/2018	Successor Agency to the El Cajon Redevelopment Agency 2018 Tax Allocation Refunding Bonds	\$38,815,000
2/5/2018	Vineland School District 2018 General Obligation Refunding Bonds (2007 A GOs)	\$2,466,592
1/30/2018	Imperial County Office of Education 2018 Lease Financing	\$9,000,000
1/4/2018	San Ramon Valley Fire Protection District 2018 Equipment Lease	\$5,500,000
12/28/2017	Pismo Beach Public Financing Agency Series 2017B Lease Revenue Bonds (NCREBs)	\$4,061,917
12/28/2017	Yuba Community College District 2017 New Clean Renewable Energy Bonds	\$6,000,000
12/21/2017	Chula Vista Municipal Financing Authority Lease Revenue Bonds Series 2017A (NCREBs)(Taxable) Lease Revenue Bonds Series 2017B (Tax-Exempt)	\$13,130,000
12/21/2017	Paradise Irrigation District 2017 Loan Agreement (Refunding 2009 Water Revenue COPs)	\$3,361,900



## APPENDIX A



<u>Issue Date</u>	<u>Agency/Description</u>	<u>Amount</u>
12/20/2017	South Tahoe Public Utility District 2017 Installment Sale Agreement	\$5,000,000
12/19/2017	City of Merced Community Facilities District No. 2005-1 (Bellevue Ranch West) 2017 Special Tax Refunding Bonds	\$6,330,000
12/14/2017	Perris Joint Powers Authority Local Agency Revenue Refunding Bonds, 2017 Series C	\$4,060,000
12/11/2017	Madera Valley Water Company 2017 Taxable Financing	\$4,260,000
12/7/2017	Successor Agency to the Redevelopment Agency of the City of Healdsburg 2017 Tax Allocation Refunding Bonds	\$17,150,000
12/1/2017	Midway Elementary School District 2017 General Obligation Refunding Bonds	\$1,693,200
11/22/2017	Successor Agency to the Solana Beach Redevelopment Agency Refunding Tax Allocation Bonds, Series 2017	\$2,700,000
11/16/2017	Buttonwillow Recreation and Park District 2017 General Obligation Refunding Bonds, Series 2008	\$4,300,000
11/16/2017	Los Gatos-Saratoga Joint Union High School District 2017 Refunding Municipal Lease	\$3,067,000
11/8/2017	Mission Resource Conservation District 2017 Lease	\$242,500
11/1/2017	Arcade Creek Recreation and Park District 2017 CalPERS Side Fund Refunding	\$305,400
10/24/2017	Highlands Recreation District 2017 Refunding Revenue Certificates of Participation	\$2,671,000
10/19/2017	San Lorenzo Unified School District 2017 Lease Refinancing	\$10,650,000
10/13/2017	Franklin Elementary School District 2017 General Obligation Refunding Bonds	\$2,455,000
10/5/2017	Inyo-Kern Schools Financing Authority 2017 Lease Revenue Refunding Bonds	\$3,087,684
9/28/2017	Perris Joint Powers Authority Local Agency Revenue Refunding Bonds, 2017 Series B	\$22,175,000
9/28/2017	Sierra Sands Unified School District 2017 General Obligation Refunding Bonds	\$11,668,508
9/8/2017	City of Marysville 2017 Lease (NCREB Direct Subsidy)	\$1,027,762
	2017 Lease	\$176,907



# APPENDIX A



<u>Issue Date</u>	<u>Agency/Description</u>	<u>Amount</u>
9/7/2017	Pleasant Hill Recreation and Park District 2017 General Obligation Refunding Bonds	\$17,485,000
8/31/2017	Benicia Unified School District 2017 New Clean Renewable Energy Lease (NCREB)	\$2,500,000
8/29/2017	Crescenta Valley Water District 2017 Installment Sale Agreement	\$7,668,000
8/24/2017	Paso Robles Joint Unified School District 2017 General Obligation Bond Anticipation Note	\$3,000,000
8/3/2017	Chowchilla Public Financing Authority Taxable Lease Revenue Bonds, Series 2017A (NCREB Direct Subsidy) Taxable Lease Revenue Bonds, Series 2017B Lease Revenue Bonds, Series 2017C	\$3,630,000
8/2/2017	Pacheco Union School District 2017 Refunding General Obligation Bonds	\$2,110,000
8/1/2017	Kern County 2017 Lease Refunding	\$5,377,124
7/26/2017	Jefferson Union High School District General Obligation Ed-Tech® Bonds, 2014 Election, Series D	\$4,000,000
7/13/2017	Geyserville Unified School District 2017 Refunding General Obligation Bonds	\$2,587,500
7/6/2017	Cloverdale Unified School District 2017 General Obligation Refunding Bonds	\$2,001,439
6/29/2017	Freshwater Elementary School District 2017 General Obligation Refunding Bonds	\$651,000
6/29/2017	City of Gardena 2017 Lease Agreement	\$1,635,000
6/29/2017	Chowchilla Public Financing Authority Taxable Water Revenue Bonds, Series 2017A (NCREB Direct Subsidy) Taxable Water Revenue Bonds, Series 2017B Water Revenue Bonds, Series 2017C	\$8,160,000
6/21/2017	Perris Joint Powers Authority Local Agency Revenue Bonds (IA 1-CFD (Avelina)) 2017 Series A	\$4,580,000
6/20/2017	Pacific Grove Unified School District 2017 Equipment Lease Financing	\$635,705
6/6/2017	Lemon Grove School District 2014 Election, Series D, General Obligation Ed Tech Bonds	\$1,000,000



# APPENDIX A



<u>Issue Date</u>	<u>Agency/Description</u>	<u>Amount</u>
6/6/2017	Chowchilla Public Financing Authority Taxable Wastewater Revenue Bonds, Series 2017A (NCREB Direct Subsidy) Taxable Wastewater Revenue Bonds, Series 2017B Wastewater Revenue Bonds, Series 2017C	\$3,310,000
6/5/2017	Clovis Veterans Memorial District 2017 Lease Financing	\$3,470,000
5/3/2017	Banning Unified School District 2017 Municipal Lease (Taxable NCREB Direct Subsidy)	\$7,960,000
5/10/2017	2017 Municipal Lease (Tax-exempt)	\$2,000,000
4/25/2017	West County Transportation Agency Series 2017 Bonds (Transportation Facility Project)	\$10,835,000
4/20/2017	North Central Fire Protection District 2017 Lease Refunding (2010 Lease Agreement)	\$3,179,000
4/19/2017	Discovery Bay Public Financing Authority Enterprise Revenue Bonds, Series 2017 (Water and Wastewater Projects)	\$8,825,000
4/12/2017	City of Reedley 2017 Water Refunding Revenue Bonds	\$12,615,000
4/4/2017	Sonoma County Water Agency 2017 Installment Sale Agreement	\$3,690,355
4/4/2017	South Park County Sanitation District 2017 Installment Sale Agreement	\$1,929,627
3/31/2017	Cajon Valley Union School District 2017 Refunding Certificates of Participation	\$4,752,000
3/16/2017	City of Corning Water Revenue Refunding Bonds, Series 2017 Sewer Revenue Refunding Bonds, Series 2017	\$3,460,000 \$5,160,000
3/15/2017	City of Chowchilla 2017 Refunding Revenue Bonds (Greenhills) (Refunding 2003 Revenue Bonds)	\$3,138,000
3/14/2017	Sonoma County 2017 Energy Lease Refunding	\$17,225,000
3/9/2017	Selma-Kingsburg-Fowler County Sanitation District 2017 Installment Sale Agreement (Taxable NCREB Direct Subsidy)	\$9,775,000
3/7/2017	Santa Clara Valley Transportation Authority Sales Tax Revenue Refunding Bonds, 2017 Series A	\$10,030,000
3/2/2017	Golden Valley Unified School District 2017 Lease Purchase Agreement	\$2,700,000



# APPENDIX A



<u>Issue Date</u>	<u>Agency/Description</u>	<u>Amount</u>
2/16/2017	Beardsley School District 2017 General Obligation Refunding Bond	\$5,483,339
2/8/2017	McFarland Rec & Park District 2017 Lease-Purchase	\$500,000
1/18/2017	Town of Fairfax 2016 Lease (Refinancing Project)	\$3,860,000
1/12/2017	Gustine Unified School District 2017 Lease	\$6,875,000
1/12/2017	Cajon Valley Union School District 2017 Lease Financing (Taxable NCREB Direct Subsidy)	\$19,455,000
12/22/2016	City of Livermore CFD No. 2016-2 Special Tax Refunding Bonds, Series 2016 (Shea Properties)	\$10,015,000
12/22/2016	Los Olivos Unified School District 2016 General Obligation Refunding Bonds	\$4,083,000
12/21/2016	Scotts Valley Water District 2016 Installment Purchase Agreement	\$6,049,548
12/15/2016	Pacific Grove Unified School District 2014 Election, 2016 GO Bonds Ed-Tech® Series B	\$2,103,000
12/15/2016	Ocean View School District 2016 Municipal Lease	\$6,178,000
12/6/2016	County of Calaveras Community Facilities District No. 2 (Saddle Creek) Series 2016 Special Tax Refunding Bonds	\$4,440,562
11/29/2016	California Affordable Housing Agency (Imperial Valley I-IV Apartments) Multifamily Housing Revenue Refunding Bonds, Series 2016A Taxable Multifamily Housing Revenue Refunding Bonds, Series 2016A-T	\$3,755,000 \$255,000
11/17/2016	Sweetwater Springs Water District 2016 Refunding Installment Sale Agreement	\$1,850,758
11/10/2016	Holtville Unified School District 2016 GO Refunding Bonds (Refunding of Election of 2002, Series 2007)	\$1,090,000
11/8/2016	Delhi Unified School District 2016 Equipment Lease	\$255,000
10/27/2016	Esparto Unified School District 2016 General Obligation Refunding Bonds	\$2,055,543
10/20/2016	Truckee Donner Public Utility District 2016 Taxable Pension Obligation Refunding Bonds	\$5,589,000
10/12/2016	Bass Lake Elementary School District 2016 GO Refunding (Refunding of Election of 2006, Series 2006)	\$5,560,000



# APPENDIX A



<u>Issue Date</u>	<u>Agency/Description</u>	<u>Amount</u>
10/4/2016	Cosumnes Community Services District Certificates of Participation, Series A 2016 Energy Projects - Taxable NCREB Direct Subsidy	\$5,450,000
	Cosumnes Community Services District Certificates of Participation, Series B 2016 Energy Projects - Taxable	\$135,000
	Cosumnes Community Services District Certificates of Participation, Series C 2016 Energy Projects - Tax-Exempt	\$1,260,000
10/4/2016	Truckee Donner Public Utility District 2016 Installment Sale Agreement	\$3,266,000
9/30/2016	Cold Spring Elementary School District 2016 General Obligation Refunding Bonds	\$3,699,279
9/13/2016	San Miguel Consolidated Fire Protection District 2016 Taxable Lease Refunding	\$5,168,000
9/13/2016	State of California General Obligation Bonds Various Purpose	\$2,707,155,000
9/8/2016	Successor Agency of the City of Chowchilla Tax Allocation Refunding Bonds, Series 2016	\$6,190,000
9/7/2016	Jefferson Union High School District 2014 Election, Series B General Obligation Bonds (Ed-Tech Bonds ®)	\$2,108,000
8/31/2016	Sonoma County Office of Education 2016 Lease-Purchase	\$4,595,000
8/31/2016	Paradise Irrigation District 2016 Loan Agreement	\$2,640,000
8/30/2016	City of Merced CFD No. 2003-1 (Bellevue Ranch East) 2016 Special Tax Refunding Bonds	\$8,985,000
8/15/2016	Tehachapi Valley Recreation and Park District 2016 Lease Purchase Financing	\$587,250
7/28/2016	City of Chowchilla 2016 Lease Refinancing	\$1,120,000
7/27/2016	City of Santa Ana Assessment District No. 2015-01 (Warner Industrial Community) Limited Obligation Improvement Bonds	\$1,585,000
7/22/2016	Bear Valley Community Services District Taxable 2016 General Obligation Refunding Bonds	\$792,000
7/21/2016	Cosumnes Community Services District Certificates of Participation (2016 Refinancing Project)	\$8,115,000



## APPENDIX A



<u>Issue Date</u>	<u>Agency/Description</u>	<u>Amount</u>
6/30/2016	Mt. Diablo Unified School District CFD No. 1 Series 2016 Special Tax Refunding Bonds	\$13,790,000
6/23/2016	Tehachapi Unified School District 2016 General Obligation Refunding Bonds	\$13,332,000
6/22/2016	Elsinore Valley Municipal Water District Community Facilities District No. 99-1 (La Gonda) Special Tax Refunding Bonds, 2016 Series	\$2,673,000
6/22/2016	Elsinore Valley Municipal Water District Community Facilities District No. 2004-1 (Woodmoor) Special Tax Refunding Bonds, 2016 Series	\$1,461,000
6/8/2016	Point Arena Joint Union High School District 2016 General Obligation Refunding Note	\$2,213,000
5/26/2016	Ojai Valley Sanitary District 2016 Wastewater Revenue Refunding Bonds	\$8,575,000
5/25/2016	Town of Fairfax 2016 General Obligation Refunding Bonds	\$1,249,000
5/25/2016	Moraga-Orinda Fire Protection District 2016 Fire Station Financing	\$4,069,000
5/25/2016	Santa Cruz City High School District 2016 Municipal Lease	\$1,583,000
5/12/2016	Central Unified School District 2016 Lease Agreement	\$13,668,513
5/12/2016	Kernville Union School District 2016 Refunding Lease-Purchase	\$1,017,776
5/11/2016	City of Reedley 2016 Wastewater Refunding Revenue Bonds	\$3,030,000
5/4/2016	Konocti Unified School District 2016 General Obligation Refunding Bonds (2007C) 2016 General Obligation Refunding Bonds (2006B)	\$1,860,000 \$4,012,000
5/2/2016	City of Calistoga 2016 Rate Reset (2007 Capital Improvement Project Lease)	\$3,870,413
4/27/2016	Lewiston Community Services District Fire Station Financing	\$460,000
4/1/2016	Ventura Port District 2016 Refunding Consolidated Loans w/ Dept of Boating & Waterways (1998 & 2005 Loans)	\$4,841,800
3/9/2016	Ventura Unified School District 2016 Lease Refinancing Certificates	\$1,903,000



# APPENDIX A



<u>Issue Date</u>	<u>Agency/Description</u>	<u>Amount</u>
3/8/2016	City of Santa Clara 2016 Installment Sale Agreement (Trimble Road Sanitary Sewer Project)	\$12,000,000
2/23/2016	County of Santa Cruz Limited Obligation Improvement Bonds Assessment District No. 15-01 (Orchard Drive Sewer Extension Project)	\$815,000
2/11/2016	Successor Agency to the Former Redevelopment Agency of the City of Greenfield Tax Allocation Refunding Bonds, Series 2016	\$17,915,000
2/10/2016	Ventura Port District 2016 Rate Reset (2008 & 2009 Refunding Certificates of Participation)	\$9,008,400
1/28/2016	Holtville Unified School District 2016 Certificates of Participation	\$3,280,000
1/27/2016	Oxnard Union High School District 2016 Lease Refinancing (2005 Lease Revenue Bonds)	\$3,904,000
12/18/2015	Linden Unified School District 2015 General Obligation Refunding Bonds	\$6,663,291
12/18/2015	Jefferson Union High School District 2015 Certificates of Participation	\$1,580,000
12/17/2015	Newman-Crows Landing School District 2015 Refunding Certificates of Participation	\$5,051,000
12/4/2015	City of Morgan Hill Reassessment District No. 2015-2 (Madrone Business Park) Limited Obligation Reassessment Refunding Bonds, Series 2015A	\$5,005,000
12/2/2015	City of Greenfield 2015 Lease Refinancing (2006 Civic Center Lease)	\$1,649,470
11/24/2015	Nuvview Union School District 2015 GO Refunding Bonds; 2006 Election, Series A	\$3,736,000
11/24/2015	Orinda Union School District 2015 Taxable NCREB Direct Subsidy	\$2,905,000
11/5/2015	City of Morgan Hill Reassessment District No. 2015-1 (Morgan Hill Ranch) Limited Obligation Reassessment Refunding Bonds, Series 2015	\$4,415,000
11/5/2015	City of Morgan Hill Reassessment District No. 2015-2 (Madrone Business Park) Limited Obligation Reassessment Refunding Bonds, Series 2015B (Taxable)	\$601,000
10/30/2015	Reef-Sunset Unified School District 2015 Lease (Refunding of 2002 Certificates of Participation)	\$1,152,000
10/28/2015	Santa Cruz High School District 2015 Certificates of Participation	\$1,775,249





# APPENDIX A



<u>Issue Date</u>	<u>Agency/Description</u>	<u>Amount</u>
9/24/2015	Big Oak Flat - Groveland Unified School District 2015 General Obligation Ref Bonds	\$1,743,000
8/5/2015	Truckee Donner Public Utility District Water System Refunding Revenue Bonds, Series 2015	\$14,580,000
8/4/2015	Town of Mammoth Lakes 2015 Refunding Lease Agreement	\$3,550,000
8/3/2015	Cosumnes Community Services District 2015 Certificates of Participation (2015 Refinancing Project)	\$9,105,000
7/31/2015	Reef-Sunset Unified School District Refunding 2007 General Obligation Bonds	\$4,326,000
7/28/2015	Soledad Unified School District 2015 Refunding Certificates of Participation	\$4,343,692
7/21/2015	Julian Cuyamaca Fire Protection District 2015 Fire Station Financing	\$1,658,905
7/9/2015	South Bay Union School District Refunding of 1999 General Obligation Bond	\$999,000
7/7/2015	City of Healdsburg Wastewater Revenue Refunding Bonds, Series 2015 A	\$26,625,000
6/18/2015	City of Livermore Community Facilities District No. 99-1 (Tri-Valley Technology Park) Special Tax Refunding Bonds, Series 2015	\$15,655,000
5/28/2015	California Affordable Housing Agency Multifamily Housing Revenue Bonds (Village Park Apartments) Series 2015A	\$6,200,000
5/14/2015	City of Kingsburg Lease Revenue Refunding Bonds, Series 2015	\$2,700,000
5/5/2015	Greenfield Union School District 2015 GO Refunding Bond 2005 GO Bonds, Election of 1999, Series B	\$2,259,000
4/29/2015	Feather River Recreation and Park District 2015 Certificates of Participation	\$4,073,752
4/28/2015	County of Amador 2015 Refunding Certificates of Participation, Series 2005	\$6,168,000
4/28/2015	City of Kingsburg Pooled Revenue Refunding Bonds, Series 2015	\$1,439,100
4/21/2015	State of California Public Works Board Lease Revenue Bonds 2015 Series A, B, C, D, E	\$243,415,000



## APPENDIX A



<u>Issue Date</u>	<u>Agency/Description</u>	<u>Amount</u>
4/15/2015	Bodega Bay Public Utility District 2015 Installment Sale and Loan Agreement	\$3,955,062
4/15/2015	Lakeside Union School District 2014 Election, Series A GO (Ed-Tech Bonds®)	\$2,900,000
3/31/2015	Kerman Unified School District 2015 General Obligation Refunding Bonds	\$4,140,000
3/30/2015	Oakdale Public Financing Authority 2015 Taxable Pension Obligation Bonds	\$3,927,100
3/18/2015	Lake Elsinore Public Financing Authority Local Agency Revenue Refunding Bonds, Series 2015	\$108,845,000
3/4/2015	West Hills Community College District 2014 Election, Series A GO (Ed-Tech Bonds®)	\$4,015,000
2/19/2015	Fort Bragg Redevelopment Successor Agency 2015 Tax Allocation Refunding Bonds	\$4,040,000
2/18/2015	Montebello Unified School District 2015 Lighting Retrofit Project Energy Efficiency Financing	\$6,800,000
2/12/2015	Pacific Grove Unified School District 2014 Election, Series A GO Bonds (Ed-Tech Bonds®)	\$2,370,000
2/5/2015	San Ramon Valley Fire Protection District 2015 Certificates of Participation	\$12,010,000
1/22/2015	Santa Ynez Valley Union High School District 2015 Lease Financing	\$3,455,000
1/22/2015	Successor Agency to the Community Redevelopment Agency of the City of Healdsburg - 2015 Tax Allocation Refunding Bonds Series A (Taxable), Series B (Housing Set Aside Tax Revenue) (Taxable) Refunding of 2003 Tax Allocation Bonds, Series A and Series B	\$14,319,000



# STATEMENT OF QUALIFICATIONS TO SERVE AS BOND, TAX AND DISCLOSURE COUNSEL TO THE COUNTY OF MONO

Nixon Peabody LLP

August 1, 2018



**Rudy S. Salo**  
Partner  
T 213-629-6069  
F 866-817-1940  
[rsalo@nixonpeabody.com](mailto:rsalo@nixonpeabody.com)

Nixon Peabody LLP  
300 South Grand Avenue  
Suite 4100  
Los Angeles, CA 90071-3151  
213-629-6000

August 1, 2018

**Via Email**

Leslie Chapman  
Mono County Chief Administrative Officer  
PO Box 556  
Courthouse Annex II  
Bridgeport, CA 93517  
Email – [lchapman@mono.ca.gov](mailto:lchapman@mono.ca.gov)

Janet Dutcher  
Mono County Director of Finance  
PO Box 556  
Courthouse Annex II  
Bridgeport, CA 93517  
Email – [jdutcher@mono.ca.gov](mailto:jdutcher@mono.ca.gov)

**RE: Request for Proposal for Bond, Tax and Disclosure Counsel**

Dear Leslie/Janet:

Nixon Peabody LLP (“Nixon Peabody” or the “firm”) appreciates the opportunity to submit our Statement of Qualifications to serve as Bond, Tax and Disclosure Counsel to the County of Mono (the “County”) in connection with a tax-exempt lease/leaseback financing in the form of Lease Revenue Bonds or Certificates Participation, the proceeds of which will be used to construct a new county administrative building.

Nixon Peabody is a limited liability partnership which was formed in 1999 by the merger of two prestigious law firms with broad-based practices and extensive portfolios. However, the firms that came together to form Nixon Peabody were founded more than a century ago, and many of our significant business relationships have endured over the years.

We believe that Nixon Peabody is very well qualified to provide Bond, Tax and Disclosure Counsel services to the County. Our public finance practice is one of the largest in the nation with more than 40 bond attorneys, including four tax partners whose experience is second to none. Very few firms have the broad knowledge of California municipal finance and a national platform that Nixon Peabody can offer.

I shall be the primary contact person on behalf of Nixon Peabody. Please feel free to contact me at the above number or email address if you should have any questions.

Thank you for this opportunity to present our qualifications.

Very truly yours,



Rudy S. Salo  
Partner

## QUALIFICATIONS

**Public Finance Generally.** Nixon Peabody is a nationally recognized bond counsel firm with more than 30 years of experience in all areas of public finance. Thomson Reuters historically and consistently ranks Nixon Peabody among the top ten bond counsel, disclosure counsel, underwriters' and bank counsel firms in the country.

In particular, Nixon Peabody has extensive experience in California. Nixon Peabody has served as bond counsel for numerous California issuers, including, among others, the County of Riverside, the City of San Diego, the City of Los Angeles, the County of Monterey, Los Angeles County, the Bay Area Air Quality Management District, the California Infrastructure and Economic Development Bank, the California Municipal Finance Authority, the Harbor Department of the City of Los Angeles, the Los Angeles County Metropolitan Transportation Authority, the San Diego Unified Port District and The Metropolitan Water District of Southern California, and numerous school districts and community college districts. Representative disclosure counsel clients include the State of California, the State of California Public Works Board, the State of Nevada, the Counties of Monterey and Riverside, the Airport Commission of the City and County of San Francisco, the Cities of Los Angeles, Glendale, and San Diego, the San Diego Unified Port District, the Los Angeles County Metropolitan Transportation Authority, and numerous school and community college districts throughout California, including the West Contra Costa Unified School District.

**Tax Experience.** The firm has four experienced tax partners who function exclusively as "§103" lawyers. They have broad experience with all of the varied structures used in the public finance industry and have worked on virtually every type of financing in the tax-exempt market. Our tax lawyers have developed an administrative, regulatory and legislative practice that is unmatched by any other firm, wrote many of the rules and regulations while employees of both the IRS and Treasury and have relationships with federal tax officials at all levels of government. Additionally, our §103 attorneys have obtained numerous favorable private letter rulings from the IRS and have successfully represented associations like the Large Public Power Council, the American Public Gas Association and the Government Finance Officers Association, as well as individual issuer clients, in obtaining relief in situations where the current law and regulations are problematic.

**Disclosure Experience.** Nixon Peabody is a national leader in the rapidly evolving area of municipal market disclosure, and our attorneys have significant experience advising issuers with regard to their disclosure obligations. We have been engaged to provide disclosure training materials and conduct disclosure training sessions for key personnel and elected officials, as well as post-issuance disclosure advice in circumstances where there was a concern that the original disclosure may have been inadequate. We have also worked with the Securities and Exchange Commission ("SEC") staff on interpretations of Rule 15c2-12 and the implications of Circular 230 on disclosure. In addition, we have served as disclosure counsel or as a combination bond and disclosure counsel for issuers outside of California, including, among others, the State of Nevada, the New York Metropolitan Transportation Authority and its affiliates, the Power Authority of the State of New York and the New York City Municipal Water Finance Authority. We were also engaged as special disclosure counsel to the Treasurer of the State of New Jersey to promulgate its disclosure policies and procedures.

**Offices.** Services for the proposed engagement would be provided from our Los Angeles and San Francisco offices. The firm's main office is in Boston. There has not been a change of ten percent or more of staffing in any of these offices during the past year. Nixon Peabody does not track changes in sales of its offices.

### **Project Experience and Pricing:**

**Rudy Salo**, a partner in the firm's Public Finance group, would serve as relationship partner with primary responsibility for our work for the County. Mr. Salo would be actively involved in managing the firm's day-to-day representation of the County. **Travis Gibbs**, a tax partner in the firm's Public Finance group, would be the supervising tax partner for the County; as such, he would direct the tax analysis of the County's transactions. **Chuck Wolf**, a partner in the firm's Public finance group, would assist Rudy and Travis with structuring questions and related matters. **Jade Turner-Bond** and **Shannon Egan**, associates, would assist Messrs. Salo and Gibbs with documents, research and due diligence.

The individuals identified above have served as bond counsel, disclosure counsel or tax counsel for Lease Revenue Bonds and Certificates of Participation issued by the State of California, the Counties of Monterey, Contra Costa, Riverside and Los Angeles, and the Cities of Los Angeles and San Diego and numerous school and community college districts throughout the State of California, including the West Contra Costa Unified School District, Palmdale School District and Lancaster School District.

Rudy Salo has served as bond counsel, disclosure counsel, underwriters' counsel, and bank/lender's counsel on a broad range of municipal financings, including general obligation bonds, revenue bonds, lease revenue bonds, tax revenue anticipation notes, and certificates of participation. Rudy has served as bond and/or disclosure counsel for numerous governmental entities throughout the State, including the County of Riverside, the County of Monterey, the County of Los Angeles, the City of Los Angeles, the City of San Diego, the City of Glendale, West Contra Costa Unified School District, Ventura Regional Sanitation District, Santa Monica Community College District and Citrus Community College District.

Rudy has previously served as the lead attorney serving as disclosure counsel to the State of California on all lease revenue bond transactions between fiscal year 2011-2012 through fiscal year 2014-2015. The firm now serves as disclosure counsel to the State of California on its general obligation bonds transactions. He also serves as disclosure counsel to the West Contra Costa Unified School District in Richmond, California, which is a large issuer of general obligation bonds in the State of California, and the State of Nevada on its Highway Revenue Bond program since 2016. Rudy has also served as bank counsel to numerous commercial banks since 2010 in connection with loans or financings throughout California, including various counties, school districts, community college districts and other municipal entities. Rudy also has extensive experience leading multiple school and community college district general obligation bonds, certificates of participation, and lease revenue financings to successful closings.

Travis Gibbs has extensive experience as bond counsel and tax counsel in public offerings of municipal securities, including general obligation bonds, certificates of participation, school district bonds, hospital issues, variable rate financings, cash flow financings, small issue industrial development bonds, nonprofit corporation equipment financings, tax allocation bonds, refunding bonds, and rebate excepted financings. Travis's experience includes serving as counsel in complex structured transactions with a focus on maintaining the integrity of the tax-exemption on the bonds being issued. He has also acted as counsel in numerous transactions which involved derivative products such as SWAPS, CAPS, and the sale of stripped call rights. A representative list of clients includes the City and County of San Francisco, the Transbay Authority, the Metropolitan Water District of Southern California, the State of California and the County of Riverside, as well as other cities, counties, ports, water districts, transportation authorities, airport authorities and school districts.

Chuck Wolf has served as bond counsel and/or disclosure counsel for the tax-exempt financing and refinancing of various public facilities. Chuck currently represents the State of California as disclosure counsel on its general obligation bond deals and previously represented the State Public Works Board as disclosure counsel. Chuck has been practicing public finance law for over 35 years. Chuck also has extensive experience with general fund lease revenue bonds and certificates of participation. A representative list of lease revenue bonds or certificates of participation clients includes the Counties of Monterey, Contra Costa, Riverside and Los Angeles, California State Public Works Board, the Cities of Los Angeles and San Diego, and the Bay Area Quality Management.

Jade Turner-Bond serves as bond counsel, disclosure counsel, underwriter's counsel and letter of credit counsel on a broad range of public projects financed by tax-exempt and taxable bonds. As a former attorney to the California State Treasurer, Jade has experience in matters related to general obligation bonds, commercial paper notes, revenue anticipation notes, private activity bonds, private placements and the restructuring of credit and liquidity agreements.

Shannon Egan has served as bond counsel and underwriter's counsel in a number of public offerings of municipal securities, including general obligation bonds, certificates of participation and lease revenue bonds. Shannon has experience in drafting documents, conducting due diligence, and researching public finance topics.

Full biographies of our team members are attached hereto as *Appendix A*. References are included in *Appendix B*.

**Pricing.** We are eager to serve as Bond, Tax and Disclosure Counsel to the County and to provide our services at the lowest reasonable cost consistent with the County's needs and our professional responsibility.

We would propose to be compensated based upon a capped fee basis of \$165,000 for our Bond, Tax and Disclosure Counsel services. This fee proposal is based upon our prior experience working with Counties for similar transactions. For your information, our rates in Los Angeles and San Francisco range from below \$375 per hour for our most junior associates to over \$950 per hour for our most senior partners. The standard hourly rates for members of the team identified in our proposal range from \$385 to \$890. Our capped fee proposal assumes fixed rate bonds, no credit enhancement, no extraordinary tax issues; 3-5 months to closing, no validation actions, no challenges or litigation and no other significant delays.

In connection with this financing, our capped fee proposal includes providing advice, preparing documents, and rendering opinions concerning all aspects of the proposed financing, including but not limited to preparation of the Preliminary and Official Statement; Continuing Disclosure, preparation and filing of contracts, agreements, opinions, and any other necessary legal documents, Tax Certificates preparation and Tax Opinions.

**Disbursements or Expenses.** Typical examples of out-of-pocket disbursements include photocopying, express delivery charges and travel expenses, it being understood that this is not an exclusive list and we would expect to be reimbursed for any out-of-pocket disbursement made. The firm's charges for out-of-pocket disbursements and expenses represent either a direct pass-through of a cost from another party or our own internal costs which include no add-ons. We would not charge for secretarial or clerical time.

In addition, we would be reimbursed for our out-of-pocket expenses incurred in connection with services rendered. These would include client-requested travel expenses. We bill for such expenses at cost.

## APPENDIX A - TEAM RESUMES





## **RUDY S. SALO**

### **Partner**

300 South Grand Avenue, Suite 4100  
Los Angeles, CA 90071-3151  
Phone: 213-629-6069 • Fax: 866-817-1940  
E-mail: [rsalo@nixonpeabody.com](mailto:rsalo@nixonpeabody.com)  
Website: [www.nixonpeabody.com](http://www.nixonpeabody.com)

### **Practice**

Public Finance

### **Experience**

Rudy Salo is a partner in the firm's Public Finance practice group. Rudy has served as bond counsel, disclosure counsel, underwriters' counsel, and bank/lender's counsel on a broad range of municipal financings, including general obligation bonds, revenue bonds, lease revenue bonds, tax revenue anticipation notes, and certificates of participation. Rudy has served as bond and/or disclosure counsel for numerous governmental entities throughout the State, including the City of Glendale, County of Riverside, the County of Los Angeles, the City of Los Angeles, the City of San Diego, West Contra Costa Unified School District, Ventura Regional Sanitation District, Santa Monica Community College District and Citrus Community College District.

Rudy led the bond counsel representation and assisted with the disclosure counsel representation for Glendale Water & Power's Electric Revenue Bonds, 2016 Refunding Series. Rudy has previously served as the lead attorney serving as disclosure counsel to the State of California on all lease revenue bond transactions between fiscal year 2011-2012 through fiscal year 2014-2015. The firm now serves as disclosure counsel to the State of California on its general obligation bonds transactions. He also serves as disclosure counsel to the West Contra Costa Unified School District in Richmond, California, which is a large issuer of general obligation bonds in the State of California, and the State of Nevada on its Highway Revenue Bond program since 2016. Rudy has also served as bank counsel to numerous commercial banks since 2010 in connection with loans or financings throughout California, including various electric utilities, counties, school districts, community college districts and other municipal entities. Rudy also has extensive experience leading multiple school and community college district general obligation bonds, certificates of participation, and lease revenue financings to successful closings.

### **Admissions**

Mr. Salo is admitted to practice in California.

### **Education**

Georgetown University Law Center, J.D.

University of California at Los Angeles, B.A., *magna cum laude*



## **TRAVIS GIBBS**

**Partner**

One Embarcadero Center  
San Francisco, CA 94111  
Phone: 415-984-8336 • Fax: 866-599-4729  
E-mail: [tgibbs@nixonpeabody.com](mailto:tgibbs@nixonpeabody.com)  
Website: [www.nixonpeabody.com](http://www.nixonpeabody.com)

### **Practice**

Public Finance  
Tax

### **Experience**

Travis Gibbs has extensive experience as bond counsel and tax counsel in public offerings of municipal securities, including general obligation bonds, certificates of participation, school district bonds, hospital issues, variable rate financings, cash flow financings, small issue industrial development bonds, nonprofit corporation equipment financings, tax allocation bonds, refunding bonds, and rebate excepted financings. His experience includes serving as counsel in complex structured transactions with a focus on maintaining the integrity of the tax-exemption on the bonds being issued. Travis has also acted as counsel in numerous transactions which involved derivative products such as SWAPS, CAPS, and the sale of stripped call rights.

A representative list of clients includes: the City and County of San Francisco; the City of Los Angeles; the City of San Diego; the Los Angeles County Metropolitan Transportation Authority; The Metropolitan Water District of Southern California; the State of California; the County of Riverside; and the San Francisco County Transportation Authority; as well as other counties, ports, water districts, transportation authorities, airport authorities, and school districts.

In addition to tax-exempt financing, Travis has had experience in a variety of other tax law matters for corporation, municipal, nonprofit, and individual clients.

### **Admissions**

Travis is admitted to practice in California.

### **Education**

University of Texas, J.D.  
University of Florida, B.A.



## **CHUCK WOLF**

**Partner**

300 South Grand Avenue, Suite 4100  
Los Angeles, CA 90071-3151  
Phone: 213-629-6066 • Fax : (866) 947-1119  
E-mail: [cwolf@nixonpeabody.com](mailto:cwolf@nixonpeabody.com)  
Website: [www.nixonpeabody.com](http://www.nixonpeabody.com)

### **Practice**

Public Finance

### **Experience**

Chuck Wolf is a member of the firm's public finance practice and has extensive experience in public finance, project finance, and structured finance. He has served as issuer's counsel and underwriters counsel for the tax exempt and taxable financing and refinancing of various infrastructure facilities including electric energy generation and transmission facilities, airports, toll bridges, highways, light rail systems, water systems, wastewater systems, sports stadiums, convention centers, shopping centers, hospitals, schools, prisons and numerous other public facilities.

Mr. Wolf has served as counsel in transactions in the states of California, Colorado, Massachusetts, Nevada, Vermont and Washington and the territory of Guam. He has participated in financing transactions for the Vermont Public Power Supply Authority, the Southern California Public Power Authority, Massachusetts Municipal Wholesale Electric Company, Los Angeles Department of Water and Power, Anaheim Electric System, the State of California, the Bay Area Toll Authority, the Los Angeles Department of Airports, the Sonoma-Marín Area Rail Transit District, the State of Washington Department of Transportation, Los Angeles County Metropolitan Transportation Authority, San Diego County Regional Transportation Commission, Santa Clara Valley Transportation Authority, California Department of Water Resources, City of San Diego Water System, City of San Diego Wastewater System, City of Los Angeles Wastewater System, the California Counties of Los Angeles, Riverside and Sacramento and the California Cities of Los Angeles, San Diego and Long Beach.

Mr. Wolf's financial institution clients include Bank of America Merrill Lynch, Barclays, Citigroup, De La Rosa & Company, Goldman, Sachs & Co., J.P. Morgan, Morgan Stanley, Stifel Nicolaus & Co. and Wells Fargo.

### **Education**

Boston College Law School, J.D. (*cum laude*)

Boston University School of Management, B.A. (*summa cum laude*)

### **Admissions**

Mr. Wolf is admitted to practice in California and Massachusetts.

**JADE TURNER-BOND****Associate**

300 South Grand Avenue, Suite 4100  
Los Angeles, CA 90071-3151  
Phone: 213-629-6141 • Fax: 844-540-4097  
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Website: [www.nixonpeabody.com](http://www.nixonpeabody.com)

**Practice**

Public Finance  
Project Finance  
Banking & Finance

**Experience**

Jade Turner-Bond, an associate in our Public Finance group, serves as bond counsel, disclosure counsel, underwriter's counsel and letter of credit counsel on a broad range of public projects financed by tax-exempt and taxable bonds. As a former attorney to the California State Treasurer, Jade has experience in matters related to general obligation bonds, commercial paper notes, revenue anticipation notes, private activity bonds, private placements and the restructuring of credit and liquidity agreements. Representative clients include the Los Angeles County Metropolitan Transportation Authority, the City of Los Angeles, the County of Riverside and The Metropolitan Water District of Southern California.

**Admissions**

Jade is admitted to practice in California.

**Education**

University of the Pacific, McGeorge School of Law, J.D.  
University of California, Davis, B.A.



## **SHANNON EGAN**

**Associate**

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Los Angeles, CA 90071-3151  
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E-mail: [segan@nixonpeabody.com](mailto:segan@nixonpeabody.com)

Website: [www.nixonpeabody.com](http://www.nixonpeabody.com)

### **Practice**

Public Finance

### **Experience**

Shannon Egan is a transactional associate and a member of Nixon Peabody's Corporate & Finance practice team. She represents clients in a variety of business transactions in the private equity, public finance and general corporate fields.

Her practice focuses on drafting and reviewing the underlying bond documents and disclosure documents for finance transactions. She is involved in a wide variety of financings involving multi-family housing projects, utilities, transportation financings, nonprofit corporations, higher education and student loans.

### **Admissions**

Ms. Egan is admitted to practice in California.

### **Education**

University of Michigan Law School, J.D. (*Michigan Business and Entrepreneurial Law Review, Notes Editor*)

Michigan State University, James Madison College, B.A., Comparative Cultures and Politics

## APPENDIX B - REFERENCES

**Lori Chatwood**, Deputy Treasurer  
Nevada State Treasurer's Office  
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**Christine A. Godinez**, Principal Assistant City Attorney  
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**Ms. Sheri Gamba**, Retired Associate Superintendent, Business Services  
West Contra Costa Unified School District  
(510) 231-1170  
[Rsgamba007@gmail.com](mailto:Rsgamba007@gmail.com)



# 2018 Mono County Civic Center Financing

Prepared by



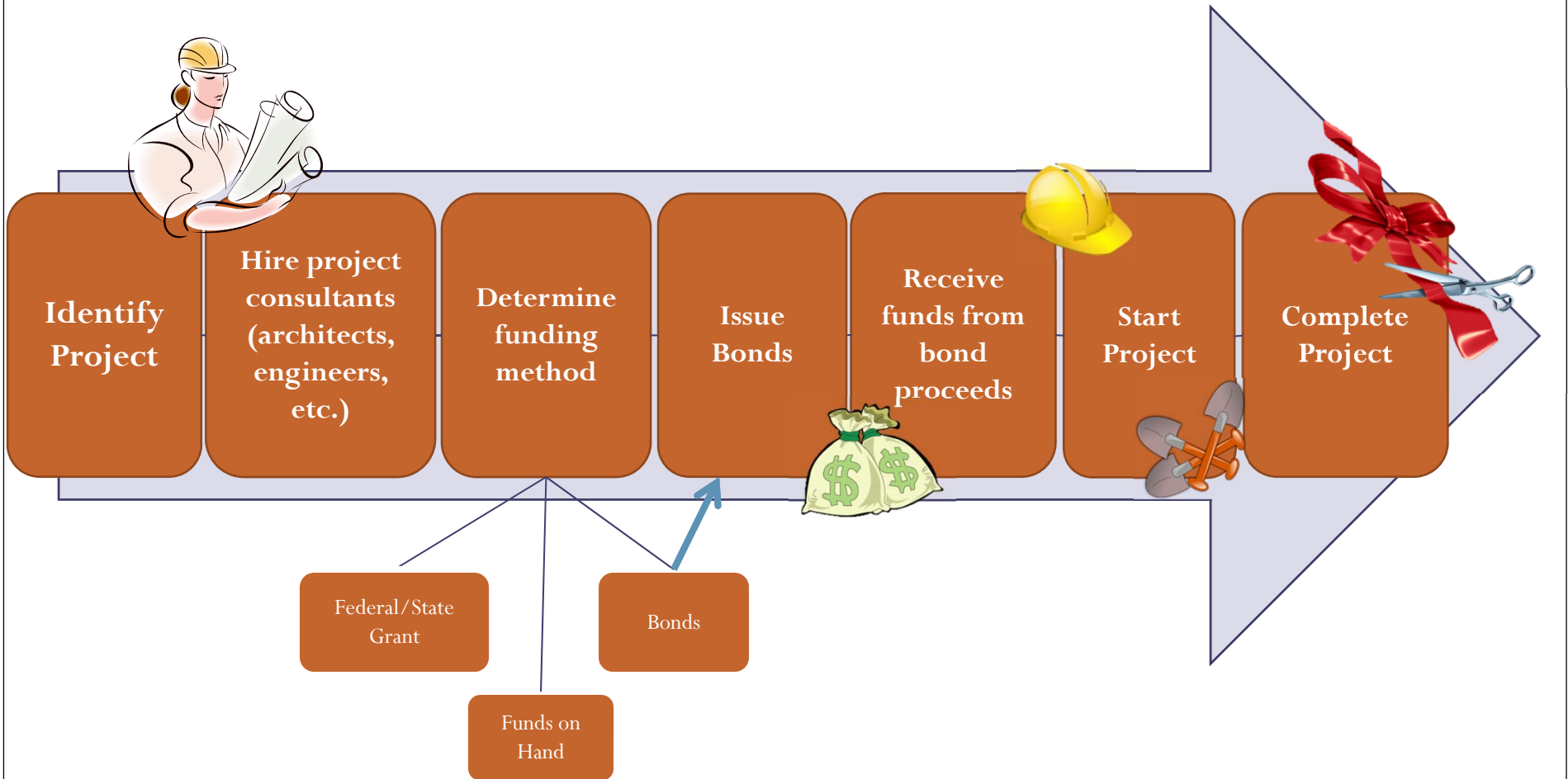
**BRANDIS TALLMAN LLC**



*Investment Banking for  
California's Communities*

August 21, 2018

# Project Financing Process





# Key Players in Bond Issues

- **The Issuer (You):** The issue must meet your needs and goals.
- **Municipal Advisor:** Helps issuer plan and execute bond sale, represents issuer in dealings with other market players.
- **Bond Counsel:** Provides opinion on legal authority and tax-exempt status of bond issue.
- **Disclosure Counsel:** Produces the preliminary official statement & final official statement which is the bond issue's primary disclosure document that the market receives.
- **Rating Agency:** Provides independent assessment of issuer creditworthiness, assigns letter grade to inform investors.
- **Underwriter:** Purchases bonds from issuer, then sells them to investors.
- **Investor:** Individual or institution that purchases the bonds from the Underwriter.



# Accessing the Capital Markets

# Capital Marketplace

- Who are the investors?
  - Retail
  - Professional Retail
  - Institutional
- How do investors purchase municipal paper?
  - Public Offering
    - Order period on sale date

# Public Offering Method of Sale

- Under a public offering, an underwriter purchases bonds from an issuer with the intent to resell the bonds to investors. The sale of bonds can be made to large investors such as mutual funds and insurance companies, commonly known as institutional investors, or to individual investors, commonly known as retail investors.
- Suitability rules play a role in determining what securities an underwriter can recommend to an investor. Historically, the SEC has deferred to self-regulatory organizations to regulate this conduct. Under suitability rules used by FINRA, the NYSE and the MSRB, the securities dealer must have some basis for believing that any particular security they recommend is suitable for the investor on the basis of facts disclosed by the investor.
- As a result, the financing team must design the financing structure to meet the needs of the issuer in context of the investor market for the debt. This includes research and documentation of the credit quality of the bond (credit rating), its term to maturity, its risk of redemption and its potential for sale in the secondary market. Other requirements, such as establishment of a reserve fund or surety bond must be considered.
- These requirements and due diligence procedures increase the costs of issuance of the bonds. Additionally, a trustee or paying agent is required to service the debt to the investors of a public offering. However, the institutional or retail investor often provides the issuer with a lower interest rate. The bonds can be serialized so that the interest rate increases with each maturity rather than remaining fixed for the term of the bonds. This can provide an overall lower interest cost.



# Financing Structure

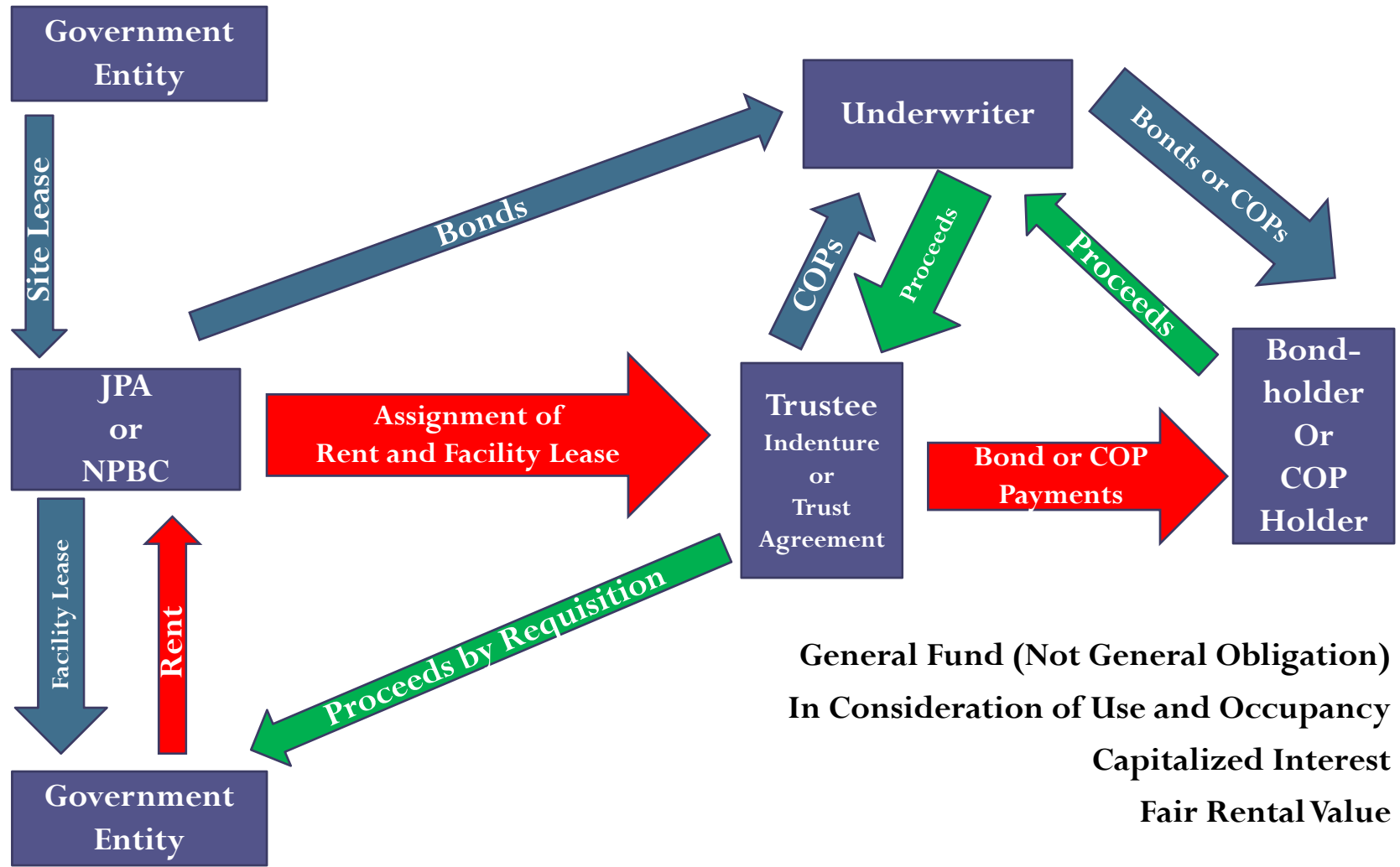
# Financing Structure – Lease Financing

- Lease financing provides public agencies with the ability to finance capital improvements.
- Lease payments are annually appropriated, made from any lawfully available funds.
- Lease financing allows public agencies to avoid depleting reserves for large capital projects.
- Security
  - Asset (of equal or greater value to the financing amount) required to secure the lease/certificates of participation payments
    - The market typically prefers essential assets to secure the financing
    - County is expected to utilize capitalized interest to secure the financing
- Type of Structure is based on method of sale:
  - Certificates of Participation (“COPS”) - Public Offering

# Why Lease Structure

- County is Debt Limit Entity
  - County does not have the power to enter into a financial agreement that obligates it beyond the current fiscal year without 2/3rds approving vote of its electorate, unless it can satisfy one of the accepted and long standing exceptions to the debt limit.
  - The exception applicable to the County is known as the “lease exemption” to the constitutional debt limit.
- Lease / Lease-back
  - Application of the lease exemption is performed through the use of a non-profit financing authority.
  - The County and the non-profit financing authority enter into a lease / lease-back arrangement in which the County makes rental payments to the financing authority to lease-back the facility, consummating the lease exemption for the County.
  - The lease / lease-back arrangement dissolves upon the final maturity of the financing. The County maintains ownership of the facility throughout the entire process.

# LEASE FINANCING STRUCTURES







# Financing Scenario

## Civic Center Project

# County Civic Center Financing Public Offering New Construction

	Current Market Rates	Current Market Rates Plus 25bps	Current Market Rates Plus 50bps
Project Fund	20,500,000	20,500,000	20,500,000
Cost of Issuance (1)	705,188	713,866	723,531
Capitalized Interest	1,406,434	1,438,468	1,471,591
Reserve Fund	Surety Policy	Surety Policy	Surety Policy
Original Issue (Premium)	(2,681,622)	(2,312,334)	(1,945,122)
Par Amount	19,930,000	20,340,000	20,750,000
Arbitrage Yield (2)	3.37%	3.63%	3.88%
All-In TIC	4.20%	4.35%	4.50%
Final Maturity	December 1, 2053	December 1, 2053	December 1, 2053
<b>AVERAGE ANNUAL DEBT SERVICE</b>	<b>1,206,462</b>	<b>1,232,937</b>	<b>1,259,686</b>
<b>TOTAL DEBT SERVICE</b>	<b>42,426,134</b>	<b>43,358,318</b>	<b>44,300,916</b>

- (1) Includes: bond counsel, disclosure counsel, municipal advisor, credit rating, title, counter-party, trustee, bond insurance, surety, underwriter's discount, and printing/miscellaneous/rounding.
- (2) Based on financing analysis from August 2018. Interest rates are preliminary and subject to change with market conditions.



# Market and Timing

# Bond Market Rates August 16, 2017 – August 16, 2018

Prepared by Brandis Tallman LLC



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## 10-year Treasury Yields

Aug. 16, 2018: 2.87%  
 52-week High: 3.11% - May 17, 2018  
 52-week Low: 2.06% - December 8, 2017

## 10-year MMD Yields

Aug. 16, 2018: 2.43%  
 52-week High: 2.55% - May 22, 2018  
 52-week Low: 1.81% - September 8, 2017

## 30-year Treasury Yields

Aug. 16, 2018: 3.03%  
 52-week High: 3.25% - May 17, 2018  
 52-week Low: 2.67% - September 7, 2017

## 30-year MMD Yields

Aug. 16, 2018: 3.01%  
 52-week High: 3.16% - April 25, 2018  
 52-week Low: 2.46% - December 6, 2017

# Recent FOMC Meetings

- **March 21, 2018:** The Fed raised the fed funds rate by 0.25% to a range of 1.50% to 1.75%. In his comments Jerome Powell said that the “economic outlook has strengthened in recent months”, but that the first quarter growth slowdown allows them to stick to their forecast for 3 rate hikes in 2018. The plan will be for 3 more in 2019, and 2 in 2020.
- **May 2, 2018:** The Fed left rates unchanged as expected with fed funds target between 1.50% and 1.75%. Although inflation has approached the Fed’s 2.0% target, there was no concern that inflation would move dramatically higher in the near future.
- **June 13, 2018:** The FOMC raised interest rates 25 bps, as expected, to a 1.75% to 2.00% range. One Fed official switched to a slightly more aggressive stance: now 8 officials see 4 rate hikes in 2018; 7 officials forecast 3 hikes. The rate-hike decision has flattened the yield curve; the differential between 2-year and 10-year Treasuries stands at 37.6 basis points, or 0.376 percentage point, representing the tightest spread since 2007.
- **August 1, 2018:** Rates were left unchanged, as expected; but the FOMC said “economic activity has been rising at a strong rate”, rather than the previous statement’s “solid rate”, which lead to a rate hike. Yields closed 3 to 5 bps higher across the board because of the overnight selloff in the Japanese JGB bonds.

# Next Steps

- Form financing team
- Develop financing timeline
- Financial consultants begin due diligence and prepare offering documents
- Finance team presents documents to Board of Supervisors for approval
- Sell bonds
- Close and fund transaction

# Sample Financing Timeline

Timing	Action	Responsible Party
Week One	Kick-off conference call with financing team	All
	Distribute interested parties list and financing schedule	Municipal Advisor
Week Four	1 <sup>st</sup> draft of preliminary official statement and legal documents distributed	Bond Counsel & Disclosure Counsel
Week Five	Comments due on preliminary official statement & legal documents	ALL
Week Six	Agenda deadline for Board meeting	Municipal Advisor, Underwriter & County
Week Seven	Board meeting to approve transaction and related documents	Municipal Advisor, Underwriter & County
Week Eight	Rating presentation review and conference call	Municipal Advisor, Underwriter & County
Week Nine	Receive rating and bond insurance quote	Municipal Advisor, Underwriter & County
Week Ten	Distribute preliminary official statement to investors	Underwriter
Week Twelve	Price bonds / Finalize numbers	Underwriter
Week Fourteen	Close transaction	Underwriter & Bond Counsel



**OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS**

**REGULAR AGENDA REQUEST**

Print

**MEETING DATE** August 21, 2018

**TIME REQUIRED**

**SUBJECT** Closed Session -- Human Resources

**PERSONS  
APPEARING  
BEFORE THE  
BOARD**

**AGENDA DESCRIPTION:**

(A brief general description of what the Board will hear, discuss, consider, or act upon)

CONFERENCE WITH LABOR NEGOTIATORS. Government Code Section 54957.6. Agency designated representative(s): Stacey Simon, Leslie Chapman, Dave Butters, Janet Dutcher, and Anne Larsen. Employee Organization(s): Mono County Sheriff's Officers Association (aka Deputy Sheriff's Association), Local 39--majority representative of Mono County Public Employees (MCPE) and Deputy Probation Officers Unit (DPOU), Mono County Paramedic Rescue Association (PARA), Mono County Public Safety Officers Association (PSO), and Mono County Sheriff Department's Management Association (SO Mgmt). Unrepresented employees: All.

**RECOMMENDED ACTION:**

**FISCAL IMPACT:**

**CONTACT NAME:**

**PHONE/EMAIL:** /

**SEND COPIES TO:**

**MINUTE ORDER REQUESTED:**

YES  NO

**ATTACHMENTS:**

<a href="#">Click to download</a>
No Attachments Available

**History**

**Time**

**Who**

**Approval**





**OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS**

**REGULAR AGENDA REQUEST**

Print

**MEETING DATE** August 21, 2018

**TIME REQUIRED**

**SUBJECT** Closed Session -- Initiation of litigation

**PERSONS  
APPEARING  
BEFORE THE  
BOARD**

**AGENDA DESCRIPTION:**

(A brief general description of what the Board will hear, discuss, consider, or act upon)

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION. Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Government Code section 54956.9. Number of potential cases: one.

**RECOMMENDED ACTION:**

**FISCAL IMPACT:**

**CONTACT NAME:** Anne Larsen

**PHONE/EMAIL:** 760 924-1707 / alarsen@mono.ca.gov

**SEND COPIES TO:**

**MINUTE ORDER REQUESTED:**

YES  NO

**ATTACHMENTS:**

<p><a href="#">Click to download</a></p> <p>No Attachments Available</p>
--

**History**

Time	Who	Approval
8/16/2018 5:20 AM	County Administrative Office	Yes
8/16/2018 9:42 AM	County Counsel	Yes
8/16/2018 3:29 PM	Finance	Yes



OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS

## REGULAR AGENDA REQUEST

Print

**MEETING DATE** August 21, 2018

**TIME REQUIRED**

**SUBJECT** Closed Session -- Existing Litigation

**PERSONS  
APPEARING  
BEFORE THE  
BOARD**

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### AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION. Paragraph (1) of subdivision (d) of Government Code section 54956.9. Name of case: Mono County v. Los Angeles Department of Water and Power, et al. (CV180078).

---

### RECOMMENDED ACTION:

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### FISCAL IMPACT:

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### CONTACT NAME:

**PHONE/EMAIL:** /

---

### SEND COPIES TO:

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### MINUTE ORDER REQUESTED:

YES  NO

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### ATTACHMENTS:

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No Attachments Available

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#### History

Time	Who	Approval
8/17/2018 5:16 AM	County Administrative Office	Yes
8/16/2018 9:28 AM	County Counsel	Yes
8/16/2018 3:29 PM	Finance	Yes



**OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS**

**REGULAR AGENDA REQUEST**

Print

**MEETING DATE** August 21, 2018

**Departments: Public Health, Behavioral Health**

**TIME REQUIRED** 1 hour

**PERSONS  
APPEARING  
BEFORE THE  
BOARD**

Dr. Tom Boo, Bryan Wheeler, Robin  
Roberts, Ingrid Braun, Sandra Pearce

**SUBJECT** Opioid Epidemic and Harm Reduction  
Presentation

**AGENDA DESCRIPTION:**

(A brief general description of what the Board will hear, discuss, consider, or act upon)

This presentation is a collaborative effort between Mono County Public Health, Behavioral Health, and Sheriff's Office to inform the Board, stakeholders, and community about opioids, local evidence-based interventions, and opportunities to move forward in addressing strategic priority 1C: Improving Public Health and Safety through addressing the opioid crisis and substance abuse.

**RECOMMENDED ACTION:**

None (informational only). Provide any desired direction to staff.

**FISCAL IMPACT:**

There is no fiscal impact to the General Fund.

**CONTACT NAME:** Sandra Pearce

**PHONE/EMAIL:** 760.924.1818 / spearce@mono.ca.gov

**SEND COPIES TO:**

**MINUTE ORDER REQUESTED:**

YES  NO

**ATTACHMENTS:**

Click to download
<a href="#">Staff Report</a>
<a href="#">Presentation</a>
<a href="#">Mono County Snapshot</a>

**History**

Time

Who

Approval

8/17/2018 6:27 AM	County Administrative Office	Yes
8/16/2018 9:50 AM	County Counsel	Yes
8/16/2018 6:11 PM	Finance	Yes



# MONO COUNTY HEALTH DEPARTMENT

## Public Health

P.O. BOX 476, BRIDGEPORT, CA 93517 PHONE (760) 932-5580 • FAX (760) 932-5284  
P.O. BOX 3329, MAMMOTH LAKES, CA 93546 PHONE (760) 924-1830 • FAX (760) 924-1831

DATE: August 21, 2018  
TO: Honorable Board of Supervisors  
FROM: Sandra Pearce, Public Health Director  
SUBJECT: **Opioid Epidemic and Harm Reduction Presentation**

### **Recommendation:**

Informational presentation only.

### **Discussion:**

This presentation is a collaborative effort between Mono County Health Department, Behavioral Health, and Sheriff's Office to inform the Board, stakeholders, and community about opioids, local evidence-based interventions, and opportunities to move forward in addressing strategic priority 1C: Improving Public Health and Safety through addressing the opioid crisis and substance abuse. The presentation objectives include the following:

- Provide an update on the current state of the national, regional, and local opioid epidemic.
- Discuss the role of harm reduction in addressing the epidemic.
- Review ongoing and proposed activities and services to mitigate harms associated with opioid addiction and use of injection drugs.
- Introduce three interventions for which authorization will be requested from the Board in follow-up agenda items:
  - California Department of Public Health (CDPH) Naloxone Grant
  - Mono County Syringe Exchange Program
  - Drug Medi-Cal Contract

### **Fiscal Impact:**

There is no fiscal impact to the County General Fund.

For questions about this item, please call Robin Roberts at (760) 924-1729 or Sandra Pearce at (760) 924-1818.

Submitted by:

A handwritten signature in black ink that reads "S Pearce".

Sandra Pearce, Public Health Director

# Opioid Epidemic and Harm Reduction

Board of Supervisors Presentation

August 21, 2018

## **Mono County Health Department**

- Sandra Pearce, Public Health Director
- Dr. Tom Boo, Health Officer
- Bryan Wheeler, Health Program Manager

## **Mono County Behavioral Health**

- Robin Roberts, Director of Behavioral Health

## **Mono County Sheriff's Office**

- Ingrid Braun, Mono County Sheriff



# Objectives

- Provide an update on the current state of the national, regional, and local opioid epidemic
- Discuss the role of harm reduction in addressing the epidemic
- Review ongoing and proposed activities and services to mitigate harms associated with opioid addiction and use of injection drugs
- Introduce interventions for which authorization will be requested from the Board in follow-up agenda items:
  - California Department of Public Health (CDPH) Naloxone Grant
  - CDPH/OA Syringe Exchange Program
  - Drug Medi-Cal Contract



# Harm Reduction

- In this context, Harm Reduction refers to evidence-based interventions to reduce adverse effects of opioid use disorder (OUD) and injection drug use
  - Objectives are to reduce death and disability, improve quality of life and function
  - Recognizes that addiction is a disease that is difficult to treat
  - Avoids judgment and stigmatization





# Opioid Overdose Epidemic

- Overdose deaths have become a leading cause of death & illness in the United States
- 64,000 drug overdose deaths occurred in 2016, with opioids responsible for 42,00 of these deaths
- A National Emergency was declared in 2018
- The epidemic is a Public Health priority at the federal, state, and local level
  - Mono County Board of Supervisors identified addressing the opioid crisis and substance abuse as a 2018/19 priority



## Federal and State Activity

- Raising public and prescriber awareness of risks of opioid addiction
- New US opioid prescribing guidelines, requirements and scrutiny
- US Surgeon General calls for more Americans to carry naloxone to reverse overdose, April 5, 2018
- Push at federal and state levels to expand access to Medication-Assisted Treatment, especially buprenorphine
- California legislation made naloxone and syringes available without prescription
  - Regulations ensure that naloxone prescriptions are covered by MediCal
  - CDPH naloxone distribution to all local health jurisdictions
  - CDPH syringe exchange program certification or County authorization



## Local Trends

- In 2017, there were 1,882 opioid overdose deaths in CA, 0 in Mono County
- At this time, the opioid epidemic has not hit Mono County as hard as other regions of CA and the US
- There is insufficient data on prevalence of opioid use and addiction in Mono County, but overdoses occur
- Anecdotally, people who use drugs and seek assistance at the Health Department in Mammoth report that injection drug use is increasing
- Separately, individuals in outlying communities express fear to Behavioral Health staff about their own addiction and risk of overdose
- Cutbacks in opioid prescribing may drive more people to illicit sources
- Mono County residents should have access to proven harm reduction services



# Multi-faceted Harm Reduction Approach

- Medication-Assisted Treatment (MAT) for opioid use disorder
- Naloxone distribution
- Syringe exchange programs and SB-212
- Testing and linkage to treatment for blood-borne pathogens
- All linked substance abuse counseling and therapy



# Medication-Assisted Therapy (MAT)

- Drugs reduce opioid relapse and death rates and permit many people with opioid use disorder (OUD) to live productive lives
- Maintenance therapy (open-ended)
- Methadone
  - Only available for OUD in federally-certified methadone clinics
- Buprenorphine
  - An opioid with excellent safety profile, proven to reduce risk of death
- Naltrexone
  - Action similar to Narcan, newly available in once-monthly injection



## Abstinence vs MAT

- Abstinence is hard
- Relapse is common and risky
- Relapse from abstinence      high risk of overdose
  - Body quickly loses tolerance to opioids--the amount used previously may kill the user after short period of abstinence
  - Release from jail, discharge from hospital
- Evidence indicates that MAT much more effective at preventing relapse and deaths



# Buprenorphine Maintenance Therapy

- Well-established MAT option
- Remarkable drug that will treat withdrawal and craving but will generally not cause fatal respiratory depression and blocks the effects of other opioids
- Oral (transmucosal) and new long-acting injectable forms
- Some abuse potential
- Often formulated with naloxone to make injection unappealing
- Requirement that buprenorphine prescribers obtain education about use of the drug and apply for DEA permission (waiver)
  - Only 5% of U.S. physicians have obtained DEA waivers to prescribe the drug



## Buprenorphine not a Panacea

- MAT should be combined with counseling/psychotherapy
- Efficacy comparable to methadone, perhaps slightly less
- Life-saving for some patients
- Others drop out, disappear, relapse
- Can be dangerous if alcohol or sedative drugs also used
- Not very effective in advanced liver disease





# Local Buprenorphine Availability Challenges

- Single prescriber in Eastern Sierra for many years (Dr. Weiss, Toiyabe)
  - Toiyabe now has buprenorphine prescribers in Bishop and Lone Pine
- Available at Northern Inyo Rural Health Clinic in Bishop
- **NO** prescribers in Mammoth/Mono County
  - Continuing outreach to Mammoth Hospital
  - Behavioral Health working on various opportunities
- Sheriff Braun received a grant to initiate MAT in the county jail
  - Department of Health Care Services grant and learning collaborative



## Naltrexone Injection (aka Vivitrol)

- Once monthly injection
- Blocks the effects of opioids (no high, no OD)
- Recipients must have completed withdrawal or it will cause or exacerbate withdrawal
- In studies 25% of candidates relapsed before completing withdrawal
- For those who make it through withdrawal and start the drug the efficacy seems comparable to buprenorphine
- Won't control cravings
- No special education or DEA prescriber waiver required
- May be attractive in correctional settings (upon release)



# Naloxone Distribution

- Naloxone (aka Narcan, best known brand name) specifically reverses the effects of opioids in the body
  - OD antidote-prevents death
- Familiar drug in ER and hospital setting
- Excellent safety profile
- Newer intranasal and autoinjector delivery devices for public use
- Widespread community distribution of naloxone has been associated with impressive reductions in overdose deaths
- Magnitude of mortality reduction suggests some element of behavioral change



## CDPH Naloxone Grant

- One-time allocation of intranasal naloxone to local health jurisdictions
  - 270 doses allocated for Mono County
- Mono County Health and Behavioral Health Departments will distribute at our offices
- Identifying partner agencies and organizations to help distribute to people or households who may be at risk or come in contact with people at risk
- Potential partners include law enforcement, EMS, fire, social services, Toiyabe Indian Health Project, jail, perhaps hospital



# Naloxone Distribution

- Authorized by Health Officer standing order
- Some education is required--keep it simple
- Short training videos
- Public communication



## Syringe Exchange Programs (SEPs)

- Provision of new syringes and associated paraphernalia
- Well-established public health intervention
- Reduces rates of bloodborne infections associated with injection drug use
- Potential entry point for other services, linkages to care
- Reduce disease and disability
- Cost-effective
- Coordinated Syringe Exchange Program between Public Health and Behavioral Health



# Syringe Exchange Programs in California: An Overview

- Syringe exchange programs (SEPs) have been operating in California since the late 1980s, providing sterile syringes, collecting used ones, and acting as a point of access for health education and help for people who inject drugs
- There are more than 40 SEPs operating in California
- California SEPs operate in a variety of settings, including health clinics, mobile vans, storefronts and churches



**Alameda**  
**City of Sacramento**  
**City of San Diego**  
**Contra Costa**  
**Del Norte**  
**Fresno\***  
**Humboldt**  
**Kings**  
**Lake**  
**Los Angeles**  
**Marin**  
**Mendocino**  
**Merced**  
**Monterey**  
**Orange**  
**Plumas**  
**San Francisco**  
**San Luis Obispo**  
**San Mateo**  
**Santa Barbara**  
**Santa Clara**  
**Santa Cruz**  
**Shasta**  
**Sonoma**  
**Ventura**  
**Yolo**

## Counties & Cities with Authorized Syringe Exchange Programs (SEPs) in California.

*As of May 2018*



\* **Note:** The Fresno County Board of Supervisors authorized its local SEP in 2008 and rescinded its authorization in 2011. The **Fresno Needle Exchange** operates under the provisions of California Health and Safety Code Section 11364.1, which allows physicians to dispense syringes without a prescription.





# Syringe Exchange Programs Overview

- Since 1999 the California State Legislature has acted several times to expand access to sterile syringes through SEPs authorized by local government
- Most syringe exchange programs currently operating in California have been authorized by their county boards of supervisors or city councils



## Research in California: the CalSEP Study<sup>1</sup>

- The California Syringe Exchange Program (CalSEP) study, funded by the Centers for Disease Control and Prevention, examined the impact of syringe exchange legislation over several years in sixteen counties
- Researchers found that for most SEP clients, the SEPs were the only contact the clients had with healthcare or social services of any kind. Of 10 recommended preventive services received by SEP clients, 76% were received exclusively from SEPs



## Other Studies

- A study of 81 cities around the world compared HIV infection rates among those who use intravenous drugs in cities that had SEPs verses cities that did not
- In the 29 cities with SEPs, HIV infection rates decreased by an average of 5.8% per year<sub>2</sub>
- In the 52 cities without SEPs, HIV infection rates increased by 5.9% per year
- Researchers studying a San Francisco SEP found that the program did not encourage or increase drug use<sub>3</sub>



# CDPH Office of AIDS Syringe Exchange Certification

- In 2012, Assembly Bill (AB) 604, (Skinner, Chapter 744, Statutes of 2011) granted authority to the California Department of Public Health (CDPH), Office of AIDS (OA) to Provide Certification for SEPs for Local Health Departments
- Applicants may apply directly to CDPH/OA for authorization, rather than through their local county or city government
- Applicants must provide the following basic services
  - Referrals to drug treatment
  - Mental health services
  - Blood borne pathogen testing and linkage to care
  - Funding to provide the services
  - Data collection



## CDPH Office of AIDS Syringe Exchange Certification

- CDPH/OA must post information about the application on its website and a 45-day public comment period
- During this period CDPH/OA must consult with local law enforcement and the local health officer of the proposed location
- Provide linkage to a clearing house that supplies injection equipment and Narcan
- SEP certification is granted for two years



## Opportunities, Engagement, and Interventions

- Building relationships and trust over time
- Provide education and harm reduction
- Provide Narcan and training to the targeted population
- Engage targeted populations to care for their personal health and link them to other services offered such as
  - Public Health, Behavioral Health, Social Services, and Wild Iris
  - Testing for HIV and Hepatitis C
  - Linkage to care and treatment



# Testing for Blood Borne Pathogens

- Mono County Health Department provides free screening services for HIV and Hepatitis C
- Rapid testing (results in 20 mins)
- Provide linkage to care at Mammoth Hospital for confirmatory testing
- Provide referrals to specialty treatment
- Direct warm hand offs to Behavioral Health



# Outreach Projects

- Mono County Public Health and Behavioral Health Departments currently conduct wellness fairs in communities at risk of increasing intravenous drug use
- Services offered
  - Blood borne pathogen screening
  - Education and harm reduction
  - Immunization education
  - Linkage to services





## SB-212 (Jackson): Solid waste: pharmaceutical and sharps waste stewardship program

- Creates a comprehensive statewide system to ensure that pharmaceutical and sharps waste is properly handled, transported, and disposed.
- Local health departments support efforts to reduce accidental injury, poisoning, and exposure caused by pharmaceutical and sharps waste among California residents.
- Per California Department of Resources Recycling and Recovery (CalRecycle)
  - 936 million needles are used by self-injecting Californians each year.
  - 31 percent of self-injecting Californians dispose of needles using conventional trash receptacles, posing a public health hazard from accidental needle sticks



## SB-212 (Jackson)

- Per US Food and Drug Administration (FDA)
  - Keeping medicines and pharmaceutical products after they are no longer needed creates an unnecessary health risk in the home, especially in homes where children are present.
  - Accidental exposure to medications in the home is a leading source of unintentional poisoning among children in the United States, resulting in approximately 60,000 visits to the emergency room and 450,000 calls to poison control centers.
- Per US Geological Survey
  - A significant number of streams and water supplies in the United States contain measurable concentrations of prescription and non-prescription drugs, steroids, and reproductive hormones due to improper disposal of such products, posing a potential negative impact to human health.



## Ancillary Efforts

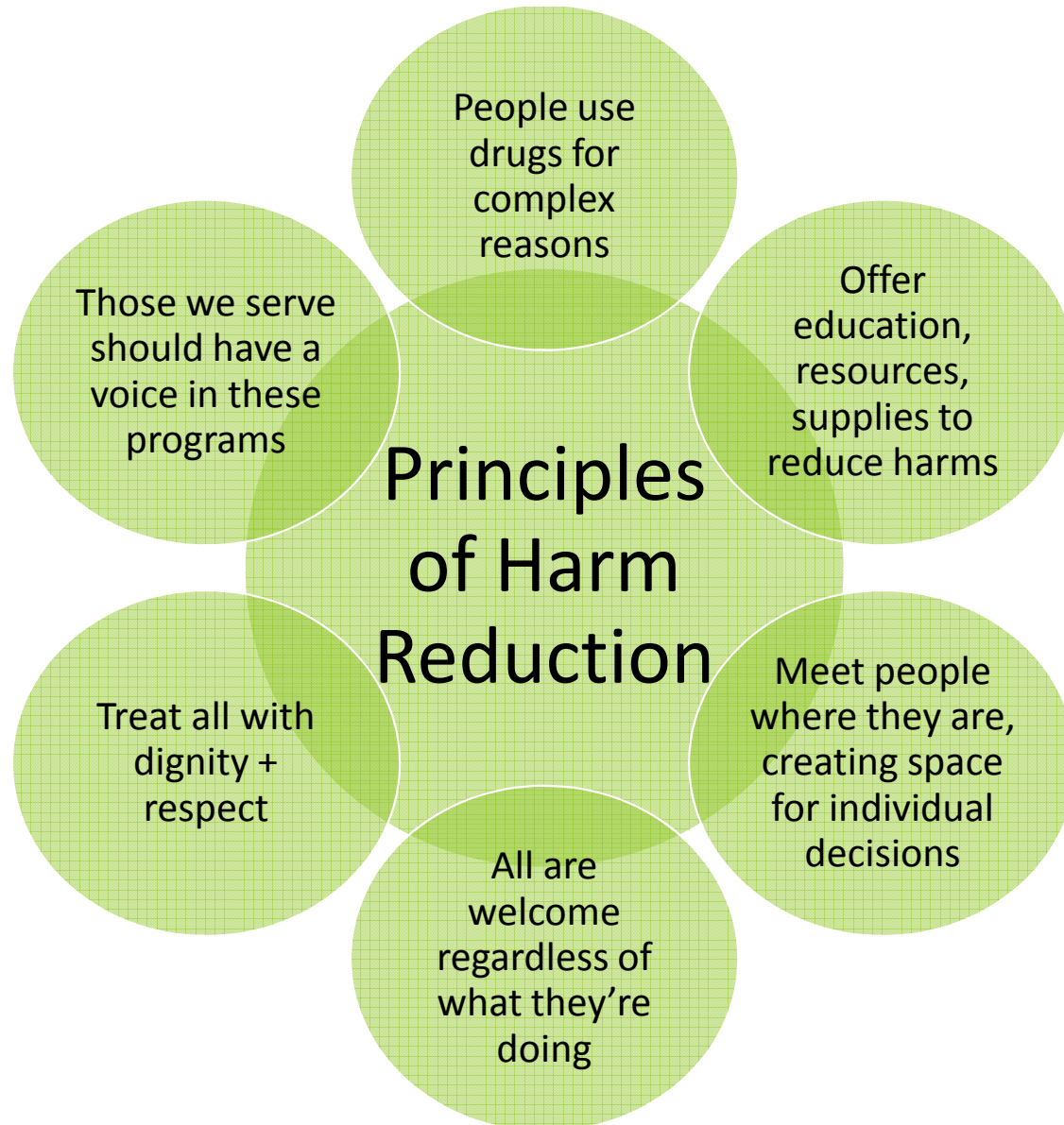
- Encourage local pharmacists and healthcare providers to embrace harm reduction interventions
- Pharmacists allowed to sell syringes without prescription but not required.
  - Few local pharmacists seem willing to do this
  - Mixed messaging, apparent ambivalence from CA Board of Pharmacy
- Pharmacists may sell intranasal naloxone OTC after completing a short online course, but few seem to be doing so
- Encourage local healthcare providers to prescribe Narcan to patients on opioids and to consider obtaining buprenorphine waiver



# Behavioral Health + Harm Reduction

Keeping people safe. Keeping people alive.





# Principles of Harm Reduction

People use drugs for complex reasons

Those we serve should have a voice in these programs

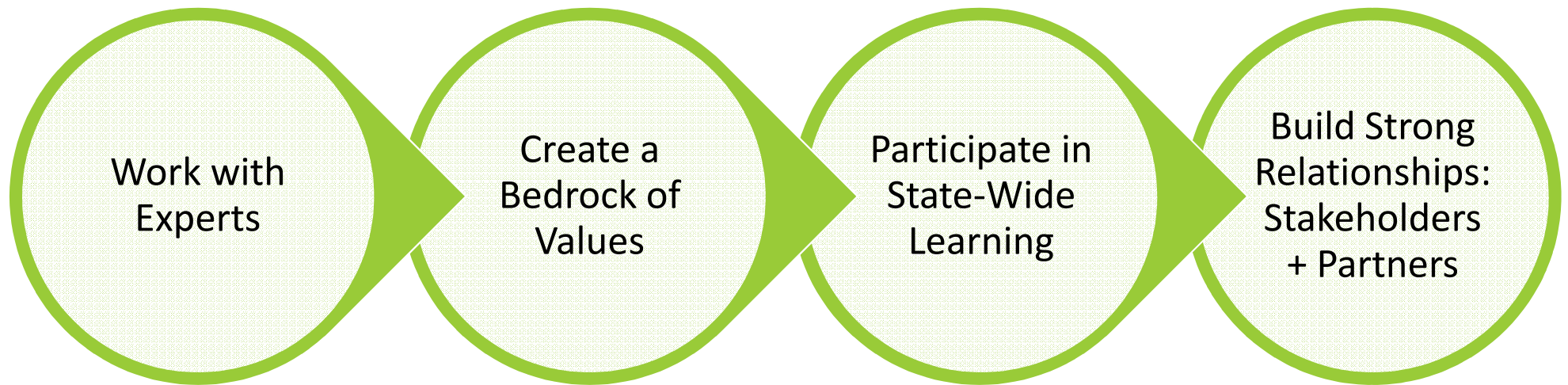
Offer education, resources, supplies to reduce harms

Meet people where they are, creating space for individual decisions

All are welcome regardless of what they're doing

Treat all with dignity + respect

# Integrating the Harm Reduction Principles



# Working with Experts + Creating a Bedrock of Values

## External Experts

- Dena Loijos from Santa Cruz
- Harm Reduction Coalition

## Community Trainings

- Principles of Harm Reduction
- Naloxone administration

## Interagency Coordination

- Bring all the moving parts together

## Visioning for Service Delivery

- Embrace a shared bedrock of values for how we will work with people who use drugs



# Participating in State-Wide Learning: MAT in the Mono County Jail

Received grant to join state-wide learning collaborative

- Goal: Implement MAT in Mono County Jail
- Why do we need MAT at the jail?

First learning session: August 14th

- Key take-aways

Impact on MAT County-Wide

- Identify providers
- Interaction with Drug Medi-Cal Contract





# Building Strong Relationships

## Stakeholders + Community Partners

- Ensure we are meeting the needs of those we are serving
- Work together to change the narrative about people who use drugs
- Create space for the voice of people who use drugs in our program designs
- Leveraging experts to ensure we are all working toward shared goals
- Offering training to all community partners
- Meeting people where they are



# Resources

- Center for Disease Control and Prevention
  - <https://www.cdc.gov/drugoverdose/opioids/index.html>
- National Association of County & City Health Officials (NACCHO)
  - <https://www.naccho.org/programs/community-health/injury-and-violence/opioid-epidemic>
- California Opioid Overdose Surveillance Dashboard
  - <https://discovery.cdph.ca.gov/CDIC/ODdash/>
- California Department of Public Health Naloxone Grant Program
  - <https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/SACB/Pages/NaloxoneGrantProgram.aspx>
- Office of AIDS Syringe Exchange Program
  - [https://www.cdph.ca.gov/Programs/CID/DOA/Pages/OA\\_prev\\_sep.aspx](https://www.cdph.ca.gov/Programs/CID/DOA/Pages/OA_prev_sep.aspx)
- SB-212 (Jackson) Solid waste: pharmaceutical and sharps waste stewardship
  - [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB212](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB212)



## SEP Research Studies

<sup>1</sup> Bluthenthal, R. Syringe Exchange Program Diversity and Correlates of HIV Risk: Preliminary results from the California Syringe Exchange Program Study. Presentation to the California Department of Health Services, Office of AIDS, April 22, 2003. Sacramento, CA.

<sup>2</sup> Hurley, S.F., Jolley, D.J., Kaldor, J.M. Effectiveness of needle-exchange programmes for prevention of HIV infection. *Lancet* 1997; 349:1797-1800.

<sup>3</sup> Watters, J.K., Estilo, M.J., Clark, G.L., et al. Syringe and needle exchange as HIV/AIDS prevention for injection drug users. *Journal of the American Medical Association* 1994; 271:115-120.



# Questions or Comments?

## Mono County Health Department

- Sandra Pearce, MS, RN, PHN, CNS  
760.924.1818  
[spearce@mono.ca.gov](mailto:spearce@mono.ca.gov)
- Tom Boo, MD, FAAFP, DTM&H  
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- Bryan Wheeler, PHN  
760.924.1835  
[bwheeler@mono.ca.gov](mailto:bwheeler@mono.ca.gov)

## Mono County Behavioral Health

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## Mono County Sheriff's Office

- Sheriff Ingrid Braun  
760.932.7549  
[ibraun@monosheriff.org](mailto:ibraun@monosheriff.org)

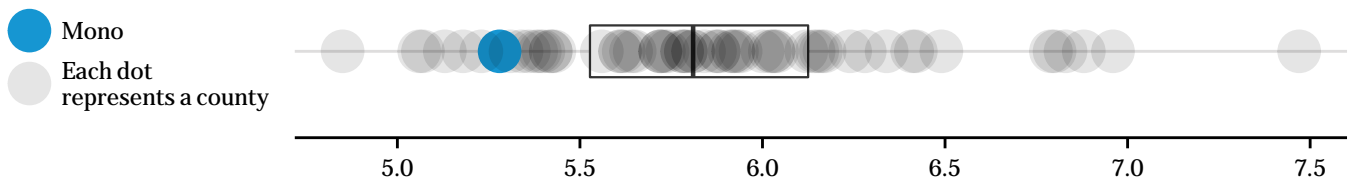


## County Estimates of Opioid Use Disorder and Treatment Needs in California

### California County Spotlight: Mono County, February 19, 2018

- In 2016, an estimated **5.3** percent of people ages 12 and over (**623** people) in **Mono** had an opioid use disorder (OUD).
- The county had **1** opioid overdose death in 2016.
- Assuming 20% of people with OUD seek treatment, there are **72** to **94** people with OUD in the county without local access to opioid agonist treatment (i.e. buprenorphine or methadone). Since there are no regulatory barriers to naltrexone and counseling treatments, this snapshot focuses on agonists.

### Percent of the Population 12 Years and Older with Opioid Use Disorder in California Counties, Highlighting Mono<sup>a</sup>



County Measure	
All opioid overdose deaths, 2016 <sup>b</sup>	<b>1</b> death; <b>7.2</b> per 100,000 people
Buprenorphine prescriptions, 2016 <sup>b</sup>	<b>126</b> prescriptions; <b>9.0</b> per 1,000 people
Methadone patients at OTPs, 2016 <sup>c</sup>	<b>0</b> methadone patients at OTPs
Buprenorphine-waivered prescribers, February 2018 estimate <sup>d</sup>	<b>1</b> prescriber with a 30-patient limit, <b>0</b> prescribers with a 100-patient limit, <b>0</b> prescribers with a 275-patient limit; up to <b>5</b> prescribers from out of county prescribe to patients in the county.
Estimated count and rate of OUD <sup>e</sup>	<b>623</b> people with OUD; <b>5.3</b> per 100 people
Estimated number of people with OUD who could be treated, given current buprenorphine and methadone treatment capacity <sup>f</sup>	Between <b>31</b> and <b>53</b> people could be treated given current capacity, depending on how many patients each buprenorphine prescriber treats.
Estimated treatment gap, assuming 20% of people with OUD seek treatment <sup>f</sup>	Between <b>72</b> and <b>94</b> people are likely to seek treatment but cannot get it, based on current opioid agonist treatment capacity.
Count and percent of prescribers with a buprenorphine waiver <sup>d</sup>	There are <b>61</b> prescribers in the county, and <b>1.6%</b> have a buprenorphine waiver.
Strategies to Meet Demand for Treatment, Assuming 20% of People With OUD Seek Treatment	
<b>Increase prescribers:</b> <sup>g</sup> Adding at least <b>1</b> prescriber with a 30-patient limit would double the county's waived prescribers and fill <b>9.4%</b> of the treatment gap (if all prescribers treat an average of 9 patients each) or <b>20.9%</b> of the treatment gap (if the new prescriber treats an average of 15 patients and the current prescriber treats half of their maximum waiver capacity).	
<b>Increase resources:</b> Work with health plans for prescriber outreach; add MAT in health centers, jails, EDs, hospitals, maternity practices, and existing addiction treatment programs; market MAT telehealth to the public; work with opioid treatment programs to add med units and spokes; work with county Alcohol and Drug departments to coordinate counseling and other services; expand MAT services through the Drug Medi-Cal waiver; engage with local opioid safety coalition.	

## Data sources and notes:

<sup>a</sup> Each dot in this chart shows the estimated rate of OUD among those 12 years and older in each county. The featured county's rate is shown as a blue dot; other California county rates are shown as dots. The boxplot in this chart shows the spread and average of the rates in all counties. The box in the boxplot has a middle line that shows the median rate across counties. The ends of the box show the rate at the lowest quarter of counties and the highest quarter of counties.

<sup>b</sup> California Opioid Overdose Surveillance Dashboard. Buprenorphine prescriptions are by patient location and exclude Butrans, which is generally prescribed for pain.

<sup>c</sup> Substance Abuse and Mental Health Services Administration (SAMHSA) 2016 Opioid Treatment Program (OTP) directory.

<sup>d</sup> Estimates based on DEA Active Controlled Substances Act (CSA) Registrants database and Controlled Substance Utilization Review and Evaluation System (CURES) data as well as several data sources; see methods below and the appendix methodology.

<sup>e</sup> Estimates based on National Survey on Drug Use and Health (NSDUH) and other data sources; see methods below and the appendix methodology. Estimates of OUD involve prescription opioids and/or heroin.

<sup>f</sup> Estimates based on DEA CSA Registrants database and a range of estimated patients per prescriber; see methods below and the appendix methodology. Treatment capacity and treatment gap estimates are rounded up to the nearest integer.

<sup>g</sup> Estimates based on OUD prevalence estimates, DEA CSA Registrants database, and a range of estimated patients per prescriber; see methods below and the appendix methodology. Prescriber estimates are rounded up to the nearest integer. The treatment gap could also be addressed by encouraging currently waived prescribers to increase the number of patients treated and/or increasing their waiver limit.

## Summary of Methods

This fact sheet presents data from the California Opioid Overdose Surveillance Dashboard and other data sources, as well as county-level estimates based on new analyses by researchers at the Urban Institute ([www.urban.org](http://www.urban.org)). To estimate the demand for treatment, we calculated county rates of OUD, starting with estimates of past-year abuse or dependence on nonmedical use of prescription pain relievers for 26 substate regions in California from the NSDUH (Lipari et al. 2017), and adjusting these estimates for additional NSDUH estimates of heroin use disorder and recent trends in OUD. We then used regression models to predict county-level OUD rates as a function of explanatory variables that have an empirical relationship with OUD (Alzeer et al. 2017; Paulozzi et al. 2017). We tested a variety of models that produced similar patterns of results in predicting OUD rates. County-level estimates of the population from the Centers for Disease Control and Prevention (CDC) were applied to these rates to create county-level counts, which were adjusted to match the NSDUH substate OUD counts. To estimate buprenorphine MAT capacity, we drew on the DEA Active Controlled Substances Act (CSA) Registrants database, which includes all DATA-waived buprenorphine prescribers. We mapped prescriber addresses to county using a ZIP code to county crosswalk from UDS Mapper and the Census Bureau, and for ZIP codes that map to more than one county, we geocoded addresses through the Google Geocoding API. In counties where the number of prescribers from California's CURES data was larger than our estimate based on DEA data, we adjusted the estimated number of waived prescribers, preserving the distribution of waiver limits from the DEA data. We calculated county buprenorphine treatment capacity using a lower bound of estimated average capacity in California of nine patients per provider (Thomas et al. 2017) and an upper bound equal to half of a prescriber's estimated maximum patient waiver limit. Small adjustments for patient capacity related to out-of-county buprenorphine prescribers and MAT capacity related to methadone slots at OTPs in the county were added. To compute the treatment gap, i.e. the number of individuals with OUD who are likely to seek treatment but who do not have access to MAT in their county, we assumed that 20% of individuals with OUD are likely to seek MAT (WHO 2013; Wu, Zhu, and Swartz 2016). We then calculated the treatment gap by subtracting the low and high estimated range of the treatment capacity in each county from the estimated number seeking treatment. We computed the estimated number of additional 30-waivered buprenorphine prescribers needed per county to achieve capacity to fill the estimated treatment gap. We present strategies to meet demand for treatment, showing a range using lower and upper estimates of the treatment gap and the treatment capacity. In cases where the number of new prescribers needed would be more than double the number of current buprenorphine prescribers, we present an alternative, more feasible strategy of doubling the number of prescribers. In these cases, we present the percent of the treatment gap that would be filled.

For more information on the methods used in producing these estimates, see the methodological appendix at:

[www.urban.org/research/publication/county-level-estimates-opioid-use-disorder-and-treatment-needs-california](http://www.urban.org/research/publication/county-level-estimates-opioid-use-disorder-and-treatment-needs-california).

**About the Authors** Lisa Clemans-Cope is a senior health economist and Marni Epstein is a research assistant in the Urban Institute's Health Policy Center. Doug Wissoker is a senior fellow in the Urban Institute's Statistical Methods Group. Contact: Lisa Clemans-Cope at [lclemans@urban.org](mailto:lclemans@urban.org).

**Suggested Citation:** Lisa Clemans-Cope, Marni Epstein, and Doug Wissoker. County-Level Estimates of Opioid Use Disorder and Treatment Needs in California. The Urban Institute. February 19, 2018.



**OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS**

**REGULAR AGENDA REQUEST**

Print

**MEETING DATE** August 21, 2018

**Departments: Public Health**

**TIME REQUIRED** 10 minutes

**PERSONS  
APPEARING  
BEFORE THE  
BOARD** Tom Boo

**SUBJECT** CDPH Naloxone Distribution Grant

**AGENDA DESCRIPTION:**

(A brief general description of what the Board will hear, discuss, consider, or act upon)

Naloxone Distribution Grant from the California Department of Public Health (CDPH) for the purchase of Narcan products for the emergency treatment of opioid overdose.

**RECOMMENDED ACTION:**

Approve County entry into the Naloxone Distribution Grant Agreement #16-11059 with CDPH and authorize the Public Health Director's signature to execute said contract on behalf of the County, including forms CDPH 1229 and Contractor Certification Clause (CCC).

**FISCAL IMPACT:**

There is no fiscal impact to the County General Fund. The grant would provide the Mono County Health Department with \$506.25 for administrative costs and \$10,125.00 for Narcan Products (270 doses).

**CONTACT NAME:** Sandra Pearce

**PHONE/EMAIL:** 760-924-1818 / spearce@mono.ca.gov

**SEND COPIES TO:**

Sandra Pearce

**MINUTE ORDER REQUESTED:**

YES  NO

**ATTACHMENTS:**

Click to download
<input type="checkbox"/> <a href="#">BOS Staff Report</a>
<input type="checkbox"/> <a href="#">Naloxone Grant</a>

**History**

Time

Who

Approval

8/17/2018 6:47 AM	County Administrative Office	Yes
8/16/2018 9:39 AM	County Counsel	Yes
8/16/2018 6:16 PM	Finance	Yes





# MONO COUNTY HEALTH DEPARTMENT

## Public Health

P.O. BOX 476, BRIDGEPORT, CA 93517 PHONE (760) 932-5580 • FAX (760) 932-5284  
P.O. BOX 3329, MAMMOTH LAKES, CA 93546 PHONE (760) 924-1830 • FAX (760) 924-1831

DATE: August 21, 2018  
TO: Honorable Board of Supervisors  
FROM: Sandra Pearce, Public Health Director  
SUBJECT: **Naloxone Distribution Grant Agreement # 16-11059**

### **Recommendation:**

Approve County entry into the Naloxone Distribution Grant Agreement #16-11059 and authorize the Public Health Director's signature to execute said contract on behalf of the County, including forms CDPH 1229 and Contractor Certification Clause (CCC).

### **Discussion:**

This is an intervention discussed in the presentation, Opioid Epidemic and Harm Reduction, given on August 21, 2018. The purpose of the naloxone distribution grant is to reduce the rate of fatal overdose from opioid drugs including heroin and prescription opioids. The grant would provide a one-time allocation of intranasal naloxone to local health jurisdictions, specifically 270 doses for Mono County. Mono County Public Health and Behavioral Health will collaborate to distribute naloxone at our offices, and through partner agencies and organizations in order to put it in the hands of people or households who may be at risk for opioid overdose. This process will include working with local entities such as Social Services, Law Enforcement, and First Responders to establish a naloxone distribution system, effectively providing medication and training to those distributing and receiving the naloxone.

### **Fiscal Impact:**

There is no fiscal impact to the County General Fund.

The agreement will provide Mono County Health Department with \$506.25 for administrative costs and \$10,125.00 for Narcan Products (270 doses).

For questions about this item, please call Dr. Tom Boo at (760) 924-1828 or Sandra Pearce at (760) 924-1818.

Submitted by:

Sandra Pearce, Public Health Director

**SAFE AND ACTIVE COMMUNITIES BRANCH  
NALOXONE DISTRIBUTION GRANT PROGRAM**

**Awarded By**

**THE CALIFORNIA DEPARTMENT OF PUBLIC HEALTH, hereinafter “Department”**

**TO**

**Mono County Public Health, hereinafter “Grantee”**

**Implementing the project, “NALOXONE DISTRIBUTION,” hereinafter “Project”**

**GRANT AGREEMENT NUMBER 16-11059**

The Department awards this Grant and the Grantee accepts and agrees to use the Grant funds as follows:

**AUTHORITY:** The Department has authority to grant funds for the Project under Health and Safety Code, Section 1179.80.

**PURPOSE:** The Department shall provide a grant to and for the benefit of the Grantee; the purpose of the Grant is to reduce the rate of fatal overdose from opioid drugs including heroin and prescription opioids as specified in Exhibit A, Grant Application, which is hereby incorporated to serve as the Project.

**GRANT AMOUNT:** The maximum amount payable under this Grant shall not exceed \$10,406.25 dollars.

**TERM OF GRANT:** The term of the Grant shall begin on April 1, 2018, or upon approval of this grant, and terminates on June 30, 2019. No funds may be requested or invoiced for work performed or costs incurred after June 30, 2019.

**PROJECT REPRESENTATIVES.** The Project Representatives during the term of this Grant will be:

<b>California Department of Public Health</b>	<b>Mono County Public Health</b>
Stacy Alamo Mixson, MPH	Thomas Boo
PO Box 997377, MS 7214	437 Old Mammoth Rd Suite Q, PO Box 3329
Sacramento, CA 95899-7377	Mammoth Lakes, CA 93546
Phone: 916.552.9852	Phone: 760 924-1828
Fax: 916.552.9810	Fax: 760 924-1831
E-mail: Stacy.Alamo@cdph.ca.gov	E-mail: tboo@mono.ca.gov

Direct all inquiries to:

<b>California Department of Public Health, Safe and Active Communities Branch</b>	<b>Mono County Public Health</b>
Attention: Nancy Bagnato, MPH	Attention: Thomas Boo
PO Box 997377, MS 7214	437 Old Mammoth Rd Suite Q, PO Box 3329
Sacramento, CA 95899-7377	Mammoth Lakes, CA 93546
Phone: 916.552.9846	Phone : 760 924-1828
Fax: 916.552.9810	FAX : 760 924-1831
E-mail: Nancy.Bagnato@cdph.ca.gov	E-mail : tboo@mono.ca.gov

Either party may change its Project Representative upon written notice to the other party.

**STANDARD PROVISIONS.** The following exhibits are attached and made a part of this Grant by this reference:

Exhibit A GRANT APPLICATION ([The Grant Application provides the description of the project and associated cost](#))

Exhibit B BUDGET DETAIL AND PAYMENT PROVISIONS

Exhibit C STANDARD GRANT CONDITIONS

Exhibit D REQUEST FOR APPLICATIONS  
Including all the requirements and attachments contained therein

Exhibit E ADDITIONAL PROVISIONS

**GRANTEE REPRESENTATIONS:** The Grantee(s) accept all terms, provisions, and conditions of this grant, including those stated in the Exhibits incorporated by reference above. The Grantee(s) shall fulfill all assurances and commitments made in the application, declarations, other accompanying documents, and written communications (e.g., e-mail, correspondence) filed in support of the request for grant funding. The Grantee(s) shall comply with and require its contractors and subcontractors to comply with all applicable laws, policies, and regulations.

IN WITNESS THEREOF, the parties have executed this Grant on the dates set forth below.

Executed By:

Date: \_\_\_\_\_

\_\_\_\_\_  
Sandra Pearce  
Public Health Director  
Mono County Public Health  
437 Old Mammoth Rd  
Mammoth Lakes, CA 93546

Date: \_\_\_\_\_

\_\_\_\_\_  
Marshay Gregory, Chief  
Contracts and Purchasing Services Section  
California Department of Public Health  
1616 Capitol Avenue, Suite 74.317  
P.O. Box 997377, MS 1800- 1804  
Sacramento, CA 95899-7377

# CDPH Naloxone Grant Program Application

Response ID:103 Data

## 1. Naloxone Distribution Projects

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**California Department of Public Health  
Safe and Active Communities Branch  
Naloxone Grant Program**

**REQUEST FOR APPLICATIONS (RFA #16-10967):  
Naloxone Distribution Projects**

### Application

**Please complete and submit this application for the Naloxone Grant Program as soon as possible, but no later than May 1, 2017 in order to initiate the development of a grant agreement with CDPH.**

Please send questions by April 17, 2017 to [ngp@cdph.ca.gov](mailto:ngp@cdph.ca.gov).

Please provide the following information:

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#### 1. Local Health Department

Mono County HD

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#### 2. Health Officer Information

Name : Thomas Boo

Phone Number : 760 924-1828

E-mail Address : [tboo@mono.ca.gov](mailto:tboo@mono.ca.gov)

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#### 3. Name of Grantee (Legal Business Name)

Mono County Health Department

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#### 4. Principal Investigator (PI) Information

Name : Thomas Boo

Address 1 : 437 Old Mammoth Rd

Address 2 : Suite Q, PO Box 3329

City, Zip : Mammoth Lakes, 93546

Phone : 760 924-1828

FAX : 760924-1831

E-mail : [tboo@mono.ca.gov](mailto:tboo@mono.ca.gov)

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#### New Analysis Question

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#### 5. Person to Direct Inquiries to:

Name : Thomas Boo

Address 1 : 437 Old Mammoth Rd

Address 2 : Suite Q, PO Box 3329

City, Zip : Mammoth Lakes, 93546

Phone : 760 924-1828

FAX : 760 924-1831

E-mail : [tboo@mono.ca.gov](mailto:tboo@mono.ca.gov)

## 6. Person Authorized to Sign the Final Grant Agreement on Behalf of Your Agency

Name : Sandra Pearce  
Title : Public Health Director

## 7. Your Organization's DEA Number

FB1625358

## 8. Address associated with your DEA Number (This address will be used for shipment of naloxone product.)

Address 1 : Toiyabe Indian Health Project  
Address 2 : 250 SeeVee Ln  
City, Zip : Bishop, CA 93514

## 2. Naloxone Distribution Projects

Please refer to the Naloxone Grant Program Local Health Department Allocation Chart included as Attachment A in the Naloxone Grant Program Request for Applications (RFA) to determine the amount of grant product and funding being offered to your organization.

The allocation available for administrative costs, if accepted, may be used to cover costs of conducting outreach and assessment of local entities, receipt and distribution of naloxone products, reporting, or other activities related to the grant implementation. However, LHDs may elect to opt out of receiving the administrative allocation and instead apply that dollar amount to the purchase of additional naloxone product.

## 9. Funding amount you are requesting for the purchase of naloxone product (Narcan nasal spray)

\$10,125

## 10. Funding amount you are requesting for administrative costs

\$506.25

## 11. How would you like to have your allocation of naloxone product delivered to you (at no cost)?

In two shipments; receiving half in a second shipment in June, 2018

## 12. Understanding that you may need to conduct further outreach to identify those local entities that are ready and qualified to distribute/administer naloxone, who do you see as potential recipients *at this time*?

Law Enforcement  
Emergency Medical Services  
Other: Indian Health Service health care program and County Behavioral Health

**\*In your distribution plan, due to CDPH/SACB 60 days after the grant agreement is executed, you will list the names and types of local entities you select to receive the naloxone product.**

## 3. Naloxone Distribution Projects

Syringe exchange/harm reduction programs that have established naloxone distribution systems in place (as defined in the RFA) are a priority for the distribution of naloxone due to the high risk population that accesses these services.

## 13. Do you have a syringe exchange/harm reduction program in your jurisdiction?

NO

**If YES, do you anticipate any challenges in working with the syringe exchange/harm reduction program in the distribution of**

naloxone?

If YES, please describe:

14. At this time, do you anticipate any challenges to implementing any of the activities required by the grant?

Yes

15. If YES, please describe:

I think there are inherent challenges in collaborating with already busy organizational partners but I believe there is sufficient interest in harm reduction that we will be successful.

#### 4. Naloxone Distribution Projects

By submitting this application, your organization is agreeing to:

1. Conduct outreach to identify local entities within their health jurisdiction that already have a naloxone distribution system in place and have the capacity to efficiently and effectively provide naloxone and training to first responders (as described in section C, number 2 in this RFA).<sup>\*</sup> Local entities may include harm reduction/syringe exchange programs, substance use disorder treatment providers, homeless programs, jails, emergency services providers, law enforcement, and others.

<sup>\*</sup>If a LHD identifies the need to establish a new naloxone distribution system(s) in their jurisdiction, the LHD must ensure that any new naloxone distribution system meets the definition provided in section C, number 3 in this RFA prior to distributing naloxone.

2. Select local entities to receive naloxone based on the level of risk of overdose among the population(s) they serve and need for naloxone (Narcan) product.

*Priority consideration is to be given to harm reduction/syringe exchange programs, if present within the health jurisdiction. (A list of California harm reduction/syringe exchange programs that currently have a naloxone distribution system in place is included as Attachment B).*

3. Submit a naloxone distribution plan to CDPH/SACB for approval by June 16, 2017, or within 60 days of receiving CDPH final approval of the grant agreement. The plan will be submitted on-line and must include the names of selected local entities, the type(s) of services they provide, a description of the target population(s) they serve, and the number of naloxone product they will receive. CDPH will provide a standardized distribution plan template.

4. Begin distributing naloxone product to selected local entities by July 16, 2017, or within 90 days of receiving CDPH final approval of the grant agreement. All naloxone must be distributed to selected local entities by September 30, 2018.

5. Document and submit a final report to CDPH/SACB by April 1, 2019, on the distribution of naloxone for accountability and evaluation purposes.

6. Enter into a Standard Grant Agreement with CDPH. Attachment C includes a grant agreement template, Budget Detail and Payment Provisions, Standard Grant Conditions, and Additional Provisions.

Thank you!

Please hit the SUBMIT button.

## 5. Thank You!

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Please submit any questions to [ngp@cdph.ca.gov](mailto:ngp@cdph.ca.gov).

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### Confirmation Email

Mar 13, 2018 15:15:52 Success: Email Sent to: NGP@cdph.ca.gov

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### Confirmation Email

Mar 13, 2018 15:15:54 Success: Email Sent to: tboo@mono.ca.gov

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**Exhibit B**  
Budget Detail and Payment Provisions

**1. Invoicing and Payment**

- A. Upon final approval of the Grant Agreement, and upon receipt and approval of an invoice, the State agrees to reimburse the Grantee for the specified Administrative Allocation amount in accordance with the costs specified herein.
- B. The invoice shall include the Grant Number and shall be submitted in triplicate upon final approval of the Grant Agreement:

Nancy Bagnato, MPH  
California Department of Public Health  
Safe and Active Communities Branch  
PO Box 997377, MS 7214  
Sacramento, CA 95899-7377

C. Invoices shall:

- 1) Be prepared on Grantee letterhead. If the invoice is not on produced letterhead, the invoice must be signed by an authorized official, employee or agent certifying that the expenditures claimed represent activities performed and are in accordance with Exhibit A Grant Application under this Grant.
- 2) Bear the Grantee's name as shown on the Grant.
- 3) Identify the billing and/or performance period covered by the invoice.
- 4) Itemize costs for the billing period in the same or greater level of detail as indicated in this Grant. Subject to the terms of this Grant, reimbursement may only be sought for those costs and/or cost categories expressly identified as allowable and approved by CDPH.

**2. Budget Contingency Clause**

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

**3. Prompt Payment Clause**

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

**4. Amounts Payable**

A. The amounts payable shall not exceed:

- 1) \$10,125.00 for Narcan Products for the budget period of 04/01/18 through 06/30/19.
- 2) \$506.25 for Administrative Costs for the budget period of 04/01/18 through 06/30/19.

**Exhibit B**  
Budget Detail and Payment Provisions

- B. Payment allocations shall be made in accordance with the amounts listed in Paragraph 4.A., above. Pursuant to the Budget Act of 2016, this is one-time funding available for expenditure through June 30, 2019. The Grantee will only receive reimbursement for Administrative Costs, if requested. The Grantee will receive direct distribution of Narcan Products in the amount stated and no invoicing will be required.

**5. Timely Submission of Final Invoice**

- A. A final undisputed invoice shall be submitted for payment no more than thirty (30) calendar days following the expiration or termination date of this Grant, unless a later or alternate deadline is agreed to in writing by the program grant manager. Said invoice should be clearly marked "Final Invoice", indicating that all payment obligations of the State under this Grant have ceased and that no further payments are due or outstanding.
- B. The State may, at its discretion, choose not to honor any delinquent final invoice if the Grantee fails to obtain prior written State approval of an alternate final invoice submission deadline.

## EXHIBIT C

### STANDARD GRANT CONDITIONS

1. **APPROVAL:** This Grant is of no force or effect until signed by both parties and approved by the Department of General Services, if required. The Grantee may not commence performance until such approval has been obtained
2. **AMENDMENT:** No amendment or variation of the terms of this Grant shall be valid unless made in writing, signed by the parties, and approved as required. No oral understanding or Agreement not incorporated in the Grant is binding on any of the parties. In no case shall the Department materially alter the scope of the Project set forth in Exhibit A.
3. **ASSIGNMENT:** This Grant is not assignable by the Grantee, either in whole or in part, without the written consent of the Grant Manager in the form of a written amendment to the Grant.
4. **AUDIT:** Grantee agrees that the Department, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to this Grant. Grantee agrees to maintain such records for a possible audit for a minimum of three (3) years after final payment or completion of the project funded with this Grant, unless a longer period of records retention is stipulated. Grantee agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Grantee agrees to include a similar right of the State to audit records and interview staff in any subcontract related to the project.
5. **CONFLICT OF INTEREST:** Grantee certifies that it is in compliance with all applicable state and/or federal conflict of interest laws.
6. **INDEMNIFICATION:** Grantee agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the project, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Grantee in the performance of any activities related to the Project.
7. **FISCAL MANAGEMENT SYSTEMS AND ACCOUNTING STANDARDS:** Grantee agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit tracing of all grant funds to a level of expenditure adequate to establish that such funds have not been used in violation of any applicable state or federal law, or the provisions of this Grant. Grantee further agrees that it will maintain separate Project accounts in accordance with generally accepted accounting principles.
8. **GOVERNING LAW:** This Grant is governed by and shall be interpreted in accordance with the laws of the State of California.

- 9. INCOME RESTRICTIONS:** Grantee agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Grantee under this Grant shall be paid by the Grantee to the Department, to the extent that they are properly allocable to costs for which the Grantee has been reimbursed by the Department under this Grant.
- 10. INDEPENDENT CONTRACTOR:** Grantee, and its agents and employees of Grantee, in the performance of the Project, shall act in an independent capacity and not as officers, employees or agents of the Department.
- 11. MEDIA EVENTS:** Grantee shall notify the Department's Grant Manager in writing at least twenty (20) working days before any public or media event publicizing the accomplishments and/or results of the Project and provide the opportunity for attendance and participation by Department's representatives.
- 12. NO THIRD-PARTY RIGHTS:** The Department and Grantee do not intend to create any rights or remedies for any third- party as a beneficiary of this Grant or the project.
- 13. NOTICE:** Grantee shall promptly notify the Department's Grant Manager in writing of any events, developments or changes that could affect the completion of the project or the budget approved for this Grant.
- 14. PROFESSIONALS:** Grantee agrees that only licensed professionals will be used to perform services under this Grant where such services are called for.
- 15. RECORDS:** Grantee certifies that it will maintain Project accounts in accordance with generally accepted accounting principles. Grantee further certifies that it will comply with the following conditions for a grant award as set forth in the Request for Applications (Exhibit D) and the Grant Application (Exhibit A).

  - A. Establish an official file for the Project which shall adequately document all significant actions relative to the Project;
  - B. Establish separate accounts which will adequately and accurately depict all amounts received and expended on this Project, including all grant funds received under this Grant;
  - C. Establish separate accounts which will adequately depict all income received which is attributable to the Project, especially including any income attributable to grant funds disbursed under this Grant;
  - D. Establish an accounting system which will adequately depict final total costs of the Project, including both direct and indirect costs; and,
  - E. Establish such accounts and maintain such records as may be necessary for the state to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations.
- 16. RELATED LITIGATION:** Under no circumstances may Grantee use funds from any disbursement under this Grant to pay for costs associated with any litigation between the Grantee and the Department.

**17. RIGHTS IN DATA:** Grantee and the Department agree that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work submitted under Exhibit A in the performance of the Project funded by this Grant shall be in the public domain. Grantee may disclose, disseminate and use in whole or in part, any final form data and information received, collected, and developed under this Project, subject to appropriate acknowledgment of credit to the Department for financial support. Grantee shall not utilize the materials submitted to the Department (except data) for any profit making venture or sell or grant rights to a third-party who intends to do so. The Department has the right to use submitted data for all governmental purposes.

**18. VENUE:** The Department and Grantee agree that any action arising out of this Grant shall be filed and maintained in the Superior Court, California. Grantee waives any existing sovereign immunity for the purposes of this Grant, if applicable.

**19. STATE-FUNDED RESEARCH GRANTS:**

- A. Grantee shall provide for free public access to any publication of a department-funded invention or department-funded technology. Grantee further agrees to all terms and conditions required by the California Taxpayer Access to Publicly Funded Research Act (Chapter 2.5 (commencing with Section 13989) of Part 4.5 of Division 3 of Title 2 of the Government Code).
- B. As a condition of receiving the research grant, Grantee agrees to the following terms and conditions which are set forth in Government Code section 13989.6 ("Section 13989.6"):
  - 1) Grantee is responsible for ensuring that any publishing or copyright agreements concerning submitted manuscripts fully comply with Section 13989.6.
  - 2) Grantees shall report to the Department the final disposition of the research grant, including, but not limited to, if it was published, when it was published, where it was published, when the 12-month time period expires, and where the manuscript will be available for open access.
  - 3) For a manuscript that is accepted for publication in a peer-reviewed journal, the Grantee shall ensure that an electronic version of the peer-reviewed manuscript is available to the department and on an appropriate publicly accessible database approved by the Department, including, but not limited to, the University of California's eScholarship Repository at the California Digital Library, PubMed Central, or the California Digital Open Source Library, to be made publicly available not later than 12 months after the official date of publication. Manuscripts submitted to the California Digital Open Source Library shall be exempt from the requirements in subdivision (b) of Section 66408 of the Education Code. Grantee shall make reasonable efforts to comply with this requirement by ensuring that their manuscript is accessible on an approved publicly accessible database, and notifying the Department that the manuscript is available on a department-approved database. If Grantee is unable to ensure that their manuscript is accessible on an approved publicly accessible database, Grantee may comply by providing the manuscript to the Department not later than 12 months after the official date of publication.

- 4) For publications other than those described in paragraph B.3 above,, including meeting abstracts, Grantee shall comply by providing the manuscript to the Department not later than 12 months after the official date of publication.
- 5) Grantee is authorized to use grant money for publication costs, including fees charged by a publisher for color and page charges, or fees for digital distribution.



KAREN L. SMITH, MD, MPH  
Director and State Public Health Officer

State of California—Health and Human Services Agency  
**California Department of Public Health**



EDMUND G. BROWN JR.  
Governor

March 27, 2017

TO: POTENTIAL LOCAL HEALTH DEPARTMENT APPLICANTS  
SUBJECT: RELEASE OF REQUEST FOR APPLICATIONS  
NALOXONE DISTRIBUTION PROJECTS

The California Department of Public Health (CDPH), Safe and Active Communities Branch (SACB) is pleased to announce the release of a Request for Applications (RFA) for Naloxone Distribution Projects.

Through this non-competitive RFA process, CDPH/SACB is offering grants of naloxone product (Narcan nasal spray) and funding for project administration to local health departments (LHDs) in all 61 California health jurisdictions to conduct **Naloxone Distribution Projects**. LHDs will provide Narcan to local entities within their jurisdictions that have naloxone distribution systems. The term of the grant award is June 1, 2017 to June 30, 2019.

Two (repeating) informational webinars will be held for eligible applicants. **Participation in one of these webinars is mandatory.** The webinars are scheduled for:

**Monday, April 3, 2017: 1:00 pm – 2:00 pm**

To register for this session go to <https://cdph.webex.com/cdph-en/k2/j.php?MTID=t33dfebb403abd78bd2e954c947af5015>

**Tuesday, April 4, 2017: 10:00 am – 11:00 am**

To register for this session go to <https://cdph.webex.com/cdph-en/k2/j.php?MTID=tc801f8d752d4385ed72b3f38a3b52e85>

**Submit any questions you would like addressed during the webinar(s) to [ngp@cdph.ca.gov](mailto:ngp@cdph.ca.gov) by March 31, 2017.**

Please see the RFA for additional requirements, timelines, and instructions.

Sincerely,

Stacy Alamo Mixson, MPH  
Chief, Safe and Active Communities Branch  
California Department of Public Health



**California Department of Public Health  
Safe and Active Communities Branch  
Naloxone Grant Program**

**REQUEST FOR APPLICATIONS (RFA #16-10967):  
Naloxone Distribution Projects**

**A. Introduction**

Senate Bill (SB) 833 (Chapter 30, Statutes of 2016) established a new Naloxone Grant Program within the California Department of Public Health (CDPH) with the goal of reducing the number of fatal overdoses in California from opioid drugs, including prescription opioids and heroin, by increasing access to the life-saving drug naloxone. A total of \$3 million was allocated on a one-time basis to support this program.

**B. Purpose of RFA**

Through this non-competitive Request for Application (RFA) process, the CDPH Safe and Active Communities Branch (SACB) is offering grants of naloxone product (Narcan nasal spray) and funding to all 61 local health departments (LHDs) to conduct **Naloxone Distribution Projects**. LHDs will provide naloxone product to local programs, agencies and community-based organizations (local entities) within their jurisdictions that have naloxone distribution systems and are in the best position to save lives from opioid overdose.

**C. Background**

In 2015, with funding from the Centers for Disease Control and Prevention (CDC), SACB initiated the California Prescription Drug Overdose Prevention Initiative to promote a multi-faceted statewide response involving many partners and a variety of strategies ([www.cdph.ca.gov/programs/SACB/Pages/PrescriptionDrugOverdoseProgram.aspx](http://www.cdph.ca.gov/programs/SACB/Pages/PrescriptionDrugOverdoseProgram.aspx)). Initiative staff also provide support to the CDPH Director's Prescription Opioid Misuse and Overdose Prevention Workgroup and partners with the California Healthcare Foundation to fund local opioid safety coalitions that promote safe prescribing, use of naloxone, and expansion of medically assisted treatment options. The California Opioid Overdose Surveillance Dashboard ([https://pdop.shinyapps.io/ODdash\\_v1/](https://pdop.shinyapps.io/ODdash_v1/)), developed by SACB research scientists, displays data demonstrating the severity of the problem. The Naloxone Grant Program will further strengthen California's public health response to opiate overdose.

1. **Drug overdose** (poisoning) is the leading cause of unintentional injury death in the United States, causing more deaths than motor vehicle crashes. Opioids – both prescription painkillers and heroin – are responsible for most of those deaths. The number of Californians affected by prescription and non-prescription opioid misuse and overdose is substantial, with rates varying significantly across counties, and even within counties.



2. **Naloxone** is a medication that works almost immediately to reverse opiate overdose. Naloxone is currently a prescription drug, but is not a controlled substance. It has few known adverse effects, no potential for abuse, and can be rapidly administered through intramuscular injection or nasal spray. While most professional first responders and emergency departments are equipped with naloxone, emergency service providers may not arrive in time to revive overdose victims. Trained and equipped bystanders such as friends, family, and other non-health care providers and drug users themselves can effectively respond and reverse an opioid overdose. Given the success of bystander naloxone programs, the CDC and the World Health Organization have recommended expanding the availability of naloxone to lay people.
3. **Naloxone Distribution Systems:** 1) work under a standing order from a licensed clinician/medical director; 2) have staff that are trained (or are trained to provide education to others) on naloxone storage and administration, overdose prevention techniques, how to recognize an opioid overdose (signs and symptoms), how to respond by calling 911 and provide rescue breathing, and post-overdose care; 3) dispense naloxone products; and 4) document distribution efforts.
4. **Laws** are currently in place that support making naloxone more readily available. For example, California Civil Code Section 1714.22 (Statutes of 2013, Chapter 707, Section 1) eliminates civil and criminal liability for: 1) licensed health care providers that prescribe naloxone and issue standing orders for the distribution of naloxone, and 2) individuals, who have received supply of naloxone and had the required training, who administer naloxone to someone suspected of experiencing an overdose. This law took effect on January 1, 2014.

D. Term of Grant Award

The term of the grant award is June 1, 2017, (or upon final Grant Agreement approval by CDPH) to June 30, 2019.

E. Applicant Eligibility

Governmental health departments in all 61 California local health jurisdictions are eligible and encouraged to apply to the Naloxone Grant Program.

F. Product and Funding Allocation

The Naloxone Grant Program is offering funding amounts allocated for naloxone product and project administrative costs to every health jurisdiction in California based on a formula developed to maximize the potential for saving lives. The formula addresses the need for naloxone using data from each county to calculate an average number of opioid-involved (including heroin) overdose deaths and emergency department visits for each of the last three years. The formula utilizes information on effective naloxone distribution and overdose reversals from a CDC report ([www.cdc.gov/mmwr/preview/mmwrhtml/mm6106a1.htm](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6106a1.htm)) to determine a kit-to-save ratio, which translates to approximately four kits distributed for each life saved. The

three-year average of deaths and emergency department visits for each county is then multiplied by four to determine the estimated number of kits to be distributed for each county. The cost of the naloxone product and a base minimum number of kits for each county are factored into the calculation.

**A Naloxone Grant Program Local Health Department Allocations Chart**, which lists the amounts available to each LHD for the purchase of naloxone (Narcan nasal spray) and for project administration, is provided as Attachment A.

LHDs that receive a grant from the Naloxone Grant Program will not purchase the naloxone product. In order to obtain the best purchase price, expedite the delivery of naloxone product, and avoid additional administrative burden on LHDs, CDPH/SACB will procure a bulk purchase of Narcan nasal spray from the manufacturer ADAPT Pharma (at a price of \$75 per carton of two doses), and the manufacturer will ship the product (at no additional cost) directly to each grantee. Grantees can choose to have the naloxone product delivered all in one shipment or split their allocation in half and receive a second shipment in June, 2018.

The funding offered to each LHD for project administration, if accepted, may be used to cover costs of: conducting outreach and assessment of local entities; receipt, storage, and distribution of naloxone product; reporting; and other activities related to project implementation. If accepting the allocation for administrative costs, LHDs will submit a single invoice for reimbursement of the amount to CDPH/SACB upon final CDPH approval of the Grant Agreement in accordance with Exhibit B, Budget Detail and Payment Provisions (included in Attachment B).

LHDs may elect to opt out of receiving the project administration allocation and instead apply that dollar amount to the purchase of additional naloxone product.

#### G. Grant Requirements

Naloxone Grant Program grantees are required to:

1. **Conduct outreach** to identify local entities within their health jurisdiction that already have a naloxone distribution system in place and have the capacity to efficiently and effectively provide naloxone and training to first responders (as described in section C, number 3 in this RFA).<sup>\*</sup> Local entities may include harm reduction/syringe exchange programs, substance use disorder treatment providers, homeless programs, jails, emergency services providers, law enforcement, and others.

<sup>\*</sup> If a LHD identifies the need to establish a new naloxone distribution system(s) in their jurisdiction, the LHD must ensure that any new naloxone distribution system meets the definition provided in section C, number 3 in this RFA prior to distributing naloxone.

2. **Select local entities** to receive naloxone based on the level of risk of overdose among the population(s) they serve and need for naloxone (Narcan) product.

*Priority consideration is to be given to harm reduction/syringe exchange programs, if present within the health jurisdiction. (A list of California harm reduction/syringe exchange programs that currently have a naloxone distribution system in place is included as Attachment C.)*

3. **Submit a naloxone distribution plan** to CDPH/SACB for approval by June 16, 2017, or within 60 days of receiving CDPH final approval of the Grant Agreement. The plan will be submitted on-line and must include the names of selected local entities, the type(s) of services they provide, a description of the target population(s) they serve, and the number of naloxone product they will receive. CDPH will provide a standardized distribution plan template.
4. **Begin distributing naloxone** product to selected local entities by July 16, 2017, or within 90 days of receiving CDPH final approval of the Grant Agreement. All naloxone must be distributed to selected local entities by September 30, 2018.
5. **Document and submit a final report** to CDPH/SACB by April 1, 2019, on the distribution of naloxone for accountability and evaluation purposes.
6. **Enter into a Standard Grant Agreement with CDPH.** Attachment C includes a Grant Agreement template, Budget Detail and Payment Provisions, Standard Grant Conditions, and Additional Provisions.

#### H. Reporting Requirements

In order to demonstrate that the naloxone product provided through the Naloxone Grant Program were effectively distributed and utilized, CDPH/SACB will require LHDs to document and report information in a **final report, due April 1, 2019**, on the local entities that received naloxone product from the grantee (e.g., organization name, type and location, date of distribution, and number of doses distributed), the individuals that received naloxone from the local entities, and if possible, the number of overdose reversals that can be attributed to the Naloxone Grant Program. On-line data collection forms and instructions, developed with input from grantees and other stakeholders, will be provided.

#### I. Funding Restriction

Grantees may not seek reimbursement/gain for, or sell the naloxone product received through, this grant award.

#### J. Mandatory Letter of Interest

**A Letter of Interest is required and must be received by April 7, 2017.** The letter is non-binding. Please complete the on-line Letter of Interest at [www.surveygizmo.com/s3/3436352/d311e1c1f806](http://www.surveygizmo.com/s3/3436352/d311e1c1f806) which requires the following information:

1. LHD County/Jurisdiction.
2. Health Officer Name and contact information.
3. Contact information for individual responsible for the application.

4. An indication of the intent to apply (or not apply).
5. An indication of the intent to receive the funding allocation dedicated for administrative needs, or a redirection of this funding toward the purchase of additional naloxone product.

K. Informational Webinars (Mandatory)

Two (repeating) informational webinars will be held for eligible applicants to provide additional information and to address questions. **Participation in one of these webinars is mandatory for all potential applicants and registration is required.**

Monday, April 3, 2017; 1:00 pm – 2:00 pm

To register for this session go to <https://cdph.webex.com/cdph-en/k2/j.php?MTID=t33dfebb403abd78bd2e954c947af5015>

Tuesday, April 4, 2017; 10:00 am – 11:00 am

To register for this session go to <https://cdph.webex.com/cdph-en/k2/j.php?MTID=tc801f8d752d4385ed72b3f38a3b52e85>

**Please submit any questions you would like addressed during the webinar(s) to [ngp@cdph.ca.gov](mailto:ngp@cdph.ca.gov) by March 31, 2017.**

L. Other Available Resources

Because this is a one-time allocation of funding, CDPH/SACB is not able to offer start-up or ongoing technical assistance or training support. However, a website has been established for grantees (and others who may be interested) that will include helpful materials and resources. Please visit

[www.cdph.ca.gov/programs/SACB/Pages/NaloxoneGrantProgram.aspx](http://www.cdph.ca.gov/programs/SACB/Pages/NaloxoneGrantProgram.aspx)

M. Application Submission Instructions

In order to initiate the development of a Grant Agreement with CDPH, **applications are to be submitted on-line as soon as possible, but no later than May 1, 2017.**

To complete an application, go to

[www.surveygizmo.com/s3/3436263/f7385e3c96d5](http://www.surveygizmo.com/s3/3436263/f7385e3c96d5). For reference, a copy of the application has been provided as Attachment D. Please submit any questions regarding the RFA or application to [ngp@cdph.ca.gov](mailto:ngp@cdph.ca.gov) by April 17, 2017. All questions and responses will be posted by April 21, 2017 to:

[www.cdph.ca.gov/programs/SACB/Pages/NaloxoneGrantProgram.aspx](http://www.cdph.ca.gov/programs/SACB/Pages/NaloxoneGrantProgram.aspx)

N. Grant Award Process

On-line applications will be reviewed for completeness and the information provided will be used to develop a CDPH Grant Agreement. The resulting Grant Agreement will be sent to the applicant agency for signature. Once signed and returned to CDPH, and then signed by CDPH's Contract Management Unit, the Grant Agreement is considered fully executed.

O. RFA Time Schedule

<b>Event</b>	<b>Date</b>
RFA Release	March 27, 2017
Questions to be Addressed During Webinars Due	March 31, 2017
<b>Mandatory Informational Webinars (Repeating)</b>	<b>April 3, 2017</b> 1:00 p.m. to 2:00 p.m.  <b>April 4, 2017</b> 10:00 a.m. to 11:00 a.m.
On-Line Mandatory Letter of Interest Due	April 7, 2017
<b>On-Line Applications Due to CDPH/SACB</b>	<b>May 1, 2017</b>
<b>Grant Start Date</b>	<b>June 1, 2017</b> (or upon CDPH final approval of Grant Agreement)

## California Department of Public Health

### Naloxone Grant Program – Local Health Department Allocations

Counties	Funding Available for Narcan Product	Number of Doses	Funds Available for Admin Costs or Additional Narcan Product
Alameda	\$76,600	2,042	\$3,830.00
Alpine	\$10,125	270	\$506.25
Amador	\$10,125	270	\$506.25
Butte	\$20,200	538	\$1,010.00
Calaveras	\$10,125	270	\$506.25
City of Berkeley	\$10,125	270	\$506.25
City of Long Beach	\$10,125	270	\$506.25
City of Pasadena	\$10,125	270	\$506.25
Colusa	\$10,125	270	\$506.25
Contra Costa	\$61,600	1,642	\$3,080.00
Del Norte	\$10,125	270	\$506.25
El Dorado	\$10,125	270	\$506.25
Fresno	\$62,600	1,670	\$3,130.00
Glenn	\$10,125	270	\$506.25
Humboldt	\$25,600	682	\$1,280.00
Imperial	\$17,000	454	\$850.00
Inyo	\$10,125	270	\$506.25
Kern	\$74,600	1,990	\$3,730.00
Kings	\$11,000	294	\$550.00
Lake	\$11,600	310	\$580.00
Lassen	\$10,125	270	\$506.25
Los Angeles	\$387,700	10,338	\$19,385.00
Madera	\$12,400	330	\$620.00
Marin	\$15,000	400	\$750.00
Mariposa	\$10,125	270	\$506.25
Mendocino	\$11,400	304	\$570.00
Merced	\$16,600	442	\$830.00
Modoc	\$10,125	270	\$506.25
Mono	\$10,125	270	\$506.25
Monterey	\$29,600	790	\$1,480.00
Napa	\$10,125	270	\$506.25
Nevada	\$10,125	270	\$506.25
Orange	\$233,200	6,218	\$11,660.00
Placer	\$23,000	614	\$1,150.00
Plumas	\$10,125	270	\$506.25
Riverside	\$148,300	3,954	\$7,415.00
Sacramento	\$103,600	2,762	\$5,180.00

## California Department of Public Health

### Naloxone Grant Program – Local Health Department Allocations

Counties	Funding Available for Narcan Product	Number of Doses	Funds Available for Admin Costs or Additional Narcan Product
San Benito	\$10,125	270	\$506.25
San Bernardino	\$108,300	2,888	\$5,415.00
San Diego	\$248,300	6,622	\$12,415.00
San Francisco	\$97,600	2,602	\$4,880.00
San Joaquin	\$68,200	1,818	\$3,410.00
San Luis Obispo	\$25,700	686	\$1,285.00
San Mateo	\$24,800	662	\$1,240.00
Santa Barbara	\$33,100	882	\$1,655.00
Santa Clara	\$47,900	1,278	\$2,395.00
Santa Cruz	\$36,000	960	\$1,800.00
Shasta	\$31,600	842	\$1,580.00
Sierra	\$10,125	270	\$506.25
Siskiyou	\$10,125	270	\$506.25
Solano	\$27,900	744	\$1,395.00
Sonoma	\$40,400	1,078	\$2,020.00
Stanislaus	\$42,100	1,122	\$2,105.00
Sutter	\$10,125	270	\$506.25
Tehama	\$10,125	270	\$506.25
Trinity	\$10,125	270	\$506.25
Tulare	\$32,400	864	\$1,620.00
Tuolumne	\$10,125	270	\$506.25
Ventura	\$85,800	2,288	\$4,290.00
Yolo	\$10,500	280	\$525.00
Yuba	\$10,125	270	\$506.25

**SAFE AND ACTIVE COMMUNITIES BRANCH  
NALOXONE DISTRIBUTION GRANT PROGRAM**

**Awarded By**

**THE CALIFORNIA DEPARTMENT OF PUBLIC HEALTH, hereinafter “Department”**

**TO**

**{Name of Grantee}, hereinafter “Grantee”**

**Implementing the project, “NALOXONE DISTRIBUTION,” hereinafter “Project”**

**GRANT AGREEMENT NUMBER XX-XXXXX**

The Department awards this Grant and the Grantee accepts and agrees to use the Grant funds as follows:

**AUTHORITY:** The Department has authority to grant funds for the Project under Health and Safety Code, Section 1179.80.

**PURPOSE:** The Department shall provide a grant to and for the benefit of the Grantee; the purpose of the Grant is to reduce the rate of fatal overdose from opioid drugs including heroin and prescription opioids as specified in Exhibit A, Grant Application, which is hereby incorporated to serve as the Project.

**GRANT AMOUNT:** The maximum amount payable under this Grant shall not exceed \$xx,xxx dollars (\$xx,xxx).

**TERM OF GRANT:** The term of the Grant shall begin on June 1, 2017, or upon approval of this grant, and terminates on June 30, 2019. No funds may be requested or invoiced for work performed or costs incurred after June 30, 2019.

**PROJECT REPRESENTATIVES.** The Project Representatives during the term of this Grant will be:

<b>California Department of Public Health</b>	Grantee: [Legal Business Name]
Stacy Alamo Mixson, MPH	{name} Name: Principal Investigator (PI)
PO Box 997377, MS 7214	Address:
Sacramento, CA 95899-7377	City, ZIP:
Phone: 916.552.9852	Phone:
Fax: 916.552.9810	Fax:
E-mail: Stacy.Alamo@cdph.ca.gov	E-mail:



Direct all inquiries to:

<b>California Department of Public Health, Safe and Active Communities Branch</b>	<b>Grantee: [Legal Business Name]</b>
Attention: Nancy Bagnato, MPH	Attention:
PO Box 997377, MS 7214	Address
Sacramento, CA 95899-7377	City, Zip
Phone: 916.552.9846	Phone
Fax: 916.552.9810	Fax
Nancy.Bagnato@cdph.ca.gov	E-mail

Either party may change its Project Representative upon written notice to the other party.

**STANDARD PROVISIONS.** The following exhibits are attached and made a part of this Grant by this reference:

- Exhibit A GRANT APPLICATION ([The Grant Application provides the description of the project and associated cost](#))
- Exhibit B BUDGET DETAIL AND PAYMENT PROVISIONS
- Exhibit C STANDARD GRANT CONDITIONS
- Exhibit D REQUEST FOR APPLICATIONS  
Including all the requirements and attachments contained therein
- Exhibit E ADDITIONAL PROVISIONS

**GRANTEE REPRESENTATIONS:** The Grantee(s) accept all terms, provisions, and conditions of this grant, including those stated in the Exhibits incorporated by reference above. The Grantee(s) shall fulfill all assurances and commitments made in the application, declarations, other accompanying documents, and written communications (e.g., e-mail, correspondence) filed in support of the request for grant funding. The Grantee(s) shall comply with and require its contractors and subcontractors to comply with all applicable laws, policies, and regulations.

IN WITNESS THEREOF, the parties have executed this Grant on the dates set forth below.

Executed By:

Date: \_\_\_\_\_

\_\_\_\_\_  
Name, Title of Authorized Representative  
Agency Name  
Address

Date: \_\_\_\_\_

\_\_\_\_\_  
Angela Salas, Chief  
Contracts and Purchasing Services Section  
California Department of Public Health  
1616 Capitol Avenue, Suite 74.317  
P.O. Box 997377, MS 1800- 1804  
Sacramento, CA 95899-7377

**EXHIBIT A**

**GRANT  
APPLICATION**

**Exhibit B**  
Budget Detail and Payment Provisions

**1. Invoicing and Payment**

- A. Upon final approval of the Grant Agreement, and upon receipt and approval of an invoice, the State agrees to reimburse the Grantee for the specified Administrative Allocation amount in accordance with the costs specified herein.
- B. The invoice shall include the Grant Number and shall be submitted in triplicate upon final approval of the Grant Agreement:

Nancy Bagnato, MPH  
California Department of Public Health  
Safe and Active Communities Branch  
PO Box 997377, MS 7214  
Sacramento, CA 95899-7377

C. Invoices shall:

- 1) Be prepared on Grantee letterhead. If the invoice is not on produced letterhead, the invoice must be signed by an authorized official, employee or agent certifying that the expenditures claimed represent activities performed and are in accordance with Exhibit A Grant Application under this Grant.
- 2) Bear the Grantee's name as shown on the Grant.
- 3) Identify the billing and/or performance period covered by the invoice.
- 4) Itemize costs for the billing period in the same or greater level of detail as indicated in this Grant. Subject to the terms of this Grant, reimbursement may only be sought for those costs and/or cost categories expressly identified as allowable and approved by CDPH.

**2. Budget Contingency Clause**

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

**3. Prompt Payment Clause**

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

**4. Amounts Payable**

A. The amounts payable shall not exceed:

- 1) \$XXX,XXX for Narcan Products for the budget period of 06/01/16 through 06/30/19.
- 2) \$XXX,XXX for Administrative Costs for the budget period of 06/01/16 through 06/30/19.

**Exhibit B**  
Budget Detail and Payment Provisions

- B. Payment allocations shall be made in accordance with the amounts listed in Paragraph 4.A., above. Pursuant to the Budget Act of 2016, this is one-time funding available for expenditure through June 30, 2019. The Grantee will only receive reimbursement for Administrative Costs, if requested. The Grantee will receive direct distribution of Narcan Products in the amount stated and no invoicing will be required.

**5. Timely Submission of Final Invoice**

- A. A final undisputed invoice shall be submitted for payment no more than **thirty (30)** calendar days following the expiration or termination date of this Grant, unless a later or alternate deadline is agreed to in writing by the program grant manager. Said invoice should be clearly marked "Final Invoice", indicating that all payment obligations of the State under this Grant have ceased and that no further payments are due or outstanding.
- B. The State may, at its discretion, choose not to honor any delinquent final invoice if the Grantee fails to obtain prior written State approval of an alternate final invoice submission deadline.

**EXHIBIT C****STANDARD GRANT CONDITIONS**

1. **APPROVAL:** This Grant is of no force or effect until signed by both parties and approved by the Department of General Services, if required. The Grantee may not commence performance until such approval has been obtained
2. **AMENDMENT:** No amendment or variation of the terms of this Grant shall be valid unless made in writing, signed by the parties, and approved as required. No oral understanding or Agreement not incorporated in the Grant is binding on any of the parties. In no case shall the Department materially alter the scope of the Project set forth in Exhibit A.
3. **ASSIGNMENT:** This Grant is not assignable by the Grantee, either in whole or in part, without the written consent of the Grant Manager in the form of a written amendment to the Grant.
4. **AUDIT:** Grantee agrees that the Department, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to this Grant. Grantee agrees to maintain such records for a possible audit for a minimum of three (3) years after final payment or completion of the project funded with this Grant, unless a longer period of records retention is stipulated. Grantee agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Grantee agrees to include a similar right of the State to audit records and interview staff in any subcontract related to the project.
5. **CONFLICT OF INTEREST:** Grantee certifies that it is in compliance with all applicable state and/or federal conflict of interest laws.
6. **INDEMNIFICATION:** Grantee agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the project, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Grantee in the performance of any activities related to the Project.
7. **FISCAL MANAGEMENT SYSTEMS AND ACCOUNTING STANDARDS:** Grantee agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit tracing of all grant funds to a level of expenditure adequate to establish that such funds have not been used in violation of any applicable state or federal law, or the provisions of this Grant. Grantee further agrees that it will maintain separate Project accounts in accordance with generally accepted accounting principles.
8. **GOVERNING LAW:** This Grant is governed by and shall be interpreted in accordance with the laws of the State of California.

- 9. INCOME RESTRICTIONS:** Grantee agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Grantee under this Grant shall be paid by the Grantee to the Department, to the extent that they are properly allocable to costs for which the Grantee has been reimbursed by the Department under this Grant.
- 10. INDEPENDENT CONTRACTOR:** Grantee, and its agents and employees of Grantee, in the performance of the Project, shall act in an independent capacity and not as officers, employees or agents of the Department.
- 11. MEDIA EVENTS:** Grantee shall notify the Department's Grant Manager in writing at least twenty (20) working days before any public or media event publicizing the accomplishments and/or results of the Project and provide the opportunity for attendance and participation by Department's representatives.
- 12. NO THIRD-PARTY RIGHTS:** The Department and Grantee do not intend to create any rights or remedies for any third- party as a beneficiary of this Grant or the project.
- 13. NOTICE:** Grantee shall promptly notify the Department's Grant Manager in writing of any events, developments or changes that could affect the completion of the project or the budget approved for this Grant.
- 14. PROFESSIONALS:** Grantee agrees that only licensed professionals will be used to perform services under this Grant where such services are called for.
- 15. RECORDS:** Grantee certifies that it will maintain Project accounts in accordance with generally accepted accounting principles. Grantee further certifies that it will comply with the following conditions for a grant award as set forth in the Request for Applications (Exhibit D) and the Grant Application (Exhibit A).
- A. Establish an official file for the Project which shall adequately document all significant actions relative to the Project;
  - B. Establish separate accounts which will adequately and accurately depict all amounts received and expended on this Project, including all grant funds received under this Grant;
  - C. Establish separate accounts which will adequately depict all income received which is attributable to the Project, especially including any income attributable to grant funds disbursed under this Grant;
  - D. Establish an accounting system which will adequately depict final total costs of the Project, including both direct and indirect costs; and,
  - E. Establish such accounts and maintain such records as may be necessary for the state to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations.
- 16. RELATED LITIGATION:** Under no circumstances may Grantee use funds from any disbursement under this Grant to pay for costs associated with any litigation between the Grantee and the Department.

**17. RIGHTS IN DATA:** Grantee and the Department agree that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work submitted under Exhibit A in the performance of the Project funded by this Grant shall be in the public domain. Grantee may disclose, disseminate and use in whole or in part, any final form data and information received, collected, and developed under this Project, subject to appropriate acknowledgment of credit to the Department for financial support. Grantee shall not utilize the materials submitted to the Department (except data) for any profit making venture or sell or grant rights to a third-party who intends to do so. The Department has the right to use submitted data for all governmental purposes.

**18. VENUE:** The Department and Grantee agree that any action arising out of this Grant shall be filed and maintained in the Superior Court, California. Grantee waives any existing sovereign immunity for the purposes of this Grant, if applicable.

**19. STATE-FUNDED RESEARCH GRANTS:**

- A. Grantee shall provide for free public access to any publication of a department-funded invention or department-funded technology. Grantee further agrees to all terms and conditions required by the California Taxpayer Access to Publicly Funded Research Act (Chapter 2.5 (commencing with Section 13989) of Part 4.5 of Division 3 of Title 2 of the Government Code).
- B. As a condition of receiving the research grant, Grantee agrees to the following terms and conditions which are set forth in Government Code section 13989.6 ("Section 13989.6"):
- 1) Grantee is responsible for ensuring that any publishing or copyright agreements concerning submitted manuscripts fully comply with Section 13989.6.
  - 2) Grantees shall report to the Department the final disposition of the research grant, including, but not limited to, if it was published, when it was published, where it was published, when the 12-month time period expires, and where the manuscript will be available for open access.
  - 3) For a manuscript that is accepted for publication in a peer-reviewed journal, the Grantee shall ensure that an electronic version of the peer-reviewed manuscript is available to the department and on an appropriate publicly accessible database approved by the Department, including, but not limited to, the University of California's eScholarship Repository at the California Digital Library, PubMed Central, or the California Digital Open Source Library, to be made publicly available not later than 12 months after the official date of publication. Manuscripts submitted to the California Digital Open Source Library shall be exempt from the requirements in subdivision (b) of Section 66408 of the Education Code. Grantee shall make reasonable efforts to comply with this requirement by ensuring that their manuscript is accessible on an approved publicly accessible database, and notifying the Department that the manuscript is available on a department-approved database. If Grantee is unable to ensure that their manuscript is accessible on an approved publicly accessible database, Grantee may comply by providing the manuscript to the Department not later than 12 months after the official date of publication.



- 4) For publications other than those described in paragraph B.3 above, including meeting abstracts, Grantee shall comply by providing the manuscript to the Department not later than 12 months after the official date of publication.
- 5) Grantee is authorized to use grant money for publication costs, including fees charged by a publisher for color and page charges, or fees for digital distribution.

# **EXHIBIT D**

## **REQUEST FOR APPLICATIONS**

Exhibit E  
Additional Provisions

**1. Cancellation / Termination**

- A. This Grant may be cancelled by CDPH without cause upon thirty (30) calendar days advance written notice to the Grantee.
- B. CDPH reserves the right to cancel or terminate this Grant immediately for cause. The Grantee may submit a written request to terminate this Grant only if CDPH substantially fails to perform its responsibilities as provided herein.
- C. The term "for cause" shall mean that the Grantee fails to meet the terms, conditions, and/or responsibilities of this agreement. Causes for termination include, but are not limited to the following occurrences:
  - 1) If the Grantee knowingly furnishes any statement, representation, warranty, or certification in connection with the agreement, which representation is materially false, deceptive, incorrect, or incomplete.
  - 2) If the Grantee fails to perform any material requirement of this Grant or defaults in performance of this agreement.
  - 3) If the Grantee files for bankruptcy, or if CDPH determines that the Grantee becomes financially incapable of completing this agreement.
- D. Grant termination or cancellation shall be effective as of the date indicated in CDPH's notification to the Grantee. The notice shall stipulate any final performance, invoicing or payment requirements.
- E. In the event of early termination or cancellation, the Grantee shall be entitled to compensation for services performed satisfactorily under this agreement and expenses incurred up to the date of cancellation and any non-cancelable obligations incurred in support of this Grant.
- F. In the event of termination, and at the request of CDPH, the Grantee shall furnish copies of all proposals, specifications, designs, procedures, layouts, copy, and other materials related to the services or deliverables provided under this Grant, whether finished or in progress on the termination date.
- G. The Grantee will not be entitled to reimbursement for any expenses incurred for services and deliverables pursuant to this agreement after the effective date of termination.
- H. Upon receipt of notification of termination of this Grant, and except as otherwise specified by CDPH, the Grantee shall:
  - 1) Place no further order or subgrants for materials, services, or facilities.
  - 2) Settle all outstanding liabilities and all claims arising out of such termination of orders and subgrants.

Exhibit E  
Additional Provisions

- 3) Upon the effective date of termination of the Grant and the payment by CDPH of all items properly changeable to CDPH hereunder, Grantee shall transfer, assign and make available to CDPH all property and materials belonging to CDPH, all rights and claims to any and all reservations, grants, and arrangements with owners of media/PR materials, or others, and shall make available to CDPH all written information regarding CDPH's media/PR materials, and no extra compensation is to be paid to Grantee for its services.
  - 4) Take such action as may be necessary, or as CDPH may specify, to protect and preserve any property related to this agreement which is in the possession of the Grantee and in which CDPH has or may acquire an interest.
- I. CDPH may, at its discretion, require the Grantee to cease performance of certain components of the Scope of Work as designated by CDPH and complete performance of other components prior to the termination date of the Grant.

**2. Avoidance of Conflicts of Interest by Grantee**

- A. CDPH intends to avoid any real or apparent conflict of interest on the part of the Grantee, subgrants, or employees, officers and directors of the Grantee or subgrants. Thus, CDPH reserves the right to determine, at its sole discretion, whether any information, assertion or claim received from any source indicates the existence of a real or apparent conflict of interest; and, if a conflict is found to exist, to require the Grantee to submit additional information or a plan for resolving the conflict, subject to CDPH review and prior approval.
- B. Conflicts of interest include, but are not limited to:
- 1) An instance where the Grantee or any of its subgrants, or any employee, officer, or director of the Grantee or any subgrant or has an interest, financial or otherwise, whereby the use or disclosure of information obtained while performing services under the grant would allow for private or personal benefit or for any purpose that is contrary to the goals and objectives of the grant.
  - 2) An instance where the Grantee's or any subgrant's employees, officers, or directors use their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family, business or other ties.
- C. If CDPH is or becomes aware of a known or suspected conflict of interest, the Grantee will be given an opportunity to submit additional information or to resolve the conflict. A Grantee with a suspected conflict of interest will have five (5) working days from the date of notification of the conflict by CDPH to provide complete information regarding the suspected conflict. If a conflict of interest is determined to exist by CDPH and cannot be resolved to the satisfaction of CDPH, the conflict will be grounds for terminating the grant. CDPH may, at its discretion upon receipt of a written request from the Grantee, authorize an extension of the timeline indicated herein.

Exhibit E  
Additional Provisions

**3. Dispute Resolution Process**

- A. A Grantee grievance exists whenever there is a dispute arising from CDPH's action in the administration of an agreement. If there is a dispute or grievance between the Grantee and CDPH, the Grantee must seek resolution using the procedure outlined below.
- 1) The Grantee should first informally discuss the problem with the CDPH Program Grant Manager. If the problem cannot be resolved informally, the Grantee shall direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Grantee's position and the remedy sought. The Branch Chief shall render a decision within ten (10) working days after receipt of the written grievance from the Grantee. The Branch Chief shall respond in writing to the Grantee indicating the decision and reasons therefore. If the Grantee disagrees with the Branch Chief's decision, the Grantee may appeal to the second level.
  - 2) When appealing to the second level, the Grantee must prepare an appeal indicating the reasons for disagreement with Branch Chief's decision. The Grantee shall include with the appeal a copy of the Grantee's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Grantee to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Grantee within twenty (20) working days of receipt of the Grantee's second level appeal.
- B. If the Grantee wishes to appeal the decision of the Deputy Director of the division in which the branch is organized or his/her designee, the Grantee shall follow the procedures set forth in Division 25.1 (commencing with Section 38050) of the Health and Safety Code and the regulations adopted thereunder. (Title 1, Division 2, Chapter 2, Article 3 (commencing with Section 1140) of the California Code of Regulations).
- C. Disputes arising out of an audit, examination of an agreement or other action not covered by subdivision (a) of Section 20204, of Chapter 2.1, Title 22, of the California Code of Regulations, and for which no procedures for appeal are provided in statute, regulation or the Agreement, shall be handled in accordance with the procedures identified in Sections 51016 through 51047, Title 22, California Code of Regulations.
- D. Unless otherwise stipulated in writing by CDPH, all dispute, grievance and/or appeal correspondence shall be directed to the CDPH Grant Manager.
- E. There are organizational differences within CDPH's funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Grantee shall be notified in writing by the CDPH Grant Manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

California Harm Reduction/Syringe Exchange Programs with Existing Naloxone Distribution Systems

County	Organization	Program Name (if different)
<b>Alameda</b>	Needle Exchange Emergency Distribution (NEED)	
<b>Alameda</b>	Casa Segura	HIV Education & Prevention Project of Alameda County (HEPPAC)
<b>Contra Costa</b>	A New Leaf Treatment Center	
	Casa Segura	HEPPAC
<b>Fresno</b>	Fresno Needle Exchange	
<b>Humboldt</b>	Humboldt Area Center for Harm Reduction (HACHR)	Peer Outreach Program
<b>Humboldt</b>	Humboldt County Department of Health and Human Services	North Coast AIDS Project (NorCAP)
<b>Lake</b>	Any Positive Change	
<b>Los Angeles</b>	Venice Family Clinic	Common Ground
<b>Los Angeles</b>	LA Community Health Project	
<b>Los Angeles</b>	Homeless Health Care Los Angeles (HHCLA)	Needle Exchange at the Center for Harm Reduction
<b>Los Angeles</b>	Tarzana Treatment Centers	
<b>Marin</b>	Marin Treatment Center	
<b>Mendocino</b>	Mendocino County AIDS/Viral Hepatitis Network (McAVHN)	
<b>Orange</b>	Solace Foundation	
<b>Sacramento/Yolo</b>	Harm Reduction Services	Safe Points Syringe Exchange
<b>Sacramento/Yolo</b>	Safer Alternatives thru Networking and Education (SANE)	
<b>San Francisco</b>	Homeless Youth Alliance	San Francisco Needle Exchange (SFNE)
<b>San Francisco</b>	San Francisco AIDS Foundation	SAS Needle Exchange
<b>San Francisco</b>	St. James Infirmary	
<b>San Francisco</b>	Asian and Pacific Islander Wellness Program	Trans: Thrive
<b>San Francisco</b>	San Francisco Drug User's Union	
<b>San Francisco</b>	Glide Memorial Church	Glide Harm Reduction Services
<b>San Diego</b>	A New Path (Parents for Addition and Healing)	
<b>San Luis Obispo</b>	County of San Luis Obispo Behavioral Health Dept.	
<b>San Luis Obispo</b>	SLOSEP	
<b>San Mateo</b>	AIDS Community Research Consortium (ACRC)	ACRC Syringe Access Program (ASAP)
<b>Santa Cruz</b>	Janus of Santa Cruz	
<b>Shasta</b>	Shasta Community Health Center	Health Outreach for People Everywhere (HOPE)
<b>Ventura</b>	Ventura County Health Care Agency	Syringe Replacement Program

**California Department of Public Health (CDPH)  
Safe and Active Communities Branch  
Naloxone Grant Program**

**REQUEST FOR APPLICATIONS (RFA #16-10967):  
Naloxone Distribution Projects**

**APPLICATION (WORD Version)**

Please complete and submit this application for the Naloxone Grant Program on-line at [www.surveygizmo.com/s3/3436263/f7385e3c96d5](http://www.surveygizmo.com/s3/3436263/f7385e3c96d5) as soon as possible, **but no later than May 1, 2017**, in order to initiate the development of a grant agreement with CDPH.

Send questions by April 17, 2017 to [ngp@cdph.ca.gov](mailto:ngp@cdph.ca.gov).

Please provide the following information:

1. Local Health Department:
2. Name of Health Officer:  
Phone Number:                      E-mail Address:
3. Name of Grantee (Legal Business Name):
4. Name of Principal Investigator (PI):  
Address:  
City, Zip:  
Phone:  
FAX:  
E-Mail:
5. Name of Person to Direct Inquiries to:  
Address:  
City, Zip:  
Phone:  
Fax:  
E-Mail:
6. Name and Title of Person Authorized to Sign the Final Grant Agreement on Behalf of Your Agency:
7. Your organization's DEA Number:
8. Address associated with your DEA Number (this address will be used for shipment of naloxone product):

Please refer to the Naloxone Grant Program Local Health Department Allocation Chart included as Attachment A in the Naloxone Grant Program Request for Applications (RFA) to determine the amount of grant product and funding being offered to your organization.

The allocation available for administrative costs, if accepted, may be used to cover costs of conducting outreach and assessment of local entities, receipt and distribution of naloxone product, reporting, or other activities related to the grant implementation. However, LHDs may elect to opt out of receiving the administrative allocation and instead apply that dollar amount to the purchase of additional naloxone product.

9. Funding amount you are requesting for the purchase of naloxone product (Narcan nasal spray):

10. Funding amount you are requesting for administrative costs:

11. How would you like to have your allocation of the naloxone product delivered to you (at no cost)?

All in one shipment

In two shipments; receiving half in a second shipment in June, 2018.

12. Understanding that you may need to conduct further outreach to identify those local entities that are ready and qualified to distribute/administer naloxone, who do you see as potential recipients at this time?

Harm Reduction Centers/Syringe Exchange Programs

Substance Use Disorder Treatment Services

Homeless Shelter Programs

Law Enforcement

Emergency Medical Services

Fire Services

Other: \_\_\_\_\_

(In your distribution plan, due to CDPH/SACB 60 days after the grant agreement is executed, you will list the names and types of local entities you select to receive the naloxone product).

Syringe exchange/harm reduction programs that have established naloxone distribution systems in place (as defined in the RFA) are a priority for the distribution of naloxone due to the high risk population that accesses these services.

13. Do you have a syringe exchange/harm reduction program in your jurisdiction?

YES  NO

If YES, do you anticipate any challenges in working with the syringe exchange/harm reduction program in the distribution of naloxone?

YES  NO



If YES, please describe:

14. At this time, do you anticipate any challenges to implementing any of the activities required by the grant?

\_\_\_ YES \_\_\_ NO

If YES, please describe:

By submitting this application, your organization is agreeing to:

1. **Conduct outreach** to identify local entities within their health jurisdiction that already have a naloxone distribution system in place and have the capacity to efficiently and effectively provide naloxone and training to first responders (as described in section C, number 2 in this RFA).<sup>\*</sup> Local entities may include harm reduction/syringe exchange programs, substance use disorder treatment providers, homeless programs, jails, emergency services providers, law enforcement, and others.

<sup>\*</sup>If a LHD identifies the need to establish a new naloxone distribution system(s) in their jurisdiction, the LHD must ensure that any new naloxone distribution system meets the definition provided in section C, number 3 in this RFA prior to distributing naloxone.

2. **Select local entities** to receive naloxone based on the level of risk of overdose among the population(s) they serve and need for naloxone (Narcan) product.

*Priority consideration is to be given to harm reduction/syringe exchange programs, if present within the health jurisdiction. (A list of California harm reduction/syringe exchange programs that currently have a naloxone distribution system in place is included as Attachment B).*

3. **Submit a naloxone distribution plan** to CDPH/SACB for approval by June 16, 2017, or within 60 days of receiving CDPH final approval of the grant agreement. The plan will be submitted on-line and must include the names of selected local entities, the type(s) of services they provide, a description of the target population(s) they serve, and the number of naloxone product they will receive. CDPH will provide a standardized distribution plan template.
4. **Begin distributing naloxone** product to selected local entities by July 16, 2017, or within 90 days of receiving CDPH final approval of the grant agreement. All naloxone must be distributed to selected local entities by September 30, 2018.
5. **Document and submit a final report** to CDPH/SACB by April 1, 2019, on the distribution of naloxone for accountability and evaluation purposes.

6. **Enter into a Standard Grant Agreement with CDPH.** Attachment C includes a grant agreement template, Budget Detail and Payment Provisions, Standard Grant Conditions, and Additional Provisions.

Thank you!

**SUBMIT**

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Additional Provisions

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Additional Provisions

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- B. Conflicts of interest include, but are not limited to:
- 1) An instance where the Grantee or any of its subgrants, or any employee, officer, or director of the Grantee or any subgrant or has an interest, financial or otherwise, whereby the use or disclosure of information obtained while performing services under the grant would allow for private or personal benefit or for any purpose that is contrary to the goals and objectives of the grant.
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Exhibit E  
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**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.

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

**CONTRACTOR CERTIFICATION CLAUSES**

1. **STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 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 lesser 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.



OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS

## REGULAR AGENDA REQUEST

Print

**MEETING DATE** August 21, 2018

**Departments: Public Health**

**TIME REQUIRED** 10 minutes

**PERSONS APPEARING BEFORE THE BOARD** Sandra Pearce

**SUBJECT** CDPH, Syringe / Needle Exchange Program

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### AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

Syringe Exchange Program of the California Department of Public Health, Office of AIDS (CDPH/OA).

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### RECOMMENDED ACTION:

Authorize the Public Health Department's submission of an application to become a CDPH/OA Syringe Exchange Program.

---

### FISCAL IMPACT:

There is no impact to the General Fund. Funding and supplies will be provided through various public health related grant programs.

---

**CONTACT NAME:** Sandra Pearce

**PHONE/EMAIL:** 760-924-1818 / spearce@mono.ca.gov

---

### SEND COPIES TO:

Sandra Pearce

---

### MINUTE ORDER REQUESTED:

YES  NO

---

### ATTACHMENTS:

Click to download
<a href="#">BOS Staff Report</a>
<a href="#">SEP Fact Sheet</a>
<a href="#">SEP Application</a>
<a href="#">SEP Operating Requirements</a>
<a href="#">SEP Guidelines</a>

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History

<b>Time</b>	<b>Who</b>	<b>Approval</b>
8/17/2018 5:38 AM	County Administrative Office	Yes
8/16/2018 9:41 AM	County Counsel	Yes
8/16/2018 3:35 PM	Finance	Yes



# MONO COUNTY HEALTH DEPARTMENT

## Public Health

P.O. BOX 476, BRIDGEPORT, CA 93517 PHONE (760) 932-5580 • FAX (760) 932-5284  
P.O. BOX 3329, MAMMOTH LAKES, CA 93546 PHONE (760) 924-1830 • FAX (760) 924-1831

DATE: August 21, 2018  
TO: Honorable Board of Supervisors  
FROM: Sandra Pearce, Public Health Director  
SUBJECT: Mono County Health Department Syringe Exchange Program

### **Recommendation:**

Support the Health Department's interest to submit an application to become a California Department of Public Health, Office of AIDS (CDPH/OA) Syringe Exchange Program.

### **Discussion:**

This is an intervention discussed in the presentation, Opioid Epidemic and Harm Reduction, given on August 21, 2018. Syringe exchange programs (SEPs) have been operating in California since the late 1980s, providing sterile syringes, collecting used ones, and acting as a point of access to health care and help for people who inject drugs. Mono County Public Health and Behavioral Health have determined through key informant interviews and client interactions that conditions exist for the rapid spread of HIV, viral hepatitis, or other blood-borne diseases. As such, both departments would like to establish a coordinated Syringe Exchange Program.

The Public Health Department would like to apply to the California Department of Public Health, Office of AIDS (CDPH/OA) to be authorized to operate as a Syringe Exchange Program. This Syringe Exchange Program would be operated in partnership with the Behavioral Health Department, including a syringe exchange location at the Behavioral Health Department's main office in Mammoth and potentially its satellite locations in Walker and/or Benton. Organizations applying to CDPH/OA for authorization to provide syringe services must submit the following plans with their applications:

- Syringe Dispensing Plan
- Syringe Collection and Sharps Waste Disposal Plan
- Service Delivery Plan
- Data Collection and Program Evaluation Plan
- Community Relations Plan

Additionally, to be eligible for CHPH/OA funding, each program must provide the following materials and key services:

- Hypodermic needles and syringes
- Personal sharps disposal containers

- Harm reduction supplies including, but not limited to, safer injection and wound care supplies
- Condoms and other safer sex supplies
- Syringe collection and disposal
- Information and education including:
  - Overdose prevention and response training
  - Safer injection education
  - Education about proper sharps disposal and prevention of needle-stick injuries
  - Safer sex education
- Direct provision, direct linkage or referrals to:
  - Substance use disorder treatment services
  - Screening for HIV, HCV and sexually transmitted infections
  - HIV and HCV care and treatment
  - Hepatitis A and hepatitis B vaccination
  - Housing services
  - Naloxone

**Fiscal Impact:**

There is no impact to the General Fund.

Funding and supplies will be provided through:

- Ryan White, Part B (staff time and some supplies)
- Office of AIDS Clearing House (syringes, supplies, and educational materials)
- STD Branch (HIV and HCV test kits)
- Immunization Assistance Grant (Hep A/B Vaccines)
- CDPH Naloxone Grant (Naloxone)

For questions about this item, please call Sandra Pearce at (760) 924-1818.

Submitted by:



Sandra Pearce, Public Health Director



# FACT SHEET

## ABOUT THE CALIFORNIA DEPARTMENT OF PUBLIC HEALTH, OFFICE OF AIDS SYRINGE EXCHANGE CERTIFICATION PROGRAM

July, 2018

Syringe exchange programs (SEPs) have been operating in California since the late 1980s, providing sterile syringes, collecting used ones, and acting as a point of access to health care and help for people who inject drugs.

As part of California's efforts to prevent the spread of HIV and other blood-borne diseases, California [Health and Safety \(H&S\) Code Section 121349](#) outlines **two mechanisms** by which an SEP may be authorized to operate.

1. SEPs may be authorized by county or city government; and/or
2. Programs may be authorized by the California Department of Public Health, Office of AIDS (CDPH/OA) in any location where the department determines that the conditions exist for rapid spread of HIV, viral hepatitis, or other blood-borne diseases.

Additionally, California Business and Professions Code Section 4145 permits physicians and pharmacists to furnish or sell an unlimited number of hypodermic needles and syringes to adults age 18 and older.

### The CDPH/OA SEP Certification Program

Under California H&S Code Section 121349:

- Applicants may apply directly to CDPH/OA for authorization, rather than to their local county or city government.

- Applications must meet minimal requirements to be considered. These include a list of basic services that must be provided (including, but not limited to referrals to drug treatment and mental health programs), sufficient funding to provide the services and capacity to collect required data.
- Once the Department determines that an application meets these requirements and deems the applicant provisionally appropriate CDPH/OA must post information about the application on its website and a 45-day public comment period begins.
- During this period CDPH/OA must consult with local law enforcement and the local health officer of the proposed location.
- After the 45-day public comment period, CDPH/OA has 30 business days in which to make the decision.
- SEP certification is granted for two years. Before the end of the two-year period, the Department may reauthorize the program in consultation with the local health officer and local law enforcement leadership.

Additional information about the CDPH/OA Syringe Exchange Certification Program and about access to sterile syringes in California is available at the CDPH/Office of AIDS website at:

[https://www.cdph.ca.gov/Programs/CID/DOA/Pages/OA\\_prev\\_sep.aspx](https://www.cdph.ca.gov/Programs/CID/DOA/Pages/OA_prev_sep.aspx).



**IV. Description and Summary of Proposed SEP**

Program Service Delivery Mode <i>(check one)</i> : <input type="checkbox"/> Fixed Site <input type="checkbox"/> Mobile Site <input type="checkbox"/> Both Fixed and Mobile Sites	Estimated Annual Number of Clients to be Served: <input style="width: 50px;" type="text"/>	Estimated Annual Number of Syringes Dispensed & Collected: <input style="width: 50px;" type="text"/> & <input style="width: 50px;" type="text"/>
---	--	--

SEP Location(s), Days and Hours of Operation *(if more than three locations, provide all of the requested information below for each additional location in an attachment)*:

Name of Location	Address of Location	County	Days and Hours of Operation <i>(e.g. Monday - Friday 2pm to 8pm, Saturday 11am to 2pm)</i>
1.			
2.			
3.			

Is there a neighborhood association affiliated with the location(s) of your proposed SEP site(s)?     Yes     No  
 If yes, please provide the contact name, phone number, and e-mail for the neighborhood association(s) for each location.

Contact Name	Phone Number	E-mail Address
1.	(    )	
2.	(    )	
3.	(    )	

For each of the SEP locations above, please describe the staffing *(please indicate number of staff, titles of positions, and a brief description of their duties)*:

	Number of Staff	Title of Position(s)	Description of Duties
1.	<input style="width: 40px; height: 20px;" type="text"/> #		
2.	<input style="width: 40px; height: 20px;" type="text"/> #		
3.	<input style="width: 40px; height: 20px;" type="text"/> #		

Please provide a short summary paragraph that will be posted on the California Department of Public Health, Office of AIDS website, which summarizes the proposed program and includes the name of the applicant organization, the name of the SEP *(if different)*, the location(s), hours and days of service, and types of services to be delivered *(not to exceed 150 words)*:



**V. Needs Statement**

Please provide the rationale for the request for Certification in the location(s) specified and use data and other objective sources to document the need. Examples include statistics on HIV infection among IDUs in the local health jurisdiction (LHJ), statistics on viral hepatitis among IDUs in the LHJ, and the presence or absence of other syringe exchange services in the proposed location(s):

**VI. Additional Required Information**

Additional requirements for SEP Certification are listed in the California Code of Regulations Subchapter 15, Sections 7000 through 7016, Title 17, Division 1, Chapter 4.

**Applicants must attach a copy of each of the following:**

- a) Syringe Dispensing Plan as described in Section 7012(a);
- b) Syringe Collection and Disposal Plan as described in Section 7012(b);
- c) Service Delivery Plan as described in Section 7012(c);
- d) Data Collection and Program Evaluation Plan as described in Section 7012(d);
- e) Community Relations Plan as described in Section 7012(e); and
- f) A budget for the program which includes a minimum projected income and costs for personnel, outside services and operating expenses, including but not limited to rent, utilities, equipment, materials including syringes and disposal containers, transportation, insurance, training, meetings, syringe disposal services, and indirect costs.

A description of each plan can be found on the CDPH/OA Syringe Exchange Certification Program Application Checklist.

**VII. Applicant Acknowledgement and Attestation\*\***

The following SEP services must be provided to all participants by State-certified SEPs per Health and Safety Code Section 121349(d)(3):

- Needle and syringe exchange services;
- HIV and viral hepatitis prevention education services; and
- Safe recovery and disposal of used syringes and sharps waste.

The Applicant attests that upon Certification it will comply with state laws, regulations, and local ordinances.

The Applicant also attests that it has the capacity to begin syringe exchange services within ninety (90) days of Certification.

The Applicant further acknowledges and agrees to the involvement of program participant input into program design, implementation, and evaluation.

**Signature:** \_\_\_\_\_ **Date (mm/dd/yyyy):** \_\_\_\_\_

**\*\* IMPORTANT:** Submission of an application does not constitute Certification.

**Completed applications for Certification can be submitted via:**

**Mail:**

California Department of Public Health, Office of AIDS  
Attention: SEP Certification Program  
P.O. Box 997426, MS 7700  
Sacramento, CA 95899-7426

**or:**

**E-Mail:**

[SEPAApplication@cdph.ca.gov](mailto:SEPAApplication@cdph.ca.gov)

Additional information on SEP Certification can be found at:

[https://www.cdph.ca.gov/programs/CID/DOA/pages/OA\\_prev\\_sep.aspx](https://www.cdph.ca.gov/programs/CID/DOA/pages/OA_prev_sep.aspx)

# Operating Requirements for Syringe Exchange Programs Certified by the California Department of Public Health, Office of AIDS

*The operating requirements for syringe exchange programs (SEPs) authorized by the California Department of Public Health (CDPH) are outlined in California Health and Safety Code (HSC) Section 121349 and California Code of Regulations Title 17, Division 1, Chapter 4, Subchapter 15.*

Organizations applying to CDPH for authorization to provide syringe services must submit the following plans with their applications. The description of each plan may be short, but must include the elements listed.

## **Syringe Dispensing Plan**

The Syringe Dispensing Plan describes how the program will provide supplies, including needles and syringes, to program participants. The plan must:

1. Be designed to provide new, sterile syringes to meet the needs of participants in accordance with the recommendations made by the U.S. Public Health Service, published in the Center for Disease Control and Prevention's Medical Advice for Person Who Use Injection Drugs, 1997, to support the use of a new, sterile syringe for each injection; and
2. Track the number of syringes dispensed.

## **Syringe Collection and Sharps Waste Disposal Plan**

This plan describes how the program will collect sharps waste from program participants, and how the program will dispose of sharps and other home-generated medical waste. The syringe collection and sharps waste plan must:

1. Be designed to maximize return of used syringes without increasing risk of needlestick injury to staff or program participants;
2. Track number of syringes returned in a manner that eliminates direct handling of sharps waste and does not interfere with service provision;
3. Include a needlestick injury protocol and a plan for ensuring staff and participant familiarity with the protocol;
4. Include sharps waste disposal education that ensures staff and participants are familiar with state law regulating proper disposal of home-generated sharps waste as referenced in HSC Section 118286; and
5. Include a plan and budget for sharps waste disposal, or an explanation if no cost is associated with the sharps waste disposal.

## **Service Delivery Plan**

This plan describes how the program will deliver services, and which services will be provided, either directly or by referral. The plan must include *direct* provision of the following services:

1. Syringe exchange services;
2. HIV and viral hepatitis prevention education; and

# Operating Requirements for Syringe Exchange Programs Certified by the California Department of Public Health, Office of AIDS

3. Safe recovery and disposal of used syringes and sharps waste.

## **Data Collection and Program Evaluation Plan**

The data collection and program evaluation plan describes how programs will collect and report data and evaluate the impact of their efforts. The plan must describe how the program will:

1. Incorporate evaluation data into program design, and
2. Include at minimum the following data elements:
  - a. The total number of persons served;
  - b. The total number of syringes and needles dispensed, collected and disposed of; and
  - c. The total number and types of referrals made to drug treatment and other services.

## **Community Relations Plan**

The community relations plan must:

1. Record adverse incidents and positive interactions between local law enforcement and SEP staff, volunteers or participants in their role as program participants;
2. Document concerns and positive feedback expressed by program participants, community members, neighborhood associations and/or local law enforcement officials; and
3. Document steps the program has taken to address any reasonable concerns.

# **Guidelines for Syringe Exchange Programs Funded by the California Department of Public Health, Office of AIDS**



California Department of Public Health  
Center for Infectious Diseases  
Office of AIDS

May 10, 2018

# Table of Contents

[Ctrl + click on headings below to go directly to the pages indicated](#)

<b>Introduction</b> .....	<b>3</b>
Public Funding of Syringe Exchange.....	3
Purpose of the Guidelines .....	4
What These Guidelines Are Not.....	4
Development and Review .....	4
<b>Guidelines for SEPs Funded by CDPH/OA</b> .....	<b>6</b>
Key Services .....	6
Policies and Procedures.....	7
Data Collection and Evaluation .....	7
<b>OA SEP Guidelines Self-Assessment Checklist</b> .....	<b>9</b>
<b>Appendix A: Authorization of SEPs in California</b> .....	<b>12</b>
Local Authorization of SEPs.....	12
State Authorization of SEPs .....	12
Local Health Department Role in Local SEP Authorization.....	12
<b>Appendix B: Glossary of Terms</b> .....	<b>14</b>
<b>Appendix C: California Legal Code Related to Access to Sterile Syringes</b> .....	<b>15</b>
<b>Appendix D: Framework for IDU Health and Wellness</b> .....	<b>158</b>
<b>Appendix E: Examples of Needle-Stick Injury Prevention and Response Protocols</b> .....	<b>21</b>
<b>Appendix F: Examples of Client Confidentiality Protocols</b> .....	<b>24</b>
<b>Appendix G: Resources</b> .....	<b>27</b>
Best Practices .....	27
Websites with Additional Resources.....	27

# Introduction

## Public Funding of Syringe Exchange

Syringe exchange programs (SEPs) have been operating in California since 1988, when activists in San Francisco began providing sterile syringes and collecting used ones in response to the burgeoning AIDS epidemic. SEPs were soon established in other cities and counties in the state, and in 1999 Governor Gray Davis signed legislation that sanctioned local authorization of SEPs. The counties and cities in California that provided this authorization were among the first in the country to fund syringe exchange with public dollars.

Scientific research conducted over the more than two decades since those first street-based efforts has conclusively demonstrated that syringe exchange is highly effective in reducing the spread of HIV among people who inject drugs (PWID) and in linking them to other essential services. Research has consistently demonstrated that SEPs do not result in negative consequences such as increased drug use or increased syringe litter in the communities that are host to these programs.

In December 2015, President Barack Obama signed legislation that responded to calls from the scientific, medical and public health communities to allow federal funding of efforts to expand access to sterile syringes. Federal agencies, including the Department of Health and Human Services, the Centers for Disease Control and Prevention (CDC), the Health Resources and Services Administration (HRSA) and the Substance Abuse and Mental Health Administration (SAMHSA), [issued guidance](#) to allow grantees to use their funds to support syringe services programs (SSPs).<sup>1</sup>

In a separate but equally impactful action, the California State Legislature passed and Governor Edmund G. Brown signed Senate Bill 75, Committee on Budget, Chapter 18, Statutes of 2015, which authorized funding that allowed the California Department of Public Health (CDPH), Office of AIDS (OA) to establish a Syringe Exchange Supply Clearinghouse. The Supply Clearinghouse provides a baseline level of supplies to authorized SEPs in order to enhance the health and wellness of people who inject drugs and increase the organizational stability of California SEPs.

OA considers access to sterile syringes to be a critical component of HIV prevention and care in California. OA supports an approach to working with PWID that fosters overall health and wellness through such services as wound care, overdose prevention, viral hepatitis testing and medication-assisted treatment, and involving drug users in the development of the programs that are meant to serve them. OA encourages its local partners to include syringe exchange funding among their locally-funded initiatives, where such local funds are available, and to

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<sup>1</sup> "SSP" is the term used by CDC and other federal agencies to denote programs that provide syringe exchange, distribution, and/or disposal for PWID. SSPs include SEPs, but may also include other programs or initiatives, such as nonprescription syringe sale in pharmacies, physician prescription for disease prevention purposes, and sharps disposal for PWID. This document refers specifically to syringe exchange program operation, and does not address other SSPs.

include SEPs among the AIDS service organizations with which they consult on matters of policy and practice.

### **Purpose of the Guidelines**

These guidelines were developed in accordance with recommendations made by the United States Public Health Service, which state “for those who are unable to stop injection drugs, a new, sterile syringe should be used for each injection.”<sup>2</sup> The *Guidelines for SEPs Funded by CDPH/OA*:

1. Outline the minimum requirements for California programs to be funded with OA funds or receive materials through the California Syringe Exchange Supply Clearinghouse;
2. Provide information on legal requirements associated with SEP operations in California state statute;
3. Provide ancillary information such as *California Legal Code Related to Access to Sterile Syringes* (Appendix C) and the *Framework for Injection Drug User (IDU) Health and Wellness* (Appendix D) to assist local health jurisdictions (LHJs) and SEPs in understanding the environment in which they work, and the ways in which they can do their best work.

### **What These Guidelines Are Not**

These guidelines are designed to outline the requirements for California SEPs to receive supplies through OA and/or be funded with OA funds and do not apply to the general operation of SEPs in California. **These guidelines do not supersede legal requirements for SEP operation established in California state laws or by local California governments and their municipal laws.** Federal funders may issue additional guidance to their grantees; if applicable, OA will integrate those requirements into future updates of this document.

These guidelines apply to SEPs themselves and do not include additional guidance for health departments that fund SEPs using OA CDC or HRSA monies. Guidance for LHJs is available on the OA Prevention Branch [web page](#).

While this document may offer a framework for best practices, it is not a comprehensive guide to best practices established by scientific research and experienced practitioners in the field. Suggestions for best practices can be found in Appendix G. Additionally, the *Framework for Injection Drug User Health and Wellness*, attached here in Appendix D, provides an overview of best practices for community-based organizations working with PWID from a California perspective.

### **Development and Review**

The *Guidelines for SEPs Funded by CDPH/OA* are based in part on a document developed by the San Francisco Department of Public Health, “San Francisco Syringe Access and Disposal Program Policy and Guidelines,” which was in turn modeled on guidance developed by the New South Wales Australia Department of Health.

This document was written by Alessandra Ross, Injection Drug Use Specialist for OA, and was edited and reviewed by members of the California Syringe Exchange Network (CASEN), an association of syringe exchange providers. OA is grateful for the efforts of Rachel Anderson, Daniel Getzoff, Emalie Huriaux, Joy Rucker, Hilary McQuie, and Shoshanna Scholar in the development of these guidelines. Rachel McLean (California Department of Public Health, STD

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<sup>2</sup> CDC. (1997). Health Resources and Services Administration, National Institute on Drug Abuse and Substance Abuse and Mental Health Services Administration. [HIV prevention bulletin: Medical advice for persons who inject illicit drugs](#). Retrieved May 29, 2016, from

Control Branch) also contributed to the development. Additional review was provided by Peter Simpson (Harm Reduction Services), Bob Lewis (Family Health Centers of San Diego), and Dallas Blanchard (Fresno Needle Exchange). The *Framework for Injection Drug Use Health and Wellness* (Appendix D) was developed in 2009 by the Substance Use/Injection Drug Use Task Force of the California Planning Group, the primary community advisory body to OA.



# Guidelines for SEPs Funded by CDPH/OA

These guidelines outline the minimal requirements for California SEPs to receive syringe exchange supplies through the California Syringe Exchange Supply Clearinghouse and/or to be funded with OA funds through contracts with local health departments to provide syringe exchange services.

The guidelines are followed by the *OA SEP Guidelines Self-Assessment Checklist*, which is designed to help California SEPs assess their readiness to apply for OA materials or receive OA syringe exchange funding through local health departments.

## Key Services

In order to be eligible for OA funding, each SEP must be authorized to operate pursuant to Health & Safety (H&S) Code Section 121349<sup>3</sup> or Business & Professional (B&P) Code Section 4145. Each program must provide the following materials and services:

1. Hypodermic needles and syringes;
2. Personal sharps disposal containers;
3. Harm reduction supplies including, but not limited to, safer injection and wound care supplies;
4. Condoms and other safer sex supplies;
5. Syringe collection and disposal;
6. Information and education including:
  - a. Overdose prevention and response training;
  - b. Safer injection education;
  - c. Education about proper sharps disposal and prevention of needle-stick injuries; and
  - d. Safer sex education.
7. Direct provision, direct linkage or referrals to:
  - a. Substance use disorder treatment services;
  - b. Screening for HIV, HCV and sexually transmitted infections;
  - c. HIV and HCV care and treatment;
  - d. Hepatitis A and hepatitis B vaccination;
  - e. Housing services; and
  - f. Naloxone.

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<sup>3</sup> H&S Code Section 121349 allows local governments to authorize SEPs in consultation with CDPH, and allows CDPH/OA to directly authorize applicant agencies to provide syringe exchange services.

## **Policies and Procedures**

In addition to the services listed above, SEPs that receive syringe exchange supplies through the California Syringe Exchange Supply Clearinghouse or are funded with OA funds through contracts with local health departments to provide syringe exchange services must have policies and procedures in place that are consistent with [harm reduction](#) principles. These policies and procedures must include the following:

1. Syringe dispensing policies designed to provide sufficient new syringes to meet the needs of program participants, in keeping with U.S. Public Health Service recommendations that people who inject drugs use a new, sterile syringe for each injection;<sup>4</sup>
2. Syringe collection and disposal policies and procedures that:
  - a. Encourage program participants to return used syringes to the program, and/or to dispose of them properly;
  - b. Collect sharps waste in such a way to minimize direct handling by program staff, volunteers and clients. Returned syringes should not be individually counted. The number of returned syringes may be calculated through recording volume or weight of returned sharps containers, or through other methods that avoid direct handling of sharps waste.
3. A [needle-stick injury protocol](#) and a plan for ensuring staff and participant familiarity with the protocol (see examples, Appendix E); and
4. Protocols to safeguard participant confidentiality (see examples, Appendix F).

## **Data Collection and Evaluation**

In addition to the services, policies and procedures above, SEPs must evaluate their own programs, and contribute to knowledge about California syringe exchange programs. As part of those efforts, SEPs must:

1. Implement a community relations plan that:
  - a. Records adverse and/or positive incidents between law enforcement and SEP staff, volunteers or participants (in their role as SEP participants);
  - b. Documents concerns expressed by program participants, community members and law enforcement and makes a good faith effort to address any reasonable concerns;
2. Implement an evaluation plan that:
  - a. Incorporates evaluation data into program design;

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<sup>4</sup> Op. cit.

- b. Gathers both input and feedback from program participants and incorporates both into program design;
- c. Reports the following data to OA annually:
  - 1. Number of syringes dispensed;
  - 2. Number of syringes collected;
  - 3. Number of clients served; and
  - 4. Number of naloxone kits dispensed (if applicable).

### **Additional Reporting Requirements**

In addition to the data reporting requirements above, SEPs must:

- 1. Provide to OA information about program operation including hours of operation, locations, and additional services offered to accompany syringe exchange.
- 2. Participate in a once-yearly survey that examines program capacity and the challenges that California SEPs face.

# OA SEP Guidelines Self-Assessment Checklist

In order to determine ability to meet the above guidelines, complete the self-assessment checklist below.

## Materials and Services

*Our SEP provides the following, or will be able to provide within 30 days of receiving CDPH/OA supplies or funding:*

- Hypodermic needles and syringes;
- Personal sharps disposal containers;
- Safer injection supplies;
- Wound care supplies;
- Condoms and safer sex supplies; and
- Syringe collection and disposal for people who inject drugs.

## Policies and Procedures

*Our SEP has the following policies and procedures in place, or will be able to put them in place prior to receiving CDPH/OA supplies or funding:*

- Syringe collection protocols that:
  - Encourage participants to return used syringes and dispose of them properly;
  - Collect sharps waste and track returned sharps waste in such a way to minimize direct handling by staff, volunteers, and clients;
- Syringe dispensing policies that are in keeping with federal recommendations that people who inject drugs (PWID) use a new, sterile syringe for each injection;
- Needle stick prevention protocols;
- Needle stick injury response protocols; and
- Participant confidentiality protocols.

## Data Collection and Evaluation Design

*Our SEP collects the following data, or will be able to within 30 days of receiving CDPH/OA supplies or funding:*

- Number of syringes dispensed;
- Number of syringes collected;
- Number of clients served; and
- Number of naloxone kits dispensed (if applicable).

*Our SEP will establish a Community Relations Plan within 30 days of receiving CDPH/OA supplies or funding that:*

- Records adverse and/or positive incidents between law enforcement, SEP staff, volunteers, and participants; and
- Documents concerns expressed by participants, community members and law enforcement, which SEP will make a good faith effort to address.

*Our SEP will establish an evaluation plan within 90 days of receiving CDPH/OA supplies or funding that:*

- Incorporates evaluation data into the program design; and
- Gathers input and feedback from participants and incorporates it into the program design.

### **Data Reporting**

*Our SEP will be prepared to:*

- Report data to OA annually;
- Provide OA with program operations information including hours, location, and additional services offered; and
- Participate in a yearly survey to examine program capacity and challenges.

### **Harm Reduction Training and Information**

*Our SEP provides the following, or will be able to provide within 90 days of receiving CDPH/OA supplies or funding:*

- Overdose prevention and response training;
- Safer injection education;
- Education about proper sharps disposal and prevention of needle-stick injuries; and
- Safer sex education.

### **Testing, Screening, Linkage and Referrals**

*Our SEP will: 1) provide services on-site 2) provide direct linkage (warm handoff) or 3) provide referrals to the following:*

Substance use disorder treatment services

- 1) Provide
- 2) Direct Linkage
- 3) Referral

HIV screening

- 1) Provide
- 2) Direct linkage
- 3) Referral

HIV care & treatment

- 1) Provide
- 2) Direct linkage
- 3) Referral

HCV care & treatment

- 1) Provide
- 2) Direct linkage
- 3) Referral

Hepatitis A & hepatitis B vaccination

- 1) Provide
- 2) Direct linkage
- 3) Referral

Naloxone

- 1) Provide
- 2) Direct linkage
- 3) Referral

HCV screening

- 1) Provide
- 2) Direct linkage
- 3) Referral

Sexually transmitted infections screening

- 1) Provide
- 2) Direct linkage
- 3) Referral

Housing services

- 1) Provide
- 2) Direct linkage
- 3) Referral

# Appendix A: Authorization of SEPs in California

## Local Authorization of SEPs

California law allows local boards of supervisors, mayors and/or city councils to authorize syringe exchange within their jurisdictions in consultation with CDPH. (See Appendix C for complete text of applicable statute.)

Once locally authorized, SEPs do not need to be re-authorized unless local ordinance requires it. An SEP that is authorized through local government action is considered an authorized program and does not need to apply to the state for authorization.

## State Authorization of SEPs

California law also allows CDPH to authorize SEPs in locations where the conditions exist for rapid spread of viral hepatitis, HIV or other potentially deadly diseases. The [CDPH/OA Syringe Exchange Certification Program](#) allows agencies that serve PWID to apply directly to OA to add syringe exchange to their current services. Key provisions of the program include:

- OA SEP certification lasts two years and is made after consultation with the local health officer (LHO) and local law enforcement official, and after a 90-day public comment period;
- Before the end of the two-year authorization period, OA may reauthorize the SEP in consultation with the LHO and local law enforcement officials.

Counties and cities maintain the authority to authorize SEPs and set their own standards for program operation. Standards for OA-Certified SEPs may be found [here](#).

## Sale or Provision of Syringes by Licensed Pharmacists and Physicians

California law allows pharmacists and physicians to furnish or sell an unlimited number of hypodermic needles and syringes to adults age 18 and older. The law also permits adults age 18 and older to possess syringes for personal use if acquired from a physician, pharmacist, authorized SEP or any other source that is authorized by law to provide sterile syringes or hypodermic needles without a prescription.

Syringe services provided by physicians and pharmacists are authorized by B&P Code Section 4145 and do not require separate authorization by state or local government.

Physician-operated syringe services administered in accordance with B&P Code Section 4145 are eligible to participate in the California Syringe Exchange Supply Clearinghouse.

## Local Health Department Role in Local SEP Authorization

H&S Code Section 121349.3 requires the LHO in counties and/or cities that have authorized SEPs to present information about SEPs at an open meeting of the local authorizing body (city

council or board of supervisors).<sup>5</sup> These presentations must be made biennially (every other year). The LHO is not required to report on syringe access services led by physicians and pharmacists.

The information the LHO must report to the city council or board of supervisors is required to include, but is not limited to, relevant statistics on blood-borne infections associated with syringe sharing and the use of public funds to support SEPs.

Although not codified in law, in practice many boards of supervisors, mayors and city councils have relied on recommendations made by their LHO in order to take action to authorize syringe exchange within the jurisdiction. Technical assistance is available from OA in order to support these recommendations, and the [OA Syringe Access web page](#) provides background information that may be useful in developing presentations and reports.

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<sup>5</sup> The LHO has no responsibility to report on SEPs that are authorized by CDPH/OA, however, when CDPH/OA authorizes SEPs in a county it is required by law to both consult with the LHO prior to authorization, and to provide the LHO with data gathered by the SEP on an annual basis. See Appendix C for further information.



# Appendix B: Glossary of Terms

Harm reduction	<p>A set of strategies to reduce drug-related harm experienced by individuals, families and communities. These strategies do not require the drug user to cease or modify his or her drug use prior to taking action to reduce harm. The term may also be applied more broadly to non-drug-related harms: the British Columbia Centre for Disease Control defines harm reduction as “taking action through policy and programming to reduce the harmful effects of behavior” (BC Centre for Disease Control, 2004).</p> <p>Harm reduction principles are outlined in the <a href="#">Key Principles</a> section of the <i>Framework for IDU Health and Wellness</i>, Appendix D.</p>
Needle-stick injury protocol	Policies and procedures that outline both immediate and subsequent remedial and prophylactic actions to take in the event of a needlestick injury.
Sharps waste	Used needles, syringes and lancets. Sharps waste from individuals is termed “home-generated sharps waste” by California law, and is not regulated as “medical waste”, which is sharps and other waste generated on site by medical providers, and is subject to different laws and regulations.
Syringe exchange program	Program that provides access to sterile syringes and other sterile injection supplies and collects used syringes from program participants. Programs also provide relevant information and education, including overdose prevention and response, as well referrals to medical care, drug treatment, and other social services.
Syringe services programs	Term used by the federal Department of Health and Human Services and its agencies to refer to 1) syringe exchange programs and 2) syringe disposal programs for PWID.

# Appendix C: California Legal Code Related to Access to Sterile Syringes

## Syringe Exchange Programs

[California Health and Safety \(H&S\) Code Section 11364.7\(a\)](#) establishes that no public entity, its agents, or employees shall be subject to criminal prosecution for distribution of syringes to participants in syringe exchange programs (SEPs) authorized by the public entity.

[California Business and Professions \(B&P\) Code Section 4145.5\(e\)](#) requires SEPs to counsel consumers on safe disposal and provide them with one or more of the following disposal options: 1) onsite disposal, 2) provision or sale of sharps containers that meet applicable state and federal standards, and/or 3) provision or sale of mail-back sharps containers.

## Local Authorization of SEPs

[H&S Code Section 121349.1](#) allows local governments to authorize SEPs in consultation with the California Department of Public Health (CDPH), as recommended by the U.S. Secretary of Health and Human Services, subject to the availability of funding, as part of a network of comprehensive services, including treatment services, to combat the spread of HIV and blood-borne hepatitis infection among injection drug users.

[H&S Code Section 121349.2](#) requires that local government and health officials, law enforcement and the public be given an opportunity to comment on SEPs on a biennial basis in order to address and mitigate any potential negative impact of SEPs.

[H&S Code Section 121349.3](#) requires the local health officer to present information about SEPs at an open meeting of the local authorizing body. The information is to include, but is not limited to, relevant statistics on blood-borne infections associated with syringe sharing and the use of public funds to support SEPs. The report must be made on a biennial basis.

## State Authorization of SEPs

[H&S Code Section 121349.1](#) allows CDPH to authorize SEPs in locations where the conditions exist for the rapid spread of viral hepatitis, HIV or other potentially deadly diseases.

## Sale or Provision of Syringes by Licensed Pharmacists and Physicians

[B&P Code Section 4145](#) permits pharmacists and physicians to furnish or sell an unlimited number of hypodermic needles and syringes to adults age 18 and older.

[H&S Code Section 11364](#) permits adults age 18 and older to possess syringes for personal use if acquired from a physician, pharmacist, authorized SEP or any other source that is authorized by law to provide sterile syringes or hypodermic needles without a prescription.

### **Individual Possession of Needles and Syringes**

[H&S Code Section 11364](#) governs the possession of drug paraphernalia. Adults age 18 and older may possess syringes for personal use if acquired from a physician, pharmacist, authorized SEP or any other source that is authorized by law to provide sterile syringes or hypodermic needles without a prescription. Adults may possess an unlimited number of hypodermic needles and syringes for personal use, without a prescription. Individuals may not possess a syringe on school grounds with the intent to provide the syringe to an individual under the age of 18, if that person may use the syringe to inject a controlled substance.

### **Nonprescription Sale of Syringes (NPSS) in Pharmacies**

[B&P Code Section 4145](#) permits the nonprescription sale of hypodermic needles and syringes by California pharmacies. AB 1743 (Ting, Chapter 331, Statutes of 2014) removed the prior limit on the number of hypodermic needles and syringes that California pharmacies and physicians had been permitted to furnish or sell. As of January 1, 2015, pharmacists and physicians may furnish or sell an unlimited number of hypodermic needles and syringes to adults age 18 and older.

A pharmacy that furnishes nonprescription syringes must store them so that they are only available to authorized personnel and are not accessible to other persons. Such pharmacies must also counsel consumers on safe disposal and provide written information or verbal counseling at the time of syringe sale on how to do the following: 1) access drug treatment, 2) access testing and treatment for HIV and hepatitis C, and 3) safely dispose of sharps waste. A [Patient Information Sheet](#) that includes this written information can be downloaded from the CDPH website. Pharmacies must also make sharps disposal available to customers by selling or furnishing sharps disposal containers or mail-back sharps containers, or by providing on-site disposal.

### **Syringe Disposal**

[B&P Code Section 4146](#) permits pharmacies to accept the return of needles and syringes from the public if contained in a sharps container, which is defined in [H&S Code Section 117750](#) as “a rigid puncture-resistant container that, when sealed, is leak resistant and cannot be reopened without great difficulty.”

[H&S Code Section 118286](#) prohibits individuals from discarding home-generated sharps waste in home or business recycling or waste containers.

[H&S Code Section 118286](#) also requires that home-generated sharps waste be transported only in a sharps container or other container approved by the applicable enforcement agency, which may be either the state ([CalRecycle](#) program) or a local government agency. Home-generated sharps waste may be managed at household hazardous waste facilities, at “home-generated sharps consolidation points,” at the facilities of medical waste generators, or by the use of medical waste mail-back containers approved by the state.

[B&P Code 4145.5](#) requires SEPs and pharmacies that sell or provide nonprescription syringes to counsel consumers on safe disposal and also provide them with one or more of the following disposal options: 1) onsite disposal, 2) provision of sharps containers that meet applicable state and federal standards, and/or 3) provision of mail-back sharps containers.

# Appendix D: Framework for IDU Health and Wellness

Excerpt from the California HIV/AIDS Planning Group *Framework for Injection Drug User Health and Wellness*, 2009.

## Purpose

*The Framework for IDU Health and Wellness* was written by the California HIV Planning Group's Substance Use/IDU Task Force in collaboration with OA staff and in consultation with community experts. It was inspired by the *Framework for Gay Men's Health and Wellness*, which was developed in 2004 by the Gay Men's Task Force of the CHPG. In that document, the authors state that the Task Force concluded that "sustained HIV prevention efforts have faltered, in part, because they focused singularly on a disease—AIDS—rather than focusing on the diverse health and wellness of gay men...[H]ealth promotion must be the platform and disease prevention one of the planks among all health-related initiatives targeting gay men. HIV prevention, therefore, must begin with promoting overall health and wellness including physical, mental, spiritual, and sexual." A similar comprehensive approach is emerging as best practice for HIV prevention and care for injection drug users. The World Health Organization and the Centers for Disease Control and Prevention are among the organizations that have recommended comprehensive services as the most effective way of preventing HIV for IDUs and other drug users.

## Premise

The Substance Use/IDU Task Force asserts that one of the best ways to discourage self-destructive behaviors is to foster value for health and wellness among drug users, as well as a sense of worth and self-acceptance that is not contingent upon abstinence from drugs. The Framework emerges from the philosophy of harm reduction, which holds as one of its key principles that drug users are treated with dignity and as full members of society. The harm reduction model holds much in common with strength-based models of social work and social change, which emphasize the assets of individuals and communities over their deficits.

It is crucial to recognize that the social stigma that exists in this country against injection drug use is institutionalized in ways that affect the health and wellness of IDUs and their communities. This stigma probably deters many people from beginning injection. However, once a person begins injection, that same stigma can pervade every aspect of an individual's life, determining where and how they live, whether or not they receive health care, whether they are treated well or poorly in many different situations and whether they are free or imprisoned. Incarceration increases risk of disease transmission and overdose, and further jeopardizes IDU health. Homophobia, sexism, racism, ageism, classism, and other oppressions that IDUs face, and sometimes perpetrate, also affect IDU health. Additionally, it is well documented that IDUs of color disproportionately bear the burden of HIV disease. Drug using youth also experience multiple oppressions resulting in health disparities. Understanding the debilitating effects of discrimination must be a priority for research, service design and delivery.

## Key Principles

The *Framework for IDU Health and Wellness* is based on the following key principles:

1. Drug users have a right to protect their own health and the health of those around them;
2. Drug users should have the means by which to protect their health, including access to sterile injection equipment sufficient to meet their needs;
3. All drug users should receive accurate, non-biased and non-judgmental information on illicit drugs and other substances;
4. All drug users should receive the same level of care as any other individual accessing health care or social services;
5. Drug users should have access to drug and alcohol treatment on demand;
6. Providers should recognize the valid and valuable expertise that people who use drugs can give to designing, delivering and evaluating effective services;
7. Health care and social service professionals should ensure that the provision of services to drug users is not contingent upon the individual's agreement to enter drug treatment, or abstain from drug use. Service providers must not withhold appropriate treatments or services from drug users; and
8. Services should be provided in a manner that encourages engagement and retention in care.

## Background

Injection drug use has been a familiar aspect of California community life for many decades. With some notable exceptions, state and local governments have not successfully addressed the complex social and medical needs of IDUs who are not in drug treatment programs. The emphasis on identifying and serving the needs of IDUs outside of the drug treatment system is important: research indicates that fewer than half of all injectors report having ever used any substance abuse treatment services in their lifetimes.

In California, drug users, their allies and advocates started rallying around issues of IDU health in the 1980s, when SEPs were first established in order to reduce the risk of HIV infection for drug users, their partners and families. Despite considerable legal and social barriers, IDUs and their allies were successful in establishing [more than 35] SEPs in California, and in integrating services for drug users into countless other health and social service programs in the state. Numerous success stories point to the little-recognized fact that IDUs have been successfully taking responsibility for their own health and the health of their communities for many years.

Community-based organizations (CBOs) are crucial points of intervention and care. People who use drugs interact with virtually every social service system in California. Syringe exchange programs have taken the lead to engage and serve current injection drug users; however, there

remain many untapped opportunities for community-based service programs to help reduce negative health outcomes for drug users, and enhance drug user health and wellness.

Some of the actions CBOs may take include:

1. Provide safer injection education to all active drug users;
2. Offer overdose prevention education and response, and distribute naloxone<sup>6</sup>, especially to people who have been recently incarcerated;
3. Examine policies that exclude active drug users or limit their program participation by referring potential program participants to other agencies rather than serving them directly;
4. Recognize the expertise drug users have by training and employing them as volunteers and staff;
5. Expand syringe access by providing sterile syringes and safe disposal to people injecting drugs;
6. In regions where syringe access is limited by law, provide IDUs with ancillary materials, such as cookers and sterile water, in order to protect IDU health;
7. Ensure that staff members are trained to provide education and treatment referral for significant IDU health issues, including hepatitis, abscess prevention and wound care;
8. Ensure referrals to drug treatment are up-to-date, and include referrals to buprenorphine and methadone maintenance therapy where available;
9. Ensure that staff members are educated in the effects of incarceration on IDU health and are able to provide services that reduce its negative impacts.

This [Framework for Injection Drug User Health and Wellness](#) document is available on the OA website.

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<sup>6</sup> Naloxone, sometimes known by the brand name Narcan, is an opiate antagonist used to reverse the effects of an overdose.

# Appendix E: Examples of Needle-Stick Injury Prevention and Response Protocols

## *Sample Needlestick Prevention Protocol*

### [Washington Heights Corner Project Policy and Procedure Manual](#)

To prevent needlestick injuries to WHCP personnel and participants, the following procedures must always be followed:

- a. WHCP SEP staff, peers, volunteers and participants must be educated regarding safety precautions for carrying and handling of syringes and other “sharps”, with emphasis on the agency's safety policies and procedures during visits to the exchange.
- b. If necessary, WHCP SEP staff, peers and volunteers should remind participants not to crowd the exchange area(s).
- c. Areas where WHCP SEP operations are conducted should have adequate lighting.
- d. WHCP staff, peers and volunteers conducting exchange operations must never handle or touch used injection equipment.
- e. All used injection equipment collected by the program must be placed in approved leak-proof, rigid, puncture-resistant containers (sharps containers).
- f. During syringe exchange program transactions sharps containers should be placed between the participants and staff/volunteers.
- g. WHCP SEP personnel should never hold the sharps container during an exchange; the container should be placed on a secure table or on the ground and should be kept level at all times.
- h. Any injection equipment that falls outside of the sharps container should be retrieved by the participant and placed in the sharps container. If this is not possible, program staff/peers/volunteers should use tongs to retrieve used injection equipment that falls outside the container.
- i. Sharps containers should NEVER be filled beyond the manufacturer's fill line; the container should never be more than 3/4 full.
- j. WHCP SEP staff/peers/volunteers/participants should be instructed never to insert their hands into the sharps container or to forcibly push used injection equipment down into the container beyond the opening at the top.



- k. Each WHCP SEP site must have the following safety equipment on-site during exchange operations: puncture-resistant utility gloves, bleach, and forceps or tongs; all of which could be used in the event of a container spill.
- l. WHCP Program staff/peers/volunteers are encouraged to wear puncture-resistant utility gloves at all times when opening, sealing, or handling sharps containers.
- m. All WHCP staff and volunteers at the exchange site should be encouraged to wear protective clothing, including long pants and closed footwear to have limbs protected against possible needlesticks.
- n. All WHCP SEP staff/peers/volunteers involved in the transport of hazardous waste must receive appropriate training in handling and disposal procedures and only staff/volunteers receiving such training are authorized to transport waste.
- o. Sharps containers must be properly sealed and placed in leakproof, disposable cartons with lids that close securely. These cartons must be clearly labeled "infectious waste."

***Sample Needlestick Prevention and Response Protocol Adapted from the [Guidelines and Operating Procedures manual of the Chicago Recovery Alliance \(CRA\)](#)***

### **Syringe Collection**

Throughout all CRA operations at no time are syringes to be touched.

The people bringing syringes into exchange are responsible for placing them directly into our puncture-proof sharps container.

If a syringe falls on the ground or otherwise does not make it into the sharps container CRA personnel will ask the person who brought it in to place it in the sharps container. Photo tongs will be available to assist anyone in reducing their contacts with the syringes.

When a sharps container is full to the line indicated on its side, it should be closed with the attached lid and put in a safe, out-of-the-way place. It is not reopened or reused after this point and it proceeds directly to disposal (as outlined below).

*These procedures are more stringent than the Blood Borne Pathogens Standards as promulgated by the Occupational Safety and Health Administration (OSHA) for health care settings.*

### **Accidental Needlesticks**

While it is policy for volunteers or staff to not touch used or potentially used syringes at any time during the operation of the outreach, an accidental needle stick may occur.

If anyone is stuck by a needle and the skin is broken the following actions should be immediately taken:

1. Encourage bleeding through the wound caused by the needle. Bleeding through the fresh wound may help cleanse the wound and avoid infections.

2. Wash the wound with soap and water ASAP.
3. Immediately page the site supervisor \_\_\_\_\_(name) at \_\_\_\_\_(number) and inform them of what happened. They will advise you of the current CDC protocol for post-exposure treatments for needle sticks and guide you to these treatments, if indicated. If the site supervisor is not available, page \_\_\_\_\_(name) at \_\_\_\_\_(number)
4. Collect the syringe that stuck you, if possible without additional risk, for testing.
5. The site supervisor will accompany you to \_\_\_\_\_(name of medical facility.)

### **Additional Policy and Procedure Manuals for SEPs**

The Harm Reduction Coalition's technical assistance web pages include several examples of [policy and procedure manuals](#).

# Appendix F: Examples of Client Confidentiality Protocols

## Santa Cruz AIDS Project

In order to preserve the dignity and privacy of all people, it has been recognized that any intimate information by or given to people in the helping profession is so privileged, and that such information is protected under law with prescribed method, circumstances and penalties for its release.

The sole duty of this agency, its individuals, employees, and volunteers is to treat the people who come to us with trust, respect and to protect the confidentiality of any information provided by or about them.

Information obtained about the Santa Cruz AIDS Project, while working in the office or one of its programs is also considered to be of a delicate and sensitive nature. It is not to be repeated within the community at large.

In becoming a volunteer you have accepted a responsibility which carries with it a privilege of service to our community. As a volunteer, you are an integral part of this agency and accept the same ethical responsibility as the program's staff. All information which you may hear, directly or indirectly, concerning a person with HIV disease, their family, friends and or anyone else connected with the program, must also be considered as strictly confidential. Such information should never be discussed with anyone either inside or outside the program, except with authorized and specifically designated case manager as arranged.

I \_\_\_\_\_, agree not to divulge any information obtained during my volunteer work to any unauthorized persons. I recognize that unauthorized release of confidential information may make me subject to civil action under provisions of the welfare and institutions code of the State of California, and application federal laws concerned with the individual's right to privacy.

## Safer Alternatives thru Networking and Education (SANE) Confidentiality Agreement

This agreement applies to all SANE "workforce members" including: employees; medical staff and other health care professionals; volunteers; agency, temporary and registry personnel; and students and interns (regardless of whether they are SANE trainees or rotating through SANE facilities from another institution).

It is the responsibility of all SANE workforce members, as defined above, including employees, medical staff, students and volunteers, to preserve and protect confidential patient, employee and business information. The Federal Health Insurance Portability Accountability Act (HIPAA) Privacy Law, the Confidentiality of Medical Information Act (California Civil Code § 56 et seq.) and the Lanterman-Petris-Short Act (California Welfare & Institutions Code § 5000 et seq.) govern the release of patient identifiable information by hospitals and other health care providers. The State Information Practices Act (California Civil Code sections 1798 et seq.) governs the acquisition and use of data that pertains to individuals. All of these laws establish

protections to preserve the confidentiality of various medical and personal information and specify that such information may not be disclosed except as authorized by law or individual.

Confidential Patient/Client Care Information includes any individually identifiable information in possession or derived from a provider of health care, substance use treatment, and/or HIV/AIDS education services regarding a patient's/client's medical history, drug use history, mental, or physical condition or treatment, as well as the patients/clients and/or their family member's records, test results, conversations, treatment records, research records and financial information. Examples include, but are not limited to:

Physical medical and psychiatric records including paper, photo, video, diagnostic and therapeutic reports, laboratory and pathology samples;  
Patient insurance and billing records;  
Mainframe and department based computerized patient data and alphanumeric radio pager messages;  
Visual observation of patients receiving medical care or accessing services; and  
Verbal information provided by or about a patient/client.

Confidential Employee and Business Information includes, but is not limited to, the following:

Employee home telephone number and address;  
Spouse or other relative names;  
Social Security number or income tax withholding records;  
Information related to evaluation of performance;  
Other such information obtained from SANE's records which if disclosed, would constitute an unwarranted invasion of privacy; or  
Disclosure of confidential business information that would cause harm to SANE.

Peer review and risk management activities and information are protected under California Evidence Code section 1157 and the attorney-client privilege.

I understand and acknowledge that:

I shall respect and maintain the confidentiality of all discussions, deliberations, patient care records and any other information generated in connection with individual patient care, risk management and/or peer review activities.

It is my legal and ethical responsibility to protect the privacy, confidentiality and security of all medical records, proprietary information and other confidential information relating to SANE, including business, employment and medical information relating to our patients, clients, employees and health care providers.

I shall only access or disseminate patient/client care information in the performance of my assigned duties and where required by or permitted by law, and in a manner which is consistent with officially adopted policies of SANE, or where no officially adopted policy exists, only with the express approval of my supervisor or designee. I shall make no voluntary disclosure of any discussion, deliberations, patient/client care records or any other patient/client care, peer review or risk management information, except to persons authorized to receive it in the conduct of SANE affairs.

SANE performs audits and reviews patient/client records in order to identify inappropriate access.

My user ID is recorded when I access electronic records and I am the only one authorized to use my user ID. Use of my user ID is my responsibility whether by me or anyone else. I will only access the minimum necessary information to satisfy my job role or the need of the request..

I agree to discuss confidential information only in the work place and only for job related purposes and not to discuss such information outside of the work place or within hearing of other people who do not have a need to know about the information.

I understand that any and all references to HIV testing, such as any clinical test or laboratory test used to identify HIV, a component of HIV, or antibodies or antigens to HIV, are specifically protected under law and unauthorized release of confidential information may make me subject to legal and/or disciplinary action.

I understand that the law specially protects psychiatric and drug abuse records, and that unauthorized release of such information may make me subject to legal and/or disciplinary action.

My obligation to safeguard patient/client confidentiality continues after my termination of employment/volunteer service with SANE.

I understand all volunteers and staff members that are not Mandated Reporters at SANE have a moral obligation to report any elder or child abuse or neglect, crimes on program premises or against program personal, and report all medical emergencies to supervising staff.

I hereby acknowledge that I have read and understand the foregoing information and that my signature below signifies my agreement to comply with the above terms. In the event of a breach or threatened breach of the Confidentiality Agreement, I acknowledge SANE may, as applicable and as it deems appropriate, pursue disciplinary action up to and including my termination from SANE.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

# Appendix G: Resources

## Best Practices

Scott G, Irwin K, eds. [Recommended Best Practices for Effective Syringe Exchange Programs in the United States: Results of a Consensus Meeting](#). New York City Department of Health and Mental Hygiene. 2009.

*In addition to best practices, this brief consensus report includes a list of practices to avoid, both on the part of policymakers and on the part of service providers. The recommendations include the rationale and research behind the recommendations.*

Winkelstein E. [Guide to Developing and Managing Syringe Access Programs](#). New York: Harm Reduction Coalition. 2010.

*This manual is a practical guide to starting an SEP that is rooted in field-tested best practices. It includes sample job descriptions, forms and program protocols to address challenges ranging from engaging community support to staff supervision. Includes an excellent list of resources.*

Strike C, Leonard L, Millson M, Anstice S, Berkeley N, Medd E. [Ontario Needle Exchange Programs: Best Practice Recommendations Toronto](#): Ontario Needle Exchange Coordinating Committee. 2006.

*This comprehensive manual is practically laid out with topics covered both “in brief” in one section, and “in detail” in another. Covers almost all aspects of SEP operations, including such topics as which materials to distribute and services to offer, and the benefits and drawbacks of different service delivery models.*

Benjamin A, Davila C, Frost, T et. al. [Peer-Delivered Syringe Exchange Toolkit: Models, Considerations and Best Practices](#). New York: Harm Reduction Coalition, 2012.

*This toolkit provides examples of policies and practices of peer-delivered syringe service programs. Each section contains insight and ideas drawn from the experience of various programs and ends with questions to consider based on each program’s needs.*

Wheeler E, Burke K, McQuie H, Stancliffe, S. [Overdose Prevention and Naloxone Manual](#). New York: Harm Reduction Coalition, 2012.

*This manual provides information necessary to develop and manage an overdose prevention and education program, with or without a naloxone component. Includes downloadable worksheets and additional resources.*

## Websites with Additional Resources

[CDPH/OA’s Access to Sterile Syringes](#)

[Harm Reduction Coalition](#)

[CDC Syringe Services Programs](#)

[Chicago Recovery Alliance](#)



OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS

## REGULAR AGENDA REQUEST

Print

**MEETING DATE** August 21, 2018

**Departments: Behavioral Health**

**TIME REQUIRED** 30 minutes

**PERSONS APPEARING BEFORE THE BOARD** Amanda Greenberg

**SUBJECT** Workshop and Request for Qualifications for Permanent Supportive Housing and Affordable Housing Project Developer in Mammoth Lakes

### AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

Presentation by Amanda Greenberg from the Behavioral Health Department and Jennifer Lopez, a national housing consultant, regarding the development of permanent supportive housing/affordable (PS/A) housing in Mammoth Lakes and Walker, CA. Approval to release Request for Qualifications for PS/A housing developer.

### RECOMMENDED ACTION:

Authorize Mono County Behavioral Health to release a Request for Qualifications (RFQ) in substantially the form provided in the packet and including such changes as approved by County Counsel, for an experienced PS/A housing developer to partner with Mono County in the identification, development and operation of a PS/A housing project in Mammoth Lakes.

### FISCAL IMPACT:

There is no fiscal impact to the Mono County General Fund. Up to \$2 million is available for this project through the Mental Health Services Act. This item does not commit funding at this time.

**CONTACT NAME:** Robin Roberts or Amanda Greenberg

**PHONE/EMAIL:** 760-924-1740 / rroberts@mono.ca.gov

### SEND COPIES TO:

### MINUTE ORDER REQUESTED:

YES  NO

### ATTACHMENTS:

Click to download
<input type="checkbox"/> <a href="#">Staff Report</a>
<input type="checkbox"/> <a href="#">Power Point Presentation</a>
<input type="checkbox"/> <a href="#">Request for Proposals</a>

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**History**

<b>Time</b>	<b>Who</b>	<b>Approval</b>
8/17/2018 6:34 AM	County Administrative Office	Yes
8/16/2018 3:34 PM	County Counsel	Yes
8/16/2018 6:09 PM	Finance	Yes





**MONO COUNTY BEHAVIORAL HEALTH DEPARTMENT**

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**COUNTY OF MONO**

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P. O. BOX 2619 MAMMOTH LAKES, CA 93546 (760) 924-1740 FAX: (760) 924-1741

TO: Mono County Board of Supervisors  
FROM: Robin K. Roberts, Behavioral Health Director  
DATE: August 21, 2018

**SUBJECT:**

Presentation by Amanda Greenberg from the Behavioral Health Department and Jennifer Lopez, a national housing consultant, regarding the development of permanent supportive housing/affordable (PS/A) housing in Mammoth Lakes and Walker, CA.

Approval to release Request for Qualifications for PS/A housing developer.

**RECOMMENDATION:**

Hear presentation. Authorize Mono County Behavioral Health to release a Request for Qualifications (RFQ) in substantially the form provided in the packet and including such changes as approved by County Counsel, for an experienced PSH/A housing developer to partner with Mono County in the identification, development and operation of a PSH/A housing project in Mammoth Lakes.

**DISCUSSION:**

Through community needs assessments, including a Point-In-Time homelessness count, the Mono County Behavioral Health Department (MCBH) has identified a need for affordable housing with supportive services for individuals that we serve. To address this need, MCBH wishes to release an RFQ requesting Statements of Qualifications (SOQ) from experienced and qualified affordable and Permanent Supportive Housing (PSH) developers interested in developing, constructing, owning, operating, and managing a high-quality PSH and affordable housing development of 30 or more units in Mammoth Lakes. This RFQ will include a description of the project, proposal requirements, and instructions for submitting a Statement of Qualifications (SOQ).

Through this RFQ process, MCBH intends to select a Developer and enter into an agreement with the County for the Project. The agreement is a long-term planning and development agreement for the planning, design development, construction and continued operation of a mixed PSH and affordable housing development. The agreement will follow standard terms for a Low-Income Housing Tax Credit (LIHTC) funded affordable housing project and will be drafted by an attorney familiar with the LIHTC program in California. MCBH has retained a national

affordable housing consultant to guide us through the selection process and assist with project design until December 2018.

**FISCAL IMPACT:**

There is no fiscal impact to the Mono County General Fund.

Mono County Behavioral Health (MCBH) has up to \$2,000,000 available through the Mental Health Services Act available to subsidize this project. Through the RFQ, MCBH is not committing these funds to a developer, but will make them available if gap financing or operating subsidy is needed.

**SUBMITTED BY:**

Robin K. Roberts, Director of Behavioral Health, Contact: 760.924.1740

# Mono County Behavioral Health Mammoth Housing Development Update

Robin Roberts, Director of Behavioral Health

August 21st, 2018



# MCBH Housing Project Update

- In 2017 we identified a shortage of affordable units in Mono County available to our clients
- This spring we contracted with Jenn Lopez, a housing consultant from Colorado
- She came for site visits June 25-26 and met with key partners
- Our next step is to release an RFQ for a development partner in August
- We anticipate selecting a development partner by early October 2018



# MCBH Housing Project Concept

- 30-45 units that will be a mix of 1 and 2 bedroom units; the size of the total development will depend on the acquired site and market demand
- MCBH is the sponsor of the project and is selecting a development partner to own, manage, and operate the development
- Services will be provided on-site to ensure that MCBH clients have supports in place



# Target Population

- The project will serve Mono County residents earning less than \$35,000 a year and we anticipate smaller household sizes due to need
- The project will have a preference for individuals who need supportive services and/or individuals who are mental health services eligible
- MCBH will provide services on-site for residents
- The project will have commercial space and/or community space for residents
- MCBH and the selected development partner will hire an experienced property management firm to manage the project operations and waitlist



# Project Financing

- MCBH anticipates that the project will be funded primarily with state funds such as the Low Income Housing Tax Credit program (LIHTC)
- This type of funding is complex and is why we are going through an RFQ process to identify a highly qualified development partner
- Local funding needed for the project is minimal, we may need help with identifying a site and we welcome political support for our state funding applications
- Example: if the project is 35 units and costs \$9,625,000 then it would be funded as follows: Tax credit equity: \$7,700,000; State housing funds and low-interest loan: \$1,925,000

# Project Design

- MCBH and the selected developer will hire an experienced architect to design the building
- The project will be well-designed and will incorporate green features and use high-quality materials
- Because of the competitiveness of the LIHTC program, the design will have to be very appealing to attract investors





# RFQ Process

- Request for Qualifications is a common process for local communities to select a development partner
- Selecting a development partner early on ensures a financially feasible project and helps offset pre-development costs
- The RFQ will award points for CA experience, rural experience, and experience with service enriched housing and/or permanent supportive housing



# RFQ Process and MOU

- A local RFQ selection committee will be comprised of staff from MCBH, the County, the Town of Mammoth Lakes, and the project consultant
- If a developer is selected, they will enter into an agreement to develop a housing project with support from MCBH

# Development Agreement

- This document will be developed by the experienced housing attorney that Mono County already has under contract to assist with this project
- It protects the MCBH from risk exposure while ensuring the county has a stake in the project and some control over who the project serves
- It is required as part of most state funding applications
- This document will be reviewed by Mono County Counsel prior to execution

# Ideal Project Timeline

- **August:** RFQ released for a development partner
- **September:** Project selection committee meets to score responses and schedule interviews, if needed
- **Early October:** Development partner selected, site selection begins
- **November:** Site selected
- **2019:** LIHTC application submittal

# Request

- Approve the release of the RFQ, understanding that once a developer is selected an agreement will be executed between the Developer and the County (Board approval req'd)
- Provide any feedback or suggestions on the project



Mono County Behavioral Health  
Request for Qualifications:  
Permanent Supportive Housing Project  
Mammoth Lakes, California



Release Date: \_\_\_\_\_, 2018

Submittal Deadline: \_\_\_\_, 2018  
not later than 5:00 PM (Pacific)

## Contents

Introduction.....	3
Submission of Proposals.....	3
MCBH’s Reservation of Rights.....	3
Background.....	4
Project Parameters.....	4
General Overview of Services.....	5
SOQ Requirements.....	6
Ranking Criteria.....	7
Selection Procedure.....	8
Attachment A: Required Statements.....	9
Attachment B: General Terms and Conditions.....	11

## Introduction

Mono County, through its Department of Behavioral Health (hereinafter MCBH), is accepting proposals to determine the qualifications and capacity of a development firm ("Developer") to create high quality, affordable permanent supportive housing in Mammoth Lakes, California. This RFQ includes background, project description, proposal requirements and instructions for submitting your Statement of Qualification ("SOQ").

The Developer selected under this RFQ will enter into a Memorandum of Understanding or other agreement ("Contract") with Mono County, which will outline Developer's predevelopment, development and Project operation activities,. The Contract will also outline Mono County's and MCBH's role in connection with the proposed development, including but not limited to Developer oversight and coordination, assistance with supportive services, and possible financial assistance, as more particularly described below. The project site has not been identified and any SOQ should include potential development locations, or a strategy for acquiring suitable Project locations.

## Submission Requirements

SOQs must be e-delivered in PDF format to MCBH no later than 5:00 p.m. Pacific Time on \_\_\_\_\_, 2018. Statements of qualifications (SOQ) received after the deadline will not be accepted. Submittals and all inquiries regarding this RFQ should be submitted via e-mail to:

Amanda Fenn Greenberg  
Mono County Behavioral Health  
Email: [agreenberg@mono.ca.gov](mailto:agreenberg@mono.ca.gov)

Do not contact other MCBH or Mono County staff directly. Information provided by anyone other than the above contact may be invalid and SOQs which are submitted in accordance with such information may be declared non-responsive. It is recommended that proposers send a confirmation e-mail with contact information to Amanda Greenberg by \_\_\_\_\_, 2018. All questions should be submitted via e-mail to Amanda at the above e-mail address by \_\_\_\_\_ at 5pm. All questions will be answered and shared with registered proposers by \_\_\_\_\_ at 5pm.

## Reservation of Rights

1. Mono County and MCBH reserve the right to reject any or all SOQs, to waive any irregularities in the RFQ process, or to terminate the RFQ process at any time.
2. Mono County and MCBH reserve the right not to select a Developer.
3. Mono County and MCBH reserve the right to reject and not consider any SOQ that does not meet the requirements of this RFQ, including, but not necessarily limited to, incomplete SOQs and/or SOQs offering alternate or non-requested services.



4. Neither Mono County nor MCBH shall have any obligation to compensate any person or firm for any costs incurred in responding to this RFQ nor any obligation to compensate any person or firm for any costs incurred or in connection with the proposed project, unless expressly agreed to in writing by Mono County.
5. Mono County and MCBH shall reserve the right to, at any time during the RFQ or contract process, prohibit any further participation by a proposer or reject any proposal submitted that does not conform to any of the requirements detailed herein.
6. Mono County and MCBH reserve the right to require additional information from all proposers to determine level of financial responsibility, qualifications, experience or other relevant factors.

## Background

Mono County is a frontier county, bordering the state of Nevada to the north and east and the Sierra Nevada Mountains to the west. The County in total is home to 14,000 people, while the main population center, Mammoth Lakes, boasts a year-round population of 8,000. Mono County's primary industry is tourism; Mammoth Lakes is a ski resort community with a housing stock that is only 33 percent owner-occupied. In a 2017 needs assessment, the Town of Mammoth Lakes identified the need for 595 workforce housing units over the next five years.

In 2017, MCBH also conducted a needs assessment focused on mental health needs in the community. The department found that supportive housing was one of the top three needs identified in the County. Currently, MCBH offers therapy, case management, rehab aide, telepsychiatry, and substance use disorder counseling. Additionally, the department has expertise in community programming and outreach. From 1997 to 2011, MCBH operated a sober living facility in Mammoth Lakes, CA; however, for the last six years, the department has had few options to offer clients who are homeless or at risk of homelessness.

To meet these needs, MCBH seeks a Developer with experience in financing, developing, owning and managing a combined affordable and permanent supportive housing projects in rural communities.

## Project Parameters

1. **Introduction:** Mono County, through MCBH, is seeking a Developer to develop an affordable housing project (size dependent on market and site selection) that would combine general affordable housing units with approximately 15 units specifically for those eligible for benefits under the Mental Health Services Act within the incorporated Town of Mammoth Lakes (the "Project"). The building(s) will be a well-designed, multi-story and multi-family development, with pet-friendly units. The Project will be constructed in compliance with all applicable building codes and design guidelines. Ideally, the Project will also include appropriate programming and administrative space,

as well as an indoor/outdoor common area and social enterprise space and/or childcare space.

2. **Location:** The Project site has not been identified and any SOQ should include potential Project locations, or a strategy for acquiring suitable Project locations. The site would ideally house the entire Project, but a multi-site development would also be considered.
3. **Development Services:** The selected Developer will identify a Project site, engage in predevelopment activities and, provided that a feasible Project is realized, ultimately acquire a site and develop and operate an affordable supportive housing project.
4. **Mono County Behavioral Health Contribution:** Subject to funding availability, MCBH will offer supportive services for residents eligible under the Mental Health Services Act during Project operations. MCBH will also refer tenants to the Developer for supportive housing units in the Project. In addition to these in-kind supports, MCBH anticipates investing up to \$2 million [in Mental Health Services Act \(MHSA\) funds](#) for land acquisition, service reserves, or other Project expenses. Finally, Mono County, including its MCBH, is a well-respected government entity that brings significant political will and public support to this Project.
5. **CONTRACT:** Mono County intends to enter into an Contract with the Developer which will outline all phases of project planning, development and operation as well as contributions/in-kind support by the County and/or MCBH.

### General Overview of Services

The intent of this RFQ is to identify and contract with a Developer with significant experience in the financing, design, planning, construction and management of affordable and permanent supportive housing, that will work with the County's representative, Amanda Fenn Greenberg, MPH and other County staff and project partners (collectively the "Development Team") to provide the following:

1. Develop, own and operate affordable supportive housing to serve tenants eligible for assistance under the California Mental Health Services Act who are likely to be clients of or will receive services from MCBH.
2. In collaboration with the County (a) identify a Project site; and (b) develop a Project and programmatic design, which will incorporate best practices in supportive and affordable housing development, operations and services.
3. Analyze Project feasibility, including but not limited to financial feasibility, land use and planning procedures, and physical and environmental condition of the identified Project site.
4. Coordinate with the County in community outreach efforts concerning the Project.
5. Solicit, hire, and manage consultants and Project contractors including the Project architect, contractor and other professionals as needed during the predevelopment, construction and operational stages of the Project.

6. Undertake all necessary work to identify financing and funders for the Project, including the supportive housing units. Submit funding application(s) and associated requirements for predevelopment, development, and operation of the affordable/supportive housing project. Anticipated financing includes: Low Income Housing Tax Credits, HOME Program Funds, Federal Home Loan Bank Affordable Housing Program (AHP) funds, McKinney Vento SHP and/or Shelter Plus Care funding, No Place Like Home funding.
7. Coordinate and attend monthly Developer and MCBH meetings.

## SOQ Requirements

1. **Cover Letter:**
  - a. Title of this RFQ
  - b. Name and mailing address of firm
  - c. Names of the owner, partner, or officer of the business
  - d. Contact person, including email and phone number
  
2. **Signature Requirements:** The Cover Letter must be signed by an officer empowered by the applicant to sign such material and thereby commit the Developer to the obligations contained in the SOQ and in the resulting contract. Further, the signing and submission of an SOQ shall indicate the intention of the applicant to adhere to the provisions described in this RFQ, including the required certifications.
  - a. SOQs submitted on behalf of a Partnership shall be signed in the organization name by a partner or the Attorney-In-Fact. If signed by the Attorney-In-Fact, there shall be attached to the proposal a Power-Of-Attorney evidencing authority to sign proposals, dated the same date as the proposal and executed by all partners of the organization.
  - b. Proposals which are submitted on behalf of a Corporation shall have the correct corporate name thereon and the actual signature of the authorized officer of the corporation written (not typed) below the corporate name. The title of the office held by the person signing for the corporation shall appear below the signature of the officer.
  - c. Proposals which are submitted by an Individual doing business under a developer name (“dba”) shall be signed in the name of the individual doing business under the proper organization name and style.
  
3. **Developer Qualifications:** Describe the Developer and provide a statement of the organization's qualifications to perform requested permanent supportive housing and affordable housing financing, planning, construction, development and management services.
  
4. **Team Qualifications:** Please include resumes of key principals and individuals who will be overseeing or involved with this Project.
  
5. **Project Experience:**

- a. Please describe your team’s experience in affordable permanent supportive housing development and ownership using Low Income Housing Tax Credits (LIHTC) and other funding sources applicable to the Project.
  - b. Please describe your team’s experience with service planning and fundraising in affordable/permanent supportive housing.
  - c. Please describe the general experience of your team.
6. **Associations:** Please provide a description of any associations with other individuals or firms or any form of subcontracting that is planned for the Project.
  7. **References:** Provide a minimum of three references for related affordable permanent supportive housing projects where your team has financed, planned, developed, constructed and managed a similar project.
  8. **Project Plan and Schedule:** Provide a detailed discussion of your team’s approach to the successful implementation and long-term sustainability of this Project, including but not limited to site identification, development schedule (tied to actual dates), preliminary financing proposals, preliminary project and programmatic design, and approach to ensuring best practices in operations, management and services.
  9. **Examples:** Please provide examples (including pictures) of other affordable permanent supportive housing projects developed and owned by your team. Please include the unit count, types and sizes, total development cost, and debt and equity used to finance the Project.
  10. **Disclosures:** Please disclose any claims, lawsuits, formal disputes for work or services previously or currently being performed. Please disclose any loss of funding NOT due to budget cuts or cuts to programs.

### Ranking Criteria

Proposals will be evaluated on the following criteria:

Criteria	Maximum Points
Experience with LIHTC, AHP, other funding sources	30
Experience developing permanent supportive housing (PSH)	20
Experience providing property management services in a PSH environment	20
Quality and design of developer’s recent project(s)	20
Experience providing affordable housing for rural population	20
Proposed developer fee schedule and proposed split	10
Experience developing similar projects in California	20
<b>Total possible points</b>	<b>140</b>

## Selection Procedure

Mono County will evaluate each SOQ submitted. Proposals will then be reviewed, evaluated, and ranked, as further described below, by a selection committee composed of Mono County staff and consultants and Mono County Behavioral Health Advisory Board members.

Restrictions: All persons having familial (including in-laws) and/or employment relationships (past or current) with principals and/or employees of a proposer entity and/or other relationships that would constitute a conflict of interest under applicable laws will be excluded from participation on the selection panel. Similarly, all persons having ownership interest in and/or contract with a proposing entity will be excluded from participation on the selection panel.

The selection committee shall review and rank the submittals based on the ranking criteria listed above. The top-rated firms shall be short-listed and invited to an interview with the selection committee or a subset of that committee. Based on the submittals and interviews proposer(s) shall be recommended to the Mono County Board of Supervisors for contract award. The Board of Supervisors will then make its determination whether or not to follow the committee's recommendation. If the recommendation is followed and the top-rated proposer is approved for award, all proposers will receive a Notice of Results of Selection.

Mono County and MCBH recognize that the selected individuals or firms may not have experience or capacity to provide professional services in all areas. In such event, the firm may supplement its capabilities by teaming with sub-consultants. In such cases, proposers shall identify these sub-consultants, as their expertise will be considered by Mono County and MCBH in addition to the proposer's capabilities as described in the selection criteria listed above.

Top-rated firms will be invited to interview no later than \_\_\_\_\_. Interviews may take place in person or via video conference.

## Attachment A: Required Statements

This form is provided as a convenience. You may complete and return this form or include your own statements of assurance which meet the requirements.

*By signature on the cover letter of this submittal and by including this document, I/we attest and agree to the following:*

1. **Project Scope and Addenda:** I/We will perform the services and adhere to the requirements described in this RFQ.
  
2. **Public Records Act:**
  - a. I/We acknowledge that subsequent to award of this RFQ, all of part of this submittal may be released to any person or development team who may request it, as prescribed by the State of California Public Records Act (Govt. Code 6250, et seq), and that:  
  
\_\_\_\_\_ None of this submittal is considered proprietary  
OR  
\_\_\_\_\_ The portions/pages of this submittal identified below are proprietary and/or confidential for the reasons stated (cite the specific exemptions allowed by the California Public Records Act/Government Code):  
  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  - b. I/We acknowledge that the above statements may be subject to legal review and challenge.
  
3. **Non-Substitution of Designated Staff:** I/We assure that the designated development team, including sub-consultants (if any), is used for this Project and that departure or reassignment of, or substitution for, any member of the designated Project team or sub-consultant(s) shall not be made without the prior written approval of Mono County.
  
4. **Non-Conflict of Interest:** I/We warrant that no official or employee of Mono County or MCBH has an interest, has been employed or retained to solicit or aid in the procuring of the resulting contract, nor that any such person will be employed in the performance of such contract without immediate divulgence of such fact to Mono County.
  
5. **Non-Collusion:** I/We warrant that this offer is made without any previous understanding, agreement or connection with any person, development team or corporation submitting a separate proposal for the same Project and is in all respects fair, without outside control, collusion, fraud or otherwise illegal action.

6. **Insurance and Indemnification Requirements:** I/We agree to indemnify and hold the County and MCBH and their officers, employees and representatives harmless and to provide insurance as may be required by the County. The cost of complying with the insurance requirements shall be paid for by the Developer. I/We agree to provide complete and valid insurance certificates within ten (10) days of MCBH's written request.

7. **Debarment & Suspension Certification (49 CFR 29)**

- a. The proposer, under penalty of perjury, certifies that, except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, manager:
  - i. is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
  - ii. has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past 3 years;
  - iii. does not have a proposed debarment pending; and
  - iv. has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

b. If there are any exceptions to this certification, insert the exceptions in the following space.

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c. Exceptions will not necessarily result in denial of award, but will be considered in determining the Developer's responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

d. Note: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the SOQ, and by signing the cover letter provided with the SOQ, you are certifying the information provided.

## Attachment B: General Terms and Conditions

1. **Contract:** Upon completion of the selection process, recommendation for award, and subject to Board of Supervisor approval, the selected developer will enter into a Contract with Mono County. The form of the Contract will be provided by Mono County.
2. **Compensation.** Developer understands and agrees that it will not receive monetary compensation from the County or MCBH under or pursuant to the Contract, unless otherwise agreed to by the County and MCBH. MCBH and the County do not anticipate compensating Developer under or pursuant to the Contract and that the County is seeking to collaborate to enable the development of permanent supportive housing. Developer's consideration for its services under the Contract will be the cooperation and collaboration of the County and MCBH in developing a viable affordable permanent supportive housing project in Mammoth Lakes. As noted below, the County may contribute up to \$2M to the Project.
3. **Independent Contractor:** At all times, the Developer shall represent himself/herself to be an independent contractor offering such services to the general public and shall not represent himself/herself, or his/her employees, to be an employee of the County of Mono. Therefore, the developer shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save, and hold the County of Mono, its officers, agents, and employees, harmless from and against, any and all loss, cost (including attorney fees), and damage of any kind related to such matters.
4. **Prevailing Wage Requirements:** The services described herein may be considered “public works” as defined by California Labor Code Section 1720 et seq., and/or subject to the payment of prevailing wages pursuant to the federal Davis-Bacon Act. Any Developer awarded a contract as the result of this RFQ shall be responsible for compliance with all applicable prevailing wage laws, as well as any and all applicable state or federal wage laws.
5. **Contract Service Standards:** All work performed pursuant to a contract issued under this RFQ must conform and comply with all applicable local, state and federal laws.
6. **Assurance of Designated Project Team:** Proposer shall assure that the designated Project team, including sub-consultants and sub-contractors (if any), is used for this Project. Departure or reassignment of, or substitution for, any member of Developer’s designated staff, representatives or affiliates shall not be made without the prior written approval of MCBH.
7. **Publicity Clause:** Developer shall obtain prior written approval from MCBH and Mono County for use of information relating to MCBH or Mono County or any resulting



Contract or the Project in advertisements, brochures, promotional materials or media, press releases or other informational avenues.

8. **Termination:** Mono County may terminate the Contract resulting from this RFQ upon notice to Developer.
9. **Conflict of Interest:** By submitting its SOC, the Developer warrants that no official or employee of Mono County or MCBH has an interest, has been employed or retained to solicit or aid in the procuring of the resulting contract, nor that any such person will be employed in the performance of such contract without immediate divulgence of such fact to Mono County.
10. **Non-Collusion:** Developers submitting statements of qualification shall warrant that their SOQ is made without any previous understanding, agreement, or connection with any person, firm or corporation submitting a separate proposal for the same project and is in all respects fair, without outside control, collusion, fraud, or otherwise illegal action. This condition shall not apply to SOQs which are submitted by developers who have partnered with others to submit a cooperative proposal that clearly identifies a primary contractor and the associated sub-contractors.
11. **Licensing, Indemnification, & Insurance Requirements:** All costs of complying with County insurance and indemnification requirements shall be paid for by the Developer. The selected Developer shall provide complete and valid insurance certificates, as well as copies of any required current City, State, and/or Federal licenses within ten (10) days of Mono County's written request.



**OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS**

**REGULAR AGENDA REQUEST**

Print

**MEETING DATE** August 21, 2018

**Departments: Public Works - Solid Waste**

**TIME REQUIRED** 15 minutes

**PERSONS** Justin Nalder

**SUBJECT** Proposed Amendment to Mono  
County Code Section 12.10.021 -  
Exemptions to Solid Waste Handling  
Requirements

**APPEARING  
BEFORE THE  
BOARD**

**AGENDA DESCRIPTION:**

(A brief general description of what the Board will hear, discuss, consider, or act upon)

Proposed Amendment to Mono County Code Section 12.10.021 - Exemptions to Solid Waste Handling Requirements, to eliminate in its entirety the exemption from the solid waste franchise/franchise agreement requirement provided in Section 12.10.21(A)(3); in addition, amend the definition of "construction and demolition waste" provided in Section 12.02.020 to exclude the terms "rubble" and "pavements."

**RECOMMENDED ACTION:**

Introduce, read title, and waive further reading of proposed ordinance amending Mono County Code Section 12.10.021 – Exemptions to Solid Waste Handling Requirements.

**FISCAL IMPACT:**

If the revision to the Mono County Code provisions relating to certain exemptions afforded to the collection, handling, and disposal of construction and demolition waste (C&D Waste) is approved, then there may be an increase in revenue to the Solid Waste Enterprise Fund from the payment of additional tipping fees and export fees by solid waste franchisees to the County. Amount of the increase cannot be estimated at this time.

**CONTACT NAME:** Justin Nalder

**PHONE/EMAIL:** 760-932-5453 / jnalder@mono.ca.gov

**SEND COPIES TO:**

**MINUTE ORDER REQUESTED:**

YES  NO

**ATTACHMENTS:**

Click to download
<a href="#">Staff Report for Ordinance Revision on C&amp;D Waste Exemption</a>
<a href="#">Ordinance Amending C&amp;D Waste Exemption</a>

[Exhibit A to Ordinance](#)

[Exhibit B to Ordinance](#)

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### History

<b>Time</b>	<b>Who</b>	<b>Approval</b>
8/16/2018 6:20 AM	County Administrative Office	Yes
8/16/2018 1:45 PM	County Counsel	Yes
8/16/2018 3:32 PM	Finance	Yes



# MONO COUNTY DEPARTMENT OF PUBLIC WORKS SOLID WASTE DIVISION

POST OFFICE BOX 457 • 74 NORTH SCHOOL STREET • BRIDGEPORT, CALIFORNIA 93517  
60.932.5440 • FAX 760.932.5441 • [monopw@mono.ca.gov](mailto:monopw@mono.ca.gov) • [www.monocounty.ca.gov](http://www.monocounty.ca.gov)

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**To:** Honorable Chair and Members of the Board of Supervisors  
**From:** Justin Nalder, Solid Waste Superintendent  
**Date:** June 19, 2018  
**Subject:** Proposed Amendment to Mono County Code Section 12.10.021

---

**Recommended Action:**

Introduce, read title, and waive further reading of proposed ordinance amending Mono County Code Section 12.10.021 – Exemptions to Solid Waste Handling Requirements.

**Fiscal Impact:**

If the revision to the Mono County Code provisions relating to certain exemptions afforded to the collection, handling, and disposal of construction and demolition waste (C&D Waste) is approved, then there may be an increase in revenue to the Solid Waste Enterprise Fund from the payment of additional tipping fees and export fees by solid waste franchisees to the County.

**Discussion:**

Mono County Code, Title 12-Solid Waste, Chapter 12.10-Franchise Requirements for Solid Waste Handling and Solid Waste Facilities, Section 12.10.021-Exempt Solid Waste Handling authorizes certain persons to collect, handle, and dispose of solid waste in the unincorporated area of the County without a franchise agreement. As is pertinent here, Section 12.10.021(A)(3) exempts from the franchise/franchise agreement requirement “[p]ersons who collect, transport, and dispose of construction and demolition waste.” This exemption has allowed persons and waste haulers from inside and outside of Mono County to collect and haul C&D waste in direct competition with haulers that have been granted a solid waste franchise and entered into a solid waste franchisee agreement with the County authorizing them to provide such C&D Waste hauling and disposal services. In addition, Section 12.10.021(A)(3) exempts these non-franchisee persons and haulers from the requirements to dispose the C&D Waste within the County at its Benton Crossing Landfill (and thus paying tipping/gate fees) and paying a capacity fee for exporting such C&D Waste out of the County. The exemption not only creates an unlevel playing field among waste haulers but also circumvents reporting requirements set by the State.

The proposed ordinance would amend the Mono County Code to eliminate in its entirety the exemption from the solid waste franchise/franchise agreement requirement provided in Section 12.10.21(A)(3) to ensure that the County’s solid waste franchisees are solely responsible for providing C&D Waste collection, handling, and disposal services in the unincorporated part of the County; the diversion of C&D Waste is accurately reported; and all fees associated with the collection, handling, and disposal of C&D Waste are paid pursuant to the County’s solid waste franchise agreements. In addition, the proposed ordinance would amend the definition of “construction and demolition waste” provided in Section 12.02.020 to exclude the terms “rubble” and “pavements” so that the solid waste franchise/franchise agreement requirement applies primarily to waste related to vertical constructions and not road and pavement construction; accordingly, contractors collecting, handling, and disposing of waste from road construction project would be exempt from the franchise/franchise agreement requirement.

If you have any questions regarding this item, please contact me at (760) 932-5453 or [jnalder@mono.ca.gov](mailto:jnalder@mono.ca.gov).

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Justin Nalder".

Justin Nalder  
Solid Waste Superintendent

Attachment: Ordinance No.18-\_\_ : AN ORDINANCE OF THE MONO COUNTY BOARD OF SUPERVISORS AMENDING CHAPTER 12.02, SECTION 12.02.020 AND CHAPTER 12.10, SECTION 12.10.021 OF THE MONO COUNTY CODE TO REVISE THE DEFINITION OF "CONSTRUCTION AND DEMOLITION WASTE" AND ELIMINATE THE PROVISION EXEMPTING FROM THE SOLID WASTE FRANCHISE REQUIREMENT PERSONS THAT COLLECT, TRANSPORT, AND DISPOSE OF CONSTRUCTION AND DEMOLITION WASTE



ORDINANCE NO. 18 - \_\_

**AN ORDINANCE OF THE MONO COUNTY BOARD OF SUPERVISORS  
AMENDING CHAPTER 12.02, SECTION 12.02.020 AND CHAPTER 12.10, SECTION  
12.10.021 OF THE MONO COUNTY CODE TO REVISE THE DEFINITION OF  
“CONSTRUCTION AND DEMOLITION WASTE” AND ELIMINATE THE  
PROVISION EXEMPTING FROM THE SOLID WASTE FRANCHISE  
REQUIREMENT PERSONS THAT COLLECT, TRANSPORT, AND DISPOSE OF  
CONSTRUCTION AND DEMOLITION WASTE**

**WHEREAS**, Mono County Code, Chapter 12.02, Section 12.02.020<sup>1</sup> defines “solid waste” to mean and include, among other things, “construction and demolition waste”; and

**WHEREAS**, Chapter 12.02, Section 12.02.020 defines “construction and demolition waste” to mean “used or discarded construction materials, packaging, and rubble resulting from construction, renovation, remodeling, repair, and demolition operations on pavements, houses, commercial buildings and other structures”; and

**WHEREAS**, Chapter 12.10, Section 12.10.020 prohibits all persons from engaging in solid waste handling activities in the unincorporated area of the county unless the County has granted that person a franchise and entered into a franchise agreement with that person to perform such activities; and

**WHEREAS**, Chapter 12.10, Section 12.10.021(A)(3) provides that “[p]ersons who collect, transport, and dispose of construction and demolition waste” are exempt from the prohibition of Chapter 12.10, Section 12.10.020, and accordingly may engage in the collection, transport, and disposal of construction and demolition waste in the unincorporated area of the county without being granted a franchise and entering into a franchise agreement with the County; and

**WHEREAS**, the County has granted franchises and entered into franchise agreements with two solid waste enterprises (hereinafter, “Franchisees”) pursuant to Chapter 12.10, Section 12.10.020 to provide solid waste handling services in the unincorporated area of the county; and

**WHEREAS**, those franchise agreements require Franchisees to dispose of solid waste, including construction and demolition waste, handled and collected in the unincorporated area of the county at the Benton Crossing Landfill so that the County may collect certain fees (i.e., “tipping fees” and “gate fees”) to ensure the financial sustainability of its solid waste management program and infrastructure; and

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<sup>1</sup> Hereinafter, all “chapter, section” references are to the Mono County Code.

1           **WHEREAS**, the franchise agreements allow Franchisees that collect solid waste,  
2 including construction and demolition waste, generated in areas north of the junction of  
3 Highways 395 and 108 (hereinafter, “Sonora Junction”) to divert it from the Benton Crossing  
4 Landfill *so long as* the Franchisees pay a “capacity fee” for each load of solid waste so diverted;  
5 and

6           **WHEREAS**, one Franchisee has not paid the capacity fee required by the franchise  
7 agreement for the collection and diversion of construction and demolition waste generated in  
8 areas north of the junction of Sonora Junction from Benton Crossing Landfill in reliance on the  
9 exemption provided in Chapter 12.10, Section 12.10.021(A)(3); and

10           **WHEREAS**, other persons that are not Franchisees that collect and dispose of waste  
11 related to the construction and refurbishment of roads and highways have collected and disposed  
12 of solid waste at locations other than Benton Crossing Landfill but not paid the required capacity  
13 and Franchise fees in reliance on the exemption provided in Chapter 12.10, Section  
14 12.10.021(A)(3); and

15           **WHEREAS**, the Mono County Board of Supervisors wishes to revise the definition of  
16 “construction and demolition waste” provided in Chapter 12.02, Section 12.02.020 to clarify that  
17 “construction and demolition waste” means and includes only waste generated from the  
18 construction and demolition of vertical structures and does not include waste generated from the  
19 construction or refurbishment of roads and highways; and

20           **WHEREAS**, the Mono County Board of Supervisors wishes to delete Chapter 12.10,  
21 Section 12.10.021(A)(3) to eliminate the exemption for “[p]ersons who collect, transport, and  
22 dispose of construction and demolition waste” so as to clarify that the collection and disposal of  
23 construction and demolition waste by Franchisees is subject to the franchise agreements entered  
24 into by and between the County and the Franchisees and ensure that such waste is safely  
25 handled, properly reported, and that the County’s solid waste management programs remains  
26 financially secure.

27           **NOW, THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF**  
28 **MONO ORDAINS** as follows:

29           **SECTION ONE:** Section 12.02.020 of Chapter 12.02 of the Mono County is hereby  
30 amended as set forth in Exhibit A attached hereto and incorporated herein by this reference.

31           **SECTION TWO:** Subsection (A) of Section 12.10.021 of Chapter 12.10 of the Mono  
32 County Code is hereby amended as set forth in Exhibit B attached hereto and incorporated herein  
by this reference.

**SECTION THREE:** This ordinance shall become effective 30 days from the date of its  
adoption and final passage, which appears immediately below. The Clerk of the Board of  
Supervisors shall post this ordinance and also publish it in the manner prescribed by Government  
Code Section 25124 no later than 15 days after the date of its adoption and final passage. If the  
Clerk fails to publish this ordinance within said 15-day period, then the ordinance shall not take  
effect until 30 days after the date of publication.

1 **PASSED, APPROVED, AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2018,  
2 by the following vote, to wit:

3 **AYES:**

4 **NOES:**

5 **ABSENT:**

6 **ABSTAIN:**  
7  
8

9 \_\_\_\_\_  
10 Bob Gardner, Chair  
11 Mono County Board of Supervisors

12  
13 **ATTEST:**

14 **APPROVED AS TO FORM:**

15 \_\_\_\_\_  
16 Clerk of the Board

17 \_\_\_\_\_  
18 County Counsel  
19  
20  
21  
22  
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## EXHIBIT A

### 12.02.020 - Definitions.

"Board" means the board of supervisors of the county of Mono.

"Collection" or "collecting" means the gathering together of solid waste at the place of generation and transporting it to the point of disposal or processing.

"Commercial" or "commercial premise" means a premise where business activity is conducted, including, but not limited to, offices, retail sales, services, institutions, wholesale operations, food service, manufacturing and industrial operations, public property and facilities, but excluding, businesses conducted upon residential premises that are permitted under applicable zoning regulations and are not the primary use of the property.

"Commercial solid waste" means solid waste, excluding construction and demolition waste, generated at a commercial premise.

"Construction and demolition waste" means used or discarded construction materials, ~~and~~ packaging, ~~and rubble~~ resulting from construction, renovation, remodeling, repair, and demolition operations ~~on pavements, of~~ houses, commercial buildings, and other structures.

"County" means the county of Mono, a political subdivision of the state of California.

"County solid waste facilities" means those solid waste facilities within the county which are owned or operated by the county of Mono or its contractor or designee.

"Department" means the Mono County Department of Public Works.

"Director" means the director of the Mono County Department of Public Works or his or her authorized representative.

"Disposal site" means "disposal site" as defined in Public Resources Code Section 40122.

"Franchise" means a franchise issued under the provisions of this title.

"Franchise agreement" or "franchise agreements" means a primary, secondary and/or a facility franchise agreement issued under the provisions of this title.

"Facility franchise agreement" means "facility franchise agreement" as defined in Section 12.10.020(D) of this title.

"Franchisee" means a person holding a valid franchise issued pursuant to this title.

"Landfill" means "solid waste landfill" as defined in Public Resources Code Section 40195.1.

"Local enforcement agency" means the Environmental Health Division of the Mono County Health and Human Services Agency.

"Owner" means the person shown on the last equalized assessment roll of the county or other such records of the county assessor or tax collector, whichever contains more recent information.

"Permitted disposal site" means a disposal site that is permitted in accordance with all federal, state and local laws for disposal of solid waste or that is exempted from permitting in accordance with those laws.

"Person" means an individual, firm, limited liability company, association, partnership, industry, public or private corporation, municipal, local government entity, institution, organization, political subdivision, or any other entity. Person does not include the county of Mono.

"Premises" means a tract or parcel of land with or without habitable buildings or appurtenant structures.

"Primary franchise" means "primary franchise" as defined in Section 12.10.020(B) of this title.

"Primary franchisee" means "primary franchisee" as defined in Section 12.10.020(B) of this title.

"Recyclable materials" or "recyclables" means materials that have been separated from the nonrecyclable portion of the solid waste stream prior to disposal for the purpose of creating raw materials from which new products will be made or for the purpose of reusing them as a used or reconstituted product.

"Recycle" or "recycling" means "recycle" or "recycling" as defined in Public Resources Code Section 40180.

"Regulatory agency" means any federal, state or local governmental agency that regulates the collection, management, transportation, and disposal of solid waste (including, but not limited to, the California Integrated Waste Management Board, the Regional Water Quality Control Board, the California Department of Toxic Substances Control, the California Department of Transportation, the California Department of Motor Vehicles, the Mono County Department of Public Works, and the Environmental Health Division of the Mono County Health and Human Services Agency).

"Residential" or "residential premise" means a premise where individuals dwell or reside, regardless of whether they rent or own and occupy their dwelling or residence. "Residential premises" does not include transient occupancies. No place used primarily for business purposes shall be considered residential.

"Residential solid waste" means solid waste, excluding construction and demolition waste, generated at a residential premise.

"Secondary franchise" means "secondary franchise" as defined in Section 12.10.020(C) of this title.

"Secondary franchisee" means "secondary franchisee" as defined in Section 12.10.020(C) of this title.

"Solid waste" means "solid waste" as defined in Public Resources Code Section 40191, except that "solid waste" does not include abandoned vehicles and parts thereof or dewatered, treated, or chemically fixed sewage sludge.

"Solid waste disposal" or "dispose" means "solid waste disposal" as defined in Public Resources Code Section 40192(c).

"Solid waste enterprise" means "solid waste enterprise" as defined in Public Resources Code Section 40193 (i.e., any individual, partnerships, joint venture, unincorporated private organization, or private corporation, which is regularly engaged in the business of providing solid waste handling services).

"Solid waste facility" means "solid waste facility" as defined in Public Resources Code Section 40194.

"Solid waste handling" or "handling" (or other form thereof) means:

1. "Solid waste handling" or "handling" as defined in Public Resources Code Section 40195 (i.e., the collection, transportation, storage, transfer, or processing of solid wastes) and solid waste disposal by a solid waste enterprise defined in Section 40193 of the Public Resources Code, such as residential or commercial refuse collection in packer-type vehicles by haulers whose core business is refuse collection or the small-scale collection and disposal of residential or commercial solid waste in any type of truck, trailer or vehicle; and
2. The development and operation of solid waste facilities.

"Source separated" means "segregated from other waste material" as defined in Public Resources Code Section 40190.

"Transfer station" means "transfer or processing station" as defined in Public Resources Code Section 30200.

"Unpermitted waste" means materials that are not solid waste such as:

1. "Hazardous waste" (as defined in Public Resources Code Section 40141), including:
  - a. Hazardous wastes that are "universal waste" (as defined and listed, respectively, in 22 CCR § 66723.9 and § 66261.9, such as batteries, thermostats, lamps, cathode ray tubes, computers, telephones, answering machines, radios, stereo equipment, tape players/recorders, phonographs, video cassette players/recorders, compact disc players/recorders, calculators, some

appliances, aerosol cans and certain mercury-containing devices) exempt from the hazardous waste management requirements of Chapter 6.5 of Division 20 of the California Health and Safety Code and subject to the universal waste management requirements of Chapter 23 of Division 20 of the California Health and Safety Code, and

- b. Household hazardous wastes that result from products purchased by the general public for household use which, because of their quantity, concentration, physical, chemical, or infectious characteristics, may pose a substantial known or potential hazard to human health or the environment when improperly treated, disposed of or otherwise managed;
2. "Medical waste" regulated pursuant to the Medical Waste Management Act (Part 14 (commencing with Section 117600) of Part 9 of Division 104 of the Health and Safety Code);
3. Radioactive waste;
4. Waste tires in excess of the limitations prescribed in 14 CCR 17355(b) or reduced in volume as required in 14 CCR 17355(A); and
5. Any other materials that cannot be disposed of in class III sanitary landfills described in 27 CCR 20260.

"Yard waste" means any wastes generated from the maintenance or alteration of public, commercial, or residential landscape including, but not limited to, yard clippings, leaves, tree trimmings, prunings, brush and weeds.

## EXHIBIT B

### 12.10.021 - Exempt solid waste handling.

A. Exemptions. The following persons shall be authorized to handle solid waste in the unincorporated area of the county without a franchise:

1. Persons transporting and disposing of solid waste generated on their own premises (i.e., "self-haulers").
2. Persons transporting and disposing of solid waste generated incidentally to and as a by-product of their business, such as contractors who haul away construction or demolition waste or landscape contractors who remove yard waste generated at their project site. This exemption shall not apply to persons transporting and disposing of solid waste generated incidentally to and as a by-product of their business where the sole business service provided by such persons is the collection and/or clean-up of solid waste on the premises.
- ~~3. Persons who collect, transport, and dispose of construction and demolition waste.~~
43. Persons having entered into a contract with the state of California, or an agency thereof, or with any agency or entity exempt by law from compliance with local franchise requirements, for the collection, transportation and disposal of solid waste, when those persons collect, transport and dispose of solid waste on or from any facility operated by the state or other exempt entity.
- ~~54.~~ Persons collecting, transporting, storing, transferring, processing or disposing of unpermitted wastes in accordance with all state, federal and local laws and regulations, unless commingled in solid waste, in which case they are subject to [Section 12.10.020](#) of this chapter.
- ~~65.~~ Persons collecting, transporting, storing, and recycling source separated recyclables.
- ~~76.~~ Persons providing solid waste handling services pursuant to agreement with Mono County, unless the agreement requires that the services be provided pursuant to a franchise.
- ~~87.~~ Persons providing solid waste handling comprised solely of transportation through unincorporated areas of the county, without collecting, storing, or disposing of solid waste within the unincorporated areas of the county.

B. Permit Requirement. Nothing in this section shall exempt a person providing solid waste handling services from obtaining a permit to provide such services or from obtaining a permit to develop or operate a solid waste facility, as required by [Chapter 12.08](#) of this title.



OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS

## REGULAR AGENDA REQUEST

Print

**MEETING DATE** August 21, 2018

**Departments: County Counsel, Community Development, CAO**

**TIME REQUIRED** 15 minutes

**PERSONS  
APPEARING  
BEFORE THE  
BOARD**

Michael Draper, Christy Milovich

**SUBJECT** California Cannabis Regulations -  
Proposed Final Regulations

### AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

Discussion of the State's Proposed Final Regulations for Cannabis: Review of consistency with adopted County regulations, and consideration of a comment letter to be submitted within the open comment period related to language in the proposed regulations which allows cannabis deliveries to be made to any jurisdiction within California and/or additional provisions of the proposed regulations.

### RECOMMENDED ACTION:

Consider the State's draft permanent regulations and potentially approve proposed comment letter, as drafted or as revised.

### FISCAL IMPACT:

None.

**CONTACT NAME:** Michael Draper

**PHONE/EMAIL:** 760.924.1805 / mdraper@mono.ca.gov

### SEND COPIES TO:

### MINUTE ORDER REQUESTED:

YES  NO

### ATTACHMENTS:

Click to download
<a href="#">Staff Report</a>
<a href="#">Draft Letter</a>
<a href="#">Summary of Proposed Regulations</a>
<a href="#">Highlights of Proposed Changes to Regulations</a>
<a href="#">Summary of Proposed Changes, Manufacturing Regulations</a>
<a href="#">RCRC Letter</a>

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**History**

<b>Time</b>	<b>Who</b>	<b>Approval</b>
8/17/2018 6:52 AM	County Administrative Office	Yes
8/16/2018 1:33 PM	County Counsel	Yes
8/16/2018 6:17 PM	Finance	Yes

# Mono County Community Development Department

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PO Box 347  
Mammoth Lakes, CA 93546  
760.924.1800, fax 924.1801  
commdev@mono.ca.gov

## Planning Division

PO Box 8  
Bridgeport, CA 93517  
760.932.5420, fax 932.5431  
[www.monocounty.ca.gov](http://www.monocounty.ca.gov)

Date: August 21, 2018  
To: **Honorable Mono County Board of Supervisors**  
From: **Michael Draper, CDD Analyst**  
Re: **Proposed Final Cannabis Regulations**

### RECOMMENDATION

Consider the State's draft permanent regulations and determine whether to submit a comment letter.

### FISCAL IMPACT

None.

### BACKGROUND

In December 2017, emergency cannabis regulations were adopted by the Bureau of Cannabis Control, California Department of Public Health, and the California Department of Food & Agriculture for a six-month period. Each agency established a set of emergency regulations unique to the activities under its jurisdiction. In June 2018, the three sets of emergency regulations were readopted to meet the legislative mandate to open California's regulated cannabis market on January 1, 2018. Using these emergency regulations, Mono County created its own regulatory process for permitting and overseeing local commercial cannabis activities.

On July 13, 2018, the State cannabis licensing authorities published proposed final regulations. The publication is the start of the formal rulemaking process and begins the 45-day public comment period. Comments must be received by August 27, 2018.

### DISCUSSION

Staff has completed a review of the proposed regulations and has concluded that, with the exception of impacts to cannabis delivery, the changed language and additions will have minimal impacts to the County's current land use regulations. Summaries of the proposed regulation changes are attached.

With regard to cannabis delivery, proposed changes of significance include:

- The Bureau of Cannabis Control has added a provision that allows retailers to deliver to any jurisdiction within California

The Rural County Representatives of California (RCRC), along with the California State Association of Counties ..... (CSAC) have submitted a comment letter to the Bureau of Cannabis Control expressing opposition to certain proposed changes, including the new provision allowing cannabis delivery to any jurisdiction within the state. This letter is attached to this agenda item. The Board may choose to support RCRC's letter by providing its own comment letter.

### ATTACHMENTS

1. Summary of Proposed Regulatory Changes – Bureau of Cannabis Control
2. Highlights of the Proposed Changes to CA Cannabis Cultivation Regulations – CalCannabis
3. Summary of Proposed Changes; Regulations for Cannabis Manufacturing – CAPH
4. RCRC comment letter, "Proposed Regulations Section 5416, Subdivision (d)"





Jennifer Halferty ~ District One   Fred Stump ~ District Two   Bob Gardner ~ District Three  
John Peters ~ District Four   Stacy Corless ~ District Five

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## BOARD OF SUPERVISORS COUNTY OF MONO

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P.O. BOX 715, BRIDGEPORT, CALIFORNIA 93517  
(760) 932-5530 • FAX (760) 932-5531  
*Shannon Kendall, Clerk of the Board*

August 21, 2018

Lori Ajax, Chief  
Bureau of Cannabis Control  
2920 Kilgore Road  
Rancho Cordova, CA 95670

Transmit Via Email:     [BCC.comments@dca.ca.gov](mailto:BCC.comments@dca.ca.gov)

Dear Ms. Ajax:

The Mono County Board of Supervisors opposes Section 5416 subdivision (d) of the Bureau's July 13, 2018, proposed regulations, which provides that "[a] delivery employee may deliver to any jurisdiction within the State of California."

Mono County recently adopted a cannabis ordinance explicitly prohibiting cannabis delivery within its unincorporated area. The County's authority to implement such a prohibition comes from Business and Professions Code Sections 26200 and 26090, the latter of which expressly confirms local authority to regulate (or prohibit) any cannabis activity conducted within its local jurisdiction; there is no exception for cannabis delivery by retailers licensed within the same jurisdiction or by retailers licensed in other jurisdictions.

The new regulation, by expressly permitting delivery to any jurisdiction within the State of California, appears to directly contradict this statutory authority and raises significant concerns about impacts to the plenary power local jurisdictions have been given (and on which they heavily rely) over cannabis activities occurring within their respective boundaries. In the wake of this new regulation, the question necessarily becomes whether local ordinances banning (or regulating) cannabis delivery will be preempted and unenforceable. The regulation itself, and corresponding public comments intended to help clarify the matter, do little to answer this question.

The regulation's inconsistency with state law and confusion as to whether it has a preemptory effect on local regulations banning cannabis delivery create obvious concerns about the way different cities, counties and the state will ultimately apply, implement and enforce the provision. This lack of cohesion is a step back in what has been a long and steady process by

the state to create a comprehensive and reliable regulatory scheme and seemingly undoes the progress counties, like Mono, have made in the development and implementation of local cannabis policies.

Given the above, as well as the concerns already expressed by the Rural County Representatives of California (RCRC) and the California State Association of Counties (CSAC), Mono County respectfully requests that the Bureau reconsider including this controversial provision in its permanent regulations.

Sincerely,

Bob Gardner, Chair

CC: Paul Smith, RCRC



# BUREAU OF CANNABIS CONTROL

CALIFORNIA

# SUMMARY OF PROPOSED REGULATORY CHANGES

## CHAPTER 1. ALL BUREAU OF CANNABIS CONTROL LICENSEES

### Article 1. Division Definitions

- Adds definitions for cannabis accessories, kief, and preroll.

### Article 2. Applications

- Clarifies that temporary licenses will not be issued or extended after Dec. 31, 2018. Temporary licenses with an expiration date after Dec. 31, 2018, are valid until the expiration date.
- Requires that any administrative orders or civil judgments for labor standard violations be included on the application.
- Requires the signature page of a labor peace agreement be provided to the bureau.
- Requires use of specific forms to submit operating procedures for transportation, inventory, nonlaboratory quality control procedures, security procedures, cannabis waste management procedures, and delivery procedures.
- Allows for electronic signatures on all documents submitted to the bureau, except for notarized statements.
- Clarifies that an environmental document submitted with the license application must evaluate whether the applicant's proposed commercial cannabis activity has the potential to generate significant adverse environmental impacts.
- Specifies the information that applicants must submit if a previously certified or adopted environmental document is not available or does not exist, and if the bureau does not determine that the project is exempt from CEQA.

### Article 3. Licensing

- Requires submission of documentation demonstrating the maximum dollar value of operation for the current licensed period with a renewal application.
- Provides that if a licensee must close the premises for more than 30 days to make renovations or repairs, the bureau may allow the licensee to retain the license.
- Clarifies what business modifications the bureau must be apprised of and the procedures for doing so. Business modifications include: standard operating procedures, labor peace agreements, ownership, financial interest, license designations, microbusiness activities, and location of licensed premises.
- Clarifies that each licensed premises shall have a distinct street address and/or suite number.
- Prohibits dispersing cannabis in the air throughout the premises or throughout a portion of the premises by an oil diffuser or any other vaporizing device unless such activities are conducted in accordance with Business and Professions Code section 26200 (g).
- Removes California Code of Regulations section 5029 related to the transition period that ended June 30, 2018.
- Requires that inventory stored on the licensed premises be in a secured limited-access area.
- Requires licensees to notify the bureau, in writing, of an administrative order or civil judgment for violations of labor standards within 48 hours.
- Requires records to be legible and protected from debris, moisture, contamination, hazardous waste, fire, and theft.

# BUREAU OF CANNABIS CONTROL

## SUMMARY OF PROPOSED REGULATORY CHANGES

- Clarifies that the bureau may inspect a licensee's records without prior notice and the licensee must be able to produce records immediately upon request at the licensed premises.
- Provides additional clarification regarding what constitutes a disaster.

### Article 4. Posting and Advertising

- Prohibits the use of certain advertising techniques that may be attractive to minors, including the use of objects, such as toys, inflatables, movie characters, cartoon characters, or any other display, depiction, or image that will likely be appealing to minors.
- Prohibits advertising free cannabis goods or giveaways of any type of product.
- Requires all outdoor advertising to be affixed to a building or permanent structure and comply with the Outdoor Advertising Act.
- Defines what constitutes "reliable up-to-date audience composition data" and requires providing such data to the bureau, upon request.
- Clarifies that any action, omission, or failure of an agent, representative, or contractor retained by the licensee shall be deemed the act, omission, or failure of the licensee.

### Article 5. Security Measures

- Extends limited-access area rules to all licensees, not just retailers.

### Article 7. Returns and Destruction

- Requires a licensee to accept or reject shipments of cannabis goods in whole, except for cannabis goods not accurately reflected on the sales invoice or receipt.
- Prohibits the transfer, donation, sale, and giving away of cannabis waste.

### CHAPTER 2. DISTRIBUTORS

- Clarifies that a distributor shall only distribute and store cannabis goods, cannabis accessories, and licensees' branded merchandise or promotional materials and may not store live plants.
- Clarifies that licensed distributors are allowed to package prerolls.
- Requires distributors that relabel cannabis goods with the accurate amount of cannabinoids or terpenoids to provide the Certificate of Analysis to the manufacturer of the cannabis product.
- Adds that the net weight on any package of dried flower shall not be considered inaccurate if the actual weight is within 2.5 percent of the labeled weight.
- Changes amount of time video recordings documenting sampling shall be kept from 180 days to 90 days.
- Clarifies that once a batch passes testing, it may be transported to one or more licensed retailers, licensed distributors, or licensed microbusinesses.
- Clarifies that licensed distributors may conduct quality-assurance reviews of cannabis goods received from another distributor who has already completed the state-mandated testing.
- Requires that licensed distributors have a completed sales invoice or receipt before transporting cannabis goods, only transport cannabis goods identified on the invoice or receipt, and do not alter the invoice or receipt once transport begins.

### CHAPTER 3. RETAILERS

- Requires exit packaging to be resealable, child-resistant, and opaque.
- Allows a retailer who holds multiple retailer licenses to transfer cannabis goods from one licensed retail premises to another. A distributor must conduct the transport of the cannabis goods and the transfer must be recorded in track and trace.

# BUREAU OF CANNABIS CONTROL

## SUMMARY OF PROPOSED REGULATORY CHANGES

- Adds a provision that allows retailers to deliver to any jurisdiction within California.

### CHAPTER 4. MICROBUSINESS

- Clarifies that license types created by the California Department of Food and Agriculture and the California Department of Public Health (CDPH) in regulation are not considered qualifying commercial cannabis activities for the purposes of obtaining a microbusiness license.
- Clarifies applicants for a microbusiness must submit certain information tailored to the commercial cannabis activities that they wish to engage in.
- Reiterates that all activities performed by a licensee are to occur on the same licensed premises.
- Clarifies that microbusiness licensees are responsible for adhering to the rules and regulations applicable to the license type suitable for the activities of the licensee.
- Clarifies that a suspension or revocation of a microbusiness licensee shall affect all commercial cannabis activities allowed pursuant to that license.
- Provides that the bureau may not issue new microbusiness licenses that include cultivation activities or increase the total number of plant identifiers within a watershed or other area, if the State Water Resources Control Board or the Department of Fish and Wildlife finds, based on substantial evidence, that a microbusiness' cannabis cultivation would cause significant adverse impacts on the environment in a watershed or other geographic area.

### CHAPTER 5. CANNABIS EVENTS

- Requires applicants to provide a more detailed premises diagram indicating where each licensed retailer will be located, where cannabis consumption will occur, and where cannabis sales will occur. Limits licensed retailers to selling cannabis goods in their designated area.

### CHAPTER 6. TESTING LABORATORIES

- Provides rules for transportation of samples from the distributor to the testing laboratories.
- Sets a minimum standard of sample for each test method.
- Excludes tinctures that meet the definition established by the CDPH from meeting ethanol action level.
- Reduces action levels for Category II residual solvents.
- Establishes a greater variance and tiered approach for microdosed edible products' label claim.
- Adds minimum value of 5 percent for cannabinoid and terpenoid label claim verification.
- Provides for Certificate of Analysis to include the following information: picture of the cannabis goods, overall pass/fail for batch, label claim verification, and measured density.
- Modifies the data package requirement to require a data package for every sample instead of every batch.
- Clarifies that a failed batch may only be retested after it has undergone remediation.
- Adds a requirement to include corrective action procedures in the laboratory quality assurance manual.
- Modifies requirements for laboratory quality control samples and addresses appropriate corrective actions for problems that arise with samples.
- Expands the list of materials that must be included in the data package.
- Removes the provision that proficiency testing is required only after receiving ISO/IEC 17025 accreditation status and requires proficiency testing at least every six months regardless of ISO/IEC 17025 status.
- Allows laboratory management to have a bachelor's degree in any field.

# BUREAU OF CANNABIS CONTROL

## SUMMARY OF PROPOSED REGULATORY CHANGES

### CHAPTER 7. ENFORCEMENT

- Adds a provision to allow the bureau to issue an emergency decision to avoid immediate danger to public health, safety, or welfare.
- Provides a process for providing notice and an opportunity to be heard to a licensee subject to an emergency decision.

### CHAPTER 8. OTHER PROVISIONS

- Provides a process for the bureau to award research funding pursuant to Revenue and Taxation Code section 34019 (b) to public universities.

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## Highlights of the Proposed Changes to California's Cannabis Cultivation Regulations

On June 6, 2018, the California Department of Food and Agriculture (CDFA) readopted emergency regulations for cannabis cultivation licensing in the state of California. The emergency regulations are effective for 180 days, and during this time CDFA must propose and adopt permanent regulations; CDFA released the proposed permanent regulations for cannabis cultivation licensing on July 13, 2018, which starts the formal rulemaking process and initiates the official 45-day public comment period.

The proposed permanent regulations include changes from CDFA's current emergency regulations based on public comments and further analysis by CDFA. The following is a summary of some key proposed changes; however, this list is not all-inclusive. To review all the proposed permanent cannabis cultivation regulations, please visit CDFA's CalCannabis Cultivation Licensing website at [calcannabis.cdfa.ca.gov](http://calcannabis.cdfa.ca.gov).

### DEFINITIONS

- Modifies the terms "immature plant" or "immature" to include specific measurements for leaves or roots of plants to facilitate clear and consistent tagging/labeling requirements for seed and/or vegetatively propagated plants. (California Code of Regulations (CCR) § 8000(m))
- Clarifies "mixed-light cultivation" by specifying different lighting combinations that may be used to achieve more than one harvest without being considered indoor cultivation. (CCR § 8000(t))
- Clarifies "outdoor cultivation" by prohibiting the use of light deprivation in the canopy area. (CCR § 8000(x))
- Clarifies "nonmanufactured cannabis product" by explaining how kief is aggregated. (CCR § 8000(v))
- Modifies "pre-roll" to specify what it may contain. (CCR § 8000(aa))

### APPLICATIONS

- Clarifies that CDFA shall not issue any temporary licenses or extensions of temporary licenses after

December 31, 2018. Temporary licenses with an expiration date after December 31, 2018, will be valid until they expire, but they will not be extended beyond their expiration date. (CCR § 8100(h))

- Clarifies the documentation an applicant shall submit to CDFA for a labor peace agreement. (CCR § 8102(y))
- Adds a requirement, if applicable, that an applicant shall provide evidence that the proposed premises is not located in a watershed or other geographic area that the State Water Resources Control Board or the California Department of Fish and Wildlife has determined could be adversely impacted to a significant degree by cannabis cultivation. (CCR § 8102(cc))
- Adds a requirement in the premises diagram for the licensee to identify an area(s) that will be used to physically segregate cannabis or nonmanufactured cannabis products subject to an administrative hold. (CCR § 8106(a)(1))
- Adds a requirement that applicants must include a copy of their most recent water service bill, if applicable. (CCR § 8107(a)(1) and (a)(2))



- Adds a requirement that applicants must include a detailed description and photographs of the rainwater-catchment system infrastructure if their water source is a rainwater-catchment system. (CCR § 8107)

- Adds a requirement that the applicant's designated responsible party shall be the licensee's California Cannabis Track-and-Trace (CCTT) system account manager, who must register for CCTT system training within 10 business days of receiving a CDFA notice confirming his or her annual-license application is complete. (CCR § 8109(a))

### **CULTIVATION LICENSE FEES AND REQUIREMENTS**

- Clarifies the critical timeframes in which applicants must renew their licenses. If applicable, a licensee may request a license designation change from an A-License to an M-License, or an M-License to an A-License. (CCR § 8203)
- Clarifies the meaning of “disaster” for the purposes of disaster relief. (CCR § 8207(f))

### **CULTIVATION-SITE REQUIREMENTS**

- Adds a requirement for an after-market non-resettable hour-meter if a generator is not equipped with one. (CCR § 8306(d))

### **CALIFORNIA CANNABIS TRACK-AND-TRACE (CCTT) SYSTEM**





- Clarifies that a “lot” of immature plants shall be uniform in strain. (CCR § 8403(b)(1))
- Clarifies which activities are required to be entered into the CCTT system, including the planting of immature lots, tagging of immature plants, and specified harvest information. (CCR § 8405(c))
- Adds a requirement that any commercial cannabis activity conducted between a temporary licensee and an annual licensee shall be reported in the CCTT system by the **annual** licensee. (CCR § 8405(f))

### **COMPLIANCE AND ENFORCEMENT**

- Clarifies that CDFA shall use violation classes defined in California Code of Regulations § 8601(a) for violations that preclude or interfere with enforcement of *any* state law, including state labor laws and related regulations. (CCR § 8601(d))
- Adds circumstances and notice and hearing procedures for CDFA to issue an emergency decision and an order for a temporary suspension or an administrative hold to prevent or avoid immediate danger to public health, safety, or welfare. (CCR § 8603)
- Clarifies that a respondent to a notice may be represented by legal counsel at an informal hearing. (CCR § 8605(b)(2))
- Modifies where a respondent may file an appeal to a CDFA informal-hearing decision; appeals now must go to the Cannabis Appeals Panel instead of the Superior Court. (CCR § 8606(f))



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# SUMMARY OF PROPOSED CHANGES

## REGULATIONS FOR CANNABIS MANUFACTURING

The California Department of Public Health (CDPH) published proposed regulations on July 13, 2018, the first step in the formal rulemaking process. The proposed rules are similar to the emergency regulations currently in effect, but contain some changes and clarifications made in response to questions and feedback from the public.

### Summary of Changes in the Proposed Regulations

#### Product Classifications

Provides clarification about which products are classified as edibles and which are classified as concentrates. Specifies that orally-dissolving cannabis products (such as solid sublinguals, lozenges and mouth strips) are classified as edibles. Defines “tablets” as concentrates intended to be swallowed whole and that contain no added flavorings or sweeteners.

#### THC Limits

Allows orally-dissolving edibles intended for sale only in the medicinal market to contain up to 500 milligrams of THC per package, provided that these products contain no more than 10 mg THC per serving as required by statute and are marked “MEDICAL USE ONLY.”

#### Child-Resistant Packaging

Allows statutory requirements for child-resistant packaging to be fulfilled using exit packaging at retail, rather than individual product packaging.

#### Labeling of Flower

Clarifies and establishes basic labeling requirements for flower. Permits flower to be labeled with percentages of cannabinoid content, rather than milligrams.

#### Labeling of Trace Amounts of THC and CBD

Permits products with trace amounts of THC or CBD to be labeled “<2 mg.”

#### Labeling of Multi-Layered Product Packaging

Establishes labeling requirements for inner layers of packaging when the container of a cannabis product can be separated from the outer layer of packaging.

#### Shared-Use Facilities

Increases the maximum gross annual revenue under which a business can hold a Type S license from \$500,000 to \$1 million.

#### Labor Law Violations

Requires disclosure of violations of labor standards during the application process and if a violation occurs during the license period

#### Temporary Licenses

Clarifies that no new temporary licenses will be issued on or after January 1, 2019, and temporary licenses with expiration dates after December 31, 2019, will be valid until they expire.

To view the proposed regulations or learn more about the rulemaking process, visit [www.cdph.ca.gov/mcsb/rulemaking](http://www.cdph.ca.gov/mcsb/rulemaking).



August 13, 2018

Ms. Lori Ajax  
Chief, Bureau of Cannabis Control  
2920 Kilgore Road  
Rancho Cordova, CA 95670

Transmit Via E-Mail: [BCC.comments@dca.ca.gov](mailto:BCC.comments@dca.ca.gov)

**RE: Proposed Regulations Section 5416, Subdivision (d)**

Dear Ms. Ajax:

The Rural County Representatives of California (RCRC), the Urban Counties of California (UCC), and the California State Association of Counties (CSAC) strongly oppose the proposed regulatory statement that "[a] delivery employee may deliver to any jurisdiction within the State of California."<sup>1</sup>

The actual effect of this provision is unclear; however, certain public comments by Bureau representatives indicate that it was intended to express the Bureau's position that local ordinances regulating or prohibiting commercial cannabis delivery transactions are preempted and unenforceable. As such, this provision is both beyond the Bureau's legal authority and represents severely bad public policy.

### **The Proposed Regulation is Inconsistent with Statute and Unlawful**

Administrative regulations must be both *clear* and *consistent* with existing statutes, court decisions, or other provisions of law.<sup>2</sup> Unfortunately, proposed Section 5416, subdivision (d) meets neither of these criteria.

To begin with, the proposed regulation is not actually as clear as the foregoing public comments might suggest. The Bureau's regulatory package contains many

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<sup>1</sup> Our organizations will be submitting a separate comment letter addressing the remainder of the proposed regulatory package.

<sup>2</sup> Gov. Code, § 11349.1. Regulations that alter or amend a statute or enlarge or impair its scope are void, and courts will strike them down. (*Morris v. Williams* (1967) 67 Cal.2d 733, 748.)

provisions indicating that licensees "may" take certain actions.<sup>3</sup> Nowhere else has it been suggested that such authorizing language preempts supplemental or more stringent local rules (or embodies an "interpretation" that such rules are preempted).<sup>4</sup> Rather, these provisions clearly represent the Bureau's establishment of "*minimum standards...statewide*" to which local jurisdictions may add "additional standards, requirements, and regulations" – exactly as MAUCRSA intended.<sup>5</sup>

On its face, Section 5416 is easily susceptible to the same interpretation: A licensee may deliver to a "physical address" in any jurisdiction without violating *state* rules and becoming subject to *state* discipline – without implying any effect on any *local* requirements enforced by *local* agencies that may be applicable at that physical address.<sup>6</sup> If the Bureau intended anything more, it has not expressed that clearly – and the courts will not defer to an "interpretation" that the agency lacked the conviction to communicate forthrightly in its regulatory materials.

Further, even if the Bureau intended (and was able) to interpret MAUCRSA as preempting local ordinances regulating delivery transactions consummated within the local jurisdiction's boundaries, the effect and implementation of this provision would be deeply ambiguous. Does the regulation mean that *all* local rules for delivery transactions are preempted – or only prohibitions? Would retailers engaging in such transactions be exempt from local labor and environmental protections applicable to other cannabis businesses? Could local jurisdictions collect their duly imposed taxes "on the privilege of ... selling ... cannabis or cannabis products by a licensee" making deliveries in the

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<sup>3</sup> See, e.g., §§ 5044, subd. (m); 5045, subd. (c); 5047, subd. (d); 5502, subd. (b); 5427, subd. (a); 5602, subd. (h).

<sup>4</sup> For example, the regulation providing that multiple licensees "may" share a single security system (§ 5044, subd. (m)) cannot reasonably be construed to preempt local license conditions requiring separate systems. Similarly, Section 5502, subdivision (b) plainly does not preclude a local jurisdiction from requiring microbusinesses to maintain a single contiguous canopy area, notwithstanding the statement that "[c]anopy may be noncontiguous."

<sup>5</sup> Bus. & Prof. Code, § 26201.

<sup>6</sup> The Initial Statement of Reasons is likewise unspecific, at best, with regard to local regulation of delivery transactions. The statement that "Business and Professions Code section 26090 subdivision (e) prohibits a local jurisdiction from preventing delivery of cannabis goods on public roads by a licensee acting in compliance with law" does not more than paraphrase Section 26090 (albeit obscuring that section's explicit reference to *local*, as well as state law) – but, like the statute itself, says nothing about regulating cannabis sales transactions actually consummated on private property. (ISOR, p. 110.) Similarly, the clarification that "MAUCRSA and its implementing regulations do not impose restrictions or limit where a delivery employee may deliver, as long as it is within the State of California" is unobjectionable, but hardly suggests preemption of *local* delivery rules. (*Ibid.*) "MAUCRSA and its implementing regulations" likewise do not restrict retail storefronts from being located in residential neighborhoods, either – but local jurisdictions surely have the authority to do so.

jurisdiction, as expressly authorized by MAUCRSA?<sup>7</sup> The proposed regulation leaves all of this unclear, to the substantial detriment of both the regulators and the regulated community – and in contravention of the requirements of the Administrative Procedure Act.

More importantly, the proposed regulation is patently inconsistent with MAUCRSA, and will thus ultimately have *no* legal effect. The applicable statute cited in the ISOR, Business and Professions Code section 26090, subdivision (e), provides that:

*A local jurisdiction shall not prevent delivery of cannabis or cannabis products on public roads by a licensee acting in compliance with this division and local law as adopted under Section 26200.*

As a threshold matter, delivery transactions do not occur "on public roads." Rather, under the Bureau's own regulations, the delivery must take place at a "physical address" *located on private property*.<sup>8</sup> Although delivered cannabis is (typically) carried over public roads *prior to reaching the point of sale*, the actual "sale" – as defined by MAUCRSA itself<sup>9</sup> – is consummated entirely off the public road.

Moreover, Section 26090 explicitly requires that licensees "act[] in compliance with...*local law as adopted under Section 26200.*" The cited statute specifically and repeatedly confirms local authority to regulate – or prohibit – *any* cannabis sales and other commercial cannabis activities conducted within the local jurisdiction, with no exclusion for sales of delivered cannabis conducted by retailers licensed in other jurisdictions.

Indeed, multiple subdivisions of Section 26200 emphasize again and again the plenary local control over any cannabis business "operat[ing]" in the jurisdiction; expressly caution against any attempt to interpret MAUCRSA to "supersede or limit ... enforcement of ... local ordinances"; and conclude that "[t]his division, or any regulations promulgated thereunder, shall not be deemed to limit the authority or remedies of a city, county, or city and county under any provision of law, including, but not limited to, Section 7 of Article XI of the California Constitution."<sup>10</sup> A more direct statement that MAUCRSA does not, and

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<sup>7</sup> Rev. & Tax. Code, § 34021.5, subd. (a).

<sup>8</sup> § 5416, subds. (a), (c).

<sup>9</sup> Bus. & Prof. Code, § 26001, subd. (as) [defining "sale" as the *transfer of title* to cannabis for consideration – expressly including sales accomplished via delivery].

<sup>10</sup> The express reference to California Constitution, article XI, section 7 is significant, since that provision incorporates a formidable presumption against preemption of local business regulations. (See, e.g., *California Veterinary Medical Assn. v. City of West Hollywood* (2007) 152 Cal.App.4th 536, 548-549 [declining to defer to Department of Consumer Affairs opinion that ordinance was preempted]; *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149; *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal.4th 729, 742-743; *Garcia v. Four Points Sheraton LAX* (2010) 188 Cal.App.4th 364, 373.)

the Bureau cannot, preempt local regulation of cannabis business transactions occurring within the local jurisdiction is difficult to envision. Moreover, the cross-reference to this provision in Section 26090 unambiguously dispels any suggestion that delivery transactions are somehow excluded from this expansive local control.

On its face, Section 26090 plainly addresses the portion of the delivery process that actually does occur "on public roads" – namely, carriage from the retailer's premises to the private property where the sale will occur. The (perhaps numerous) local jurisdictions through which such transit occurs cannot interdict that traffic, as long as it remains "on the public roads" and "in compliance with ... local law." However, the suggestion that this affects local authority over commercial cannabis activities occurring *off public roads* and *in violation of local law* does not represent a reasonable interpretation of the statute.

Any doubt on the matter is alleviated by the companion statute, Section 26080, which addresses transportation of cannabis between licensed premises – similarly providing that "[a] local jurisdiction shall not prevent transportation of cannabis or cannabis products on public roads by a licensee transporting cannabis or cannabis products in compliance with this division." That provision is plainly concerned with protecting cannabis licensees while in transit "on public roads", and does not preempt local authority over the premises where the transportation begins and ends. Reading these two sections together, as any court would,<sup>11</sup> it is quite obvious that the virtually identical language in Section 26090 has precisely the same intent and effect, simply substituting "delivery" for "transportation."<sup>12</sup>

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Even without the express local control protections in Sections 26200 and 26090, the Bureau would have a substantial burden to convince the public, the legal community, and the courts that MAUCRSA can reasonably be interpreted to preempt local authority over cannabis sales under any circumstances. With those protections, that position is wholly unsustainable.

<sup>11</sup> See, e.g., *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1289 ["Identical language appearing in separate provisions dealing with the same subject matter should be accorded the same interpretation"]; *Isobe v. Unemployment Insurance Appeals Board* (1974) 12 Cal. 3d 584, 590-591.

<sup>12</sup> Indeed, Section 26090 is, if anything, even *more protective* of local authority, expressly requiring "compliance with...local law." The proposition that this section is actually accords *less* local control than its companion, allowing local regulation of only the source of the delivered cannabis, but not the terminus where the sale physically occurs, is utterly meritless.

The ballot materials for Proposition 64 confirm this plain meaning, describing local control and its modest limitations in this area as follows:

***Local Regulation of Nonmedical Marijuana Businesses.***

*Under the measure, cities and counties could regulate nonmedical marijuana businesses. For example, cities and counties could require nonmedical marijuana businesses to obtain local licenses and restrict where they could be located. Cities and counties could also completely ban marijuana-related businesses. However, they could not ban the transportation of marijuana through their jurisdictions.<sup>13</sup>*

Notably absent from the ballot materials is any hint that the plenary local control over cannabis business activities, so prominently enshrined throughout the proposition, was subject to the substantial caveat that Bureau representatives now claim to have discovered. That was clearly no part of the proposition then, and is no part of California law today.

One more aspect of MAUCRSA warrants mention. MAUCRSA exempts commercial cannabis activities conducted thereunder from the felony criminal penalties otherwise applicable to the distribution, sale, etc. of cannabis under state law. However, these immunities from arrest and prosecution extend only to activities that are permitted under "applicable local ordinances"<sup>14</sup> and "pursuant to a local authorization, license, or permit issued by the local jurisdiction, if any."<sup>15</sup> Consequently, sales of delivered cannabis that violate applicable local ordinances, or are conducted without an authorization from the local jurisdiction in which the sales occur, may not enjoy these immunities. While criminal prosecution is typically the last resort to secure compliance with local regulations, the Bureau's actions in exposing licensees and individual delivery drivers to potentially dire business and personal consequences, based upon a flawed interpretation of MAUCRSA, is likely to be counterproductive.

None of the foregoing analysis is new, or shared only by a small number of municipal attorneys. To the contrary, the conclusion that Proposition 64 (and thus MAUCRSA) "implies that local jurisdictions may move to ban delivery services and the state would be compelled to follow by not issuing licenses" was expressed in materials prepared by legislative staff for no fewer than *three* joint committee hearings over a period of months.<sup>16</sup> Bureau representatives testified at all of the foregoing committee hearings –

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<sup>13</sup> Ballot Pamp., General Elec. (Nov. 8, 2016) analysis of Prop. 64 by the Legislative Analyst, p. 93.

<sup>14</sup> Bus. & Prof. Code, § 26037.

<sup>15</sup> Bus. & Prof. Code, § 26032, subd. (a)(2).

<sup>16</sup> Assem. Comms. on Bus. and Prof., Health, and Agriculture, Joint Informational Hearing on *Cannabis Regulation: The Path Forward After Proposition 64* Briefing Paper (Feb. 7, 2017), p. 6

and expressly referenced local control each time – but gave no hint of disagreement with this conclusion.

This issue arose in the Legislature again earlier this year with the introduction of Senate Bill 1302, which would have amended MAUCRSA to preempt local jurisdictions from banning cannabis deliveries.<sup>17</sup> The Legislative Counsel determined that this constituted an amendment to Proposition 64 requiring a two-thirds vote of the Legislature – a determination that was echoed in both the policy committee report and the Senate Floor Analysis.<sup>18</sup> The proposed regulation here attempts to accomplish precisely the same result without any legislative approval whatsoever, which is entirely beyond the Bureau’s legal authority. Administrative agencies cannot amend state law by regulatory fiat.

In addition to the legislative consensus on the subject, other commentators have publicly expressed the same view – not just municipal organizations,<sup>19</sup> but also prominent

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(Attachment "**A**"); Assem. Comm. on Bus. and Prof., Informational Hearing on *Examining the Plan for Medical and Non-Medical Cannabis Regulation* Briefing Paper (May 23, 2017), p. 5 (Attachment "**B**"); Assem. Comms. on Bus. and Prof., Health, and Agriculture, Joint Informational Hearing on *Cannabis Regulation: An Update on Statewide Implementation* Briefing Paper (Feb. 20, 2018), p. 6 (Attachment "**C**").

<sup>17</sup> Sen. Bill No. 1302 (2017-2018 Reg. Sess.) as introduced Feb. 16, 2018. The bill was subsequently amended on April 9, 2018 and April 26, 2018 in ways not relevant here.

<sup>18</sup> (Sen. Comm. Gov. & Fin., analysis of Sen. Bill No. 1302 (2017-2018 Reg. Sess.) as amended Apr. 26, 2018 (Attachment "**D**") [*Using the authority granted by AUMA, most local governments in the state have banned the delivery of either medical cannabis or recreational cannabis*]; Sen. Rules Comm., Off. of Sen. Floor Analyses, 3d reading analysis of Sen. Bill No. 1302 (2017-2018 Reg. Sess.) as amended Apr. 26, 2018 (Attachment "**E**"). The legislative analyses raised the additional question of whether the Legislature itself could amend MAUCRSA to accomplish this result without a vote of the people, expressing skepticism that such a profound encroachment upon local control would be found to “further the purposes and intents” of Proposition 64. This is a plausible and potent concern – but irrelevant here, as the Bureau has no power to alter, disregard, or evade MAUCRSA in any fashion.

<sup>19</sup> See, e.g., Cromartie, *What Cities Should Know About Proposition 64, The Adult Use of Marijuana Act*, Western City (Feb. 2017), pp. 2-3 (Attachment “F”); League of Cal. Cities, *The Control, Regulate and Tax Adult Use of Marijuana Act* (Sep. 26, 2016), p. 7 (Attachment “G”).

cannabis advocacy groups,<sup>20</sup> industry publications,<sup>21</sup> and attorneys representing cannabis interests.<sup>22</sup>

Against these numerous public pronouncements, the evidence for any contrary interpretation by the Bureau prior to July 13, 2018 is unclear and unknown to local governments. As noted, Bureau representatives have testified before multiple legislative committees at which local control was addressed without mentioning this purported caveat. There is similarly no suggestion that local jurisdictions lack authority over delivery transactions occurring within their boundaries anywhere in either the December 2017 emergency regulations or the June 2018 re-adoption package. The record wholly fails to demonstrate the type of longstanding and consistent interpretation of MAUCRSA for which the Bureau could plausibly claim any sort of deference.<sup>23</sup>

In sum, to the extent that proposed Section 5416, subdivision (d) is intended to “interpret” MAUCRSA as preempting local regulation of sales of delivered cannabis consummated within the local jurisdiction, that interpretation is unreasonable and inconsistent with the statute. This regulation is consequently beyond the Bureau’s regulatory authority and of no legal effect, and should be removed from the regulatory package prior to adoption.

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<sup>20</sup> Cal. NORML, *California NORML Guide to AUMA* <[http://www.canorml.org/Cal\\_NORML\\_Guide\\_to\\_AUMA](http://www.canorml.org/Cal_NORML_Guide_to_AUMA)>, p. 4 (Attachment “H”) [“Under MMRSA, local governments are entitled to ban deliveries of medical marijuana to residents in their jurisdiction. *There is nothing in AUMA to change this by requiring local governments to allow deliveries*”].

<sup>21</sup> Ostrowitz, *California's Tidal Wave of Local Regulation*, Marijuana Industry News (March 2017), p. 13 (Attachment “I”) [“Local governments are allowed to prohibit delivery from originating or terminating in their jurisdiction, but cannot prohibit deliveries from passing through their cities on their way to a destination in another jurisdiction, i.e., delivery drivers can use the roads in a city regardless of whether that city allows delivery”]; Hecht, *Will Cannabis Delivery Survive in California’s Legal Market?*, Leafly (Feb. 6, 2018), p. 4 (Attachment “J”) [“The state may license and allow delivery services, but local municipalities retain the legal right to prohibit them”].

<sup>22</sup> Rogers, Ask an Attorney: *Can California cities block marijuana deliveries?*, The Cannifornian (Jul. 19, 2017), p. 5 (Attachment “K”) [“If a city cannot stop the transportation of cannabis through its borders, can it prohibit the delivery and receipt of cannabis therein? Unfortunately, the answer seems to be yes”]; Bentaleb, *California Cannabis Delivery: Not So Fast and Furiously Difficult*, Canna Law Blog (Mar. 30, 2018), p. 2 (Attachment “L”) [“First and foremost, a local jurisdiction can enact an outright ban on all commercial cannabis activities, including delivery”].

<sup>23</sup> See, e.g., *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal. 4th 1, 13 [“a vacillating position...is entitled to no deference”]



## **The Proposed Regulation is Harmful to the Public and the Regulated Community**

Aside from its legal defects, Proposed Section 5416, subdivision (d) also represents bad public policy, which will ultimately harm the cannabis industry, consumers, and the general public, as well as local governments.

The most obvious negative effect, and arguably the most significant, is upon compliance and public safety. As in any industry, effective regulatory oversight of cannabis licensees is critical to ensuring public and consumer safety – and also to protecting compliant businesses from less scrupulous competitors. It is indisputable that the Bureau's own enforcement resources are spread thin, and that the bulk of oversight and compliance responsibilities for licensed cannabis businesses therefore falls upon the local jurisdiction in which they are permitted.

Local jurisdictions that choose to license and regulate cannabis retailers can effectively perform these responsibilities within their own boundaries. However, under the Bureau's proposed approach, retailers licensed in one jurisdiction would be permitted to operate in other jurisdictions potentially many miles away – and would not be required to comply with the permitting and regulatory requirements of those jurisdictions. It is unreasonable and implausible to expect the permitting jurisdiction to effectively monitor and enforce regulatory compliance statewide. This oversight vacuum renders the Bureau's detailed regulations for the delivery process entirely toothless,<sup>24</sup> and will reward only the most unscrupulous of operators. The harm to both the industry and the public is clear and present.

The regulation's impact upon compliant cannabis businesses is further magnified in other ways. A number of local jurisdictions have enacted labor, environmental, and public safety protections beyond MAUCRSA's minimum standards. For example, the City of Los Angeles has adopted more expansive labor peace agreement requirements than state law.<sup>25</sup> Under the Bureau's proposal, retailers in these jurisdictions would face immediate competition from delivery services based in other jurisdictions who were not required to comply with these requirements. In addition to directly harming these retailers, the regulation will inevitably encourage cannabis businesses to locate in the jurisdiction with the fewest regulatory protections, and will put pressure on jurisdictions that have

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<sup>24</sup> For example, the age verification requirements of Section 5415, subdivision (f) are critical to preventing access by minors – one of the core principles of MAUCRSA. Local jurisdictions can effectively monitor delivery drivers' compliance within their boundaries, but will have obvious difficulty ensuring that drivers are actually checking ID's in other parts of the state. The proposed regulation puts all of MAUCRSA's core public safety protections at risk.

<sup>25</sup> Compare Los Angeles Mun. Code, § 104.11, subd. (l) ["the requirement applies to Applicants with 10 or more Employees" with Bus. & Prof. Code, § 26051.5, subd. (a)(5)(A) ["an applicant with 20 or more employees"].

chosen to enact such measures to repeal them – to the detriment of their constituents and the public at large.

Moreover, local control has value in its own right – as much for delivery sales as for bricks-and-mortar establishments.<sup>26</sup> The extensive role and protections for local governments were not included in MAUCRSA by accident, but rather reflect the recognition that local governments are best positioned to determine whether, when, and how commercial cannabis activities may be introduced into their communities. Local flexibility allows the county or city to develop a regulatory regime at the right time, and with the right components, to meet the unique needs of its residents. Further, the assurance of local control promotes community trust and acceptance of legal cannabis businesses, and was instrumental in the passage of both Proposition 64 and the MCRSA before it.

The proposed regulation would effectively abrogate these protections, for a very significant segment of commercial cannabis activities, only a short time after they were enacted. Such rapid policy reversals may have the effect of increasing local government distrust of the process of cannabis legalization, and of discouraging key stakeholders from engaging with future legislation in this area – thereby ultimately hindering the progress of cannabis regulation.

The timing of this proposal to strip local control over deliveries is especially inapt. The cannabis industry remains in transition. While many good operators have applied for an obtained state licenses, there are also many black market businesses with no intention of compliance. Removing local governments' ability to determine which cannabis businesses may conduct sales within their jurisdiction – or to determine that the conditions in their community are not yet ready to accommodate such sales – will make it more difficult to ensure that only legal cannabis businesses are engaging in these activities.

Additionally, the regulatory “rules of the road” for this industry remain much in flux. The Bureau has not yet issued a single annual license, and many basic issues relating to the delivery process itself are still under development – such as the amount of cannabis delivery vehicles may carry, the routes they may take, and marking of delivery vehicles. (Some of these details have been revised multiple times by the Bureau during the emergency and permanent regulations process, underscoring the rapidly evolving nature of this field.)

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<sup>26</sup> It is sometimes suggested that cannabis deliveries are akin to an individual customer purchasing cannabis at a storefront and then returning with it to their own home – and should be equally free from regulation. However, this is a false comparison. Sales of cannabis are unequivocally *commercial* activities, with all of the risks and benefits that entails, regardless of whether they are conducted at a storefront or in the customer's home. The state and local governments regulate business activities for good reasons, and many of those reasons are just as pressing when the activity occurs between a delivery employee and a customer in the customer's living room.

Many local jurisdictions are taking a cautious approach during these early days of cannabis legalization, opting to wait until the state regulations are finalized and the industry is better settled before permitting commercial cannabis activities. This represents conscientious and sensible public policy in many communities, and should not be greeted with reactionary regulatory proposals. While there may be some frustration at the pace of transition and deployment of the legal cannabis industry, it remains very early in that process – still less than two years after Proposition 64 passed. MAUCRSA did not – and could not – ever promise immediate, overnight access to legal commercial cannabis everywhere in the state, and the Bureau must remain cognizant and respectful of MAUCRSA’s more deliberate intent and approach.

Finally, the only real effect of the proposed regulation will be to induce false reliance by cannabis businesses. Even the most wishful legal analysis must recognize the plausible prospect that the Bureau’s “interpretation” of Section 26090 will not survive challenge, and that the courts will continue to uphold local delivery regulations and prohibitions. In the meantime, however, cannabis businesses will have developed business models and made investments in reliance upon this supposed exemption from local regulation – money and effort that an emerging industry can ill-afford to waste. They will also be exposing themselves to substantial penalties, legal actions, and other business and personal consequences the moment they begin deliveries contrary to local ordinance.

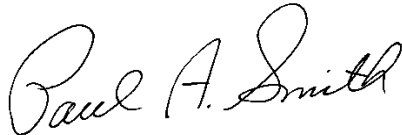
We believe that the Bureau should give serious thought to the limited protection provided by this regulation – and to the consequences that will fall upon regulated cannabis businesses should this construct fail. Encouraging retailers to take expensive risks, based upon an at best questionable legal proposition, represents a departure of the Bureau’s mandate to promote the development of the legal cannabis industry

In closing, we would note that in all of the stakeholder meetings and discussions we have had with the Bureau, they have always emphasized local control and the ability to restrict certain commercial cannabis activities. Therefore, we are at a loss to understand this major change with no outreach to your local government partners and no explanation for this change. We continue to work in partnership with the State on the implementation of the cannabis regulations and legislation and respectfully request that the provision regarding delivery be removed from the proposed regulations.

Ms. Lori Ajax  
Comments on Proposed Regulations Section 5416, subdivision (d)  
August 13, 2018  
Page 11

We appreciate the opportunity to provide these comments on the proposed delivery regulation. If you have any questions, please contact Paul A. Smith at [psmith@rcrcnet.org](mailto:psmith@rcrcnet.org), Jolena Voorhis at [jolena@urbancounties.com](mailto:jolena@urbancounties.com), or Cara Martinson at [cmartinson@counties.org](mailto:cmartinson@counties.org).

Sincerely,



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Darci Sears, Office of Assembly Speaker Anthony Rendon  
Gayle Miller, Office of Senate President Pro Tempore  
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Attachments