MARIPOSA COUNTY

P.O. Box 784 Mariposa, CA 95338 (209) 966-3222
5100 Bullion Street
http://www.mariposacounty.org/

MARSHALL LONG, CHAIR	**DISTRICT III**
ROSEMARIE SMALLCOMBE, VICE-CHAIR	**DISTRICT I**
TOM SWEENEY	**DISTRICT II**
WAYNE FORSYTHE	**DISTRICT IV**
MILES MENETREY	**DISTRICT V**

ACTION SUMMARY MINUTES

February 23, 2021

A. 9:00 AM Called to Order and Roll Call

Attendee Name	Title	Status	Arrived
Rosemarie Smallcombe	District I Supervisor	Present	9:00 AM
Tom Sweeney	District II Supervisors	Present	9:00 AM
Marshall Long	District III Supervisor	Present	9:00 AM
Wayne Forsythe	District IV Supervisor	Present	9:00 AM
Miles Menetrey	District V Supervisor	Present	9:00 AM

B. Pledge of Allegiance

Chair Long led the Pledge.

C. Introductions

None.

D. Approval of Consent Agenda (Items designated by "CA")

No public input. Each supervisor acknowledged and thanked the volunteers being appointed to committees in CA10-CA18. Supervisor Menetrey spoke in support of CA8.

RESULT: **ADOPTED [UNANIMOUS]**

MOVER: Wayne Forsythe, District IV Supervisor

SECONDER: Rosemarie Smallcombe, District I Supervisor

AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

CA1. **Health and Human Services** **RES-2021-81**

Resolution Continuing a Shelter Crisis Local Emergency in Mariposa County

CA2. **Health and Human Services RES-2021-82**

Resolution Continuing the Public Health Local Emergency Due to the COVID-19 Pandemic

CA3. **Sheriff's Office RES-2021-83**

Resolution Continuing the Local Emergency Due to the COVID-19 Global Pandemic

CA4. **Sheriff's Office RES-2021-84**

Resolution Continuing the Local Emergency Due to the 2021 Mono Wind Event

CA5. **Sheriff's Office RES-2021-85**

Resolution Continuing the Local Emergency Due to the 2021 Meteorological "Atmospheric River" Event

CA6. **Administration RES-2021-86**

Approve a Memorandum of Understanding (MOU) for Grant Writing Services with Mariposa County Resource Conservation District in an Amount Not to Exceed $45,000; and Authorize the Board of Supervisors Chair to Sign the MOU

CA7. Item Withdrawn

CA8. **Clerk of the Board of Supervisors 2021-21**

Amend the Board Member Contact Area List to Include Mariposa Public Utility District; and Appoint Marshall Long and Wayne Forsythe as Its Board Representatives

CA9. **Health and Human Services RES-2021-87**

Approve an Addendum to Lease Agreement with Mariposa Golden Agers, Inc. for Use of the Mariposa Senior Activity Center; and Authorize the Board of Supervisors Chair to Sign the Addendum

CA10. **Planning 2021-22**

Re-Appoint Dana Brown to the Greeley Hill Planning Advisory Committee for a Term to Expire February 28, 2023 (Supervisor Sweeney)

CA11. **Planning 2021-23**

Re-Appoint Tony Toso as a Member Representing the Cattle Industry and John Shimer as an At-Large Member to the Agricultural Advisory Committee, with Terms to Expire February 28, 2023

CA12. **Planning 2021-24**

Re-Appoint Catherine Fong, Schree Yager and Kevin Shelton to the El Portal Planning Advisory Committee with Terms to Expire February 28, 2023 (Supervisor Smallcombe)

CA13. **Planning 2021-25**

Re-Appoint Charles Lammers, Angela Heiss and Gary Francisco to the Midpines Planning Advisory Committee for Terms to Expire February 28, 2023 (Supervisor Smallcombe)

CA14. **Planning 2021-26**

Re-Appoint Robert Bassett, Donn Harter, John Luther, Daniel Lyle and Greg Royse to the Fish Camp Town Planning Advisory Council with Terms to Expire February 28, 2023 (Supervisor Menetrey)

CA15. **Planning 2021-27**

Re-Appoint Kim Brisack, Will Fassett, Derek Heule and Charles Phillips to the Creative Placemaking Strategy Advisory Committee (CPSAC) for Terms to Expire February 28, 2024

CA16. **Planning 2021-28**

Recognize the Service of William Rosenberg on the Wawona Town Planning Advisory Committee; Re-Appoint Tony Christianson, Ed Mee and Eugene Spindler to the Wawona Town Planning Advisory Committee with Terms to Expire February 28, 2023 (Supervisor Menetrey)

CA17. **Planning 2021-29**

Acknowledge the Service of Michelle Coppock and Janelle Danel to the Coulterville Planning Advisory Committee; Re-Appoint Rick Cordero and Stephen Huff to the Coulterville Planning Advisory Committee for Terms to Expire on February 28, 2023; Appoint James Rhodes to Fill an Unexpired Term Ending February 28, 2022 on the Coulterville Planning Advisory Committee; and Appoint Nina Coleman to the Coulterville Planning Advisory Committee for a Term to Expire February 28, 2023 (Supervisor Sweeney)

CA18. **Planning 2021-30**

Recognize the Service of Cathie Pierce and Ken Trujillo from the Catheys Valley Community Planning Advisory Committee; Re-Appoint Casey Archer (Formerly Aitchison), Ken Davis, Josh Evans and Ken Wagner to the Catheys Valley Community Planning Advisory Committee for Terms to Expire February 28, 2023 (Supervisor Long)

CA19. **Sheriff's Office RES-2021-88**

Approve a Memorandum of Understanding (MOU) with John C. Fremont Healthcare District for Security Services for Pre-Crisis/Crisis Patients; and Authorize the Board of Supervisors Chair to Sign the MOU

E. Departmental Presentation

Eric Sergienko/County Health Officer reported receiving a call from Adventist Sonora on Friday night requesting help in distributing 1200 doses of vaccine, which precipitated two mass vaccination pop-up clinics over the weekend. Dr. Sergienko also reported that 2,852 people have been vaccinated as of today with 871 of those having received both doses; and noted that those numbers do not include those vaccinated outside of the county or through other programs. He also noted that federal allotments will be catching up today, and advised of the upcoming clinic at the Fairgrounds on Friday from 9:00 AM to 5:00 PM, with another clinic to be held at the Greeley Hill Community Center from 10:00 AM to 3:00 PM on Saturday. The doctor also advised

that they are now down in the 60 year old range for vaccinations; noted that the county is flirting with the orange level; and reminded people of the dangers of traveling to outside areas, especially given that three local cases were associated with church services in Stanislaus and Merced Counties while another two were associated with travel to Las Vegas. Supervisors Forsythe and Sweeney extended thanks to Public Health for the vaccination clinics. Dr. Sergienko extended kudos to his team for their efforts.

Pete Judy/Chief probation Officer extended thanks to Dr. Sergienko and his staff, and noted that the schools have been running K-8 classes since October with few problems which he attributed to Dr. Sergienko's efforts. Chief Judy also discussed SB-823, regarding Juvenile Justice Realignment, which changes county responsibilities towards juvenile offenders. He explained that Mariposa County will receive $250,000 but does not have the ability to keep offenders here and must rely on arrangements with other counties, but that SB-823 will jeopardize that solution as many counties have indicated that they will no longer be accepting those contracts. Chief Judy advised that he will be convening the Juvenile Justice Council to recommend what to do with the annual allotment. He requested the Board communicate this challenge to small counties to their colleagues. Board discussion ensued regarding past cases, and which organizations are advocating on the issue at the state level.

Steve Ward/County Fire CAL FIRE reported that the chassis for the new Type III fire engines have been ordered but must be built and that certain parts are in short supply. Consequently, the build time has been bumped from June/July to November/December. Chief Ward also announced the passing of Keith Pearson, a volunteer fire fighter with 42 years of service.

F. Public Comment on Non-Agenda Items

None.

Recessed Board of Supervisors

9:37 AM Chair Long recessed the Board meeting, followed by René LaRoche/Clerk of the Board reading the Government Code announcement.

G. LOCAL TRANSPORTATION COMMISSION

9:37 AM Chair Long convened the meeting of the Local Transportation Commission (LTC) with all members present.

Public Comment Period

None.

LTC Regular Agenda

1. **Public Works LTC-2021-7**

Authorize the Public Works and Transportation Director to Award a Professional Services Agreement to Walker Consultants in the Amount of $55,000.00 to Develop the Short-Range Transit Plan; and Authorize the LTC Executive Director to Sign the Agreement

Mike Healy/LTC Executive Director gave the staff report. No public input.

RESULT: **ADOPTED [UNANIMOUS]**
MOVER: Wayne Forsythe, District IV Supervisor
SECONDER: Tom Sweeney, District II Supervisors
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

2. **Public Works** **LTC-2021-8**

Authorize the Public Works and Transportation Director to Award a Professional Services Agreement to NCE to Perform State Mandated Updates to the County Pavement Management Program for an Amount Not to Exceed $55,000.00; and Authorize the LTC Executive Director to Sign the Agreement

Mike Healy gave the staff report. No public input.

RESULT: **ADOPTED AS AMENDED [UNANIMOUS]**
MOVER: Miles Menetrey, District V Supervisor
SECONDER: Wayne Forsythe, District IV Supervisor
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

Adjourn LTC

9:43 AM Chair Long adjourned the LTC meeting.

Reconvene as Board of Supervisors

9:43 AM Chair Long reconvened the meeting and recessed for a brief break. He reconvened the Board meeting at 9:48 AM.

H. Regular Agenda Items

1. **Public Works** **RES-2021-89**

Approve Advertisement and Acceptance of Bids for the Removal of an Obsolete Conveyor System at the Mariposa County Landfill; and Authorize the Public Works Director to Award and Sign the Agreement (Subject to Approval as to Form by County Counsel)

Mike Healy/Public Works Director gave the staff report. No public input.

RESULT: **ADOPTED [UNANIMOUS]**
MOVER: Tom Sweeney, District II Supervisors
SECONDER: Wayne Forsythe, District IV Supervisor
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

2. **Administration RES-2021-90**

Approve the Renewal Agreement with Tangent for 10 Microsoft 365 Licenses, and Adding 370 New Licenses, in an Amount Not to Exceed $92,700 with a Term of July 5, 2020 through July 5, 2021; and Authorize the Board of Supervisors Chair to Sign the Agreement

Dallin Kimble/County Administrative Officer introduced Anthony Rios/Technical Services Manager who gave the staff report. During public comment, Leigh Westerlund/Assistant County Administrative Officer noted that these are not all new costs as the County was already paying for office support. Discussion ensued between Supervisors Menetrey and Sweeney, and Mr. Rios regarding how the licenses are applied. Supervisor Smallcombe extended kudos for the effort.

RESULT: **ADOPTED [UNANIMOUS]**
MOVER: Rosemarie Smallcombe, District I Supervisor
SECONDER: Wayne Forsythe, District IV Supervisor
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

3. **Administration RES-2021-91**

Approve the Renewal Agreement with ZorroSign for 32 Licenses, Including a Prorated Amount for 17 New Licenses, in an Amount Not to Exceed $15,675 with a Term of February 23, 2021 through July 16, 2022; and Authorize the Board of Supervisors Chair to Sign the Agreement

Dallin Kimble introduced Anthony Rios who gave the staff report. No public input. In response to Supervisor Smallcombe's question, Joe Lynch/Assistant County Administrative Officer and René LaRoche discussed ease and turnaround time on pay certifications and agreement processing.

RESULT: **ADOPTED [UNANIMOUS]**
MOVER: Rosemarie Smallcombe, District I Supervisor
SECONDER: Miles Menetrey, District V Supervisor
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

4. **Administration RES-2021-92**

Approve FY20-21 Mid-Year Budget Adjustments and Review Variance Explanations 4/5ths Vote Required

Dallin Kimble introduced Leigh Westerlund who gave the staff report. No public input. Board clarification and discussion ensued.

RESULT: **ADOPTED [UNANIMOUS]**
MOVER: Rosemarie Smallcombe, District I Supervisor
SECONDER: Wayne Forsythe, District IV Supervisor
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

I. Items removed from Consent Agenda

CA7. **Board of Supervisors**

Accept the Minutes of Tuesday, January 26, 2021

J. Board Information

Information received.

Recessed

10:55 AM Chair Long recessed the meeting.

K. 2:00 PM Reconvened

1. **Public Works (ID # 11339)**

Receive an Update on the Ferguson Slide Project from Dennis Agar, Caltrans District 10 Director and the Caltrans Ferguson Slide Project Team

Mike Healy introduced Dennis Agar/Caltrans District 10 Director, who introduced Grace Magsayo and Allen Lao from Caltrans. Mr. Lao gave a PowerPoint presentation. No public input. Board discussion ensued.

RESULT: INFORMATION RECEIVED

2. **Planning 2021-ORD-1161**

Waive the Second Reading and Adopt an Ordinance Titled "An Ordinance Amending County Code Title 17 to Add Section 17.108.200.E., Section 17.334.055.E., and Definitions to Section 17.148.010", to Prohibit Industrial Hemp Cultivation and Hemp Cultivation by Established Agricultural Research Institutions in Mariposa County

Sarah Williams/Planning Director gave the staff report. No public input.

RESULT: **ADOPTED [UNANIMOUS]**
MOVER: Miles Menetrey, District V Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

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L. Adjournment

2:31 PM Chair Long adjourned the meeting in memory of Keith Pearson.

Respectfully submitted,

René LaRoche
Clerk of the Board

Marshall Long
Chair, Board of Supervisors

MARIPOSA COUNTY

Health and Human Services · (209) 966-2000

RESOLUTION - ACTION REQUESTED 2021-81

MEETING: February 23, 2021

TO: The Board of Supervisors

FROM: Shannon Gadd, Health and Human Services Agency Director

RE: Continue a Shelter Crisis Local Emergency in Mariposa County

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RECOMMENDATION AND JUSTIFICATION:
Resolution Continuing a Shelter Crisis Local Emergency in Mariposa County.

California Government Code 8698, 8698.1 and 8698.2 allows for the governing body of a city or county to declare a shelter crisis. A shelter crisis declaration relaxes standards for building occupancy, limits liability and provides a legal basis for the use of certain facilities designated by the County as a shelter for the duration of the crisis.

In order to declare the shelter crisis, the County made findings at a public meeting and adopted Resolution 18-518 that (1) a significant number of persons within the county's jurisdiction are without the ability to obtain shelter; and (2) the situation has resulted in a threat to the health and safety of those persons.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
On November 5, 2018, the Board of Supervisors adopted Resolution 18-518 declaring the existence of a Shelter Crisis Local Emergency in Mariposa County to allow Mariposa County to proceed with temporary homeless shelter solutions to meet the needs of our homeless community members.

Recognizing the prevalence of homelessness in California and the health and safety risks facing homeless persons, California law authorizes counties to declare a "shelter crisis" and avail themselves to attendant protections and powers. Specifically, upon declaring a "shelter crisis":

- A county may allow persons unable to obtain housing to occupy designated public facilities during the duration of the emergency (public facilities include parks, schools, and vacant or underutilized facilities which are owned, operated, leased, or maintained by the county);
- A county is immune from liability for ordinary negligence in the provision of emergency housing for all conditions, acts, or omissions directly related to, and which would not occur but for, the provision of emergency housing; and

- The provisions of any state or local law or regulation prescribing standards of housing, health, and safety are suspended to the extent that strict compliance would prevent, hinder, or delay the mitigation of the effects of the crisis.

If the County desires to construct and operate an emergency homeless shelter, it is recommended that the County Board of Supervisors first declare a "shelter crisis" in order to avail itself of the associated powers and liability protections.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Do not continue the local emergency and the County may not be eligible for possible State or Federal assistance, or proceed with temporary homeless shelter solutions.

RESULT: **ADOPTED BY CONSENT VOTE [UNANIMOUS]**
MOVER: Wayne Forsythe, District IV Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

MARIPOSA COUNTY

Health and Human Services · (209) 966-2000

RESOLUTION - ACTION REQUESTED 2021-82

MEETING: February 23, 2021

TO: The Board of Supervisors

FROM: Shannon Gadd, Health and Human Services Agency Director

RE: Continue the COVID-19 Public Health Local Emergency

RECOMMENDATION AND JUSTIFICATION:
Resolution Continuing the Public Health Local Emergency Due to the COVID-19 Pandemic.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
On March 13, 2020, Mariposa County Public Health Officer, Dr. Eric Sergienko declared a local public health emergency in response to the COVID-19 Pandemic. On March 17th, 2020 the Mariposa County Board of Supervisors adopted a Resolution ratifying a Local Health Emergency.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Do not continue the local emergency and the County will not be eligible for possible State or Federal disaster assistance.

RESULT: **ADOPTED BY CONSENT VOTE [UNANIMOUS]**
MOVER: Wayne Forsythe, District IV Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

MARIPOSA COUNTY

Sheriff's Office · 209 966-3615

RESOLUTION - ACTION REQUESTED 2021-83

MEETING: February 23, 2021

TO: The Board of Supervisors

FROM: Jeremy Briese, Sheriff

RE: Continue the Local Emergency Due to COVID-19

RECOMMENDATION AND JUSTIFICATION:

Resolution Continuing the Local Emergency Due to the COVID-19 Global Pandemic.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

March 24, 2020: The Board ratified the March 17, 2020 Local Emergency Proclamation Due to the COVID-19 Global Pandemic. Additionally, the Board has ratified similar proclamations in the past during other emergencies.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

If the Board does not continue the proclamation, the County will not be eligible for possible State or Federal disaster assistance.

FINANCIAL IMPACT:

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RESULT: **ADOPTED BY CONSENT VOTE [UNANIMOUS]**
MOVER: Wayne Forsythe, District IV Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

MARIPOSA COUNTY

Sheriff's Office · 209 966-3615

RESOLUTION - ACTION REQUESTED 2021-84

MEETING: February 23, 2021

TO: The Board of Supervisors

FROM: Jeremy Briese, Sheriff

RE: Continue the Local Emergency Due to Mono Wind Event

RECOMMENDATION AND JUSTIFICATION:

Resolution Continuing the Local Emergency Due to the 2021 Mono Wind Event.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

January 22nd, 2021: The Board ratified the January 19th, 2021 Local Emergency Proclamation Due to the Mono Wind Event. Additionally, the Board has ratified similar proclamations in the past during other emergencies.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

If the Board does not continue the proclamation, the County will not be eligible for possible State or Federal disaster assistance.

FINANCIAL IMPACT:

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RESULT: **ADOPTED BY CONSENT VOTE [UNANIMOUS]**
MOVER: Wayne Forsythe, District IV Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

MARIPOSA COUNTY

Sheriff's Office · 209 966-3615

RESOLUTION - ACTION REQUESTED 2021-85

MEETING: February 23, 2021

TO: The Board of Supervisors

FROM: Jeremy Briese, Sheriff

RE: Continue the Local Emergency Due to Meteorological "Atmospheric River" Event

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RECOMMENDATION AND JUSTIFICATION:

Resolution Continuing the Local Emergency Due to the 2021 Meteorological "Atmospheric River" Event.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

February 9th, 2021: The Board ratified the February 3rd, 2021 Local Emergency Proclamation Due to the Meteorological "Atmospheric River" Event. Additionally, the Board has ratified similar proclamations in the past during other emergencies.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

If the Board does not continue the proclamation, the County will not be eligible for possible State or Federal disaster assistance.

FINANCIAL IMPACT:

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RESULT: **ADOPTED BY CONSENT VOTE [UNANIMOUS]**
MOVER: Wayne Forsythe, District IV Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

MARIPOSA COUNTY

Administration · 966-3222

RESOLUTION - ACTION REQUESTED 2021-86

MEETING: February 23, 2021

TO: The Board of Supervisors

FROM: Dallin Kimble, County Administrative Officer

RE: MCRCD Grant Writing MOU

RECOMMENDATION AND JUSTIFICATION:

Approve a Memorandum of Understanding (MOU) for Grant Writing Services with Mariposa County Resource Conservation District in an Amount Not to Exceed $45,000; and Authorize the Board of Supervisors Chair to Sign the MOU.

Mariposa County and the Mariposa County Resource Conservation District (RCD) have collaborated often on projects to enhance the wildfire resiliency and preparedness of our community. This agreement would allow the County to compensate RCD up to $15,000 annually for resiliency-related grant writing through the end of December 2023.

As wildfires become more severe across the state, more actions are needed to protect the homes and property of Mariposans. Federal and State governments are dedicating more funds to disaster mitigation, but counties are most often required to compete for those funds through a grant application process.

This action aims to increase the County's capacity for grant writing, while simultaneously supporting a capable community partner with common goals for wildfire preparation. When grants are awarded, payment for grant writing services can often be included in the grant expenses. County funds will only be necessary for work completed on grant applications that are not ultimately awarded.

The agreement exemplifies our stated value of collaboration with a top priority at a reasonable expense that can be easily tracked. Staff recommends approval at this time.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

On November 10, 2020, the Board approved an agreement with RCD to partner on the installation of a water storage tank at the Bootjack Fire Station. RCD was awarded a grant in the amount of $708,428 and dedicated considerable staff time to help offset the cost of this project.

On August 13, 2019, the Board approved an agreement with RCD to receive up to $591,714 in Forest Health Grant funding obtained by RCD for tree mortality services. This work was completed through the County's agreement with Blue Ridge Services.

Mariposa County and RCD have partnered on many other occasions to bring grant funds and resiliency projects to our community.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Do not approve. The County may not have capacity to apply for and receive as many grant funds for local resiliency projects.

FINANCIAL IMPACT:
This is a three-year agreement not to exceed $15,000 annually and shared between Fire and Public Works budget. There is sufficient funding in the budget for this agreement.

ATTACHMENTS:
Draft MOU County - RCD(PDF)

RESULT: **ADOPTED BY CONSENT VOTE [UNANIMOUS]**
MOVER: Wayne Forsythe, District IV Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

MEMORANDUM OF UNDERSTANDING FOR CONTRACTING AND GRANT WRITING SERVICES

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into this 23rd day of February, 2021, by and between the County of Mariposa ("COUNTY") and the Mariposa County Resource Conservation District ("MCRCD"), a special district of the State of California. COUNTY and MCRCD may be referred to in this MOU individually as "Party" and collectively as "Parties" where the context so requires.

WHEREAS, COUNTY and MCRCD have participated in numerous collaborative efforts to enhance the wildfire resiliency and preparedness of Mariposa County residents, and worked together to address issues that threaten public and private property and vital infrastructure; and

WHEREAS, COUNTY and MCRCD have jointly and independently pursued activities to achieve mutual goals over the past ten years and developed a strong working relationship; and

WHEREAS, COUNTY and MCRCD now desire to collaborate on a program whereby RCD may write grants for COUNTY;

NOW, THEREFORE, COUNTY AND MCRCD mutually agree to the following:

1. TERM

The term of this MOU shall commence on February 23, 2021, and terminate on December 31, 2023, unless extended as provided by this MOU.

2. SERVICES

MCRCD will provide grant writing services as described in Exhibit A of this MOU.

3. COMPENSATION

MCRCD shall be compensated for authorized services performed in an amount not to exceed forty-five thousand dollars ($45,000). Rates for MCRCD services are outlined in Exhibit B of this MOU. COUNTY shall pay MCRCD within thirty (30) days of an approved invoice.

4. RELATIONSHIP OF PARTIES

COUNTY and MCRCD are independent contractors with respect to each other. This MOU is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture, or any other similar association. Nothing in this MOU shall be construed to create an employment relationship between COUNTY, and any employee of MCRCD, or between MCRCD and any employee of COUNTY. Each Party shall be solely responsible for the acts or omissions of its officers, agents, employees, and subcontractors. Neither Party's employees shall be entitled to any employee benefits from the other Party. Ownership of project sites will remain at all times with COUNTY; MCRCD

DRAFT

Attachment: Draft MOU County - RCD (RES-2021-86 : MCRCD Grant Writing MOU)

will have no ownership interest in any final constructed projects or service implemented under a grant secured by MCRCD.

5. AUTHORITY OVER PERSONS PROVIDING SERVICES

Authority to direct the duties and functions of COUNTY employees and subcontractors providing services, supplies and information to MCRCD as required by this MOU shall continue to reside with COUNTY. It is mutually understood and agreed that COUNTY employees and subcontractors assigned to provide services, supplies or information to MCRCD as required by this MOU shall be acting as COUNTY employees or subcontractors. COUNTY and MCRCD agree to require their respective employees and/or contractors to respond in a timely manner to requests for services and information related to this MOU. The collaboration will constitute a team created to prepare grant applications required by COUNTY which will meet and work cooperatively and collaboratively to achieve project objectives.

6. MUTUAL INDEMNIFICATION

MCRCD agrees to indemnify, defend and hold harmless COUNTY, its Board of Supervisors, officers, employees, agents and assigns from and against any and all claims, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatever kind or nature, at any time arising out of or in any way connected with services rendered to MCRCD.

COUNTY agrees to indemnify, defend and hold harmless MCRCD, its Board of Directors, officers, employees, agents and assigns from and against any and all claims, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatever kind or nature, at any time arising out of or in any way connected with services rendered to COUNTY.

7. INSURANCE COVERAGE

A. MCRCD

MCRCD shall procure and maintain for the duration of the MOU insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by MCRCD, its agents, representatives, or employees. Coverage shall be at least as broad as:

(1) Commercial General Liability (CGL): Insurance Services Office (ISO)Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than $2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

Attachment: Draft MOU County - RCD (RES-2021-86 : MCRCD Grant Writing MOU)

(2) Automobile Liability: ISO Form Number CA 00 01 covering any auto, (Code 1), or if Contractor has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than $1,000,000 per accident for bodily injury and property damage.

(3) Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease.

B. COUNTY

In accordance with Government Code section 11007.4, COUNTY has elected to be self-insured for liability exposures. Under this form insurance, COUNTY and its employees acting in the course and scope of their employment are insured for tort liability arising out of official County business. All claims against the County of Mariposa based on tort liability should be presented as a government claim to the County of Mariposa, P.O. Box 784, Mariposa, CA 95338. (Gov. Code section 900, et seq.)

COUNTY has also elected to be insured for its motor vehicle liability exposures through the CSAC Excess Insurance Authority. This program provides liability coverage arising out of the operations of motor vehicles used by COUNTY employees for official County business (California Vehicle Code sections 17000 and 17001). Motor vehicle liability claims against COUNTY should be presented to the County of Mariposa, P.O. Box 784, Mariposa, CA 95338. IF your motor vehicle liability claim is not resolved within six months from the date of loss, California law requires you to file a formal claim with the County of Mariposa, P.O. Box 189, Mariposa, CA 95338. (Gov. Code section 900, et seq.)

C. OTHER INSURANCE PROVISIONS

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

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

(2) Primary Coverage: For any claims related to this Agreement, MCRCD'S insurance coverage shall be primary insurance as respects COUNTY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, officials, employees, or volunteers shall be excess of MCRCD'S insurance and shall not contribute with it.

(3) Notice of Cancellation: Each insurance policy required above shall state that coverage shall not be canceled, except with notice to COUNTY.

Attachment: Draft MOU County - RCD (RES-2021-86 : MCRCD Grant Writing MOU)

(4) Waiver of Subrogation: MCRCD hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said MCRCD may acquire against COUNTY by virtue of the payment of any loss under such insurance. MCRCD agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not COUNTY has received a waiver of subrogation endorsement from the insurer.

(5) Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by COUNTY. COUNTY may require MCRCD to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

(6) Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to COUNTY.

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

8. DISPUTE RESOLUTION

Disputes between MCRCD and COUNTY in connection with any matter relating to the terms or provisions of this MOU shall first be considered jointly by the Program Manager of MCRCD and the appropriate Department Head of services being rendered and/or the County Administrative Officer.

Prior to taking any judicial action to interpret or enforce provisions of this MOU, the Parties agree to first submit the matter to a mediator, to be mutually agreed upon by the Parties hereto, in concert with a representative of each Party.

However, pending resolution, the existence of any dispute (except for disputed charges for which notice was timely provided as required herein) will not absolve either Party of the responsibility for making timely payments for provided services nor will such disputes absolve either Party of the responsibility for timely performance of its agreed upon services to the other.

9. RECORD RETENTION AND INSPECTION

Each Party agrees to timely prepare accurate and complete financial and performance records relating to the services provided hereunder, and to maintain and preserve said records for at least three (3) years from the date of final payment under this MOU, except that if any

Attachment: Draft MOU County - RCD (RES-2021-86 : MCRCD Grant Writing MOU)

litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising therefrom.

Pursuant to California Government Code Section 8546.7, all records, documents, conditions and activities of either Party, related to the services provided hereunder, shall be subject to the examination and audit of the California State Auditor and other duly authorized agents of the State of California for a period of three (3) years after final payment under this MOU. Each Party hereby agrees to make such records available during normal business hours for inspection, audit and reproduction by any duly authorized agents of the State of California or the federal government. Each Party further agrees to allow interviews of any of its employees who might reasonably have information related to such records by any duly authorized agents of the State of California or the federal government. All examinations and audits conducted under this section shall be strictly confined to those matters connected with the performance of this MOU, including the costs of administering this MOU.

10. DISCONTINUANCE OF SERVICES

In the event notice is given by COUNTY that a service, in whole or in part, will no longer be provided, or notice is given by MCRCD that a certain service will no longer be utilized, COUNTY shall pay for all services utilized up to the date of termination of the services.

11. STRICT COMPLIANCE

The failure of either Party to insist on strict compliance with any provision of this MOU shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either Party of either performance or payment shall not be considered a waiver of any preceding breach of the MOU by the other Party.

12. COMPLIANCE WITH LAWS

Both Parties hereto agree to observe and comply with all applicable local, state, and federal laws and regulations. Both Parties further agree to comply with all applicable local, state and federal licensure and certification requirements at all times during the term of this MOU.

13. SEVERABILITY

This MOU is subject to all applicable laws and regulations. If any provision of this MOU is found by any court or other legal authority, or is agreed upon by the Parties, to be in conflict with any code or regulation, the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of this MOU to either Party is lost, this MOU may be terminated at the option of the affected Party. In all other instances, the remainder of this MOU shall remain in full force and effect.

Attachment: Draft MOU County - RCD (RES-2021-86 : MCRCD Grant Writing MOU)

14. TERMINATION AND RIGHTS UPON TERMINATION

This MOU may be terminated upon mutual written consent of the Parties, or as a remedy available at law or in equity. In the event of the termination of this MOU, MCRCD shall immediately be paid all fees earned as of the effective date of termination.

Either Party may terminate this MOU for convenience upon sixty (60) calendar days' written notice to the other Party. Upon termination for convenience, COUNTY shall be entitled to compensation for services performed acceptably up to the effective date of termination.

Should COUNTY default in the performance of this MOU or materially breach any of its provisions, MCRCD, at its option, may terminate this MOU by giving written notification to COUNTY. The termination date shall be the effective date of the notice. For the purposes of this subsection, default or material breach of this MOU shall include, but not be limited to, any of the following: failure to perform required services in a timely manner, willful destruction of property, dishonesty, or theft.

15. NOTICES

Any notice required to be given pursuant to the terms and provisions herein shall be in writing and shall be sent by First Class Mail to:

Mariposa County Resource
Conservation District
President of the Board
PO Box 2403Mariposa, CA 95338

Mariposa County Counsel
5100 Bullion Street #2
Mariposa, Ca. 95338

16. AMENDMENT

No addition to, or alteration of, the terms of this MOU shall be valid unless made in writing and signed by the Parties.

17. BINDING EFFECT

All provisions of this MOU shall be fully binding upon, and inure to the benefit of, the Parties and to each of their respective heirs, executors, administrators, successors and assigns.

18. INTERPRETATION

This MOU, as well as its individual provisions, shall be deemed to have been prepared equally by both of the Parties hereto, and shall not be construed or interpreted more favorably for one Party on the basis that the other Party prepared it.

19. FORCE MAJEURE

Attachment: Draft MOU County - RCD (RES-2021-86 : MCRCD Grant Writing MOU)

Neither Party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such Party and without fault or negligence of such Party. Such events shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

20. ENTIRE AGREEMENT

This MOU shall constitute the entire agreement between the Parties regarding the subject matter of this MOU, and shall supersede any previous agreements, promises, representations, understandings or negotiations, whether oral or written, concerning the same subject matter.

21. AUTHORITY TO EXECUTE

Each person executing this MOU represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this MOU. Each party represents and warrants to the other that the execution and delivery of this MOU and the performance of such Party's obligations hereunder have been duly authorized.

IN WITNESS WHEREOF, the Parties hereto have entered into this MOU as of the day and year first written above:

MARIPOSA COUNTY BOARD CHAIR	MARIPOSA COUNTY RCD
_____	_____
Mariposa County Board of Supervisor Chair Mariposa County Board of Superviors	David Mecchi, President Board of Directors
ATTEST:	APPROVED AS TO FORM:
_____	_____
Rene LaRoche Clerk of the Board	Steven W. Dahlem County Counsel

Attachment: Draft MOU County - RCD (RES-2021-86 : MCRCD Grant Writing MOU)

Exhibit A – Scope of Work

MCRCD will find and write grants for COUNTY. It is anticipated that work related to this MOU will primarily be related to the work of the Fire and Public Works Departments, though nothing in this agreement shall be construed to exclude other departments from participation when there is mutual interest between COUNTY and MCRCD. Specifically, MCRCD will perform the following tasks:

- Consult with COUNTY to identify needs and opportunities for obtaining grant funds.
- Search for and investigate potential funding opportunities that meet COUNTY needs and requirements.
- Present grant opportunities to COUNTY for approval and/or direction to apply.
- When directed by managing Department Head, prepare grant applications on behalf of COUNTY and according to the guidelines provided by the grantor. Provide all application materials and information not owned and maintained by COUNTY unless otherwise agreed.
- Support COUNTY staff presentations of applicable grants to the Board of Supervisors.
- When allowed under grant requirements and approved by the Board of Supervisors, submit grant applications on behalf of COUNTY and according to the guidelines provided by the grantor. When it is not permissible for MCRCD to submit directly, MCRCD will provide all prepared materials to COUNTY for submittal.
- Notify COUNTY of the outcome of grant applications in a timely manner.

In collaboration with MCRCD and to enable their performance on the tasks listed above, COUNTY will:

- Provide supporting documentation as requested by MCRCD for grant applications in a timely manner. Supporting documentation may include, but is not limited to, Board resolutions, salary rates, maps, project descriptions, or other information owned and maintained by COUNTY.

Attachment: Draft MOU County - RCD (RES-2021-86 : MCRCD Grant Writing MOU)

Exhibit B - Compensation

COUNTY shall compensate MCRCD at the fully burdened staff salary rates set forth below for time worked to investigate and prepare grants awarded on behalf of COUNTY. In the event that staff salary rates change, MCRCD shall submit a revised rate letter for approval to COUNTY for approval.

COUNTY shall compensate MCRCD for work performed on COUNTY grant applications whether or not those applications are awarded.

MCRCD shall submit a monthly invoice to COUNTY with staff timesheets and hard cost receipts. COUNTY shall pay MCRCD within thirty (30) days of an approved invoice.

It is envisioned that total payments made by COUNTY to MCRCD under this MOU shall not exceed $15,000 annually, or $45,000 in total, unless amended as provided by this MOU. This shall not restrain the County from seeking additional project services in excess of this amount should opportunities arise that require these services.

Employee Name	Classification	Effective Dates	Labor Rate ($)
Melinda Barrett	Program Manager	6/26/2020-Present	$55.00
Virginia Cole	Office Manager	6/26/2020-Present	$30.00

Attachment: Draft MOU County - RCD (RES-2021-86 : MCRCD Grant Writing MOU)

MARIPOSA COUNTY

Clerk of the Board of Supervisors · (209) 966-3222

MEETING: February 23, 2021

TO: The Board of Supervisors

FROM: Rene LaRoche, Clerk of the Board

RE: Amend Board Member Contact Area List

RECOMMENDATION AND JUSTIFICATION:

Amend the Board Member Contact Area list to include Mariposa Public Utility District (MPUD); and appoint Marshall Long and Wayne Forsythe as its Board representatives.

On January 5, 2021, the Board considered its Board Member Contact Areas and approved the contact areas and representatives. On January 26, 2021, the list was amended (attached) to include Mariposa County Unified School District and its representatives.

Supervisors Long and Forsythe have requested inclusion of Mariposa Public Utility District, as well as to become representatives to it.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

January 5, 2021: The Board conducted its annual review of Board member appointments including this list.

January 26, 2021: The Board amended the Board Member Contact Area List to add the Mariposa County Unified School District and its representatives.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Negative action prevents the addition of MPUD to the Contact Areas list or the appointment of formal representatives. Alternatively, the Board may add MPUD to the list but appoint other members as representatives.

ATTACHMENTS:
Contact Area Liaisons 2021 (PDF)

Agenda Item - No Resolution Requested 2021-21

RESULT: **ADOPTED BY CONSENT VOTE [UNANIMOUS]**
MOVER: Wayne Forsythe, District IV Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

BOARD MEMBER CONTACT AREAS

2021

CHAMBER OF COMMERCE

Supervisors Miles Menetrey and Marshall Long

FERGUSON PROJECT

Supervisor Rosemarie Smallcombe;
(Public Works Director is the lead contact person)

JOHN C FREMONT HEALTHCARE DISTRICT

Supervisors Rosemarie Smallcombe and Wayne Forsythe

MARIPOSA COUNTY UNIFIED SCHOOL DISTRICT

Supervisors Rosemarie Smallcombe and Wayne Forsythe

STATE MINERAL MUSEUM

Supervisors Tom Sweeney and Marshall Long

YOSEMITE GATEWAY PARTNERS

Supervisors Rosemarie Smallcombe and Miles Menetrey

YOSEMITE NATIONAL PARK SERVICE ISSUES

Supervisors Rosemarie Smallcombe and Miles Menetrey

Attachment: Contact Area Liaisons 2021 (2021-21 : Amend Board Member Contact Area List)

MARIPOSA COUNTY

Health and Human Services · (209) 966-2000

RESOLUTION - ACTION REQUESTED 2021-87

MEETING: February 23, 2021

TO: The Board of Supervisors

FROM: Shannon Gadd, Health and Human Services Agency Director

RE: Lease Agreement with Mariposa Golden Agers, Inc. for Community Services Building

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RECOMMENDATION AND JUSTIFICATION:
Approve an Addendum to Lease Agreement with Mariposa Golden Agers, Inc. for Use of the Mariposa Senior Activity Center; and Authorize the Board of Supervisors Chair to Sign the Addendum.

The Lease Agreement had previously been substantially the same as in previous years and contains a clause that the lease payment may be increased annually based on the Consumer Price Index (CPI) with an annual maximum increase of five-percent and no reductions in the lease payment. The County of Mariposa seeks to expand use of the facility during night hours of Weekdays and Weekend days for health emergency response efforts, resulting in a required increase of $400 per month for rent.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The Board of Supervisors approved the existing lease agreement with Mariposa Golden Agers on June 21, 2016 through Resolution No. 2016-308.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
The County may have to find another facility for senior services and incur additional expense if the addendum is not approved.

FINANCIAL IMPACT:
The cost of this increased use will be paid within the existing Health and Human Services Agency budgets.

ATTACHMENTS:
Golden Agers Lease Agmt 2016-308 (PDF)
Addendum - Mariposa Golden Agers Lease wcsignature v2 (PDF)

RESULT: **ADOPTED BY CONSENT VOTE [UNANIMOUS]**
MOVER: Wayne Forsythe, District IV Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

MARIPOSA COUNTY

County Counsel · (209) 966-3222

RECEIVED
JUN 22 2016
MARIPOSA CO. COUNSEL

RESOLUTION - ACTION REQUESTED 2016-308

MEETING: June 21, 2016

TO: The Board of Supervisors

FROM: Steve Dahlem, County Counsel

RE: Lease Agreement with Mariposa Golden Agers, Inc. for Community Services Building

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RECOMMENDATION AND JUSTIFICATION:
Approve a Lease Agreement Between the Mariposa Golden Agers, Inc. And the County of Mariposa for Use of the Community Services Building for a Term of Twenty-One Years; and Authorize the Board of Supervisors Chair to Sign the Lease Agreement. The Lease Agreement is substantially the same as in previous years and contains a clause that the lease payment may be increased annually based on the Consumer Price Index (CPI) with an annual maximum increase of five-percent and no reductions in the lease payment.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The Board has authorized the lease of the Community Services facility from the Mariposa Golden Agers, Inc. To provide senior supportive and/or senior nutrition services since it opened in 1991.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Do not approve the lease agreement. The County may have to find another facility for senior services and incur additional expense.

FINANCIAL IMPACT:
No changes in the lease amount from the previous fiscal year. The lease payments are budgeted in the Senior Services, Senior Nutrition, and Transit budgets.

ATTACHMENTS:
Golden Agers Lease Agt (DOC)

CAO RECOMMENDATION
Requested Action Recommended

Attachment: Golden Agers Lease Agmt 2016-308 (RES-2021-87 : Lease Agreement with Mariposa Golden Agers, Inc. for Community Services

Mary Hodson
Mary Hodson, CAO 6/13/2016

RESULT: **ADOPTED BY CONSENT VOTE [UNANIMOUS]**
MOVER: Rosemarie Smallcombe, District I Supervisor
SECONDER: Marshall Long, District III Supervisor
AYES: Smallcombe, Jones, Long, Cann, Carrier

Attachment: Golden Agers Lease Agmt 2016-308 (RES-2021-87 : Lease Agreement with Mariposa Golden Agers, Inc. for Community Services

RES. NO. 16-30

Attachment: Golden Agers Lease Agmt 2016-308 (RES-2021-87 : Lease Agreement with Mariposa Golden Agers, Inc. for Community Services

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into in the County of Mariposa, State of California, as of July 1, 2016, by and between the Mariposa Golden Agers, Inc., a California non-profit corporation, hereinafter referred to as **LESSOR**, and the County of Mariposa, hereinafter referred to as **LESSEE**.

WITNESSETH

WHEREAS, LESSOR owns real property located in the County of Mariposa commonly known as 5246 Spriggs Lane, Mariposa, California; and

WHEREAS, the parties wish to provide for the leasing of said property by the **LESSOR** to the **LESSEE**;

FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS HEREINAFTER CONTAINED, IT IS AGREED AS FOLLOWS:

1. **PREMISES:** The leased **PREMISES** is the real property located in the County of Mariposa commonly known as 5246 Spriggs Lane, Mariposa, California.

2. **CONSIDERATION/TERM:** For and in consideration of Twenty-Eight Thousand Nine Hundred Forty-Five Dollars and 92/100 ($28,945.92) per year payable in twelve (12) equal monthly installments on the first of each calendar month commencing on the 1st day of July 2016, and shall continue until June 30, 2037, renewable thereafter as mutually agreed by the **LESSOR** and **LESSEE**. Each year, following the first year of the term, the lease rate shall be adjusted annually on July 1st of each year and shall be increased, but not decreased, by a percentage equal to the prior year's percentage

increase in the San Francisco/Oakland Consumer Price Index for All Urban Consumers, as published by the U.S. Department of Labor's Bureau of Labor Statistics (the "Index"),subject to a maximum annual increase of five percent (5%). For purposes of computing such increases, the prior year's percentage increase in the Index shall be calculated by dividing the Index for the month of June prior to the date of the increase by the Index for the previous June. If this calculation shows that the Index has remained unchanged or has declined, the lease rate shall remain unchanged. If the described Index shall no longer be published, another generally recognized as authoritative Index shall be substituted by agreement of the parties. If they are unable to agree within thirty (30) days after demand by either party, the substitute Index shall, on application of either party, be selected by the chief officer of the San Francisco Regional Office of the Bureau of Labor Statistics or its successor. In no event shall the amount of minimum monthly rent be reduced below the amount paid in the month immediately preceding the applicable rental adjustment date.

3. **USE:**

A. **LESSEE** shall have the use of the entire facility for the Community Services Program from 8:00 a.m. to 5:00 p.m., Monday through Friday and at other times as coordinated between **LESSOR** and the Community Services Officer.

B. **LESSEE** shall be entitled to use parking located on **LESSOR'S** property as necessary for operation of the Department of Community Services Programs.

C. **LESSEE** shall be permitted to use the building for County functions at the request of **LESSEE** for no charge upon prior approval of **LESSOR**, which shall not be unreasonably withheld. Said use shall not exceed five (5) hours per month.

4. **COMPLIANCE WITH LAW:** **LESSEE** shall comply with all laws, ordinances, rules, regulations and requirement of county, state and federal government, or of any department, bureau or official thereof having jurisdiction. **LESSOR** warrants that the **PREMISES** is at the time of this Lease in compliance with all laws and ordinances.

5. **INSPECTION BY CERTIFIED ACCESS SPECIALIST:** As required by California Civil Code section 1938, **COUNTY** represents that premises have not undergone

Attachment: Golden Agers Lease Agmt 2016-308 (RES-2021-87 : Lease Agreement with Mariposa Golden Agers, Inc. for Community Services

inspection by a Certified Access Specialist (CASp).

6. **ASSIGNMENT:** Except as expressly provided herein, **LESSEE** shall not assign this Lease nor any right hereunder, nor sublet the **PREMISES**, nor any part thereof, or suffer any other person to occupy the said **PREMISES** or any portion thereof without prior written consent of the **LESSOR**, which consent shall not be unreasonably withheld. Any such assignment, subletting or occupation by any other person without such consent shall be void, and shall at the option of **LESSOR** terminate this Lease. This provision does not prohibit the **LESSEE** from renting or allowing other parties to utilize the **PREMISES** for permitted functions and events.

7. **IMPROVEMENTS, CONSTRUCTION, ALTERATION, REMOVAL: LESSEE** may maintain on the **PREMISES** improvements as necessary to facilitate the use of the **PREMISES**. Any such structure and/or alteration shall remain the sole and separate property of **LESSEE** and at the termination of this Lease shall be removed at the **LESSEE'S** expense within a reasonable time or disposed of as otherwise mutually agreed by **LESSEE** and **LESSOR**.

8. **MAINTENANCE AND REPAIR**: **LESSEE** shall be responsible for pest control, maintenance of fire extinguishers, the fire suppression system in the kitchen, the janitorial service for **LESSEE'S** administrative office, and fifty percent (50%) of the utility expenses (electricity, water, propane, and janitorial) incurred by **LESSOR**.

9. **RIGHT OF RE-ENTRY OF LESSOR:** It is expressly agreed that in the event **LESSEE** creates or causes any breach of this Lease, **LESSOR** shall have the right and option to re-enter said **PREMISES**, take possession thereof, and remove all persons as provided by law.

10. **SURRENDER OF POSSESSION:** At the expiration of this Agreement, **LESSEE** promises and agrees to deliver unto **LESSOR** the Leased **PREMISES** in as good condition as at the date of execution of this Agreement, reasonable wear and tear

Attachment: Golden Agers Lease Agmt 2016-308 (RES-2021-87 : Lease Agreement with Mariposa Golden Agers, Inc. for Community Services

excepted.

11. **INDEMNITY: LESSEE** agrees to indemnify, protect, defend and hold **LESSOR** and its officers, agents and employees, free and harmless from any and all liabilities, claims, demands, actions, losses, damages and costs of any kind, including but not limited to, all costs of defense thereof, caused by or arising out of **LESSEE'S** use or the use of any guests, invitees or agents of **LESSEE** of the leased **PREMISES**. Upon demand **LESSEE** shall, at its own expense, defend **LESSOR**, and its officers, agents and employees, against any and all such liabilities, claims, demands, actions, losses, damages, and costs of any type or nature arising from the sole negligence of **LESSEE**. **LESSOR** shall indemnify, protect, defend, and hold **LESSEE** and its officers, agents, and employees free and harmless from any and all liabilities, claims, demands, actions, losses, damages and costs of any kind, including but not limited to, all costs of defense thereof, caused by or arising out of, or in any way related to **LESSOR'S** obligations to maintain and repair the **PREMISES**, or any negligence of **LESSOR**, or any structural or other defects of the **PREMISES**.

12. **INSURANCE: LESSEE** will provide insurance coverage as of the commencement of this Lease and during any right of occupancy of the leased **PREMISES** and shall maintain coverage in full force and in effect until the termination of this Lease Agreement as follows:

A. **General Liability and Bodily Insurance**: **LESSEE** shall obtain and keep in full force and effect general liability coverage of at least One Million Dollars ($1,000,000) combined limit for bodily injury and property damage.

13. **CHANGE OF ADDRESS:** It shall be **LESSOR'S** responsibility to inform **LESSEE** of any change of address.

14. **INSPECTION: LESSOR** shall be permitted to enter and view the **PREMISES** at any reasonable time for the purpose of inspecting or maintaining such **PREMISES** and

Attachment: Golden Agers Lease Agmt 2016-308 (RES-2021-87 : Lease Agreement with Mariposa Golden Agers, Inc. for Community Services

doing any and all things with reference thereto which the **LESSOR** is obligated to do.

15. **TERMINATION PRIOR TO EXPIRATION:**

A. The **LESSOR** shall have the right to terminate this Lease, on the occurrence of any of the following events:

(i) The failure of the **LESSEE** to perform or observe any of the terms, covenants and conditions which it is obligated to perform, keep or observe under this Lease.

(ii) The abandonment of the leased **PREMISES**. Should this occur **LESSOR** shall not be responsible for the custodial protection of **LESSEE'S** abandoned property, fixtures or equipment.

B. **LESSEE** shall have the right to terminate this Lease upon sixty (60) days written notice.

C. It is mutually agreed that if **LESSEE**, during any fiscal year covered by this Agreement fails to appropriate sufficient funds to continue this Agreement, this Agreement shall be of no further force and effect. California State Constitution Article XVI section 18.

16. **BREACH:** In the event of breach of this Lease by **LESSEE**, **LESSOR** shall be entitled to all rights and remedies provided by law in addition to the specific remedies mentioned herein.

17. **PARTNERSHIP DISCLAIMER:** It is mutually understood and agreed that nothing in this Lease is intended to or shall be construed as in any way creating or establishing the relationship of partners between the parties hereto, or as constituting the **LESSEE** as an agent or representative of the **LESSOR** for any purpose or in any manner whatsoever.

18. **NOTICES:** Any notice to the **LESSEE** shall be sufficient if sent by certified mail, postage prepaid, addressed to County Administrative Officer, County of Mariposa, P.O.

Attachment: Golden Agers Lease Agmt 2016-308 (RES-2021-87 : Lease Agreement with Mariposa Golden Agers, Inc. for Community Services

Box 784, Mariposa, CA 95338. Any notice to the **LESSOR** shall be sufficient if sent by certified mail, postage prepaid, addressed to the Mariposa Golden Agers, Inc., P.O. Box 74, Mariposa, CA 95338.

19. **NON-WAIVER:** Any waiver of breach of any covenants or conditions herein contained to be kept and performed by either party shall be effective only if in writing and shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the other party from declaring a forfeiture or exercising its rights for any succeeding breach of either the same or other condition or covenant.

20. **SUCCESSOR:** This Lease shall be binding upon and inure to the benefit of all the heirs, successors and assigns of the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed the day and year first above written.

LESSOR:

PETE OLSON, President
Mariposa Golden Agers, Inc.

LESSEE:

JOHN CARRIER, Chairman
Mariposa County Board of Supervisors

ATTEST:

RENE LAROCHE
Clerk of the Board

APPROVED AS TO FORM:

STEVEN W. DAHLEM
County Counsel

Attachment: Golden Agers Lease Agmt 2016-308 (RES-2021-87 : Lease Agreement with Mariposa Golden Agers, Inc. for Community Services

ADDENDUM TO AGREEMENT
TO EXTEND, MODIFY, OR RENEW LEASE

This Agreement is an Addendum to that Lease entered into on June 21, 2016 by and between, the Owner, Mariposa Golden Agers, Inc., and the Tenant, the County of Mariposa, whereas the parties further agree as follows:

1. This Addendum to the existing Lease Agreement expands use of the facility during night hours of Weekdays and Weekend days to make available additional hours to utilize the facility as needed for health emergency response efforts.

2. Monthly rent will increase by $400 per month during the period involving expanded use of property. County Health and Human Services Agency staff will notify the Owner when the additional hours are no longer required, and monthly rent will return to the usual rate in the June 21, 2016 Agreement not including the $400 increase.

3. The effective date for this addendum is September 1, 2020.

4. Except as provided herein, all other terms of the tenancy shall remain in full force and effect.

WHEREFORE, we, the undersigned, do hereby execute and agree to the Agreement on _____, 2021 at Mariposa, California.

MARIPOSA GOLDEN AGERS, INC,
OWNER

Marshall Long, Chair
Mariposa County Board of Supervisors

APPROVED AS TO FORM:

STEVEN W. DAHLEM
County Counsel

Attachment: Addendum - Mariposa Golden Agers Lease wcsignature v2 (RES-2021-87 : Lease Agreement with Mariposa Golden Agers, Inc. for

MARIPOSA COUNTY

Planning · 209-966-5151

MEETING: February 23, 2021

TO: The Board of Supervisors

FROM: Sarah Williams, Planning Director

RE: PAC Re-Appointment (Greeley Hill)

RECOMMENDATION AND JUSTIFICATION:

Re-Appoint Dana Brown to the Greeley Hill Planning Advisory Committee for a Term to Expire February 28, 2023 (Supervisor Sweeney).

Mr. Brown has expressed interest in continuing to serve on this committee.

Appointments, term expirations and vacancies have been advertised according to the Maddy Act.

Currently there are two vacancies on this committee which continue to be advertised.

It is customary that recommendations for citizens advisory committee appointments and re-appointments are made by the District Supervisor.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
Mr. Brown was appointed August 18, 2015.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Not re-appointing may result in a lack of quorum for future meetings.

FINANCIAL IMPACT:
None

ATTACHMENTS:
210114 renotice two vacancies for GH (PDF)

RESULT: **ADOPTED BY CONSENT VOTE [UNANIMOUS]**
MOVER: Wayne Forsythe, District IV Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

MARIPOSA PLANNING

COUNTY OF MARIPOSA
5100 BULLION STREET • POST OFFICE BOX 2039
MARIPOSA, CALIFORNIA 95338–2039
209 . 966 . 5151 • FAX 209 . 742 . 5024

Sarah Williams, Director
swilliams@mariposacounty.org

Attachment: 210114 renotice two vacancies for GH (2021-22 : PAC Re-Appointment (Greeley Hill))

NOTICE OF VACANCIES ON THE

GREELEY HILL PLANNING ADVISORY COMMITTEE

Two vacancies currently exist on the Greeley Hill Planning Advisory Committee.

The purpose of the Committee is to make recommendations on the adoption of an Area Plan for Greeley Hill as well as address other planning issues pertinent to the Committee. The Committee also creates and recommends policies for the community of Greeley Hill to address issues that are important to the area.

The Committee is an advisory group to the Mariposa County Planning Commission and the Board of Supervisors.

Appointment terms are for two years. One vacancy has a remaining term that will expire February 28, 2022 and the other will expire February 28, 2023.

Members must be employed, reside, or own property or own a business within the geographic boundaries of Greeley Hill Planning Area.

Persons interested in serving on the Committee should complete an application which can be obtained at either the Mariposa County Planning Department or the Clerk of the Board's Office or can be found on line at:

http://www.mariposacounty.org/DocumentCenter/View/39675/Committees-Application---blank-fillable?bidId= .

Completed applications need to be sent to the Rene LaRoche, Clerk of the Board, by mail at P. O. Box 784, Mariposa, CA 95338, or email: rlaroche@mariposacounty.org

Posting Locations for this notice:

Greeley Hill Community Club
Coulterville Post Office
Mariposa County Planning
Mariposa County Clerk
Mariposa County Courthouse
Maripoa County Library
www.mariposacounty.org/planning

Re Notice Date: 1/14/21 Deadline for Submission: Until Filled

Our Mission is to provide our clients with professional service and accurate information in a respectful, courteous, and enthusiastic manner resulting in a well-planned rural environment.

MARIPOSA COUNTY

Planning · 209-966-5151

MEETING: February 23, 2021

TO: The Board of Supervisors

FROM: Sarah Williams, Planning Director

RE: PAC Re-Appointment for the Agricultural Advisory Committee

---

RECOMMENDATION AND JUSTIFICATION:
Re-Appoint Tony Toso as a member representing the Cattle Industry and John Shimer as an at Large Member to the Agricultural Advisory Committee, with Terms to Expire February 28, 2023.

Both have expressed interest in continuing to serve on this Committee.

With this action there will be no vacancies on this Committee.

Appointments, term expirations and vacancies have been advertised according to the Maddy Act.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

Mr. Toso was appointed February 1, 2005
Mr. Shimer was appointed June 18, 2013

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Not re-appointing members could cause a possible lack of a quorum for the committee.

RESULT: **ADOPTED BY CONSENT VOTE [UNANIMOUS]**
MOVER: Wayne Forsythe, District IV Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

MARIPOSA COUNTY

Planning · 209-966-5151

MEETING: February 23, 2021

TO: The Board of Supervisors

FROM: Sarah Williams, Planning Director

RE: Re-Appointments PAC Members (El Portal)

RECOMMENDATION AND JUSTIFICATION:
Re-Appoint Catherine Fong, Schree Yager and Kevin Shelton to the El Portal Planning Advisory Committee with Terms to Expire February 28, 2023.

All have expressed interest in being re-appointed.

Appointments, term expirations and vacancies have been advertised according to the Maddy Act.

Currently there is one vacancy on this committee which will continue to be advertised.

It is customary that recommendations for citizens advisory committee appointments and re-appointments are made by the District Supervisor.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
Ms. Fong was appointed on August 6, 2019.
Ms. Yager was appointed February 28, 2017.
Mr. Shelton was appointed February 21, 2012.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Not re-appointing could result in a lack of a quorum for the Committee.

ATTACHMENTS:
210114 renotice 1 vacancy (PDF)

RESULT: **ADOPTED BY CONSENT VOTE [UNANIMOUS]**
MOVER: Wayne Forsythe, District IV Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

MARIPOSA PLANNING

COUNTY OF MARIPOSA
5100 BULLION STREET • POST OFFICE BOX 2039
MARIPOSA, CALIFORNIA 95338–2039
209 . 966 . 5151 • FAX 209 . 742 . 5024

Sarah Williams, Director
swilliams@mariposacounty.org

Attachment: 210114 renotice 1 vacancy [Revision 1] (2021-24 : Re-Appointments PAC Members (El Portal))

NOTICE OF VACANCY ON THE

EL PORTAL PLANNING ADVISORY COMMITTEE

A vacancy currently exists on the El Portal Planning Advisory Committee.

The purpose of the El Portal Planning Advisory Committee is to create and recommend policies for the Community of El Portal to address issues that are important to the area.

The Committee is an advisory group to the Mariposa County Planning Commission and the Board of Supervisors. The purpose of the Committee is to make recommendations on the adoption of a Specific Plan for El Portal as well as address other planning issues pertinent to the Committee.

Appointment terms are for two (2) years. The term for this vacancy will expire February 28, 2023.

Members must employed, reside, or own property within the geographic boundaries of El Portal.

Persons interested in serving on the Committee should complete an application which can be obtained at either the Mariposa County Planning Department or the Clerk of the Board's Office or can be found on line at:

http://www.mariposacounty.org/DocumentCenter/View/39675/Committees-Application---blank-fillable?bidId= .

Completed applications need to be sent to the Rene LaRoche, Clerk of the Board, by mail at P. O. Box 784, Mariposa, CA 95338, or email: rlaroche@mariposacounty.org
Posting Locations for this notice:

El Portal Post Office
Mariposa County Planning
Mariposa County Clerk
Mariposa County Library
Mariposa County Courthouse
www.mariposacounty.org/planning

Re-Notice Date: 1/14/21 Deadline for Submission: Until Filled

Our Mission is to provide our clients with professional service and accurate information in a respectful, courteous, and enthusiastic manner resulting in a well-planned rural environment.

MARIPOSA COUNTY

Planning · 209-966-5151

MEETING: February 23, 2021

TO: The Board of Supervisors

FROM: Sarah Williams, Planning Director

RE: PAC Re-Appointments Members (Midpines)

RECOMMENDATION AND JUSTIFICATION:
Re-Appoint Charles Lammers, Angela Heiss and Gary Francisco to the Midpines Planning Advisory Committee for Terms to Expire February 28, 2023 (Supervisor Smallcombe).

All have expressed interest in continuing to serve on this committee.

Appointments, term expirations and vacancies have been advertised according to the Maddy Act.

There are currently two vacancies on this committee which will continue to be advertised.

It is customary that recommendations for citizens advisory committee appointments and re-appointments are made by the District Supervisor.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
Mr. Lammers was appointed to this Committee on April 2, 1991.
Ms. Heiss was appointed to this Committee on March 15, 2011.
Mr. Francisco was appointed to this Committee on January 15, 2013.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Not re-appointing these positions could result in a lack of a quorum for the Committee.
.

ATTACHMENTS:
210114 Vacancy 2 Midpines (PDF)

RESULT: **ADOPTED BY CONSENT VOTE [UNANIMOUS]**
MOVER: Wayne Forsythe, District IV Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

MARIPOSA PLANNING

COUNTY OF MARIPOSA
5100 BULLION STREET • POST OFFICE BOX 2039
MARIPOSA, CALIFORNIA 95338–2039
209 . 966 . 5151 • FAX 209 . 742 . 5024

Sarah Williams, Director
swilliams@mariposacounty.org

NOTICE OF VACANCIES ON THE MIDPINES PLANNING ADVISORY COMMITTEE

Two vacancies currently exist on the Midpines Planning Advisory Committee.

The Committee is an advisory group to the Mariposa County Planning Commission and the Board of Supervisors. The purpose of the Committee is to make recommendations on the adoption of a Specific Plan for Midpines as well as address other planning issues pertinent to the Committee.

The appointment term is for two years. These vacancies will expire February 28, 2023.

Members must be employed, reside, or own property or own a business or be a qualified elector within the geographic boundaries of Midpines Planning Area.

Persons interested in serving on the Committee should complete an application which can be obtained at either the Mariposa County Planning Department or the Clerk of the Board's Office or can be found on line. Completed applications need to be sent to the Clerk of the Board, Rene LaRoche, by mail at P. O. Box 784, Mariposa, CA 95338, (209)966-3222 or email rlaroche@mariposacounty.org

Posting Locations for this notice:

Midpines Post Office
Mariposa County Planning
Mariposa County Clerk
Mariposa County Courthouse
Mariposa County Library
www.mariposacounty.org/planning

Posting Date: 1/14/21
Deadline for Submission: **Open Until Filled**

Attachment: 210114 Vacancy 2 Midpines (2021-25 : PAC Re-Appointments Members (Midpines))

MARIPOSA COUNTY

Planning · 209-966-5151

MEETING: February 23, 2021

TO: The Board of Supervisors

FROM: Sarah Williams, Planning Director

RE: PAC Re-Appointments (Fish Camp)

RECOMMENDATION AND JUSTIFICATION:
Re-Appoint Robert Bassett, Donn Harter, John Luther, Daniel Lyle and Greg Royse to the Fish Camp Town Planning Advisory Council with Terms to Expire February 28, 2023 (Supervisor Menetrey).

All have all expressed interest in continuing to serve.

Appointments, term expirations and vacancies have been advertised according to the Maddy Act.

There are no vacancies on this Council.

It is customary that recommendations for citizens advisory appointments and re-appointments are made by the District Supervisor.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
Mr. Bassett was appointed to this Council on April 4, 2012.
Mr. Harter was appointed to this Council on March 26, 2019.
Mr. Luther was appointed to this Council on March 21, 2017.
Mr. Lyle was appointed to this Council on February 4, 2020.
Mr. Royse was appointed to this Council on February 5, 2013.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Not re-appointing these positions could result in a lack of a quorum for the Council.
.

RESULT: **ADOPTED BY CONSENT VOTE [UNANIMOUS]**
MOVER: Wayne Forsythe, District IV Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

MARIPOSA COUNTY

Planning · 209-966-5151

MEETING: February 23, 2021

TO: The Board of Supervisors

FROM: Sarah Williams, Planning Director

RE: PAC Re-Appointments Creative Placemaking Strategy Advisory Committee

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RECOMMENDATION AND JUSTIFICATION:
Re-Appoint Kim Brisack, Will Fassett, Derek Heule and Charles Phillips to the Creative Placemaking Strategy Advisory Committee (CPSAC) for Terms to Expire February 28, 2024.

All have expressed interest in continuing their service on this Committee.

Currently there is one vacancy on this Committee which will continue to be advertised.

Terms and vacancies have been and will continue to be noticed per the Maddy Act.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

Brisack, Fassett and Phillips were all originally appointed on March 13, 2018.
Heule was originally appointed November 19, 2019.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Not re-appointing members who are willing to serve may result in a lack of quorum and the inability to conduct future CPSAC meetings.
.

FINANCIAL IMPACT:
None

ATTACHMENTS:
210202 CPSAC 1 Vacancy re noticed (PDF)

RESULT: **ADOPTED BY CONSENT VOTE [UNANIMOUS]**
MOVER: Wayne Forsythe, District IV Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

MARIPOSA PLANNING

COUNTY OF MARIPOSA
5100 BULLION STREET • POST OFFICE BOX 2039
MARIPOSA, CALIFORNIA 95338–2039
209 . 966 . 5151 • FAX 209 . 742 . 5024

NOTICE OF VACANCY
ON THE CREATIVE PLACEMAKING STRATEGY ADVISORY COMMITTEE (CPSAC)

Qualified candidates should represent one or more of the following groups:

- Mariposa County Arts Council
- Mariposa Chamber of Commerce
- Yosemite-Mariposa County Tourism Bureau
- Mariposa County Economic Development Corporation
- American Indian Council of Mariposa County
- Yosemite National Park
- Sierra Foothills Conservancy
- Transportation Center Citizens Advisory Committee
- Local business owners
- Practicing artists and creators

The purpose and functions of the CPSAC shall be to:

a. Help design and implement activities like workshops and open houses to involve the community in establishing Mariposa County's Creative Placemaking Strategy;

b. Provide insight into the kinds of placemaking projects, programs, and policies that can help achieve the General Plan's vision;

c. Coordinate with staff and consultants to inventory existing local placemaking resources, identify areas of opportunity, and provide other content to make the Creative Placemaking Strategy effective; and

d. Provide periodic feedback to the Board of Supervisors regarding the success of the Creative Placemaking Strategy.

Membership terms are for 3 years, expiring the last day of February.

Meetings of this committee are generally held on the 3rd Friday of the month at 1:00 pm at Mariposa Government Cent which is located at 5100 Bullion Street, Mariposa CA.

Persons interested in serving on the committee must submit an application to: **René LaRoche, Clerk of the Board, PO Box 784 Mariposa, CA 95338. Applications may be obtained at the following locations: Planning Department Offices** Government Center 5100 Bullion Street; Mariposa, CA 95338 and on line at: http://www.mariposacounty.org/DocumentCenter/View/39657
For more Information visit the County Website or contact: Mikey Goralnik, Planning Technician, Mariposa County Planning Department Telephone: (209) 742-2222; email: mgoralnik@mariposacounty.org

Posting Locations:

Mariposa County Clerk's Office
Mariposa County Courthouse
Mariposa County Planning Department
Bootjack Store
Catheys Valley Post Office
Coulterville Post Office
El Portal Post Office
Fish Camp Post Office
Mariposa County Library
Greeley Hill Community Club
Hornitos Post Office
Lake Don Pedro Market
Midpines Post Office
Wawona Post Office
Woodland Gas, Food, & Liquor
Yosemite Valley Post Office
Yosemite West Community Board
www.mariposacounty.org/planning

Our Mission is to provide our clients with professional service and accurate information in a respectful, courteous, and enthusiast manner resulting in a well-planned rural environment.

Attachment: 210202 CPSAC 1 Vacancy re noticed (2021-27 : PAC Re-Appointments Creative Placemaking Strategy Advisory Committee)

Revised Posting Date: February 2, 2021 Deadline for Submission: Until Filled

Attachment: 210202 CPSAC 1 Vacancy re noticed (2021-27 : PAC Re-Appointments Creative Placemaking Strategy Advisory Committee)

MARIPOSA COUNTY

Planning · 209-966-5151

MEETING: February 23, 2021

TO: The Board of Supervisors

FROM: Sarah Williams, Planning Director

RE: PAC Re-Appointments and Acknowledgements (Wawona)

RECOMMENDATION AND JUSTIFICATION:
Recognize the Service of William Rosenberg on the Wawona Town Planning Advisory Committee; Re-Appoint Tony Christianson, Ed Mee and Eugene Spindler to the Wawona Town Planning Advisory Committee with Terms to Expire February 28, 2023 (Supervisor Menetrey).

Mr. Rosenberg is not seeking re-appointment to this Committee. All others have expressed interest in continuing to serve on this Committee.

With this action there will be 6 vacancies on this Committee.

Appointments, term expirations/vacancies have and will continue to be advertised according to the Maddy Act.

It is customary that recommendations for citizens advisory committee appointments and re-appointments are made by the District Supervisor.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
Mr. Rosenberg was appointed to this committee on September 23, 2013.
Mr. Christianson was appointed to this committee on February 16, 1999.
Mr. Mee was appointed to this committee on February 8, 2000.
Mr. Spindler was appointed to this committee on April 23, 2002.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Not re-appointing these positions could result in a lack of a quorum for the committee.

ATTACHMENTS:
210217 WPAC 6 (PDF)

RESULT: **ADOPTED BY CONSENT VOTE [UNANIMOUS]**
MOVER: Wayne Forsythe, District IV Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

MARIPOSA PLANNING

COUNTY OF MARIPOSA
5100 BULLION STREET • POST OFFICE BOX 2039
MARIPOSA, CALIFORNIA 95338–2039
209 . 966 . 5151 • FAX 209 . 742 . 5024
Sarah Williams, Director
swilliams@mariposacounty.org

NOTICE OF VACANCIES ON THE

WAWONA TOWN PLANNING ADVISORY COMMITTEE

Six vacancies currently exist on the Wawona Town Planning Advisory Committee.

The purpose of the committee to address issues that are important to the area and recommend policies for the Community.

The Committee is an advisory group to the Mariposa County Planning Commission and the Board of Supervisors.

Appointment terms are for two years and expire on the last day of February.

Members must employed, reside, or own property within the geographic boundaries of the Wawona Town Planning Area.

Persons interested in serving on the Committee should complete an application which can be obtained at either the Mariposa County Planning Department or the Clerk of the Board's Office or can be found on line at:

http://www.mariposacounty.org/DocumentCenter/View/39675/Committees-Application---blank-fillable?bidId= .

Completed applications need to be sent to the Rene LaRoche, Clerk of the Board, by mail at P. O. Box 784, Mariposa, CA 95338, or email: rlaroche@mariposacounty.org

Posting Locations for this notice:

Wawona Post Office
Mariposa County Planning
Mariposa County Clerk
Mariposa County Courthouse
Mariposa County Library
www.mariposacounty.org/planning

Re-notice Date: 2/17/21 Deadline for Submission: Until Filled

Attachment: 210217 WPAC 6 [Revision 1] (2021-28 : PAC Re-Appointments and Acknowledgements (Wawona))

Our Mission is to provide our clients with professional service and accurate information in a respectful, courteous, and enthusiastic manner resulting in a well-planned rural environment.

MARIPOSA COUNTY

Planning · 209-966-5151

MEETING: February 23, 2021

TO: The Board of Supervisors

FROM: Sarah Williams, Planning Director

RE: PAC Acknowledgment of Service, Re-Appointments and Appointments (Coulterville)

RECOMMENDATION AND JUSTIFICATION:
Acknowledge the Service of Michelle Coppock and Janelle Danel to the Coulterville Planning Advisory Committee; Re-Appoint Rick Cordero and Stephen Huff to the Coulterville Planning Advisory Committee for Terms to Expire on February 28, 2023; Appoint James Rhodes to Fill an unexpired Term ending February 28, 2022 on the Coulterville Planning Advisory Committee; and Appoint Nina Coleman to the Coulterville Planning Advisory Committee for a Term to Expire February 28, 2023 (Supervisor Sweeney).

Ms. Coppock has resigned and Ms. Danel did not wish to seek re-appointment.

Mr. Cordero and Mr. Huff have expressed interest in continuing to serve on this committee.

There were 4 applicants to fill 2 vacant positions. The applicants chosen were based on the District Supervisors' request.

Appointments, term expirations and vacancies have been advertised according to the Maddy Act.

With this action there will be no vacancies on this committee.

It is customary that recommendations for citizen advisory committee appointments and re-appointments are made by the District Supervisor.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
Ms. Coppock was appointed March 20, 2018.
Ms. Danel was appointed on May 10, 2016.
Mr. Cordero was appointed on February 26, 2013.
Mr. Huff was appointed on May 15, 2007.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Not re-appointing or appointing may result in a lack of quorum for future meetings.

Agenda Item - No Resolution Requested 2021-29

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FINANCIAL IMPACT:
None

ATTACHMENTS:
210203 Vacancy Notice 2 (PDF)
rhodes redact app (PDF)
coleman redact app (PDF)
alvina-rhodes redact app (PDF)
salcedo redact app (PDF)

RESULT: **ADOPTED BY CONSENT VOTE [UNANIMOUS]**
MOVER: Wayne Forsythe, District IV Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

MARIPOSA PLANNING

COUNTY OF MARIPOSA
5100 BULLION STREET • POST OFFICE BOX 2039
MARIPOSA, CALIFORNIA 95338–2039
209 . 966 . 5151 • FAX 209 . 742 . 5024

Sarah Williams, Director
swilliams@mariposacounty.org

NOTICE OF VACANCIES ON THE

COULTERVILLE PLANNING ADVISORY COMMITTEE

(2) Two vacancies exist on the Coulterville Planning Advisory Committee.

The Committee is an advisory group to the Mariposa County Planning Commission and the Board of Supervisors. They address issues that are important to the area and recommend policies for the Community.

The term of one of the appointments is to fill a remaining term until February 28, 2022. The other term will be to fill a vacancy that will expire February 28, 2023.

Members must employed, reside, or own property within the geographic boundaries of Coulterville.

Persons interested in serving on the Committee should complete an application which can be obtained at either the Mariposa County Planning Department or the Clerk of the Board's Office or can be found on line. Completed applications need to be sent to the Clerk of the Board, Rene LaRoche, by mail at P. O. Box 784, Mariposa, CA 95338, (209)966-3222 or email rlaroche@mariposacounty.org

Posting Locations:

Mariposa County Planning Department
Mariposa Courthouse
Mariposa County Clerk
Mariposa Library
Coulterville Post Office
www.mariposacounty.org/planning

Posting Date: 2/3/21 Deadline for Submission: **Open Until Filled**

Our Mission is to provide our clients with professional service and accurate information in a respectful, courteous, and enthusiastic manner resulting in a well-planned rural environment.

Attachment: 210203 Vacancy Notice 2 (2021-29 : PAC Acknowledgment of Service, Re-Appointments and Appointments (Coulterville))

County of Mariposa
5100 Bullion Street
P.O. Box 784
Mariposa, CA 95338
(209) 966-3222

RECEIVED
OCT 26 2020
BOARD OF SUPERVISORS

Application for Appointment to Mariposa County BOARDS, COMMISSIONS AND COMMITTEES

http://www.mariposacounty.org/index.aspx?NID=119

Name of Board, Commission or Committee for which you are applying: Coulterville Planning Advisory Committee

Supervisorial District in which you Reside: 2

Length of Residency in the County: 9 months

INSTRUCTIONS

Completely fill out this form, sign and return to:

Clerk of the Board
5100 Bullion Street
P.O. Box 784
Mariposa, CA 95338

First Name: James

Last Name: Rhodes

Mailing Address:

Email Address:

Are you Over 18 Years of Age: yes

Employment Status: retired-combat disability

Employer's Name: n/a

Employer's Address: n/a

Day Telephone Number:

Cell Phone Number:

Please explain why you wish to serve on this Board/Commission/Committee:
The board has not met for an extended period; some appointees no longer live in Coulterville; the (on file) plan for the town is dated 1980 & is seriously out of date and out of touch with what needs to happen i.e. a fresh, new current vision and economic plan.

Please list prior/current appointments to other Boards/Commissions/Committees:
Coweta Creek-Mayan Historical Society; Agent Orange advisory committee; United States Chess Federation school advisory committee.

NOTE: THIS DOCUMENT IS SUBJECT TO PUBLIC INSPECTION

Last Modified: 11/ /2013

Attachment: rhodes redact app (2021-29 : PAC Acknowledgment of Service, Re-Appointments and Appointments (Coulterville))

List any information regarding experience, training and/or education that you feel qualifies you for this position:

Elected member to a (CA) county sanitation and water board; United States State Department Fulbright Educational Specialist to Vietnam; member Vietnamese-American Friendship Assn.; member Vietnamese-American chamber of commerce.

Do you, or any member of your immediate family, work for the County of Mariposa or hold a position that might conflict with your duties for this Board/Commission?

If Yes, please explain:

no

Resumé Attached:	Time(s) you have available to attend meetings (days, evenings, etc.):	Do you have transportation?
no	open	yes

PLEASE NOTE that once submitted, this document becomes a public record and is subject to all forms of public inspection including, but not limited to, display on the internet, and all public records requests.

I certify that the above information is true and correct, and I authorize the verification of the information in this application in the event I am a finalist for the appointment.

Dated: 24 Oct 2020 Signature:

NOTE: THIS DOCUMENT IS SUBJECT TO PUBLIC INSPECTION

Attachment: rhodes redact app (2021-29 : PAC Acknowledgment of Service, Re-Appointments and Appointments (Coulterville))

RECEIVED
JAN 04 2021
BOARD OF SUPERVISORS

County of Mariposa
5100 Bullion Street
P.O. Box 784
Mariposa, CA 95338
(209) 966-3222

Application for Appointment to Mariposa County

BOARDS, COMMISSIONS AND COMMITTEES

http://www.mariposacounty.org/index.aspx?NID=119

Name of Board, Commission or Committee for which you are applying: COULTERVILLE TOWN PLANING COMMITTEE

Supervisorial District in which you Reside: #2

Length of Residency in the County: 1976

INSTRUCTIONS
Completely fill out this form, sign and return to:
Clerk of the Board
5100 Bullion Street
P.O. Box 784
Mariposa, CA 95338

First Name: NINA

Last Name: COLEMAN

Mailing Address: [redacted]

Email Address: [redacted]

Are you Over 18 Years of Age: YES

Employment Status: RETIRED

Employer's Name:

Employer's Address:

Day Telephone Number: [redacted]

Cell Phone Number: [redacted]

Please explain why you wish to serve on this Board/Commission/Committee:
AS A 44 YEAR RESIDENT OF COULTERVILLE, I WOULD LIKE TO BRING IMPROVEMENT TO THE TOWN AND DISTRICT 2, ENCOURAGE NEW BUSINESS AND INNOVATION TO THE COMMUNITY.

Please list prior/current appointments to other Boards/Commissions/Committees:
SERVED ON THE BOARD OF DIRECTORS FOR NORTHERN MARIPOSA COUNTY HISTORY CENTER. MANAGED COULTERVILLE VISITORS CENTER, CHAIRPERSON OF COYOTE HOWL 7 YRS. TWENTY ONE YEAR MEMBER OF COULTERVILLE FIRE BRIGADE

NOTE: THIS DOCUMENT IS SUBJECT TO PUBLIC INSPECTION

Last Modified: 11/ /2013

Attachment: coleman redact app (2021-29 : PAC Acknowledgment of Service, Re-Appointments and Appointments (Coulterville))

List any information regarding experience, training and/or education that you feel qualifies you for this position:

See PREVIOUS PAGE.

Do you, or any member of your immediate family, work for the County of Mariposa or hold a position that might conflict with your duties for this Board/Commission?

If Yes, please explain:

Resumé Attached:	Time(s) you have available to attend meetings (days, evenings, etc.):	Do you have transportation?
	ANY	YES

PLEASE NOTE that once submitted, this document becomes a public record and is subject to all forms of public inspection including, but not limited to, display on the internet, and all public records requests.

I certify that the above information is true and correct, and I authorize the verification of the information in this application in the event I am a finalist for the appointment.

Dated: 1-3-2021 Signature: [signature]

NOTE: THIS DOCUMENT IS SUBJECT TO PUBLIC INSPECTION

Attachment: coleman redact app (2021-29 : PAC Acknowledgment of Service, Re-Appointments and Appointments (Coulterville))

County of Mariposa
5100 Bullion Street
P.O. Box 784
Mariposa, CA 95338
(209) 966-3222

RECEIVED
OCT 26 2020
BOARD OF SUPERVISORS

Application for Appointment to Mariposa County BOARDS, COMMISSIONS AND COMMITTEES

http://www.mariposacounty.org/index.aspx?NID=119

Name of Board, Commission or Committee for which you are applying: Coulterville Planning Advisory Committee

Supervisorial District in which you Reside: 2

Length of Residency in the County: 9 months

INSTRUCTIONS
Completely fill out this form, sign and return to:
Clerk of the Board
5100 Bullion Street
P.O. Box 784
Mariposa, CA 95338

First Name: Nina

Last Name: Avina-Rhodes

Mailing Address:

Email Address:

Are you Over 18 Years of Age: yes

Employment Status: retired: Johns Hopkins U-CTY

Employer's Name: n/a

Employer's Address: n/a

Day Telephone Number:

Cell Phone Number:

Please explain why you wish to serve on this Board/Commission/Committee:
This board has not met for an extended period; some appointees no longer live in Coulterville; the (on file) plan for the town is dated 1980 & is seriously out of date and out of touch with what needs to happen i.e. a fresh new, current vision and economic plan.

Please list prior/current appointments to other Boards/Commissions/Committees:
Grants writer-Quechan Nation; San Pasqual Parent Council (reservation school); Intertribal Council of Arizona (22 tribes represented); Arizona Indian Education Assn; State of Alabama Save the Children Foundation; Yuma County Housing Authority Board; Yuma County Economic Development Committee

NOTE: THIS DOCUMENT IS SUBJECT TO PUBLIC INSPECTION

Last Modified: 11/ /2013

Attachment: alvina-rhodes redact app (2021-29 : PAC Acknowledgment of Service, Re-Appointments and Appointments (Coulterville))

List any information regarding experience, training and/or education that you feel qualifies you for this position:

Elected member of a (CA) county school board; United States State Department Fulbright Educational Specialist to Vietnam; Executive Director Center for Education and Training; Executive Director Western Education Health Education Center; Executive Director University of AZ Rural Health Department; University of Alabama PACERS (rural grant reviews); Manager of Russell-Lee Counties senior services; Outreach coordinator to secure gifted, low income, disadvantaged secondary students scholarships-The Johns Hopkins University's Center for Talented Youth; Agent Orange advisory committee; Salt River Indian Tribe Chamber of Commerce.

Do you, or any member of your immediate family, work for the County of Mariposa or hold a position that might conflict with your duties for this Board/Commission?

If Yes, please explain:

no

Resumé Attached:	**Time(s) you have available to attend meetings (days, evenings, etc.):**	**Do you have transportation?**
no	open	yes

PLEASE NOTE that once submitted, this document becomes a public record and is subject to all forms of public inspection including, but not limited to, display on the internet, and all public records requests.

I certify that the above information is true and correct, and I authorize the verification of the information in this application in the event I am a finalist for the appointment.

Dated: 10-24-2020 Signature: Alvina Alvina-Rhod

NOTE: THIS DOCUMENT IS SUBJECT TO PUBLIC INSPECTION

Attachment: alvina-rhodes redact app (2021-29 : PAC Acknowledgment of Service, Re-Appointments and Appointments (Coulterville))

RECEIVED
JAN 04 2021
BOARD OF SUPERVISORS

County of Mariposa
5100 Bullion Street
P.O. Box 784
Mariposa, CA 95338
(209) 966-3222

Application for Appointment to Mariposa County

BOARDS, COMMISSIONS AND COMMITTEES

http://www.mariposacounty.org/index.aspx?NID=119

Name of Board, Commission or Committee for which you are applying: Coulterville Town Plan Commitee

Supervisorial District in which you Reside: #2

Length of Residency in the County: 2004

INSTRUCTIONS
Completely fill out this form, sign and return to:
Clerk of the Board
5100 Bullion Street
P.O. Box 784
Mariposa, CA 95338

First Name: Jesse

Last Name: Salcedo

Mailing Address: [redacted]

Email Address: [redacted]

Are you Over 18 Years of Age: Yes

Employment Status: Retired

Employer's Name: Retired

Employer's Address:

Day Telephone Number: [redacted]

Cell Phone Number: [redacted]

Please explain why you wish to serve on this Board/Commission/Committee:
WouldliketobepartofthegrowthandImprovementofNorthernMariposaCounty, HopetoincreasetheTaxbaseinCoulterville,bywelcomingnewBusiness's. 2ofthecurrentboardmembersnolongerliveinthearea.Existingboarddoesnothavemeetings,notintouchwiththecommunity existingTownPlanisoutdated lastupdatedin1980

Please list prior/current appointments to other Boards/Commissions/Committees:
Vice Chairman of Vietnam Combat Veterans Ltd. Chairman CEO Salcedo Construction Corp.
Chief of Staff National American Indian Veterans Menlo Park Veterans Administration Chaplain

NOTE: THIS DOCUMENT IS SUBJECT TO PUBLIC INSPECTION

Last Modified: 11/ /2013

Attachment: salcedo redact app (2021-29 : PAC Acknowledgment of Service, Re-Appointments and Appointments (Coulterville))

List any information regarding experience, training and/or education that you feel qualifies you for this position:

Attended Advance Infantry Training, and Non Commissioned Officers school in Ft Benning Georgia, Graduated as a E-5 Sargent, Served in the US Army as a squad leader for the 25th Infantry Division, and the 1st Air Calvary Infantry in Vietnam. Have been personally responsible for the lives of my squad and Platoon for 12 months, making stressful and at times very critical decisions with very little time to consider the consequences.

Attended 4 years of Apprenticeship classes in Gavilan College 1974-1978
Became a General Contractor in 1979, over the past 40 plus years, have managed many multi Million dollar projects, with hundreds of employees, Sub-Contractors, Hundreds of Homeowners,and project owners, as a General Contractor B-1.

Have held management and ownership positions for past 50 years.
I look forward to leading Coulterville forward towards a more thriving business community

Do you, or any member of your immediate family, work for the County of Mariposa or hold a position that might conflict with your duties for this Board/Commission?

If Yes, please explain:

No

Resumé Attached:	**Time(s) you have available to attend meetings (days, evenings, etc.):**	**Do you have transportation?**
No	Will consider all times required	Yes

PLEASE NOTE that once submitted, this document becomes a public record and is subject to all forms of public inspection including, but not limited to, display on the internet, and all public records requests.

I certify that the above information is true and correct, and I authorize the verification of the information in this application in the event I am a finalist for the appointment.

Dated: JAN 4-21 Signature: Jesse Salcedo

NOTE: THIS DOCUMENT IS SUBJECT TO PUBLIC INSPECTION

Attachment: salcedo redact app (2021-29 : PAC Acknowledgment of Service, Re-Appointments and Appointments (Coulterville))

MARIPOSA COUNTY

Planning · 209-966-5151

MEETING: February 23, 2021

TO: The Board of Supervisors

FROM: Sarah Williams, Planning Director

RE: PAC Recognition & Re-Appointments (Catheys Valley)

RECOMMENDATION AND JUSTIFICATION:
Recognize the Service of Cathie Pierce and Ken Trujillo from the Catheys Valley Community Planning Advisory Committee; Re-Appoint Casey Archer (formerly Aitchison), Ken Davis, Josh Evans and Ken Wagner to the Catheys Valley Community Planning Advisory Committee for Terms to Expire February 28, 2023 (Supervisor Long).

Ms. Pierce is not seeking re-appointment and the District Supervisor has elected not to re-appoint Mr. Trujillo.

Archer, Davis, Evans and Wagner have all expressed interest in continuing to serve on this committee.

With this action, there will be three vacancies on this committee.

Appointments, term expirations and vacancies have been and will continue to be advertised according to the Maddy Act.

It is customary that recommendations for citizens advisory committee appointments and re-appointments are made by the District Supervisor.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
Ms. Pierce was appointed June 19, 2007.
Mr. Trujillo was appointed April 7, 2015.
Ms. Archer was appointed on October 15, 2019.
Mr. Davis was appointed on February 5, 2002.
Mr. Evans was appointed on July 25, 2017.
Mr. Wagner was appointed on April 7, 2015.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Not re-appointing positions could result in a lack of a quorum for the Committee.

ATTACHMENTS:
210205 CVPAC 3 Vacancies Notice (PDF)

Agenda Item - No Resolution Requested 2021-30

RESULT: **ADOPTED BY CONSENT VOTE [UNANIMOUS]**
MOVER: Wayne Forsythe, District IV Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

MARIPOSA PLANNING

COUNTY OF MARIPOSA
5100 BULLION STREET • POST OFFICE BOX 2039
MARIPOSA, CALIFORNIA 95338–2039
209 . 966 . 5151 • FAX 209 . 742 . 5024

Sarah Williams, Director
swilliams@mariposacounty.org

NOTICE OF VACANCIES ON THE

CATHEYS VALLEY COMMUNITY PLANNING ADVISORY COMMITTEE

Three vacancies exist on the Catheys Valley Community Planning Advisory Committee.

The purpose of the committee is to address issues that are important to the area and recommend policies for the Community.

The Committee is an advisory group to the Mariposa County Planning Commission and the Board of Supervisors.

Two vacancies have appointment terms for two years and expire February 28, 2023. One vacancy will be to fill a remaining term which expires February 28, 2022.

Members must be employed, reside, or own property within the geographic boundaries of the Catheys Valley Planning Area.

Persons interested in serving on the Committee should complete an application which can be obtained at either the Mariposa County Planning Department or the Clerk of the Board's Office or can be found on line at:

http://www.mariposacounty.org/DocumentCenter/View/39675/Committees-Application---blank-fillable?bidId= .

Completed applications need to be sent to the Rene LaRoche, Clerk of the Board, by mail at P. O. Box 784, Mariposa, CA 95338, or email: rlaroche@mariposacounty.org

Posting Locations for this notice:

Catheys Valley Post Office
Mariposa County Planning
Mariposa County Library
Mariposa County Clerk
Mariposa County Courthouse
www.mariposacounty.org/planning

Notice Date: 2/5/21 Deadline for Submission: Until Filled

Our Mission is to provide our clients with professional service and accurate information in a respectful, courteous, and enthusiastic manner resulting in a well-planned rural environment.

Attachment: 210205 CVPAC 3 Vacancies Notice (2021-30 : PAC Recognition & Re-Appointments (Catheys Valley))

MARIPOSA COUNTY

Sheriff's Office · 209 966-3615

RESOLUTION - ACTION REQUESTED 2021-88

MEETING: February 23, 2021

TO: The Board of Supervisors

FROM: Jeremy Briese, Sheriff

RE: 2021 Security Pre-Crisis/Crisis Patients MOU

RECOMMENDATION AND JUSTIFICATION:
Approve a Memorandum of Understanding (MOU) with John C. Fremont Healthcare District for Security Services for Pre-Crisis/Crisis Patients; and Authorize the Board of Supervisors Chair to Sign the MOU.

The existing MOU with the John C. Fremont Healthcare District for security services for pre-crisis/crisis patients expires December 31, 2020. This MOU continues the same cost sharing arrangements with no increases to the hourly rate of the Deputy Sheriff classification.

The Sheriff recommends entering into an MOU with John C. Fremont Healthcare District for a cost sharing of security services for pre-crisis/crisis patients that enter the John C. Fremont Hospital Emergency Room for medical clearances. The cost sharing MOU is between the John C. Fremont Hospital Healthcare District, Mariposa County Health and Human Services - Division of Behavioral Health, and the Sheriff's Office with each entity paying an equal one third of the hourly cost of $70.08 (which equates to a shared cost of $23.36/hr). The MOU will allow for a cost sharing of providing a Deputy Sheriff when requested by any of the entities identified in the MOU.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
On November 24, 2015, the Board adopted Resolution 15-556 approving the MOU with the John C. Fremont Healthcare District for Pre-Crisis/Crisis Patients.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Do not enter into the MOU and have the County assume the total cost for the security during pre-crisis/crisis patients.

FINANCIAL IMPACT:
Estimated Revenue has been included in the current fiscal year budget for 2020-2021.

ATTACHMENTS:
2021 Pre Crisis security MOU (PDF)

RESULT: **ADOPTED BY CONSENT VOTE [UNANIMOUS]**
MOVER: Wayne Forsythe, District IV Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

MEMORANDUM OF UNDERSTANDING

This **MEMORANDUM OF UNDERSTANDING** ("MOU") is hereby made and entered into by and between the John C. Fremont Healthcare District and the County of Mariposa.

A. PURPOSE:

The purpose of this MOU is to continue to develop and expand a framework of cooperation between the John C. Fremont Healthcare District, the Mariposa County Department of Health and Human Services, hereinafter referred to as "Health and Human Services", and the Mariposa County Sheriff's Office, hereinafter referred to as "Sheriff", to develop mutually beneficial programs, specifically: to provide part time security as needed to the John C. Fremont Healthcare District while pre-crisis/crisis patients are present pending mental health diagnosis.

B. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

This MOU benefits involved parties and serves the public through this cooperative effort to provide security to those pre-crisis/crisis patients that could be deemed in need of professional supervision/security to prevent an event/outburst that might endanger them or others by sharing the costs of a security officer. The mutual benefit for all involved parties is to provide a professional service so that the pre-crisis/crisis patients, which are deemed in need of professional supervision/security, are in fact provided with such, insuring for a secure environment at the John C. Fremont Healthcare District.

C. SHERIFF SHALL:

1. Provide a sworn law enforcement officer, absorbing one third (1/3) of the hourly cost of such, to the John C. Fremont Healthcare District for security purposes while a pre-crisis/crisis patient(s) are present pending diagnosis and transport, when security is deemed necessary for the situation.

2. The Sheriff's cost will represent one third (1/3) of the true hourly overtime rate of a top step deputy sheriff for the CY2021; which is $70.08 (equates to $23.36/hr).

3. Review this agreement with Health and Human Services and John C. Fremont Healthcare District no less than annually and modify as necessary.

D. JOHN C. FREMONT HEALTH CARE DISTRICT SHALL:

1. John C. Fremont Healthcare District shall notify the Sheriff when they are treating a pre-crisis/crisis patient and request security, if it determines that security is required for the situation.

2. John C. Fremont Healthcare District shall pay one third (1/3) of the hourly cost (equates to $23.36/hr) of the total time that the responding officer accumulates during the security detail.

Attachment: 2021 Pre Crisis security MOU (RES-2021-88 : 2021 Security Pre-Crisis/Crisis Patients MOU)

3. Review this agreement with the Sheriff and Health and Human Services no less than annually and modify as necessary.

E. HEALTH AND HUMAN SERVICES:

1. Health and Human Services shall notify the Sheriff and request security when they are treating a pre-crisis/crisis patient at the John C. Fremont Healthcare District when it determines that security is required for the situation.

2. Health and Human Services shall pay one third (1/3) of the hourly cost (equates to $23.36/hr) of the total time that the responding officer accumulates during the security detail.

3. Review this agreement with the John C. Fremont Healthcare District and the Sheriff no less than annually and modify as necessary.

F. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:

1. MODIFICATION:

Modifications within the scope of the instrument shall be made by mutual consent of the parties, by the issuance of a written modification, signed and dated by all parties, prior to any changes being performed.

2. PARTICIPATION IN SIMILAR ACTIVITIES:

This instrument in no way restricts the Sheriff or Health and Human Services from participating in similar activities with other public or private agencies, organizations and individuals.

3. TERMINATION:

Any of the parties, in writing, may terminate the instrument in whole, or in part, at any time before the date of expiration.

4. PRINCIPAL CONTACTS:

The principal contacts for this instrument are:

Mariposa County Sheriff's Office:
Jeremy Briese, Sheriff
5099 Old Highway North
PO Box 276
Mariposa, CA 95338
209-966-3615

Attachment: 2021 Pre Crisis security MOU (RES-2021-88 : 2021 Security Pre-Crisis/Crisis Patients MOU)

John C. Fremont Healthcare District:
Matthew Matthiessen, CEO
John C. Fremont Healthcare District
5189 Hospital Road
PO Box 216
Mariposa, CA 95338
209-966-3631

Mariposa County Health and Human Services:
Shannon Gadd, Director
5362 Lemee Lane
PO Box 99
Mariposa, CA 95338
209-966-2000

5. COMMENCEMENT/EXPIRATION DATE:

This MOU shall become effective on January 1, 2021 and shall terminate on December 31, 2021, unless terminated in accordance with the provisions of Section F.3 of this MOU.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the last written date below.

Jeremy Briese, Sheriff, Mariposa County Date

Shannon Gadd, Director, Mariposa Health and Human Services Date

Matthew Matthiessen, CEO, John C. Fremont Healthcare District Date

Marshall Long, Chair, Mariposa County Board of Supervisors Date

Attachment: 2021 Pre Crisis security MOU (RES-2021-88 : 2021 Security Pre-Crisis/Crisis Patients MOU)

MARIPOSA COUNTY

Public Works · 209 966 5356

MEETING: February 23, 2021

TO: The Board of Supervisors

FROM: Mike Healy, Public Works Director

RE: Authorize the Award for Professional Services to Develop the Short Range Transit Plan

---

RECOMMENDED ACTION AND JUSTIFICATION:
Authorize the Public Works and Transportation Director to Award a Professional Services Agreement to Walker Consultants in the Amount of $55,000.00 to Develop the Short-Range Transit Plan; and Authorize the LTC Executive Director to Sign the Agreement.

Staff advertised and received project proposals from three qualified firms. Staff evaluated the qualifications of the respondents and found Walker Consultants of San Francisco, CA the most qualified to accomplish this project. Staff met with Walker Consultants and negotiated a cost that was roughly 20% less than the Consultants initial cost proposal with no loss of desired and required scope to the project and within the project budget.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
At the November 11, 2020 meeting of the Local Transportation Commission the Commission authorized the advertisement for Professional Services to Develop the County's Short-Range Transit Plan in accordance with Federal Requirements. This Planning effort is funded entirely through the use of appropriated Federal Transportation Funds.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Should we not approve this study the County's Transit Funding could be jeopardized.

ATTACHMENTS:
Short Range Transit Plan LTC Action and RFP (PDF)
Mariposa SRTP_Walker Consultants Proposal Revision 3_012521 (PDF)
Walker Consult 21-022 Short Range Transit Plan (PDF)

RESULT: **ADOPTED [UNANIMOUS]**
MOVER: Wayne Forsythe, District IV Supervisor
SECONDER: Tom Sweeney, District II Supervisors
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

MARIPOSA COUNTY

Public Works · 209 966 5356

MEETING: November 10, 2020

TO: The Board of Supervisors

FROM: Mike Healy, Public Works Director

RE: Authorize the Advertisement for Request for Qualifications to Develop a Short Range Transit Plan

---

RECOMMENDED ACTION AND JUSTIFICATION:
Authorize the Advertisement for Professional Services Request for Qualifications to Develop the Mariposa County Short Range Transit Plan.

The Mariposa County Local Transportation Commission is requesting qualifications from interested firms to prepare the 2021 Short Range Transit Plan as scheduled in the Overall Work Program for fiscal year 2020-2021. The expected work shall (at a minimum) include:(1) Review of Existing Transit Services, Data Collection, Public Input; (2) Needs Assessment; (3) Recommended Goals, Objectives, and Standards; (4) Short Range Transit Plan; (5) Capital and Financial Plan.

This study is a requirement of our State and Federal Transit Plan and is paid for entirely from State and Federal Transportation Funding resources.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The Local Transportation Commission has previously approved this work item as part of the Transportation Overall Work Plan.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Should the Board not approve Transit funding, reimbursement will be placed in jeopardy.

ATTACHMENTS:
RFQ Short Range Transit Plan 2020 (PDF)

Attachment: Short Range Transit Plan LTC Action and RFP (LTC-2021-7 : Authorize the Award for Professional Services to Develop the Short

REQUEST FOR QUALIFICATIONS

MARIPOSA COUNTY LOCAL TRANSPORTATION COMMISSION'S SHORT RANGE TRANSIT PLAN 2021

Work Items to Include:

1. Review of Existing Transit Services, Data Collection, Public Input
2. Needs Assessment
3. Recommended Goals, Objectives, and Standards
4. Short Range Transit Plan
5. Capital and Financial Plan

DATE ISSUED:	**TBD**
PROPOSALS DUE:	**TBD**
SUBMIT TO:	Transportation Planning Mariposa County 4639 Ben Hur Road Mariposa, CA 95338
REFER QUESTIONS TO:	**Jeannie Morvay-Clayton, Transportation Planner**

Attachment: RFQ Short Range Transit Plan 2020 (11144 : Authorize the Advertisement for Request for Qualifications to Develop a Short Range
Attachment: Short Range Transit Plan LTC Action and RFP (LTC-2021-7 : Authorize the Award for Professional Services to Develop the Short

MARIPOSA COUNTY
REQUEST FOR QUALIFICATIONS
MCLTC'S SHORT RANGE TRANSIT PLAN

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Attachment: RFQ Short Range Transit Plan 2020 (11144 : Authorize the Advertisement for Request for Qualifications to Develop a Short Range
Attachment: Short Range Transit Plan LTC Action and RFP (LTC-2021-7 : Authorize the Award for Professional Services to Develop the Short

MARIPOSA COUNTY
REQUEST FOR QUALIFICATIONS
MCLTC'S SHORT RANGE TRANSIT PLAN

SECTION I – GENERAL INFORMATION

I-1. Request for Qualifications

The County of Mariposa, Local Transportation Commission is requesting qualifications from interested firms to prepare the 2021 Short Range Transit Plan as scheduled in the Overall Work Program for fiscal year 2020-2021. The expected work shall (at a minimum) include: (1) Review of Existing Transit Services, Data Collection, Public Input; (2) Needs Assessment; (3) Recommended Goals, Objectives, and Standards; (4) Short Range Transit Plan; (5) Capital and Financial Plan.

Qualifications will be due by **TBD.** To be considered, four (4) copies of the Qualifications plus (1) disc must be delivered to the Mariposa County Department of Public Works, 4639 Ben Hur Road, Mariposa, CA 95338. The County reserves the right to reject any or all Qualifications submitted.

During the evaluation process Mariposa County reserves the right, where it may serve the County's best interest, to request additional information or clarification from proposers, or to allow corrections of errors or omissions. At the discretion of Mariposa County, firms submitting proposals may be requested to make oral presentations as part of the evaluation process.

The County reserves the right to retain all Qualifications submitted and to use any idea(s) included in a proposal regardless of whether that qualification is selected.

It is anticipated the selection of the firm (based on merit alone) will be completed by **TBD**. Following the notification of the selected firm, their fixed fee schedule will be reviewed by the Transportation Planner in addition to a 3rd Party Review. Negotiation may result. Once pricing has been made acceptable to all parties the project will be awarded and the contract will be written. The County retains the right to reject any or all proposals, to waive any non-material irregularities or information in any proposal, and to accept or reject any items or combination of items. The proposals also become the property of Mariposa County.

Attachment: RFQ Short Range Transit Plan 2020 (11144 : Authorize the Advertisement for Request for Qualifications to Develop a Short Range
Attachment: Short Range Transit Plan LTC Action and RFP (LTC-2021-7 : Authorize the Award for Professional Services to Develop the Short

MARIPOSA COUNTY
REQUEST FOR QUALIFICATIONS
MCLTC'S SHORT RANGE TRANSIT PLAN

I-2. Tentative Project Milestones

Review of Existing Transit Services, Data Collection, Public Input
Needs Assessment
Preparation of Plans

I-3. Official Contacts

Questions by phone or in writing regarding the scope of services or other RFQ related questions must be directed to:

Jeannie Morvay-Clayton
Transportation Planner
(209) 966-5356
E-mail: jclayton@mariposacounty.org

I-4. Qualifications Due Date

Four (4) print; plus one (1) disc copy of the Qualifications must be delivered to the Mariposa County Department of Public Works. 4639 Ben Hur Road, Mariposa, CA 95338 no later than **TBD at 2:00 P.M.** local time. Facsimile or electronically transmitted qualifications **will not** be accepted. Late qualifications will be kept by the County, but not considered for award. Qualifications must be sealed and clearly addressed and marked with the RFQ title.

Any qualification may be withdrawn at any time before the "Qualifications Due" date and time, by providing a written request for the withdrawal of the qualification to the Transportation Planner. A duly authorized representative of the firm shall execute the request. Withdrawal of a qualification will not prejudice the right of the qualifier to file a new qualification.

I-5. Addenda

The County may modify the RFQ at any time prior to the RFQ due date. It is recommended that proposers periodically check with the Department of Public Works at (209) 966-5356,via email to the Transportation Planner at jclayton@mariposacounty.org, and on the County Web Page for any posted addenda. Proposers who have submitted proposals prior to the due date will also be notified through their contact information provided with their proposal. Addenda will be numbered consecutively. Verbal modifications to the RFQ specifications shall not be binding upon the County.

I-6. Irregularities

The County reserves the right to waive any non-material irregularities or information in the RFQ or in any proposal.

Attachment: RFQ Short Range Transit Plan 2020 (11144 : Authorize the Advertisement for Request for Qualifications to Develop a Short Range
Attachment: Short Range Transit Plan LTC Action and RFP (LTC-2021-7 : Authorize the Award for Professional Services to Develop the Short

MARIPOSA COUNTY
REQUEST FOR QUALIFICATIONS
MCLTC'S SHORT RANGE TRANSIT PLAN

I-7. Incurred Costs

The County is not liable for any costs incurred by a proposer in the preparation and/or presentation of a proposal.

I-8 Equal Opportunity Policy for Contractors

Mariposa County requires all proposers to comply with Federal, State and Local Law and Ordinance with regard to equal opportunity practices that all programs, services, employment opportunities, and volunteer positions and contracts are open to all persons without regard to race, religion, color, national origin, sex, age, marital status, handicap, or political affiliation.

Mariposa County does not require a business license.

Attachment: RFQ Short Range Transit Plan 2020 (11144 : Authorize the Advertisement for Request for Qualifications to Develop a Short Range
Attachment: Short Range Transit Plan LTC Action and RFP (LTC-2021-7 : Authorize the Award for Professional Services to Develop the Short

MARIPOSA COUNTY
REQUEST FOR QUALIFICATIONS
MCLTC'S SHORT RANGE TRANSIT PLAN

SECTION II – QUALIFICATION FORM AND CONTENT

II-1 Qualification Submittal

Qualifications shall be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to satisfy the requirements of the RFQ, and should be easily reproducible. Emphasis will be on completeness and clarity of content and cost effectiveness of the qualification.

All pages of the qualification must be numbered consecutively. The qualification shall not be excessive but instead should be concise. The qualification must be organized in accordance with the list of qualification contents.

II-2 Qualification Form and Content

Qualification should minimally include the following items in their qualifications.

A. All qualifications must include a cover letter addressed to County Engineer, 4639 Ben Hur Road, Mariposa, CA 95338 and signed by a duly constituted official legally authorized to bind the applicant to the proposal. The cover letter must include name, address, and telephone number of the proposer submitting the Proposal and the name, title, address, telephone number, FAX number and email address of the person, or persons to contact whom are authorized to represent the proposer and to whom correspondence should be directed.

B. Table of Contents

Include a clear identification of the item by section and by page number.

C. Executive Summary

The qualifier may use this section to introduce the qualification or to summarize the key provisions of the Qualifications.

D. Statement of Understanding

The qualifier shall include a detailed statement of understanding of the project.

E. Project Team and Qualifications

This portion should include the name of the person who will be responsible for the management and administration of the **Short Range Transit Plan** for the County with a resume of that person's experience and qualifications, the names and resumes of their assigned staff, relevant technical experience and the availability of staff for the services. After selection of a firm by the County, no substitution of key staff or sub-contractors may occur without the written approval of the County. Sub-consultants should be listed similarly.

Attachment: RFQ Short Range Transit Plan 2020 (11144 : Authorize the Advertisement for Request for Qualifications to Develop a Short Range
Attachment: Short Range Transit Plan LTC Action and RFP (LTC-2021-7 : Authorize the Award for Professional Services to Develop the Short

1. A list of related, recent projects should be included with the name of the contact person and the telephone number for which the firm has recently or currently provided services under the scope of work.

2. Scope of Work: The firm shall describe the proposed work by task, including any tasks that had been performed by sub-contractors.

F. Similar Short Range Transit Plan Examples and References

The qualification should include a listing of public sector assignments that can support the proposer's abilities, to fulfill the services requested in this RFQ. At a minimum, the listing should include plan title, plan location, project manager's contact information and range of project budget, and any other information that could be useful during the evaluation process.

G. Additional Information

Any other information that the proposer feels applicable to the evaluation of the proposal or of their qualification for accomplishing the project should be included in this section. You may use this section to address those aspects of your services that distinguish your firm from other firms.

h. Fee Schedule

The Qualification's submittal should include a separate, sealed envelope containing the FIXED FEE for completion of the *Short Range Transit Plan*. The work items can be further detailed according to the firm's understanding of the necessary elements.

Attachment: RFQ Short Range Transit Plan 2020 (11144 : Authorize the Advertisement for Request for Qualifications to Develop a Short Range
Attachment: Short Range Transit Plan LTC Action and RFP (LTC-2021-7 : Authorize the Award for Professional Services to Develop the Short

MARIPOSA COUNTY
REQUEST FOR QUALIFICATIONS
MCLTC'S SHORT RANGE TRANSIT PLAN

SECTION III – BACKGROUND & SCOPE OF WORK

III-1. General Conditions

The County of Mariposa shall not be liable for any pre-contractual expenses incurred by the consultant, nor shall any firm include such expenses as part to the proposed cost. Pre-contractual expenses include any expense incurred by a qualification and negotiation of any terms with the County.

The County reserves the right to withdraw this RFQ at any time without prior notice and to reject any or all proposals submitted without indicating any reasons. Any award of contract for services shall be made to the firms best qualified and responsive in the opinion of the County.

Qualifications may, at the County's option, be rejected if they contain any alterations, additions, conditional or alternatives, are incomplete, or contain erasures or irregularities of any kind. The County reserves the right to reject any or all proposals. The County expressly reserves the right to postpone submittal opening for its convenience and to reject any or all submittals responding to this RFQ.

The selected firm(s) must agree to indemnify, hold harmless and defend the county, its officers, agents and assigns from any liability or loss resulting from suits, claims, or actions brought against the County which result directly or indirectly from the wrongful or negligent actions of the consultant in the performance of the contract.

The selected firms will be required to comply with all existing State and Federal labor laws including those applicable to equal opportunity employment provisions.

The County reserves the right to negotiate special requirements and proposed service levels using the selected proposal as a basis. Compensation for services will be negotiated with the selected firm.

All responses to this RFQ shall become the property of the County of Mariposa and will be retained or disposed of accordingly.

No amendments, additions or alternates shall be accepted after the submission date and time.

All documents, records, designs and specifications developed by the selected firm during the course of providing services for Mariposa County shall be the property of the County. Anything considered to be proprietary should be so designated by the firm.

Acceptance by the County of any qualification submitted pursuant to this RFQ shall not constitute an implied intent to enter into a contract for services.

The County reserves the right to issue a written notice to all participating firms of any change in the proposal submission schedule should the County determine, in its sole discretion, that such changes are necessary.

Attachment: RFQ Short Range Transit Plan 2020 (11144 : Authorize the Advertisement for Request for Qualifications to Develop a Short Range
Attachment: Short Range Transit Plan LTC Action and RFP (LTC-2021-7 : Authorize the Award for Professional Services to Develop the Short

MARIPOSA COUNTY
REQUEST FOR QUALIFICATIONS
MCLTC'S SHORT RANGE TRANSIT PLAN

III-3. Scope of Services

1. Conduct Public Workshops at each major county population center or online as appropriate.

2. Conduct on-board passenger interviews, driver interviews, and interviews with interested members of the community.

3. Development of a comprehensive Short Range Transit Plan to include:

   - System Description and Identification of Issues
   - Goals and Objectives
   - Performance Standards and Overall System Evaluation
   - Projection of Future transit ridership demands and identify opportunities, including effectiveness and efficiencies. Evaluate underutilized capacity on the system.
   - Recommend appropriate Financial Plan for operations and capital.

4. Present the Draft Short Range Transit Plan to the LTC Board

5. Prepare the Final Plan based on comments and feedback.

III-4. Selection Procedure

The County intends to retain the selected firm(s) evaluated to be the best qualified to perform the work for the County, cost and other factors considered. The County shall screen all applications and the top candidates may be selected for formal in-person interviews. Proposals will be screened by a minimum of three (3) senior County staff members. Staff will determine the individuals or firms selected for interview.

In review of the proposals the County will carefully weigh the following:

- The firm's approach and overall professional abilities
- The overall expertise of the team assembled by the proposer to address the various professional disciplines described herein
- The firm's experience with similar contracts and projects
- The experience and qualifications of the proposed staff in providing similar services.
- The firm's demonstrated ability to deliver work on time and within budget
- The extent of involvement by key personnel
- The extent to which previous clients have found the firm's services acceptable
- Prior experience working in similar Public Sector Project Commissions.
- Communication skills.
- Other qualifications/criteria as deemed appropriate.

Attachment: RFQ Short Range Transit Plan 2020 (11144 : Authorize the Advertisement for Request for Qualifications to Develop a Short Range Attachment: Short Range Transit Plan LTC Action and RFP (LTC-2021-7 : Authorize the Award for Professional Services to Develop the Short

MARIPOSA COUNTY
REQUEST FOR QUALIFICATIONS
MCLTC'S SHORT RANGE TRANSIT PLAN

The county will require the individual or firm selected to maintain general liability, automobile, workers' compensations, and errors and omissions insurance. The selected firm or individual will also be required to maintain relevant business licensure. The contract will contain provisions requiring the selected firm to indemnify the County and provide that the Consultant is an independent contractor serving at the will of the County. Other required provisions will include the County Board of Supervisors right to terminate the agreement, at its sole discretion, upon the provision of notice.

Attachment: RFQ Short Range Transit Plan 2020 (11144 : Authorize the Advertisement for Request for Qualifications to Develop a Short Range
Attachment: Short Range Transit Plan LTC Action and RFP (LTC-2021-7 : Authorize the Award for Professional Services to Develop the Short



Prepared for Mariposa County Transportation Commission

Short-Range Transit Plan 2021

Revised January 25, 2021
(Original: December 10, 2020)

Prepared by
Walker Consultants
601 California Street, Suite 820
San Francisco, CA 94108
415.644.0630
walkerconsultants.com

WALKER CONSULTANTS

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601 California Street, Suite 820
San Francisco, CA 94108
415.644.0630
walkerconsultants.com

Revised January 25, 2021
(Original: December 10, 2020)

Jeannie Morvay-Clayton
Transportation Planning
Mariposa County
4639 Ben Hur Road
Mariposa, CA 95338

Re: Proposal for Mariposa County Local Transportation Commission's Short-Range Transit Plan 2021

Dear Ms. Morvay-Clayton,

Walker Consultants (Walker) is pleased to submit the following proposal for development of a Short-Range Transit Plan (SRTP) for the Mariposa County Local Transportation Commissions' transit services Mari-Go and Mari-Trans. Walker is an employee-owned, multi-disciplinary consulting firm specializing in transportation policy, planning, management and operations of transit, mobility, and parking services for public and private clients. We have completed over 3,000 such projects since our incorporation in 1965.

For this project, we have assembled a team with extensive experience in transit policy, community engagement, data collection and analysis, transit operations planning, transit ridership modeling and financial analysis. Our team members have worked with transit agencies in Washington, Oregon and California on transit service planning, funding and fare structuring, scheduling, and implementation of operations. We have also analyzed the performance and feasibility of new service models for transit and dial-a-ride services in rural areas. We recently completed such a study in Fresno County, California, and are working on a similar study in Polk County, Oregon.

It is Walker's goal to provide a quality of service that will assure the goodwill and respect of our clients, enhance our professional reputation, and provide our services in a manner whereby our clients recognize that we are one of the best firms they have worked with. Our desire is to develop a product that conforms to your requirements and specific needs; anything less is unacceptable. This message is the directive for every Walker employee. The firm's high percentage (85%) of repeat clients is a testimony to Walker's ability to meet and exceed our client's requirements.

Below you'll find Walker's qualifications for this engagement. The undersigned can represent Walker in negotiations and sign price agreements. If you need additional information, or have questions on the information presented, please do not hesitate to contact our Project Manager, Manuel Soto.

Sincerely,

WALKER CONSULTANTS



Manuel Soto, AICP, CNU-A
Project Manager, Transit and Mobility Specialist
Address: 2101 Fourth Ave, Suite 1210, Seattle, WA 98121
Mobile: 425.241.4735
Fax: 888.502.5276
Email: MSoto@WalkerConsultants.com

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**Fee Schedule provided separately*

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C Executive Summary

Attachment: Mariposa SRTP_Walker Consultants Proposal Revision 3_012521 (LTC-2021-7 : Authorize the Award for Professional Services to

Executive Summary

We know that public transit service is under unprecedented operational stress due to increases in cost of operations, decreasing ridership trends, and most recently the impacts of the COVID-19 pandemic on both ridership, fare collection revenue and local funding. At the same time the transportation industry is experiencing major shifts and experimentation in how transit and mobility services can be provided. The cost of providing traditional transit service increases every year, while struggling to meet growing service needs, particularly in large counties and rural areas.

At Walker, we have been helping rural communities fill their transit mobility gaps through rigorous analysis of need and planning and implementation of effective transportation solutions. We recently completed an evaluation of Fresno County's Rural Transit Agency involving inter-city fixed-route services, intra-city flex-route services, and dial-a-ride rural transit services, and we are currently working with Clallam County in northwestern Washington State with a comprehensive transit service review and plan for the next five years. Clallam County shares similarities with Mariposa County in that it is asked to provide service to remote areas of the county including many tribal communities, and an increasing share of older adults.

In working through these projects and our previous transit and paratransit experience, we have developed a very good understanding of the performance and level of service capabilities of "contemporary dial-a-ride" services, also known as micro-transit services. Our consultants have partnered with them in the implementation of new services. We have learned that they are not different than "good old dial-a-ride" services, in that they hardly improve efficiency and effectiveness over a "well-run" dial-a-ride operation, however their potential lies in being able to provide much better information to the customer about service and making it much easier for the customer to requesting, modifying and cancelling trips. In other words, they offer significant improvements for the user to learn and interact with service, and potentially attracting many more new users or getting existing users to ride more frequently and with more confidence.

The Mariposa County Short-Range Transit Plan of 2011, developed by Linda Rhine and Valerie Taylor, both currently retired from Nelson\Nygaard Consulting, is a very good document, we read it and we consider it to be the standard for this project. Our proposed project manager Manuel A. Soto and transit service planner Greg Strangeways, both worked at Nelson\Nygaard and learned their philosophy and approach to development of SRTPs. Additionally, Manuel A. Soto and Chrissy Mancini Nichols – our proposed transit financial lead, worked in Mariposa in 2018, in the development of the Mariposa Transportation Center Feasibility Study – Phase II, in partnership with Opticos Design and Toole Design. We participated of public workshops, reviewed available transit service options, including public and private operators of large coaches, reviewed early versions of YARTS Short Range Transit Plan, and perhaps most importantly spent three days walking around Mariposa and surveying parking demand in the historic downtown area, the civic center area, museum area and YARTS park-and-ride lot.

Walker is proposing a straight-forward methodological approach that is comprised of five tasks and three major phases of development that include: research and discovery, development of service options and recommendations, validation and production of the SRTP document. During the first phase of research and discovery, we propose conducting an on-board survey with users of Mari-Go and Medi-Trans, interviews with drivers and dispatch staff, interviews with users, and a series of ~~three~~ two virtual public workshops ~~in Mariposa, Coulterville and the Yosemite Valley~~ to listen and learn from the community and frontline service staff. We are proposing to complete the study in a period of six months from kickoff.

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D Statement of Understanding

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Statement of Understanding

In reading the 2011 SRTP, there were a few key elements that caught our attention. At the time the service was not meeting the 10 percent farebox recovery ratio that is required by TDA funds, the county population aged 65 years plus (the main segment of users of the service) was less than 20 percent but expected to grow above 25 percent in the next 10 years (it was predicted to be 26.7% in the most recent American Community Survey 5-year estimate for 2018), the productivity indicator for the service was at around 1.6 passengers per hour, and there was a desire to implement a circulation service within the town of Mariposa and an inter-city connection with the City of Oakhurst, in Madera County.

Reviewing the latest TDA audit of Mariposa County transit services, it appears that farebox recovery is at around 36 percent and NTD Profiles for 2018 and 2019 show the service performing at over 4 passengers per service hour. A remarkable increase on both measures that is likely explained by a significant increase in passengers but also efficiency in the delivery of service. However, cost of service has continued to increase, and annual hours of service were initially reduced to lately recover to 2011 levels.

Based on this reading of latest reports and indicators, we get the impression that management of the system has been very successful in increasing efficiencies in the face of growing costs, while aided by a growth in demand and target market population. We can only interpret the other side of this picture to be a pent-up demand for the service to do more and go to more places, potentially pushing for implementation of the circulation service in Mariposa, inter-city trip to Oakhurst or restoration of service from Coulterville to Sonora, and perhaps more critically a desire to prepare the service for operations during wildfire evacuations, which are unfortunately becoming more common in this part of the state.

During our visits to Mariposa for the Transportation Center Feasibility study, we were able to understand general travel demand patterns in the area and through the town, and understand the function that YARTS play in moving workers and tourists along the Highway 140 corridor. To a great extent, Mari-Go and Medi-Trans services can rely on YARTS providing the critical regional connections between Merced and the Yosemite Valley, allowing the services to focus on the sub-regional travel needs and the needs of transit dependent populations.

This is perhaps the ongoing dilemma with Mariposa County transit services, being able to meet the needs of transit dependent populations – largely older adults, persons with disabilities and low income, the growing needs of others to travel north-south within the county and nearby destinations such as Sonora and Oakhurst. As we have learned in our work for the Fresno County Rural Transit Agency, providing service to rural areas and mountainous areas is expensive because demand is sparse, and riders travel long miles to destinations.

Our proposal to the Mariposa County Local Transportation Commission (MCLTC) is that we will collaborate with you and act as augmented staff, while bringing a fresh perspective to the problem. We will approach the project without an agenda or pre-conceived plan. We want to understand the community needs in the next 10 years and chart a sustainable and implementable transit plan that allows Mariposa County to continue growing service and fulfilling a critical mission in the community.

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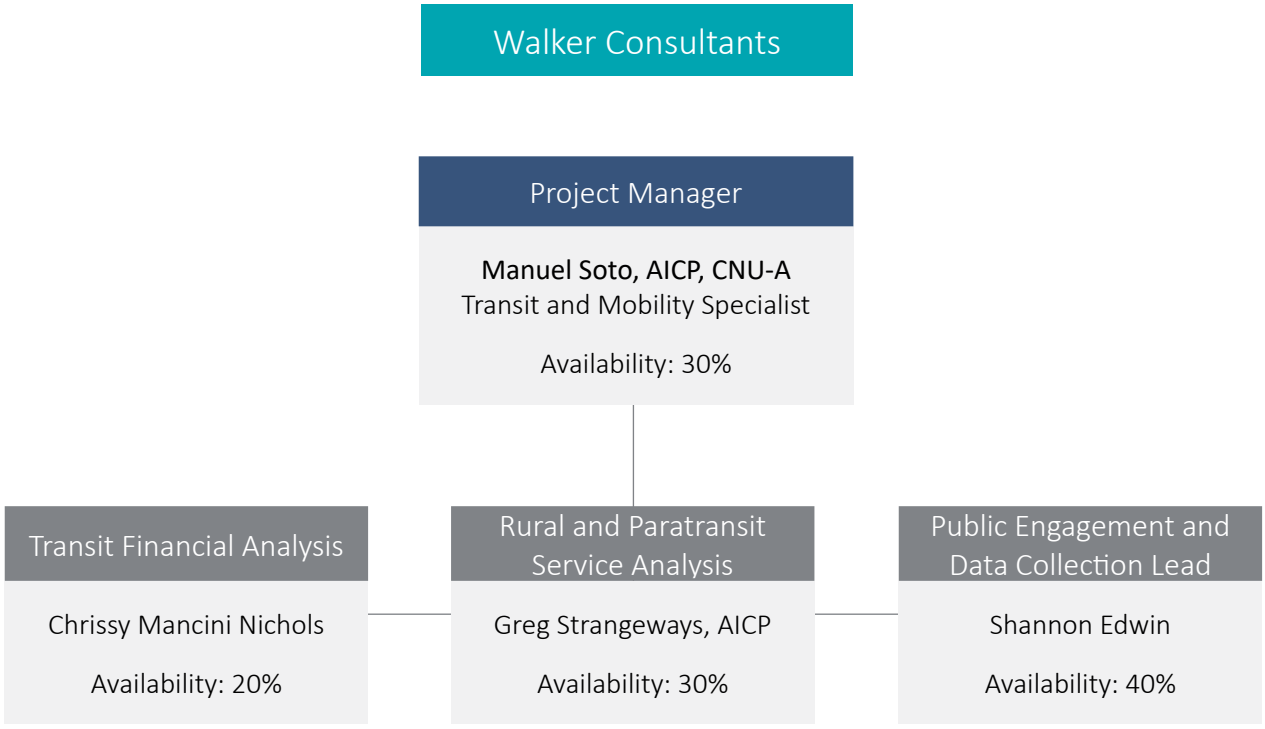
E Project Team and Qualifications

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Project Team Organization

The success of your project will depend upon a wide variety of factors. No factor is more important than the people that will work on the project. The team we have assembled for your project has been carefully selected to provide the specialized services that your project requires. Our team clearly understands your project needs and requirements.

Mariposa County



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Manuel Soto, AICP, CNU-A

Project Manager, Transit and Mobility Specialist



Manuel is a transit planner and mobility specialist with over 20 years of experience in design, planning and implementation of programs to increase multi-modal mobility and reduce the use of single-occupant vehicles. He has wide ranging expertise in transit service planning, TDM and shared mobility.

His transit planning expertise includes restructuring of bus service networks, implementation of BRT, commuter express, shuttle and first/last mile services, development of service operations plans, transit supportive policies, and demand forecasting. His TDM experience includes development of TDM programs for major employers, TDM plans for land use developments, implementation of strategies to reduce parking demand, social marketing campaigns to promote use of alternative modes and incentive programs to effect changes in travel behavior.

Some of Manuel's most notable projects (working for other firms) include planning and implementation of the Metro Rapid Bus program in Los Angeles, Microsoft Corporation's Connector Bus service in Seattle, and Fresno County Rural On-Demand Ridesharing Service implementation plan.

Education

M.A. Urban Planning, University of California, Los Angeles

Urban Economics Diploma, Universidad Católica de Chile, Santiago

Architecture Degree, Universidad Católica de Chile, Santiago

Certifications

AICP, American Institute of Certified Planners, 2014

CNU-A, Congress for the New Urbanism, 2015

Affiliations

American Planning Association (APA)

Congress for the New Urbanism (CNU)

Association of Pedestrian and Bicycle Professionals (APBP)

Association for Commuter Transportation (ACT)

International Parking & Mobility Institute (IPMI)

Urban Land Institute (ULI)

Project Highlights

Fresno County Rural Transit Agency, On-Demand Micro-Transit Service Feasibility and Implementation Plan
Fresno, CA
Market and feasibility analysis of rural transit service. Development of public-private partnerships between FCRTA, community organizations and mobility providers. Development of business plan, shared funding and revenue agreements. Strategic plan and implementation of service pilots.

California Pacific Medical Center, Shuttle Service and TDM Program
San Francisco, CA
Transit planning assistance to CPMC/Sutter Health Hospitals, reviewing shuttle service operations, and developing financial model for evaluation of costs and services. Analysis of Employee Commute and Patient/Visitor survey. TDM program assistance, and submission of TDM Compliance report to SFMTA.

Town of Mariposa, Transportation Center Feasibility Study
Mariposa, CA
Comprehensive analysis of on street parking, off-street public lots, and activity centers users and demand patterns. Development of matrix framework for implementation of parking management strategies in discreet steps, to make effectively use of existing parking capacity.

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Chrissy Mancini Nichols

Transit Financial Analysis

Chrissy joined Walker Consultants as an Urban Planner/Transportation Planner in our San Francisco office. Her portfolio includes an extensive background working with cities to plan and finance transit as well as leading research and analyses to develop local tax, budget, and economic development policy initiatives.

Chrissy specialized in identifying and modeling new revenue sources for transportation (traditional and non-traditional). For example, she created a new transit funding mechanism, worked with government partners, and drafted legislation to provide billions for a local match for Chicago to receive federal dollars to fund $10 billion in transit projects. She also worked with government partners to create new financing mechanisms for the $1 billion renovation of the Chicago Union Station.

She has also worked with national partners to make it easier for cities to access federal financing for transportation including modifying the U.S. Dept. of Transportation's underutilized Railroad Rehabilitation and Improvement Financing program as well as implementing performance measures for federal transportation spending that were included in the federal MAP-21 transportation reauthorization. She has worked on seveal state and local public-private partnerships for transportation including highways, parking assets, transit, and airports.

Education

Master of Science in Public Policy and Administration, Northwestern University

Bachelor of Science in Education, Youngstown State University

Committees

Chicago Transit Authority's Bus Transit Steering Committee

California Public Parking Association, Legislative Committee

Chicago Transit Authority's Bus Rapid Transit Steering Committee

Illinois Dept. of Transportation's North Lake Shore Drive Corridor Planning Committee

Illinois Toll Highway Authority's I-90 Finance Committee

Chicago Mayor Rahm Emanuel's Transportation and Infrastructure Transition team

Midway Airport Public Private Partnership Advisory Panel

World Business Chicago Infrastructure Strategy Team

Chicago's Metropolitan Planning Organization's technical advisory group analyzing the fiscal and economic impacts of development decisions

Awards

Professional Fellow, US Department State, Young Southeast Asian Leaders Initiative

Recipient of the Northwestern Graduate School Distinguished Thesis Award

Project Highlights

County of Mariposa
Mariposa, CA
Transit Feasibility Study

City of Sunnyvale
Sunnyvale, CA
Downtown Parking and Mobility Analysis

City of Healdsburg
Healdsburg, CA
Mobility and Parking Study

Jacksonville International Airport
Jacksonville, FL
TNC Operations Review and Analysis

City of San Mateo
San Mateo, CA
Mechanical and Automated Parking Code Analysis

City of San Diego
San Diego, CA
Code and Land Use Analysis for Transit Priority Areas

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Greg Strangeways, AICP

Rural and Paratransit Service Analysis

Greg's public and private sector experience in transportation allow him to create cost-effective multi-modal transportation solutions which make the best use of limited resources. Greg has managed large parking and transportation operations, directed Service Planning for one of the country's largest transit agencies, and consulted for numerous public and private transportation clients. He is experienced in helping municipalities and transit agencies collaborate more efficiently.

Prior to joining Walker, Greg had almost 30 years of transportation experience. This included managing all types of parking facilities for a large national operator, where Greg supervised staffs of up to 150 people, oversaw major restoration projects, and reduced payroll expense through appropriate use of technology. Greg then managed a large parking and transportation system for a group of colleges and hospitals in Boston. His next position was overseeing Service Planning for the MBTA in Boston, during which bus passengers per hour increased 23% with no increase in costs. Greg also has been a consultant with a national firm, advising clients on transportation issues, including emerging mobility options such as Uber and Lyft.

Key Experience

Parking Design

Parking Consulting

Master Planning

Education

Master's Degree in City Planning, Boston University

Bachelor's Degree in Biology, MIT

Affiliations

New England Parking Council

Urban Land Institute

American Planning Association

Project Highlights

Short-Range Transit Plan
Wilmington, NC
Created 5-year detailed plan for growing Cape Fear region. Included fixed-route service changes and use of emerging on-demand options for low-density areas.

Transit Service Planning
Boston, MA
Oversaw department in charge of deploying operating resources most effectively at the MBTA, the country's 5th largest transit system. Bus passengers per vehicle hour increased 23% without added cost, due to reallocation of service, including the extension of Route 225 to South Shore Hospital.

New Downtown Transit Hub
Providence, RI
Detailed analysis for reorienting bus service to connect with new transit center at Providence Station

Strategic Mobility Plan*
New Orleans, LA
Conducted market analysis for long-range multimodal transportation plan

**Indicates previous experience outside of Walker*

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Shannon Edwin

Public Engagement and Data Collection Lead



Key Experience

Transportation Demand Management (TDM)

City and Regional Planning

Community Redevelopment

Education

Master of City & Regional Planning

Master of Science & Engineering, with an empasis in Transportation Engineering,

California Polytechnic University, San Luis Obispo

Bachelor of Arts, Environmental Studies, University of California, Santa Barbara

Technical Skills

ESRI ArcGIS

Adobe Creative Suite

Affiliations

American Planning Association (APA)

Shannon is a member of the firm's Consulting Resources Group. Her responsibilities include researching, analyzing, and providing recommendations and guidance on parking and transportation-related issues for public sector, private sector, and institutional clients. Her work covers a variety of areas, including shared parking analysis, supply/demand analysis, parking operations, parking management, transportation planning, Transportation Demand Management (TDM), public outreach and traffic impact analysis.

She holds two master's degrees: in City and Regional Planning as well as Science and Engineering with an emphasis in Transportation Engineering from California Polytechnic University, San Luis Obispo (Cal Poly SLO). There, she focused on transportation and land-use planning with a special interest in complete streets planning. Shannon previously worked in transportation consulting for W-Trans, a transportation engineering and planning firm in the Bay Area. While there, she completed parking studies, Traffic Impact Studies (TIS), TDM Plans, Environmental Impact Reports (EIRs), General and Specific Plan updates, and map creation/analysis using ArcGIS software. Shannon was the lead parking analyst at W-Trans and continues to grow in her passion and knowledge for developing parking solutions at Walker.

Project Highlights

Fresno County Rural Transit
Fresno County, CA
Transit needs analysis for rural communities using GIS mapping

Alameda County
Alameda, CA
Parking Demand Study

City of Benicia
Benicia, CA
Downtown Parking Study

City of Sunnyvale
Sunnyvale, CA
Downtown Parking & Management Plan

City of Santa Barbara
Santa Barbara, CA
Parking and Business Improvement Area Assessment Methodology

LA County Internal Services Division
LA County, CA
System-wide parking operations analysis

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Scope of Work

We propose a simple work plan that is comprised of five tasks. Task 1. Data Collection and Review of Existing Conditions and Task 2. Public Outreach and Needs Assessment are the research and learning phase of the project. Task 3. Goals, Objectives and Performance Standards and Task 4. System Evaluation and Recommendations are the service planning and recommendations phase. Finally, Task 5. Draft and Final SRTP is the plan development phase.

Task 1. Data Collection and Review of Existing Conditions

The purpose of this task is to learn about the operations and demand of Mari-Go and Medi-Trans services, understand the operating environment and market conditions. Given the current status of the COVID-19 pandemic in California, we are planning to conduct all activities in this task remotely.

A. Kickoff Meeting: we will start the task and the project with a virtual Kickoff Meeting, where we will introduce the team, discuss project goals and timeline, establish project progress meeting schedules and other project management issues.

B. Review Service Operations: we will continue the kickoff meeting with discussions about service operations, operating environment and service riders.

C. Review Service Information: we will collect all information related to the service including existing service routes and schedules, number of dispatch and driver staff, process for booking rides and development of driver schedules, reporting and tracking of ridership and service requests, etc.

D. Review Service Vehicles: we will ~~collect~~ review information compiled by MCLTC on existing vehicles, maintenance schedules, replacement plans and other capital needs for continuation of service.

E. Review Service Cost and Ridership: we will collect and review all information regarding costs of operations, such as annual vehicle hours and miles, and ridership statistics per route, hour or trip. If available, we will review and map all passenger trips origins and destinations to understand common patterns and destinations of trips. We will use this information to evaluate the need for fixed-route services or any potential adjustments to the current service.

F. Review Fare Structure and Revenue: we will document fare structure information and collect fare revenue information and compare against service costs and ridership patterns to understand fairness, adequacy and recommend any adjustments.

G. Review Funding Sources: rounding the review of Mari-Go and Medi-Trans services, Walker will review all financial information, funding sources and mechanisms, and discuss with the Local Transportation Commission options to increase and/or diversify funding amounts and sources.

H. Other Transit Services: complementing the existing conditions task, Walker will ~~conduct a review of~~ summarize all other transportation providers and service options, including YARTS and its recent SRTP, local taxi services, local organizations transportation services, and others. The purpose of this ~~review~~ summary will be to understand ~~how~~ what options are available for Mari-Go and Medi-Trans ~~can~~ to coordinate and integrate with other services to amplify options for residents of the county.

I. Market Analysis: Walker will conduct a thorough review and assessment of market conditions. This will include a review of population and employment statistics and trends, population and employment concentrations, density, demographic characteristics of residents, socioeconomic indicators, household size and characteristics, general commute patterns, etc.

J. Identify Transit Dependent Populations: Lastly, we will select a few demographic and socioeconomic characteristics such as senior population, low income population, persons with disabilities to map and identify concentrations of transit dependent populations.

Attachment: Mariposa SRTP_Walker Consultants Proposal Revision 3_012521 (LTC-2021-7 : Authorize the Award for Professional Services to

Scope of Work

Task 2. Public Outreach and Needs Assessment

The purpose of this task is to listen and learn from internal and external stakeholders about their experience using and delivering service, and assess mobility needs in general and unmet needs in particular, that could be served by Mari-Go and Medi-Trans either through strategic growth or modifications of existing service.

~~If~~ Due to the current COVID-19 pandemic conditions in the next six months ~~are under control~~, we intend to conduct all outreach activities remotely through individual phone calls, video conference calls, online surveys and online collaboration tools ~~visit Mariposa.~~

We will meet virtually with the Local Transportation Commission staff, service drivers and dispatch, and the public. Our desired plan for this task is to conduct a series of online surveys, interviews and public workshops:

A. Passenger Surveys: we will prepare a survey questionnaire for both Mari-Go and Medi-Trans riders to obtain feedback about service. We will develop an online survey questionnaire (that is accessible through computer, tablet and phone) and provide the MCLTC with a recognizable URL address and QR code that can be used to communicate and distribute the survey through electronic, mobile phone and social media channels (e.g., email, text, posts). We will also develop a flyer or poster including the URL and QR code, that can be used to announce the survey on buses, community centers, medical clinics, etc. We will discuss the appropriate timeline and number of survey responses goal with the Local Transportation Commission. Ideally, we would like to collect at least 50 completed surveys from both services.

B. Driver and Staff Interviews: we will conduct interviews with drivers and dispatch staff to learn about their experience scheduling and delivering the service every day. They are in the frontline and know better than anyone the needs of the service and its riders. We will decide together with the MCLTC on the best format to conduct these.

C. Passenger Interviews: we will conduct up to five interviews with passengers. We will use the survey to recruit interviewees by offering the option to provide contact information and follow up. We will conduct these interviews by phone.

D. Stakeholder Interviews: we propose conducting another five phone interviews with outside stakeholders representing social and senior organizations to understand their perspective of service and mobility needs in the community. We will select the interviewees in collaboration with the Local Transportation Commission.

E. Public Workshops: we propose conducting ~~three~~ two virtual public workshop events ~~in Mariposa, Coulterville and the Yosemite Valley, to offer an option to anyone~~ open for everyone in the community to provide comment about transit services in general and Mari-Go and Medi-Trans in particular, to understand need and awareness of transit services. We are planning to conduct the workshops ~~in person or~~ online through Zoom or another platform as appropriate, given the project timeline and status of the COVID-19 pandemic, and following guidance from health authorities in Mariposa County and the State of California.

Task 3. Goals, Objectives and Performance Standards

The purpose of this task is to review existing goals, objectives, performance measures and standards of service, as set forth in the 2011 SRTP. In general, we estimate this is an important benchmarking check and review for the service. Our plan is to start this task with a peer review and use that research to revise goals, objectives, performance measures and service standards as appropriate, and considering local Mariposa County conditions and operating environment.

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Scope of Work

A. **Conduct Peer Review:** Walker will select and compare Mariposa County transit services against five other systems that share commonalities in terms of size of service area, population, density, and level of service. We will select the peer agencies in consultation with the Local Transportation Commission, but expect to select a different set of peers than those included in the 2011 SRTP.

B. **Review Goals and Objectives:** Walker will use the information collected through previous tasks and results of the peer review to revise the goals and objectives of service established on the 2011 SRTP. Goals, objectives and performance measures will be developed and provided in a matrix format that can be easily pulled out and use for reference.

C. **Review Performance Measures and Service Standards:** complementing the goals and objectives and considering changes in the community in the last 10 years, including new developments and population changes, Walker will revise performance measures and standards for the service to continue its growth and ensure its sustainability over the long term.

D. **Review Service Policies:** rounding this task, Walker will review and confirm the service policies of existing services and make any modifications as necessary.

Task 4. System Evaluation and Recommendations

The purpose of this task is to conduct an overall evaluation of the system, identify potential service alternatives and develop recommendations for service change, by collecting and integrating the knowledge obtained during the previous tasks.

A. **Overall System Evaluation:** we will start this task by summarizing the input obtained from Mari-Go and Medi-trans staff, and the findings of our research and analysis of existing data ~~and~~ to produce a comprehensive evaluation of the current system. The evaluation will include an assessment of level of service versus demand for service, identification of any underutilized capacity in the system, and identification of any opportunities to increase efficiency and effectiveness of service. Recommendations for change will consider the costs of providing service and establish priorities for implementation.

B. **Develop Service Alternatives:** complementing the evaluation of the current system and recommendations for change, Walker will identify alternative service delivery options and potential service route alternatives. We will work in consultation with the Local Transportation Commission to identify and narrow down the most viable options, and develop projections of ridership, cost and performance. An important consideration during this task will be the use and adaptation of new technologies in the operation of Mari-Go and Medi-Trans. The transit industry, both urban and rural systems, is going through change and enormous pressure from technology companies that offer a wide range of software solutions and benefits. Riders' demographics have also changed with the most recent members of the older adult population more likely to still drive and more adept at using mobile phone applications and technologies.

C. **Mobility Management:** as identified and recommended in the 2011 SRTP, the Local Transportation Commission has been working toward a mobility management operation that coordinates and integrates multiple transit services and offerings. This is also an aspect that has been facilitated by developments in technology and cloud-based software solutions. In particular, trip planning, scheduling, booking and payment across multiple services is much easier and seamless today than 10 years ago. Walker will work with the Local Transportation Commission to articulate what a Mobility Management solution may look like for Mariposa County in the next 10 years. This is an area of service that promises major benefits in terms

Attachment: Mariposa SRTP_Walker Consultants Proposal Revision 3_012521 (LTC-2021-7 : Authorize the Award for Professional Services to

Scope of Work

of being able to reach and onboard more users, as well as coordinate and integrate services across multiple providers, with the purpose of providing more information and travel options to the community.

D. Capital and Financial Plan: Walker will develop cost and revenue projections for the next five years (or the horizon of the SRTP). We will recommend capital expenditures in vehicles and transit operations and management hardware and software technology. We will also develop cost projections for the existing service and any new services or changes in delivery of service, and will develop farebox revenue and farebox recovery projections. In other words, Walker will produce a comprehensive financial plan for operations that includes capital expenditures and ongoing costs of operations, along with a complete picture of funding projections and identification of potential new funding sources.

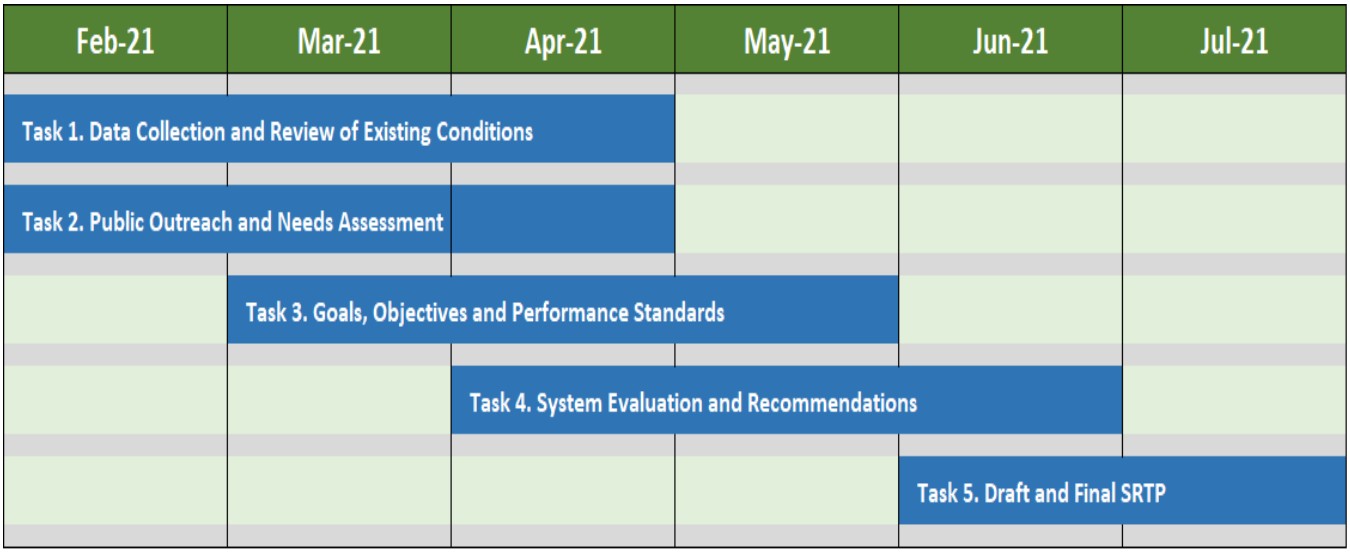
Task 5. Draft and Final SRTP

The purpose of this last task is to produce the final SRTP documents.

A. Draft SRTP Report: produce and deliver Draft SRTP document and present draft SRTP to the Local Transportation Commission Board of Directors.

B. Final SRTP Report: incorporate comments from board of director and general feedback, and prepare the final SRTP document.

Project Timeline



Attachment: Mariposa SRTP_Walker Consultants Proposal Revision 3_012521 (LTC-2021-7 : Authorize the Award for Professional Services to

Attachment: Mariposa SRTP_Walker Consultants Proposal Revision 3_012521 (LTC-2021-7 : Authorize the Award for Professional Services to

F Similar Project Examples and References

Similar Project Examples

Walker has successfully completed over one thousand parking analyses and management plans for municipalities and transit agencies throughout the US, and hope to do the same for the County of Mariposa. We highlight some of our most recent and relevant projects below.

Project	Location	PM Contact Info	Project Budget
Mariposa Transportation Center Feasibility Study	Mariposa, CA	Chrissy Mancini Nichols CMancini@walkerconsultants.com 773.330.1141	$43,000
Fresno County EV On-Demand Ridesharing Service Plan	Fresno, CA	Chrissy Mancini Nichols CMancini@walkerconsultants.com 773.330.1141	$160,000
Monmouth-Independence Transit Service Plan	City of Independence, OR	Manuel Soto MSoto@walkerconsultants.com 425.241.4735	$70,000
Ben Franklin Transit Comprehensive Analysis and Service Plan	Richland, WA	Manuel Soto MSoto@walkerconsultants.com 425.241.4735	$150,000

On the following pages, we provide more information for each listed project.

Attachment: Mariposa SRTP_Walker Consultants Proposal Revision 3_012521 (LTC-2021-7 : Authorize the Award for Professional Services to

Mariposa Transportation Center Feasibility Study

Mariposa, CA



Client Reference

Mikey Goralnik, Assistant Planner

Mariposa County, Community Design and Development Department

Phone: 209.742.1222

E-mail: mgoralnik@mariposacounty.org

Project Description

Walker partnered with Opticos Design, Inc. and Toole Design, to develop the second phase of the Mariposa Transportation Center Feasibility Study. Mariposa is a small town in the foothills of the Sierra Mountains, and one of the primary gateways to Yosemite National Park. Two state highways meet and cross through Mariposa's historic downtown, where most tourism related activities congregate, including hotels, restaurants and souvenir shops. As the seat for the County of Mariposa, the town is also its main service center, including the county courts, library, hospital, post office, etc.

Solutions Provided

The Transportation Center is a comprehensive multi-modal plan that includes design of a bus transportation center (public transit and tour buses), visitor center, and public plaza in the heart of town, and infrastructure improvements to provide safe and convenient pedestrian access, off-street parking, and trail connections with the rest of the town. Walker's role in the project was to analyze parking demand for the transportation center and parking issues in general. The main challenge was to understand whether existing parking capacity would be sufficient to absorb the transportation center site activity. Walker conducted a parking supply and demand analysis that included a comprehensive parking inventory of all streets and off-street public lots, hourly parking counts and vehicle turnover surveys, with the purpose of understanding users and demand variations on the three town activity centers – the historic downtown, the county office and civic center, and the town service and shopping center.

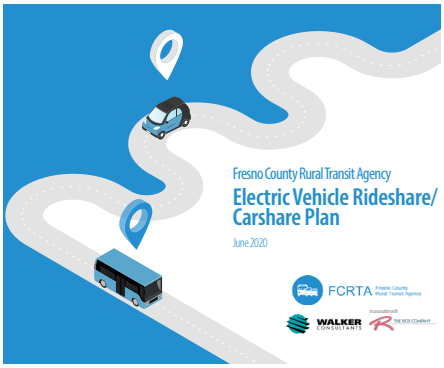
Benefits

As proposed, development of the transportation center will create and activate pedestrian connections between the three town activity centers, and allow for an extended walking shed across town, and greater access to destinations and parking resources on foot. Along with recommended improvements in ADA access, safety, and wayfinding, street design and walking infrastructure improvements will allow visitors and residents to use all parking capacity in the town, which currently is over demanded at specific blocks but generally underutilized. Walker developed parking management recommendations on a matrix framework that recommends implementation of parking management strategies incrementally, for short, medium and long term, and specific to issues in each town activity center.

Attachment: Mariposa SRTP_Walker Consultants Proposal Revision 3_012521 (LTC-2021-7 : Authorize the Award for Professional Services to

Fresno County Rural Transit Agency

Fresno, CA







Client Reference

Moses Stites
General Manager, Fresno COG
Phone: 559.233.6789
Email: mstites@fresnocog.org

Project Description

- Walker is working with the Fresno Rural Transit Agency to test how new technologies can be implemented to enhance and expand transit service in rural areas.
- Rural transit is under operational stress. The cost of providing traditional transit service in rural areas increases every year, while struggling to cover large service areas to meet rider needs.
- Social service organizations across Fresno County expressed the need for transportation services for their residents/clients to travel to jobs, medical appointments, training, the grocery store, and other quality-of-life destinations.
- Some areas of the County have no transit service and people face miles long walks in the sun and heat to get to the nearest bus stop. From there, riders must often make several bus connections to reach their final destination, making transit a long and unreliable travel option.

Solutions Provided

- Walker assembled an internal team with extensive experience in transit policy and strategy, electric vehicle policy, shared use mobility, transportation modeling, financial analysis, and transit technology.
- Team members have worked across the country and with California transit agencies on transit programming, policy, staffing plans, and financing to expand transit service.
- Walker created a business plan for implementation of an electric vehicle rural rideshare/carshare pilot to expand service and decrease costs.
- Walker also created a plan to expand and make more efficient the FCRTA's existing rural service.
- Fresno County has some of the worst air quality in the nation, the new service will use electric vehicles.

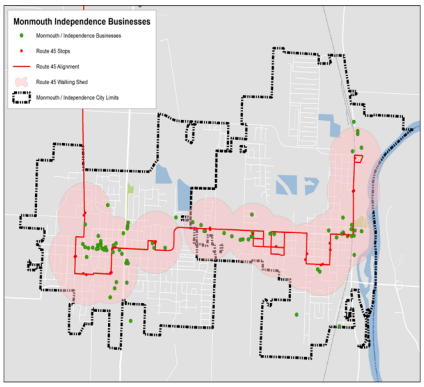
Benefits

- The new service will help small, disadvantaged communities across Fresno County fill their transit gaps cost effectively using electric vehicles.
- Walker used rigorous analysis of need and planning to create the business plan for the new service.
- Walker also identified traditional and innovative funding sources for implementation.

Attachment: Mariposa SRTP_Walker Consultants Proposal Revision 3_012521 (LTC-2021-7 : Authorize the Award for Professional Services to

Monmouth-Independence Transit Service Plan

City of Independence, OR



Client Reference

Shawn Irvine

Economic Development Director, City of Independence, OR

Phone: 503.837.1168

Email: irvine.shawn@ci.independence.or.us

Project Description

Walker was engaged by the City of Independence in Polk County, Oregon to assess the feasibility of starting a new transit service that connects the downtown areas of Monmouth and Independence with the campus of Western Oregon University, to promote economic development and increase mobility options in the community for youth and older adults. The two communities in partnership with WOU wanted Walker to conduct a broad and representative outreach effort and a thorough analysis of travel patterns and mobility needs, to identify opportunities and barriers for the operation of service, costs and funding needs, and recommend the planning steps to implement a successful service.

Solutions Provided

Walker conducted a community-wide survey to explore mobility needs, general travel patterns and attitudes and preferences regarding public transit service. Working in close collaboration with the City of Independence project manager and a Project Advisory Committee representing a broad range of stakeholders, Walker presented the group with potential service vehicles and routes, evaluated the potential of various service models and implementation scenarios, and developed costs and revenue projections to identify a preferred service model and operating plan. Our project approach was designed to develop a "roadmap" for implementation of a service pilot or proof of concept. Walker estimated that identifying an implementable plan for a service pilot would not only deliver on the goals of the project, but also allow the cities to start small, test and market the service, and adjust and grow incrementally with the community.

Walker identified a broad range of funding options, including local, state and federal sources, and complementary approaches such as utility taxes, property taxes and community partners to contribute funding or ridership revenue, and explored the feasibility of utilizing various vehicles to deliver the service including trolley-replica buses and electric vehicles.

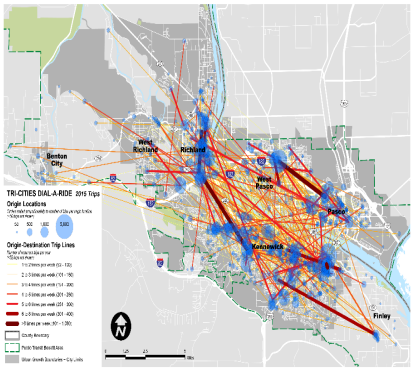
Benefits

The transit service implementation plan developed by Walker will increase mobility options for disadvantaged residents of the community who do not have access to a vehicle, but also provide a stronger connection between Western Oregon University in Monmouth and the rest of the community. The operation of a local transit service will enable WOU students to get to and from campus more easily, reduce parking conflicts in and around campus, and increase economic opportunities for students and the community.

Attachment: Mariposa SRTP_Walker Consultants Proposal Revision 3_012521 (LTC-2021-7 : Authorize the Award for Professional Services to

Ben Franklin Transit, Comprehensive Service Plan Study

Richland, WA



Client Reference

Gloria Boyce, General Manager

Ben Franklin Transit

Phone: (509) 734-5170

Email: gboyce@bft.org

Project Description

Ben Franklin Transit (BFT) is a unique system that operates service in an environment that mixes urban development areas with semi-urban and rural communities. In response to varying demand conditions that cannot always sustain fixed-route transit service, BFT has implemented a series of general public demand response systems and shared-ride taxi systems that offer point-to-point connections as well as last mile/transit feeder solutions. The CSP included a comprehensive analysis of travel patterns, usage and performance of complementary demand response and taxi systems.

The study included an extensive public outreach process in the 6 major urban centers that comprise the Ben Franklin Transit service area, which extends beyond the “Tri-Cities” urban area of Richland, Kennewick and Pasco, and includes several smaller communities of rural character in Benton County. The CSP study required development of route-by-route performance profiles, as well as a performance review of ADA paratransit operations.

Solutions Provided

Service change recommendations for the fixed-route system were developed in consideration of the impact and integration with all BFT services (ADA and general demand response and shared-taxi). Recommendations included not only a redesign of the fixed-route system, but also changes in service policy and fare structure to the larger system. A major theme in the redesign of the fixed-route system was eliminating transit centers and pulse locations that were slowing down service for everyone.

A major emphasis of the study was also to reallocate resources to increase frequency on major transit corridors and extend service hours in the evening. The resulting service plan was not only more efficient and effective in making transit connections between urban centers, and improving the directness of services, but also found enough service hours to restore service on Saturday that had been greatly reduced as part of massive service cuts in year 2010.

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G Additional Information

Attachment: Mariposa SRTP_Walker Consultants Proposal Revision 3_012521 (LTC-2021-7 : Authorize the Award for Professional Services to

Additional Information

Offices 23

Staff 325

States 50

Countries 20

Repeat Customers (%) 85

Established in 1965 as a structural engineering firm, Walker Consultants rapidly grew into a transportation, design, and consulting firm, and by 1980s led the industry as the most experienced parking and mobility consulting firm. Today, Walker Consultants is a global consulting firm with 23 domestic offices, including three in California. Our firm of approximately 325 professionals has experience working in all 50 states and in 20 foreign countries.

In addition to our extensive experience with parking and land-use policy, we have been consulting for hundreds of cities throughout the nation on policy and operational issues around transit and urban mobility, and have grown into a leader in the transportation planning field:

- We have worked with transit agencies to plan and finance transit systems through traditional and innovative finance mechanisms.
- We have worked with transit agencies and higher education institutions to evaluate and adjust their organizational structure and transit service operations plans.
- We have worked with clients to implement transit technology to manage operations, track vehicle location, book trips, process fare payments, and monitor performance.
- We have worked with communities to develop transit supportive policies to increase access to transit service, implement safe routes to transit, and reduce parking demand.
- We have worked on targeted stakeholder outreach strategies designed to gather input on a variety of transportation planning efforts.
- We have worked with public and private clients on Elective Vehicle (EV) charging policies and strategies.

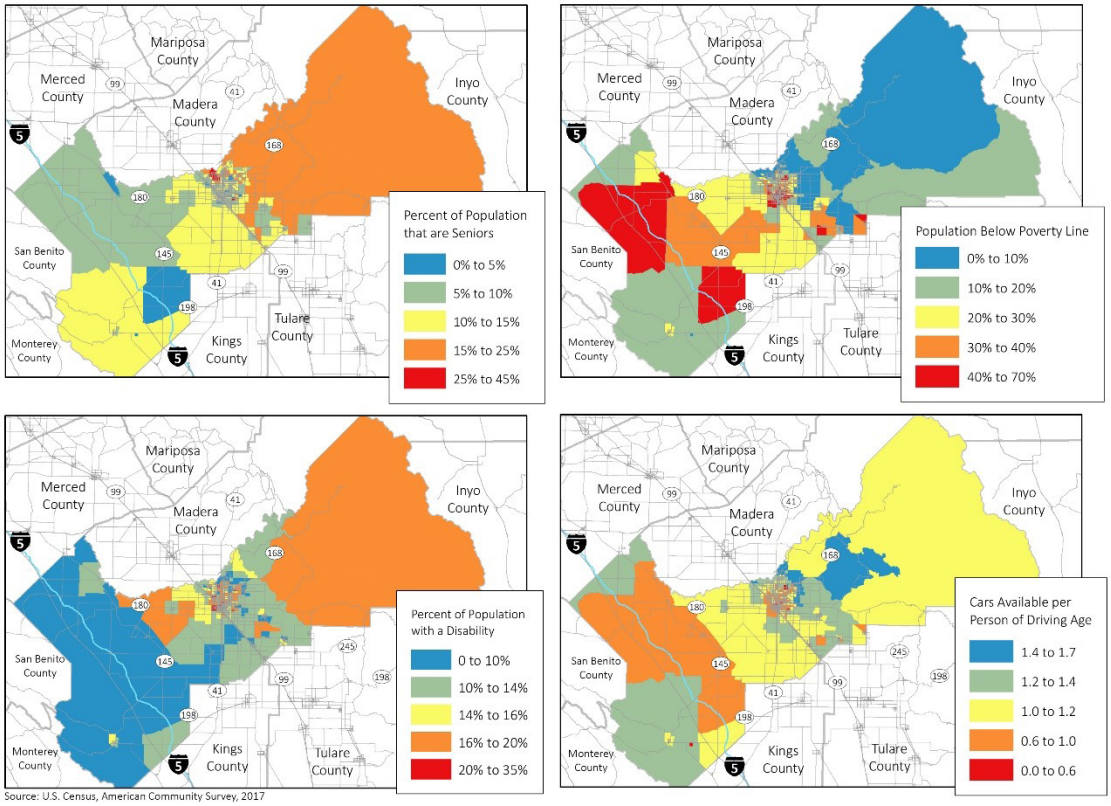
Walker is a leader in transit and mobility planning to develop more 'livable' communities. We integrate transit, biking, walking, and alternative mobility options in our work. Our mobility planning professionals design and implement programs that are cost-efficient and effective at "moving the needle," changing travel behavior, and increasing the use of alternative modes of transportation.

Our experts have worked as Directors of Transportation at planning organizations, airports, hospitals, and university campus settings, managing a portfolio of services that included transit policy and finance, parking management (pricing, operations, and revenue control), transit operations, promotion and subsidy of transportation alternatives, and marketing/education campaigns. Our consultants have helped clients plan and implement successful transit service programs, encompassing all bus transit service modes. We have developed Transit Service Plans, Transit Operations Plans and Performance Monitoring Programs for large metropolitan agencies, rural transit agencies, small towns, major employers, and Fortune 500 corporations. We have created funding and financing mechanisms to support billions in transit projects.

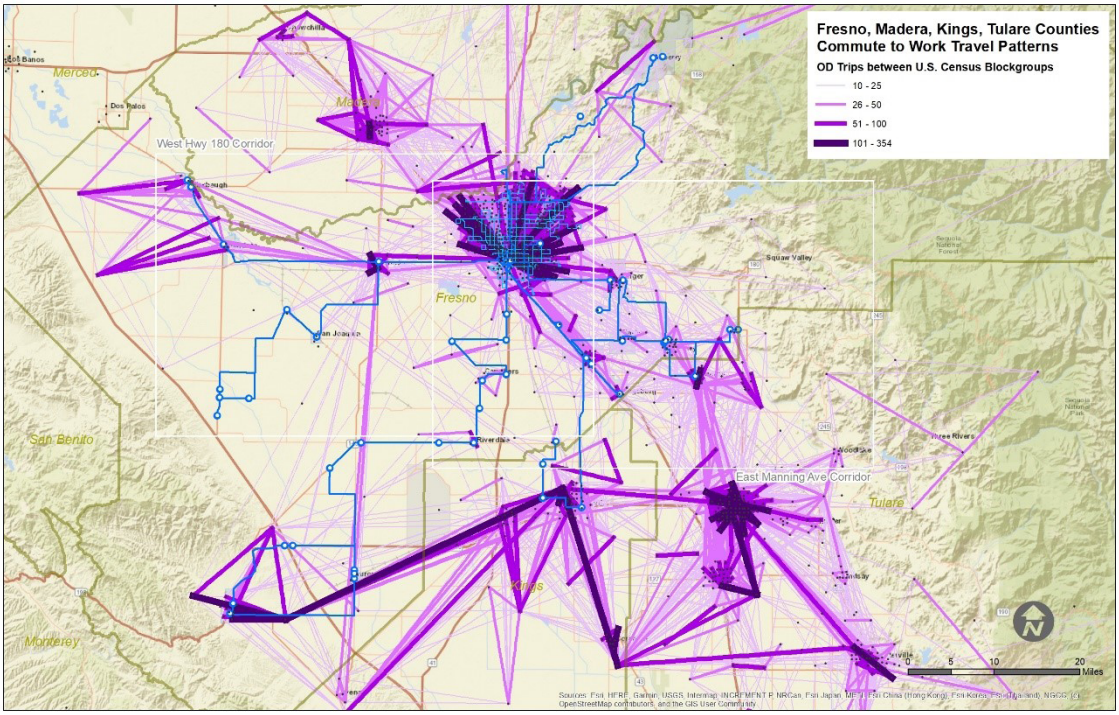
Walker has been a premier transportation consultant for over 50 years, and we will continue to focus on developing solutions that are realistic, implementable, and cost-effective by utilizing innovative technology and the creativity of our outstanding people. New mobility options and on-demand shared-ride solutions present a range of policy and design challenges for our cities and regions, and these will require developing thoughtful, creative, and fully integrated transportation solutions.

Attachment: Mariposa SRTP_Walker Consultants Proposal Revision 3_012521 (LTC-2021-7 : Authorize the Award for Professional Services to

Fresno County
Transit Demand Factors by Census Tract



Source: U.S. Census, American Community Survey, 2017



Attachment: Mariposa SRTP_Walker Consultants Proposal Revision 3_012521 (LTC-2021-7 : Authorize the Award for Professional Services to

Fee Schedule

Walker Consultants is proposing to conduct the SRTP contract for a lump sum fee of ~~$78,570~~ Fifty-Five Thousand dollars ($55,000). A breakdown of cost by task ~~and estimated expenses to support public outreach activities~~ is provided below. Travel expenses and direct expenses to support public outreach activities have been reduced to zero. Printing expenses or incentives to drive up community survey responses will be afforded by the client, if necessary.

Interviews and workshops will be conducted by Walker Consultants via phone or video conference and online collaboration tools.

Work Task	Subtotal Hours	Subtotal Cost
1. Data Collection and Review of Existing Conditions	64	$ 11,840
2. Public Outreach & Needs Assessment	87	$ 15,920
3. Goals, Objectives and Performance Standards	16	$ 3,520
4. Service Evaluation and Recommendations	76	$ 14,200
5. Draft and Final SRTP	56	$ 9,520
Subtotal Hours	299	
Subtotal Cost		$ 55,000

~~Expenses for 3 days on-site x 3 staff, to conduct interviews and workshops~~	Subtotal Cost
Lodging	$ -
Transportation (car rental, fuel, ferry, etc)	$ -
Per Diem (meals)	$ -
Supplies (data collection and engagement)	$ -
Printing (collateral and final report)	$ -
Subtotal Expenses	$ -

Total Project Cost	$ 55,000

Attachment: Mariposa SRTP_Walker Consultants Proposal Revision 3_012521 (LTC-2021-7 : Authorize the Award for Professional Services to

Attachment: Walker Consult 21-022 Short Range Transit Plan (LTC-2021-7 : Authorize the Award for Professional Services to Develop the Short

20-022

AGREEMENT FOR SHORT RANGE TRANSIT PLAN

THIS AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2021, by and between the County of Mariposa, a political subdivision of the State of California, ("County"), and Walker Consultants, ("Contractor"), pursuant to the following terms and conditions.

W I T N E S S E T H:

1. TERM

The term of this Agreement shall commence on February 9, 2021 and terminate on December 31, 2021unless extended as provided by this Agreement.

2. SERVICES

Contractor shall perform Short Range Transit Plan as described in Exhibit A, "Scope of Work," which is attached hereto and incorporated herein by reference. Contractor shall provide all staffing and materials necessary to perform the Scope of Work.

3. COMPENSATION

Contractor shall be compensated for services performed in an amount not to exceed $50,000. The Contractor's rates are listed in Exhibit B, "Cost Proposal." The County shall pay Contractor within thirty (30) days of receipt of an approved invoice.

4. INSURANCE

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

A. MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

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

shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

(2) Automobile Liability: ISO Form Number CA 00 01 covering any auto, (Code 1), or if Contractor has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than $1,000,000 per accident for bodily injury and property damage.

(3) Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease.

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

If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

B. OTHER INSURANCE PROVISIONS

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

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

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

(3) Notice of Cancellation: Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the County.

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

Attachment: Walker Consult 21-022 Short Range Transit Plan (LTC-2021-7 : Authorize the Award for Professional Services to Develop the Short

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

(6) Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the County.

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

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

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

5. HOLD HARMLESS/INDEMNIFICATION

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

6. INDEPENDENT CONTRACTOR

It is the expressed intention of the parties that Contractor is an independent contractor and not an employee, agent, joint venturer or partner of County. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between County and Contractor or any employee or agent of Contractor. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Agreement.

7. PUBLIC EMPLOYEES RETIREMENT SYSTEM (CALPERS)

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Public

Attachment: Walker Consult 21-022 Short Range Transit Plan (LTC-2021-7 : Authorize the Award for Professional Services to Develop the Short

Employees Retirement System (CalPERS) to be eligible for enrollment in CalPERS as an employee of the County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

8. STATE AND FEDERAL TAXES

As Contractor is not County's employee, Contractor is responsible for paying all required state and federal taxes. In particular:

a. County will not withhold FICA (Social Security) from Contractor's payments;
b. County will not make state or federal unemployment insurance contributions on behalf of Contractor;
c. County will not withhold state or federal income tax from payment to Contractor;
d. County will not make disability insurance contributions on behalf of Contractor;
e. County will not obtain workers' compensation insurance on behalf of Contractor.

9. ASSIGNMENT

It is understood and agreed that this Agreement contemplates personal performance by the Contractor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Contractor under this Agreement will be permitted only with the express written consent of the County.

10. NOTICE

Any and all notices, reports or other communications to be given to County or Contractor shall be given to the persons representing the respective parties at the following addresses:

CONTRACTOR:
Walker Consultants
601 California Street
San Francisco, CA 94108
415.644.0630

COUNTY:
Public Works
4639 Ben Hur Rd.
Mariposa, CA 95338
209.966.5356

11. COMPLIANCE

Contractor shall comply with all federal, state and local laws, codes, ordinance and regulations applicable to Contractor's performance under this Agreement, including, but not limited to, laws related to prevailing wages. Specifically, Contractor shall not engage in unlawful employment discrimination, including, but not limited to, discrimination based upon a person's race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship or sexual orientation, as prohibited by state or federal law.

Attachment: Walker Consult 21-022 Short Range Transit Plan (LTC-2021-7 : Authorize the Award for Professional Services to Develop the Short

12. PUBLIC RECORDS ACT

Contractor is aware that this Agreement and any documents provided to the County may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of the Contractor to clearly identify information in those documents that it considers to be confidential under the California Public Records Act. To the extent that the County agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

13. ENTIRE AGREEMENT AND MODIFICATION

This Agreement contains the entire agreement of the parties relating to the subject matter of this Agreement and supersedes all prior agreements and representations with respect to the subject matter hereof. This Agreement may only be modified by a written amendment hereto, executed by both parties; however, matters concerning the scope of services which do not affect the agreed price may be modified by mutual written consent of the Contractor and the Director of Public Works & Transportation. If there are exhibits attached hereto, and a conflict exists between the terms of this Agreement and any exhibit, the terms of this Agreement shall control.

14. ENFORCEABILITY AND SEVERABILITY

The invalidity or enforceability of any term or provisions of this Agreement shall not, unless otherwise specified, affect the validity or enforceability of any other term or provision, which shall remain in full force and effect.

15. TERMINATION AND RIGHTS UPON TERMINATION

A. This Agreement may be terminated upon mutual written consent of the parties, or as a remedy available at law or in equity. In the event of the termination of this Agreement, Contractor shall immediately be paid all fees earned as of the effective date of termination.

B. Either party may terminate this Agreement for convenience upon Thirty (30) calendar days' written notice to the other party. Upon termination for convenience, Contractor shall be entitled to compensation for services performed acceptably up to the effective date of termination, as set forth in Exhibit B.

C. Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County, at its option, may terminate this Agreement by giving written notification to Contractor. The termination date shall be the effective date of the notice. For the purposes of this subsection, default or material breach of this Agreement shall include, but not be limited to, any of the following: failure to perform required services in a timely manner, willful destruction of County property, dishonesty, or theft.

D. If County terminates this Agreement for default or material breach, then Contractor shall be liable for any reasonable costs in excess of the Agreement amount incurred by County in order to complete Exhibit A, "Scope of Work." In addition, Contractor understands and agrees that County may, in County's sole discretion, refuse to pay Contractor

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for that portion of Contractor's services which were performed by Contractor prior to the termination date and which remain unacceptable to County as of the termination date.

16. NO WAIVER

The failure to exercise any right to enforce any remedy contained in this Agreement shall not operate as to be construed to be a waiver or relinquishment of the exercise of such right or remedy, or of any other right or remedy herein contained.

17. DISPUTES

Should it become necessary for a party to this Agreement to bring an action in connection with this Agreement, the prevailing party in any claim or action shall be entitled to reimbursement for all expenses so incurred, including reasonable attorney's fees.

It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Mariposa, State of California.

18. CAPTIONS

The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

19. NUMBER AND GENDER

In this Agreement, the neutral gender includes the feminine and masculine, the singular includes the plural, and the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

20. MANDATORY AND PERMISSIVE

"Shall" is mandatory. "May" is permissive.

21. SUCCESSORS AND ASSIGNS

All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

22. COUNTERPARTS

This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

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23. OTHER DOCUMENTS

The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and, to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

24. CONTROLLING LAW

The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

25. AUTHORITY

Each party and each party's signatory warrant and represent that each has full authority and capacity to enter into this Agreement in accordance with all requirements of law. The parties also warrant that any signed amendment or modification to the agreement shall comply with all requirements of law, including capacity and authority to amend or modify the Agreement.

26. NEGOTIATED AGREEMENT

This Agreement has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this Agreement within the meaning of California Civil Code section 1654. Each party represents and warrants that in executing this Agreement it does so with full knowledge of the rights and duties it may have with respect to the other party. Each party also warrants and represents that it has received independent legal advice from its attorney with respect to the matters set forth in this Agreement and the rights and duties arising out of this Agreement, or that such party willingly foregoes any such consultation.

27. NO RELIANCE ON REPRESENTATIONS

Each party warrants and represents that it is not relying and has not relied upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this Agreement, have been independently verified. Each party further understands that it is responsible for verifying the representations of law or fact provided by the other party.

28. WARRANTY

County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby warrants that all work shall be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by County shall not operate as a waiver or release.

29. FUNDING AVAILABILITY

It is mutually agreed that if the County budget of the current fiscal year and/or any subsequent fiscal years covered under this Agreement does not appropriate sufficient funds for this

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Agreement, this Agreement shall terminate and be of no further force and effect upon the day notice is provided by County to Contractor of such event. Upon termination of this Agreement, the County shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement except for services rendered prior to such termination and Contractor shall not be obligated to perform any provisions of this Agreement. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement. County budget decisions are subject to the discretion of the Board of Supervisors.

If funding for any fiscal year is reduced or deleted by the County budget for purposes of this Agreement, the County shall have the option to either cancel this Agreement with no liability occurring to the County, except County must reimburse Contractor for services rendered prior to such reduction or modification of the County budget, or offer an Agreement amendment to Contractor to reflect the reduced amount.

Funding Source: 033-0251-577-0418

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

COUNTY OF MARIPOSA

Mike Healy, Executive Director
Local Transportation Commission

CONTRACTOR

2/12/202

Walker Consultants

ATTEST:

Rene LaRoche
Clerk of the Board

APPROVED AS TO FORM:

Steven W. Dahlem
County Counsel

Attachment: Walker Consult 21-022 Short Range Transit Plan (LTC-2021-7 : Authorize the Award for Professional Services to Develop the Short

EXHIBIT "A"

Scope of Work

We propose a simple work plan that is comprised of five tasks. Task 1. Data Collection and Review of Existing Conditions and Task 2. Public Outreach and Needs Assessment are the research and learning phase of the project. Task 3. Goals, Objectives and Performance Standards and Task 4. System Evaluation and Recommendations are the service planning and recommendations phase. Finally, Task 5. Draft and Final SRTP is the plan development phase.

Task 1. Data Collection and Review of Existing Conditions

The purpose of this task is to learn about the operations and demand of Mari-Go and Medi-Trans services, understand the operating environment and market conditions. Given the current status of the COVID-19 pandemic in California, we are planning to conduct all activities in this task remotely.

A. **Kickoff Meeting:** we will start the task and the project with a virtual Kickoff Meeting, where we will introduce the team, discuss project goals and timeline, establish project progress meeting schedules and other project management issues.

B. **Review Service Operations:** we will continue the kickoff meeting with discussions about service operations, operating environment and service riders.

C. **Review Service Information:** we will collect all information related to the service including existing service routes and schedules, number of dispatch and driver staff, process for booking rides and development of driver schedules, reporting and tracking of ridership and service requests, etc.

D. **Review Service Vehicles:** we will ~~collect~~ review information compiled by MCLTC on existing vehicles, maintenance schedules, replacement plans and other capital needs for continuation of service.

E. **Review Service Cost and Ridership:** we will collect and review all information regarding costs of operations, such as annual vehicle hours and miles, and ridership statistics per route, hour or trip. If available, we will review and map all passenger trips origins and destinations to understand common patterns and destinations of trips. We will use this information to evaluate the need for fixed-route services or any potential adjustments to the current service.

F. **Review Fare Structure and Revenue:** we will document fare structure information and collect fare revenue information and compare against service costs and ridership patterns to understand fairness, adequacy and recommend any adjustments.

G. **Review Funding Sources:** rounding the review of Mari-Go and Medi-Trans services, Walker will review all financial information, funding sources and mechanisms, and discuss with the Local Transportation Commission options to increase and/or diversify funding amounts and sources.

H. **Other Transit Services:** complementing the existing conditions task, Walker will ~~conduct a review of~~ summarize all other transportation providers and service options, including YARTS and its recent SRTP, local taxi services, local organizations transportation services, and others. The purpose of this ~~review~~ summary will be to understand ~~how~~ what options are available for Mari-Go and Medi-Trans ~~can~~ to coordinate and integrate with other services to amplify options for residents of the county.

I. **Market Analysis:** Walker will conduct a thorough review and assessment of market conditions. This will include a review of population and employment statistics and trends, population and employment concentrations, density, demographic characteristics of residents, socioeconomic indicators, household size and characteristics, general commute patterns, etc.

J. **Identify Transit Dependent Populations:** Lastly, we will select a few demographic and socioeconomic characteristics such as senior population, low income population, persons with disabilities to map and identify concentrations of transit dependent populations.

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Scope of Work

Task 2. Public Outreach and Needs Assessment

The purpose of this task is to listen and learn from internal and external stakeholders about their experience using and delivering service, and assess mobility needs in general and unmet needs in particular, that could be served by Mari-Go and Medi-Trans either through strategic growth or modifications of existing service.

~~If~~ Due to the current COVID-19 pandemic conditions in the next six months ~~are under control~~, we intend to conduct all outreach activities remotely through individual phone calls, video conference calls, online surveys and online stakeholder ~~visit Mariposa.~~

We will meet virtually with the Local Transportation Commission staff, service drivers and dispatch, and the public. Our desired plan for this task is to conduct a series of online surveys, interviews and public workshops:

A. **Passenger Surveys:** we will prepare a survey questionnaire for both Mari-Go and Medi-Trans riders to obtain feedback about service. We will develop an online survey questionnaire (that is accessible through computer, tablet and phone) and provide the MCLTC with a recognizable URL address and QR code that can be used to communicate and distribute the survey through electronic, mobile phone and social media channels (e.g., email, text, posts). We will also develop a flyer or poster including the URL and QR code, that can be used to announce the survey on buses, community centers, medical clinics, etc. We will discuss the appropriate timeline and number of survey responses goal with the Local Transportation Commission. Ideally, we would like to collect at least 50 completed surveys from both services.

B. **Driver and Staff Interviews:** we will conduct interviews with drivers and dispatch staff to learn about their experience scheduling and delivering the service every day. They are in the frontline and know better than anyone the needs of the service and its riders. We will decide together with the MCLTC on the best format to conduct these.

C. **Passenger Interviews:** we will conduct up to five interviews with passengers. We will use the survey to recruit interviewees by offering the option to provide contact information and follow up. We will conduct these interviews by phone.

D. **Stakeholder Interviews:** we propose conducting another five phone interviews with outside stakeholders representing social and senior organizations to understand their perspective of service and mobility needs in the community. We will select the interviewees in collaboration with the Local Transportation Commission.

E. **Public Workshops:** we propose conducting ~~three~~ two virtual public workshop events ~~in Mariposa, Coulterville and the Yosemite Valley, to offer an option to anyone~~ open for everyone in the community to provide comment about transit services in general and Mari-Go and Medi-Trans in particular, to understand need and awareness of transit services. We are planning to conduct the workshops ~~in person or~~ online through Zoom or another platform as appropriate, given the project timeline and status of the COVID-19 pandemic, and following guidance from health authorities in Mariposa County and the State of California.

Task 3. Goals, Objectives and Performance Standards

The purpose of this task is to review existing goals, objectives, performance measures and standards of service, as set forth in the 2011 SRTP. In general, we estimate this is an important benchmarking check and review for the service. Our plan is to start this task with a peer review and use that research to revise goals, objectives, performance measures and service standards as appropriate, and considering local Mariposa County conditions and operating environment.

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Scope of Work

A. **Conduct Peer Review:** Walker will select and compare Mariposa County transit services against five other systems that share commonalities in terms of size of service area, population, density, and level of service. We will select the peer agencies in consultation with the Local Transportation Commission, but expect to select a different set of peers than those included in the 2011 SRTP.

B. **Review Goals and Objectives:** Walker will use the information collected through previous tasks and results of the peer review to revise the goals and objectives of service established on the 2011 SRTP. Goals, objectives and performance measures will be developed and provided in a matrix format that can be easily pulled out and use for reference.

C. **Review Performance Measures and Service Standards:** complementing the goals and objectives and considering changes in the community in the last 10 years, including new developments and population changes, Walker will revise performance measures and standards for the service to continue its growth and ensure its sustainability over the long term.

D. **Review Service Policies:** rounding this task, Walker will review and confirm the service policies of existing services and make any modifications as necessary.

Task 4. System Evaluation and Recommendations

The purpose of this task is to conduct an overall evaluation of the system, identify potential service alternatives and develop recommendations for service change, by collecting and integrating the knowledge obtained during the previous tasks.

A. **Overall System Evaluation:** we will start this task by summarizing the input obtained from Mari-Go and Medi-trans staff, and the findings of our research and analysis of existing data ~~and~~ to produce a comprehensive evaluation of the current system. The evaluation will include an assessment of level of service versus demand for service, identification of any underutilized capacity in the system, and identification of any opportunities to increase efficiency and effectiveness of service. Recommendations for change will consider the costs of providing service and establish priorities for implementation.

B. **Develop Service Alternatives:** complementing the evaluation of the current system and recommendations for change, Walker will identify alternative service delivery options and potential service route alternatives. We will work in consultation with the Local Transportation Commission to identify and narrow down the most viable options, and develop projections of ridership, cost and performance. An important consideration during this task will be the use and adaptation of new technologies in the operation of Mari-Go and Medi-Trans. The transit industry, both urban and rural systems, is going through change and enormous pressure from technology companies that offer a wide range of software solutions and benefits. Riders' demographics have also changed with the most recent members of the older adult population more likely to still drive and more adept at using mobile phone applications and technologies.

C. **Mobility Management:** as identified and recommended in the 2011 SRTP, the Local Transportation Commission has been working toward a mobility management operation that coordinates and integrates multiple transit services and offerings. This is also an aspect that has been facilitated by developments in technology and cloud-based software solutions. In particular, trip planning, scheduling, booking and payment across multiple services is much easier and seamless today than 10 years ago. Walker will work with the Local Transportation Commission to articulate what a Mobility Management solution may look like for Mariposa County in the next 10 years. This is an area of service that promises major benefits in terms

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Scope of Work

of being able to reach and onboard more users, as well as coordinate and integrate services across multiple providers, with the purpose of providing more information and travel options to the community.

D. **Capital and Financial Plan:** Walker will develop cost and revenue projections for the next five years (or the horizon of the SRTP). We will recommend capital expenditures in vehicles and transit operations and management hardware and software technology. We will also develop cost projections for the existing service and any new services or changes in delivery of service, and will develop farebox revenue and farebox recovery projections. In other words, Walker will produce a comprehensive financial plan for operations that includes capital expenditures and ongoing costs of operations, along with a complete picture of funding projections and identification of potential new funding sources.

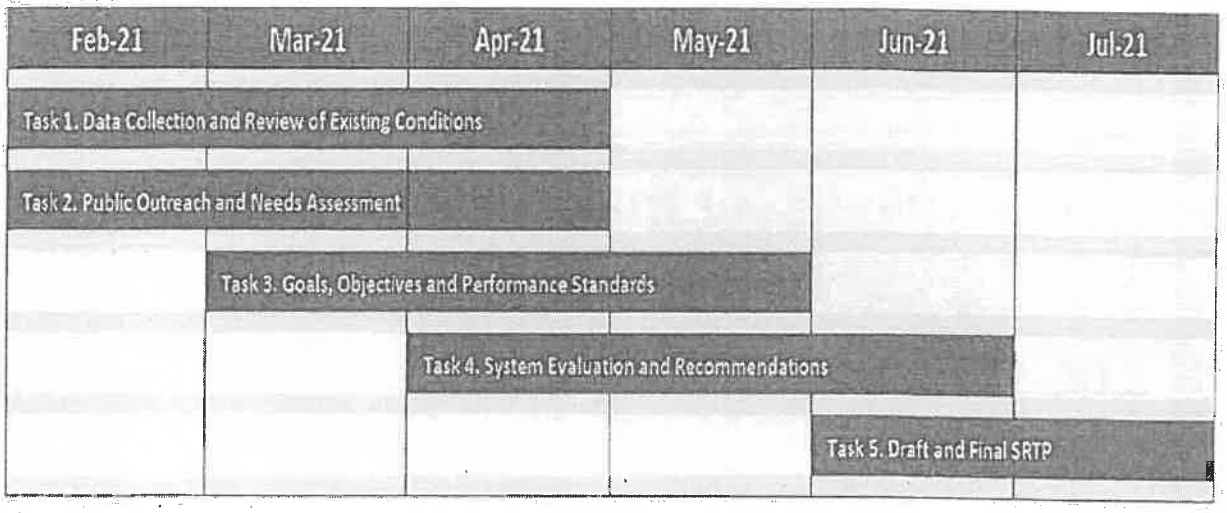
Task 5. Draft and Final SRTP

The purpose of this last task is to produce the final SRTP documents.

A. **Draft SRTP Report:** produce and deliver Draft SRTP document and present draft SRTP to the Local Transportation Commission Board of Directors.

B. **Final SRTP Report:** incorporate comments from board of director and general feedback, and prepare the final SRTP document.

Project Timeline



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EXHIBIT "B"

Fee Schedule

Walker Consultants is proposing to conduct the SRTP contract for a lump sum fee of ~~$78,570~~ Fifty-Five Thousand dollars ($55,000). A breakdown of cost by task ~~and estimated expenses to support public outreach activities~~ is provided below. ~~Travel expenses and~~ direct expenses to support public outreach activities have been reduced to zero. Printing expenses or incentives to drive up community survey responses will be afforded by the client, if necessary.

Interviews and workshops will be conducted by Walker Consultants via phone or video conference and online collaboration tools.

Work Task	Subtotal Hours	Subtotal Cost
1. Data Collection and Review of Existing Conditions	64	$ 11,840
2. Public Outreach & Needs Assessment	87	$ 15,920
3. Goals, Objectives and Performance Standards	16	$ 3,520
4. Service Evaluation and Recommendations	76	$ 14,200
5. Draft and Final SRTP	56	$ 9,520
Subtotal Hours	299	
Subtotal Cost		$ 55,000

~~Expenses for 3 days on-site x 3 staff, to conduct interviews and workshops~~	Subtotal Cost
Lodging	$ -
Transportation (car rental, fuel, ferry, etc)	$ -
Per Diem (meals)	$ -
Supplies (data collection and engagement)	$ -
Printing (collateral and final report)	$ -
Subtotal Expenses	$ -

Total Project Cost	$ 55,000

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 1/27/2021

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

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

PRODUCER
Professional Concepts Insurance Agency, Inc.
1127 South Old US Highway 23
Brighton MI 48114-9861

CONTACT NAME: certs@pciaonline.com
PHONE A/C, No, Ext: (800) 969-4041 FAX A/C, No: (800) 969-4081
E-MAIL ADDRESS: certs@pciaonline.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Travelers Indem. Co of America	25666
INSURER B: Travelers Indemnity Co. of CT	36170
INSURER C: Travelers Indemnity Co	25658
INSURER D: XL Specialty Ins. Co.	37885
INSURER E:	
INSURER F:	

INSURED
Walker Parking Consultants Engineers, Inc.
Walker Consultants
601 California Street, Suite 820
San Francisco CA 94108

COVERAGES CERTIFICATE NUMBER: 20-21 #33 REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE [X] OCCUR X Contractual Liability	X		6801J1254172047	05/23/2020	05/23/2021	EACH OCCURRENCE	$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 300,000
B	X X,C,U			6605N988754- FL			MED EXP (Any one person)	$ 5,000
	GEN'L AGGREGATE LIMIT APPLIES PER: POLICY [X] PRO-JECT [ ] LOC			6801J1669102047- CA			PERSONAL & ADV INJURY	$ 1,000,000
							GENERAL AGGREGATE	$ 2,000,000
	OTHER:						PRODUCTS - COMP/OP AGG	$ 2,000,000
								$
C	AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS	X		BA4887R56420GRP	05/23/2020	05/23/2021	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
C	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED X RETENTION $ 10,000			CUP1D3197442047	05/23/2020	05/23/2021	EACH OCCURRENCE	$ 1,000,000
							AGGREGATE	$ 1,000,000
								$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N [N] N/A If yes, describe under DESCRIPTION OF OPERATIONS below.			UB5K3205582047	05/23/2020	05/23/2021	X PER STATUTE OTH-ER	
							E.L. EACH ACCIDENT	$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000
D	Professional Liability			DPR9959266	05/23/2020	05/23/2021	Per Claim	2,000,000
							Aggregate	2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Re: Walker Project #33-002244.00, Mariposa County Short Range Transit Plan.
Mariposa County Transportation Planning is considered additional insured's with respects to general and auto liability coverages as long as required within a written contract. Waiver of subrogation in favor of certificate holder and additional insured's as long as required within a written contract. Coverage is primary and non-contributory as it applies to general liability, auto liability and umbrella. 30 day written notice provided to certificate holder and additional insured's for cancellation of coverages listed. 10 day notice for nonpayment of listed policies.

CERTIFICATE HOLDER
jdordan@mariposacounty.org
Mariposa County Transportation Planning
ATTN: Jean Dordan
4639 Ben Hur Rd.
Mariposa, CA 95338

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

AUTHORIZED REPRESENTATIVE
Mike Cosgrove/JP

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Insured: Walker Parking Consultants Engineers, Inc.
Policy No. 6801J1254172047, 6801J1669102047, 6605N988754
Policy Period: 5/23/2020-5/23/2021

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ARCHITECTS, ENGINEERS AND SURVEYORS COVERAGE XTEND ENDORSEMENT

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

GENERAL DESCRIPTION OF COVERAGE This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

A. Broadened Named Insured
B. Incidental Medical Malpractice
C. Reasonable Force Bodily Injury or Property Damage
D. Non-Owned Watercraft- Increased To Up To 75 feet
E. Aircraft Chartered With Crew
F. Damage To Premises Rented To You
G. Malicious Prosecution - Exception To Knowing Violation Of Rights Of Another Exclusion
H. Medical Payments - Increased Limit
I. Increased Supplementary Payments
J. Additional Insured - Owner, Manager Or Lessor Of Premises
K. Additional Insured - Lessor Of Leased Equipment
L. Additional Insured State Or Political Subdivisions - Permits Relating To Premises
M. Additional Insured State Or Political Subdivisions - Permits Relating To Operations
N. Who Is An Insured - Newly Acquired Or Formed Organizations
O. Knowledge And Notice Of Occurrence Or Offense
P. Unintentional Omission
Q. Waiver Of Transfer Of Rights Of Recovery Against Others To Us When Required By Written Contract
R. Amended Insured Contract Definition - Railroad Easement

PROVISIONS

A. BROADENED NAMED INSURED

1. The following is added to SECTION II - WHO IS AN INSURED:

   Any organization, other than a partnership or joint venture, over which you maintain ownership or majority interest on the effective date of the policy qualifies as a Named Insured. However, coverage for any such additional organization will cease as of the date during the policy period that you no longer maintain ownership of, or majority interest in, such organization.

B. INCIDENTAL MEDICAL MALPRACTICE

1. The following is added to the definition of "occurrence" in the DEFINITIONS Section:

   Unless you are in the business or occupation of providing professional health care services, "occurrence" also means an act or omission committed in providing or failing to provide first aid or "Good Samaritan services" to a person.

2. The following is added to the DEFINITIONS Section:

   "Good Samaritan services" means any emergency medical services for which no compensation is demanded or received.

3. The following is added to Paragraph 2.a.(1) of SECTION II - WHO IS AN INSURED:

   Unless you are in the business or occupation of providing professional health care services, Paragraphs (1)(a), (b), (c) and (d) above

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does not apply to any "bodily injury" arising out of any providing or failing to provide first aid or "Good Samaritan services" by any of your "employees", other than an employed doctor. Any such "employees" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

4. The following exclusion is added to Paragraph 2., Exclusions, of SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY in COVERAGES:

   Sale of Pharmaceuticals

   "Bodily injury" or "property damage" arising out of the willful violation of a penal statute or ordinance relating to the sale of pharmaceuticals committed by, or with the knowledge or consent of, the insured.

5. The following is added to Paragraph 5. of SECTION III - LIMITS OF INSURANCE:

   For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed in the providing or failing to provide first aid or "Good Samaritan services" to any one person will be considered one "occurrence".

6. The following is added to Paragraph 4.b., Excess Insurance, of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:

   This insurance is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to any of your "employees" for "bodily injury" that arises out of providing or failing to provide first aid or "Good Samaritan services" to any person to the extent not subject to Paragraph 2.a.(1) of Section II - Who Is An Insured.

C. REASONABLE FORCE - BODILY INJURY OR PROPERTY DAMAGE

   The following replaces Exclusion a., Expected Or Intended Injury, in Paragraph 2. of SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:

   a. Expected Or Intended Injury Or Damage

      "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect anypeffionorproperty.

D. NON-OWNED WATERCRAFT - INCREASED TO UP TO 75 FEET

1. The following replaces Paragraph (2) of Exclusion g., Aircraft, Auto Or Watercraft, in Paragraph 2. of SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:

   (2) A watercraft you do not own that is:

      (a) Less than 75 feet long; and

      (b) Not being used to carry any person or property for a charge;

2. The following is added to Paragraph 2. of SECTION II - WHO IS AN INSURED:

   Any person or organization that, with your express or implied consent, either uses or is responsible for the use of a watercraft that you do not own that is:

   (a) Less than 75 feet long; and

   (b) Not being used to carry any person or property for a charge;

3. The following is added to Paragraph 4.b., Excess Insurance, of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:

   This insurance is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the insured for "bodily injury" that arises out of the use of a watercraft that you do not own that is:

   (a) Less than 75 feet long; and

   (b) Not being used to carry any person or property for a charge.

E. AIRCRAFT CHARTERED WITH CREW

1. The following is added to Exclusion g., Aircraft, Auto Or Watercraft, in Paragraph 2. of SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY in COVERAGES:

   This exclusion does not apply to an aircraft that is:

   (a) Chartered with crew to any insured;

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(b) Not owned by any insured; and

(c) Not being used to carry any person or property for a charge.

2. The following is added to Paragraph 4.b., Excess Insurance, of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:

This insurance is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the insured for use of an aircraft that is:

(a) Chartered with crew to any insured;

(b) Not owned by any insured; and

(c) Not being used to carry any person or property for a charge.

F. DAMAGE TO PREMISES RENTED TO YOU

1. The following replaces the last paragraph of Paragraph 2., Exclusions, of SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY in COVERAGES:

Exclusions c. through n. do not apply to damage to premises while rented to you, or temporarily occupied by you with permission of the owner, caused by:

a. Fire;

b. Explosion;

c. Lightning;

d. Smoke resulting from such fire, explosion, or lightning; or

e. Water.

A separate limit of insurance applies to such damage to premises as described in Paragraph 6. of Section III - Limits Of Insurance. This insurance does not apply to damage to premises while rented to you, or temporarily occupied by you with permission of the owner, caused by:

a. Rupture, bursting, or operation of pressure relief devices;

b. Rupture or bursting due to expansion or swelling of the contents of any building or structure, caused by or resulting from water; or

c. Explosion of steam boilers, steam pipes, steam engines, or steam turbines.

2. The following replaces Paragraph 6. of SECTION III - LIMITS OF INSURANCE:

Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises while rented to you, or temporarily occupied by you with permission of the owner, caused by fire; explosion; lightning; smoke resulting from such fire, explosion, or lightning; or water. The Damage To Premises Rented To You Limit will apply to all damage proximately caused by the same "occurrence", whether such damage results from: fire; explosion; lightning; smoke resulting from such fire, explosion, or lightning; or water; or any combination of any of these.

The Damage To Premises Rented To You Limit will be the higher of:

a. $1,000,000; or

b. The amount shown on the Declarations of this Coverage Part for Damage To Premises Rented To You Limit.

3. The following replaces Paragraph a. of the definition of "insured contract" in the DEFINITIONS Section:

a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage to premises while rented to you, or temporarily occupied by you with permission of the owner, caused by:

(1) Fire;

(2) Explosion;

(3) Lightning;

(4) Smoke resulting from such fire, explosion, or lightning; or

(5) Water,

is not an "insured contract";

4. The following replaces Paragraph 4.b.(1)(b) of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:

(b) That is insurance for premises rented to you, or temporarily occupied by you with the permission of the owner;

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G. MALICIOUS PROSECUTION - EXCEPTION TO KNOWING VIOLATION OF RIGHTS OF ANOTHER EXCLUSION

The following is added to Exclusion a., Knowing Violation Of Rights Of Another, in Paragraph 2. of SECTION I - COVERAGES - COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY:

This exclusion does not apply to "personal injury" caused by malicious prosecution.

H. MEDICAL PAYMENTS - INCREASED LIMIT

The following replaces Paragraph 7. of SECTION III - LIMITS OF INSURANCE:

7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C. for all medical expenses because of "bodily injury" sustained by any one person, and will be the higher of:

(a) $10,000; or

(b) The amount shown on the Declarations of this Coverage Part for Medical Expense Limit.

I. INCREASED SUPPLEMENTARY PAYMENTS

1. The following replaces Paragraph 1.b. of SUPPLEMENTARY PAYMENTS COVERAGES A AND B of SECTION I - COVERAGES:

b. Up to $2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. The following replaces Paragraph 1.d. of SUPPLEMENTARY PAYMENTS COVERAGES A AND B of SECTION I - COVERAGES:

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to $500 a day because of time off from work.

J. ADDITIONAL INSURED - OWNER, MANAGER OR LESSOR OF PREMISES

The following is added to SECTION II - WHO IS AN INSURED:

Any person or organization that is a premises owner, manager or lessor and that you have agreed in a written contract to name as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" that:

a. Is "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" caused by an offense that is committed, after you have signed that contract; and

b. Arises out of the ownership, maintenance or use of that part of any premises leased to you under that written contract.

The insurance provided to such premises owner, manager or lessor is subject to the following provisions:

a. The limits of insurance provided to such premises owner, manager or lessor will be the limits which you agreed to provide in the written contract, or the limits shown on the Declarations of this Coverage Part, whichever are less.

b. The insurance provided to such premises owner, manager or lessor does not apply to:

(1) "Bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" caused by an offense that is committed, after you cease to be a tenant in that premises; or

(2) Structural alterations, new construction or demolition operations performed by or on behalf of such premises owner, manager or lessor.

c. The insurance provided to such premises owner, manager or lessor is excess over any valid and collectible other insurance available to such premises owner, manager or lessor, unless you have agreed in a written contract for this insurance to apply on a primary or contributory basis.

K. ADDITIONAL INSURED - LESSOR OF LEASED EQUIPMENT

The following is added to SECTION II - WHO IS AN INSURED:

Any person or organization that is an equipment lessor and that you have agreed in a written contract to name as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" that:

a. Is "bodily injury" or "property damage" caused by an "occurrence" that takes place,. or "personal injury" caused by an offense that is

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committed, after you have signed that written contract; and

b. Is caused, in whole or in part, by acts or omissions of you or any person or organization performing operations on your behalf, in the maintenance, operation or use of equipment leased to you by such equipment lessor.

The insurance provided to such equipment lessor is subject to the following provisions:

a. The limits of insurance provided to such equipment lessor will be the limits which you agreed to provide in the written contract, or the limits shown on the Declarations of this Coverage Part, whichever are less; and

b. The insurance provided to such equipment lessor does not apply:

(1) To any "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" caused by an offense that is committed, after the equipment lease expires; or

(2) If the equipment is leased with an operator.

c. The insurance provided to such equipment lessor is excess over any valid and collectible other insurance available to such equipment lessor, unless you have agreed in a written contract for this insurance to apply on a primary or contributory basis.

L. ADDITIONAL INSURED STATE OR POLITICAL SUBDIVISIONS PERMITS RELATING TO PREMISES

The following is added to Paragraph 2. of SECTION II - WHO IS AN INSURED:

Any state or political subdivision that has issued a permit in connection with premises owned or occupied by, or rented or loaned to, you, is an insured, but only with respect to "bodily injury", "property damage", "personal injury" or "advertising injury" arising out of the existence, ownership, use, maintenance, repair, construction, erection or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, elevators, street banners or decorations for which that state or political subdivision has issued such permit.

M. ADDITIONAL INSURED STATE OR POLITICAL SUBDIVISIONS PERMITS RELATING TO OPERATIONS

The following is added to Paragraph 2. of SECTION II - WHO IS AN INSURED:

Any state or political subdivision that has issued a permit with respect to operations performed by you or on your behalf is an insured, but only with respect to "bodily injury", "property damage", "personal injury" or "advertising injury" arising out of operations performed by you or on your behalf for which that state or political subdivision has issued such permit. However, no such state or political subdivision is an insured for:

(1) "Bodily injury", "property damage", "personal injury" or "advertising injury" arising out of operations performed for that state or political subdivision; or

(2) "Bodily injury" or "property damage" included within the "products - completed operations hazard".

N. WHO IS AN INSURED - NEWLY ACQUIRED OR FORMED ORGANIZATIONS

The following replaces Paragraph 4.a. of SECTION II - WHO IS AN INSURED:

a. Coverage under this provision is afforded only:

(1) Until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, if you do not report such organization in writing to us within 180 days after you acquire or form it; or

(2) Until the end of the policy period, when that date is later than 180 days after you acquire or form such organizations, if you report such organization in writing to us within 180 days after you acquire or form it.

O. KNOWLEDGE AND NOTICE OF OCCURRENCE OR OFFENSE

The following is added to Paragraph 2., Duties In The Event of Occurrence, Offense, Claim Or Suit, of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:

e. The following provisions apply to Paragraph a. above, but only for the purposes of the insurance provided under this Coverage Part to you or any insured listed in Paragraph 1. or 2. of Section II -Who Is An Insured:

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(1) Notice to us of such "occurrence" or of an offense must be given as soon as practicable only after the "occurrence" or offense is known to you (if you are an individual), any of your partners or members who is an individual (if you are a partnership or joint venture), any of your managers who is an individual (if you are a limited liability company), any of your trustees who is an individual (if you are a trust), any of your "executive officers" or directors (if you are an organization other than a partnership, joint venture, limited liability company or trust), or any "employee" (such as an insurance, loss control or risk manager or administrator) authorized by you to give notice of an "occurrence" or offense.

Knowledge by any other "employee" of an "occurrence" or offense does not imply that you also have such knowledge.

(2) If you are a partnership, joint venture, limited liability company or trust, and none of your partners, joint venture members, managers or trustees are individuals, notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known by:

(a) Any individual who is:

(i) A partner or member of any partnership or joint venture;

(ii) A manager of any limited liability company;

(iii) A trustee of any trust; or

(iv) An executive officer or director of any other organization;

that is your partner, joint venture member, manager or trustee; or

(b) Any "employee" authorized by such partnership, joint venture, limited liability company, trust or other organization to give notice of an "occurrence" or offense.

(3) Notice to us of such "occurrence" or offense will be deemed to be given as soon as practicable if it is given in good faith as soon as practicable to your workers' compensation, accident, or health insurer. This applies only if you subsequently give notice to us of the "occurrence" or offense as soon as practicable after any of the persons described in Paragraphs e. (1) or (2) above discovers that the "occurrence" or offense may result in sums to which the insurance provided under the Coverage Part may apply.

P. UNINTENTIONAL OMISSION

The following is added to Paragraph 6., Representations, of SECTION IV COMMERCIAL GENERAL LIABILITY CONDITIONS:

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

Q. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US WHEN REQUIRED BY WRITTEN CONTRACT

The following is added to Paragraph 8., Transfer of Rights of Recovery Against Others to Us, of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:

We waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of premises owned or occupied by or rented or loaned to you; ongoing operations performed by you or on your behalf, done under a written contract with that person or organization; "your work"; or "your products". We waive this right where you have agreed to do so as part of a written contract signed by you prior to loss.

R. AMENDED INSURED CONTRACT DEFINITION - RAILROAD EASEMENT

1. The following replaces Paragraph c. of the definition of "insured contract" in the DEFINITIONS Section:

c. Any easement or license agreement;

2. Paragraph f.(1) of the definition of "insured contract" in the DEFINITIONS Section is deleted.

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Walker Parking Consultants Engineers, Inc.
Policy#CUP1D3197442047
Policy Period: 5/23/2020-5/23/2021

UMBRELLA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY (UMBRELLA) INSURANCE

The following is added to Paragraph 11., OUR RIGHT TO RECOVER FROM OTHERS., of SECTION IV – CONDITIONS.:

If the insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

a. "Bodily injury" or "property damage" caused by an "occurrence" that takes place; or

b. "Personal injury" or "advertising injury" caused by an "offense" that is committed;

subsequent to the execution of the contract or agreement.

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Attachment: Walker Consult 21-022 Short Range Transit Plan (LTC-2021-7 : Authorize the Award for Professional Services to Develop the Short

Insured: Walker Parking Consultants Engineers, Inc.
Policy No. 6801JI254172047, 6801J1669102047, 6605N988754
Policy Period: 5/23/2020-5/23/2021

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. The following is added to SECTION II - WHO IS AN INSURED:

   Any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:

   a. Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and

   b. If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies, or in connection with premises owned by or rented to you.

   The person or organization does not qualify as an additional insured:

   c. With respect to the independent acts or omissions of such person or organization; or

   d. For "bodily injury", "property damage" or "personal injury" for which such person or organization has assumed liability in a contract or agreement.

   The insurance provided to such additional insured is limited as follows:

   e. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this Coverage Part.

   f. This insurance does not apply to the rendering of or failure to render any "professional services".

   g. In the event that the Limits of Insurance of the Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement does not increase the limits of insurance described in Section III - Limits Of Insurance.

   h. This insurance does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured applies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.

2. The following is added to Paragraph 4.a. of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:

   The insurance provided to the additional insured is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover. However, if you specifically agree in the "written contract requiring insurance" that this insurance provided to the additional insured under this Coverage Part must apply on a primary basis or a primary and non-contributory basis, this insurance is primary to other insurance available to the additional insured which covers that person or organizations as a named insured for such loss, and we will not share with the other insurance, provided that:

   (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and

   (2) The "personal injury" for which coverage is sought arises out of an offense committed;

   after you have signed that "written contract requiring insurance". But this insurance provided to the additional insured still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under any other insurance.

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3. The following is added to Paragraph 8., Transfer Of Rights Of Recovery Against others To Us, of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:

   We waive any right of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal injury" arising out of "your work" performed by you, or on your behalf, done under a "written contract requiring insurance" with that person or organization. We waive this right only where you have agreed to do so as part of the "written contract requiring insurance" with such person or organization signed by you before, and in effect when, the "bodily injury" or "property damage" occurs, or the "personal injury" offense is committed.

4. The following definition is added to the DEFINITIONS Section:

   "Written contract requiring insurance" means that part of any written contract under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

   a. After you have signed that written contract;
   b. While that part of the written contract is in effect; and
   c. Before the end of the policy period.

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Walker Parking Consultants Engineers, Inc.
Policy#CUP1D3197442047
Policy Period: 5/23/2020-5/23/2021

UMBRELLA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF WHO IS AN INSURED

This endorsement modifies insurance provided under the following:
COMMERCIAL EXCESS LIABILITY (UMBRELLA) INSURANCE

Paragraph 2.f. of SECTION II – WHO IS AN INSURED is deleted and replaced by the following:

f. Any other person or organization insured under any policy of the "underlying insurance" listed in the SCHEDULE OF UNDERLYING INSURANCE of the DECLARATIONS of this insurance. This insurance is subject to all the provisions and limitations upon coverage under such policy of "underlying insurance", and the limits of insurance afforded to such person or organization will be:

(i) The difference between the "underlying insurance" limits and the minimum limits of insurance which you agreed to provide; or

(ii) The limits of insurance of this policy

whichever is less.

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TRAVELERS
ONE TOWER SQUARE
HARTFORD CT 06183

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 00 03 13 (00) - 001

Policy: UB5K3205582047

WAIVER OF OUR RIGHT TORECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit any one not named in the Schedule.

SCHEDULE

DESIGNATED PERSON:

DESIGNATED ORGANIZATION:
ANY PERSON OR ORGANIZATION FOR WHICH THE INSURED HAS AGREED BY WRITTEN CONTRACT EXECUTED PRIOR TO LOSS TO FURNISH THIS WAIVER.

DATE OF ISSUE: 05-31-18 ST ASSIGN:

Attachment: Walker Consult 21-022 Short Range Transit Plan (LTC-2021-7 : Authorize the Award for Professional Services to Develop the Short

Walker Parking Consultants Engineers. Inc.
Policy#BA4887N56420GRP
Policy Period: 5/23/2020-5/23/2021

COMMERCIAL AUTO

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED – PRIMARY AND NON-CONTRIBUTORY WITH OTHER INSURANCE

This endorsement modifies insurance provided under the following:

- - ..... BUSINESS AUTO COVERAGE FORM - - -

PROVISIONS

1. The following is added to Paragraph A.1.c., Who Is An Insured, of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

   Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in SECTION II.

2. The following is added to Paragraph B.5., Other Insurance of SECTION IV – BUSINESS AUTO CONDITIONS:

   Regardless of the provisions of paragraph a. and paragraph d. of this part 5. Other Insurance, this insurance is primary to and non-contributory with applicable other insurance under which an additional insured person or organization is the first named insured when the written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, requires this insurance to be primary and non-contributory.

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COMMERCIAL AUTO

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS AUTO EXTENSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

GENERAL DESCRIPTION OF COVERAGE This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

A. BROAD FORM NAMED INSURED
B. BLANKET ADDITIONAL INSURED
C. EMPLOYEE HIRED AUTO
D. EMPLOYEES AS INSURED
E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS
F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS
G. WAIVER OF DEDUCTIBLE – GLASS
H. HIRED AUTO PHYSICAL DAMAGE LOSS OF USE INCREASED LIMIT
I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES INCREASED LIMIT
J. PERSONAL PROPERTY
K. AIRBAGS
L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS
M. BLANKET WAIVER OF SUBROGATION
N. UNINTENTIONAL ERRORS OR OMISSIONS

PROVISIONS

A. BROAD FORM NAMED INSURED

The following is added to Paragraph A.1., Who Is An Insured, of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

Any organization you newly acquire or form during the policy period over which you maintain 50% or more ownership interest and that is not separately insured for Business Auto Coverage. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

B. BLANKET ADDITIONAL INSURED

The following is added to Paragraph c. in A.1., Who Is An Insured, of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

C. EMPLOYEE HIRED AUTO

1. The following is added to Paragraph A.1., Who Is An Insured, of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

   An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. The following replaces Paragraph b. in B.5., Other Insurance, of SECTION IV – BUSINESS AUTO CONDITIONS:

   b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

      (1) Any covered "auto" you lease, hire, rent or borrow; and

      (2) Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your

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permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

D. EMPLOYEES AS INSURED

The following is added to Paragraph A.1., Who Is An Insured, of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

1. The following replaces Paragraph A.2.a.(2), of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

   (2) Up to $3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

2. The following replaces Paragraph A.2.a.(4), of SECTION II – COVERED AUTOS LIABILITY COVERAGE:

   (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to $500 a day because of time off from work.

F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS

The following replaces Subparagraph (5) in Paragraph B.7., Policy Period, Coverage Territory, of SECTION IV – BUSINESS AUTO CONDITIONS:

(5) Anywhere in the world, except any country or jurisdiction while any trade sanction, embargo, or similar regulation imposed by the United States of America applies to and prohibits the transaction of business with or within such country or jurisdiction, for Covered Autos Liability Coverage for any covered "auto" that you lease, hire, rent or borrow without a driver for a period of 30 days or less and that is not an "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.

(a) With respect to any claim made or "suit" brought outside the United States of America, the territories and possessions of the United States of America, Puerto Rico and Canada:

(i) You must arrange to defend the "insured" against, and investigate or settle any such claim or "suit" and keep us advised of all proceedings and actions.

(ii) Neither you nor any other involved "insured" will make any settlement without our consent.

(iii) We may, at our discretion, participate in defending the "insured" against, or in the settlement of, any claim or "suit".

(iv) We will reimburse the "insured" for sums that the "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, that the "insured" pays with our consent, but only up to the limit described in Paragraph C., Limits Of Insurance, of SECTION II – COVERED AUTOS LIABILITY COVERAGE.

(v) We will reimburse the "insured" for the reasonable expenses incurred with our consent for your investigation of such claims and your defense of the "insured" against any such "suit", but only up to and included within the limit described in Paragraph C., Limits Of Insurance, of SECTION II – COVERED AUTOS LIABILITY COVERAGE, and not in addition to such limit. Our duty to make such payments ends when we have used up the applicable limit of insurance in payments for damages, settlements or defense expenses.

(b) This insurance is excess over any valid and collectible other insurance available to the "insured" whether primary, excess, contingent or on any other basis.

(c) This insurance is not a substitute for required or compulsory insurance in any country outside the United States, its territories and possessions, Puerto Rico and Canada.

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Attachment: Walker Consult 21-022 Short Range Transit Plan (LTC-2021-7 : Authorize the Award for Professional Services to Develop the Short

You agree to maintain all required or compulsory insurance in any such country up to the minimum limits required by local law. Your failure to comply with compulsory insurance requirements will not invalidate the coverage afforded by this policy, but we will only be liable to the same extent we would have been liable had you complied with the compulsory insurance requirements.

(d) It is understood that we are not an admitted or authorized insurer outside the United States of America, its territories and possessions, Puerto Rico and Canada. We assume no responsibility for the furnishing of certificates of insurance, or for compliance in any way with the laws of other countries relating to insurance.

G. WAIVER OF DEDUCTIBLE GLASS

The following is added to Paragraph D., Deductible, of SECTION III – PHYSICAL DAMAGE COVERAGE:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

H. HIRED AUTO PHYSICAL DAMAGE– LOSS OF USE – INCREASED LIMIT

The following replaces the last sentence of Paragraph A.4.b., Loss Of Use Expenses, of SECTION III PHYSICAL DAMAGE COVERAGE:

However, the most we will pay for any expenses for loss of use is $65 per day, to a maximum of $750 for any one "accident".

I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT

The following replaces the first sentence in Paragraph A.4.a., Transportation Expenses, of SECTION III – PHYSICAL DAMAGE COVERAGE:

We will pay up to $50 per day to a maximum of $1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

J. PERSONAL PROPERTY

The following is added to Paragraph A.4., Coverage Extensions, of SECTION III – PHYSICAL DAMAGE COVERAGE:

Personal Property

We will pay up to $400 for "loss" to wearing apparel and other personal property which is:

(1) Owned by an "insured"; and

(2) In or on your covered "auto".

This coverage applies only in the event of a total theft of your covered "auto".

No deductibles apply to this Personal Property coverage.

K. AIRBAGS

The following is added to Paragraph B.3., Exclusions, of SECTION III– PHYSICAL DAMAGE COVERAGE:

Exclusion 3.a. does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs A.1.b. and A.1.c., but only:

a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;

b. The airbags are not covered under any warranty; and

c. The airbags were not intentionally inflated.

We will pay up to a maximum of $1,000 for any one "loss".

L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS

The following is added to Paragraph A.2.a., of SECTION IV BUSINESS AUTO CONDITIONS:

Your duty to give us or our authorized representative prompt notice of the "accident" or "loss" applies only when the "accident" or "loss" is known to:

(a) You (if you are an individual);

(b) A partner (if you are a partnership);

(c) A member (if you are a limited liability company);

(d) An executive officer, director or insurance manager (if you are a corporation or other organization); or

(e) Any "employee" authorized by you to give notice of the "accident" or "loss".

M. BLANKET WAIVER OF SUBROGATION

The following replaces Paragraph A.5., Transfer Of Rights Of Recovery Against Others To Us, of SECTION IV BUSINESS AUTO CONDITIONS:

5. Transfer Of Rights Of Recovery Against Others To Us

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract signed and executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by

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Attachment: Walker Consult 21-022 Short Range Transit Plan (LTC-2021-7 : Authorize the Award for Professional Services to Develop the Short

such contract. The waiver applies only to the person or organization designated in such contract.

N. UNINTENTIONAL ERRORS OR OMISSIONS

The following is added to Paragraph B.2., Concealment, Misrepresentation, Or Fraud, of SECTION IV BUSINESS AUTO CONDITIONS:

The unintentional omission of, or unintentional error in, any information given by you shall not prejudice your rights under this insurance. However this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

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Attachment: Walker Consult 21-022 Short Range Transit Plan (LTC-2021-7 : Authorize the Award for Professional Services to Develop the Short

MARIPOSA COUNTY

Public Works · 209 966 5356

MEETING: February 23, 2021

TO: The Board of Supervisors

FROM: Mike Healy, Public Works Director

RE: Authorize the Award of a Professional Services Agreement to NCE to Update the PMP

RECOMMENDED ACTION AND JUSTIFICATION:
Authorize the Public Works and Transportation Director to Award a Professional Services Agreement to NCE to Perform State Mandated Updates to the County Pavement Management Program for an Amount Not to Exceed $55,000.00; and Authorize the LTC Executive Director to Sign the Agreement.

In accordance with Local Transportation Commission action at their November 11, 2020 Meeting, staff advertised for Professional Consultant Services to complete this work. Staff received three responses to our solicitation, conducted a Proposal Evaluation Committee to review the Proposals and NCE was chosen as the most qualified respondent. Staff conducted cost negotiations with NCE and reached successful negotiated cost of $55,000.00 which is within the Project Budget.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
On November 11, 2020 the Commission directed staff to solicit proposals for this State mandated project work.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Do not perform this work and State Road Transportation Funding could be placed in jeopardy.

ATTACHMENTS:
LTC Pavement Management Action (PDF)
NCE_County of Mariposa Pavement Management Program Update 2021_Proposal (PDF)
NCE 21-021 Pavement Mgmnt (PDF)

RESULT: **ADOPTED AS AMENDED [UNANIMOUS]**
MOVER: Miles Menetrey, District V Supervisor
SECONDER: Wayne Forsythe, District IV Supervisor
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

MARIPOSA COUNTY

Public Works · 209 966 5356

MEETING: November 10, 2020

TO: The Board of Supervisors

FROM: Mike Healy, Public Works Director

RE: Authorize the Advertisement of Request for Qualifications to Prepare the 2021 Pavement Mgt. Update

---

RECOMMENDED ACTION AND JUSTIFICATION:
Authorize the Advertisement of Request for Qualifications to Perform the 2021 Update to the Pavement Management System.

The County of Mariposa, Local Transportation Commission is seeking to advertise for qualifications from interested firms to prepare the 2021 Pavement Management Program Update as scheduled in the Overall Work Program for fiscal year 2020-2021. The expected work shall (at a minimum) include: (1) Review of Prior Relevant Reports and Other Research; (2) Examination of the overall condition of the county road system; (3) Implementation of Multi-Year Road Rehabilitation/Maintenance Program; (4) Develop preventative maintenance plan according to available funding; (5) Provide Recommendation for selection of most Cost Effective Repairs.

This is a State mandated requirement and funded entirely by State Transportation Funding.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The Local Transportation Commission previously approved this work as part of the Local Transportation Commission Overall Work Plan.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Not approving this required work could place transportation funding in jeopardy.

ATTACHMENTS:
RFQ Pavement Management 2020 (PDF)

Attachment: LTC Pavement Management Action (LTC-2021-8 : Authorize the Award of a Professional Services Agreement to NCE to Update the

REQUEST FOR QUALIFICATIONS

MARIPOSA COUNTY LOCAL TRANSPORTATION COMMISSION'S PAVEMENT MANAGEMENT PROGRAM UPDATE 2021

Work Items to Include:

1. Review of Prior Relevant Reports and Other Research
2. Examination of the overall condition of the county road system
3. Implementation of Multi-Year Road Rehabilitation/Maintenance Program
4. Develop preventative maintenance plan according to available funding
5. Provide Recommendation for selection of most Cost Effective Repairs

DATE ISSUED:	**TBD**
PROPOSALS DUE:	**TBD**
SUBMIT TO:	Transportation Planning Mariposa County 4639 Ben Hur Road Mariposa, CA 95338
REFER QUESTIONS TO:	**Jeannie Morvay-Clayton, Transportation Planner**

Attachment: RFQ Pavement Management 2020 (11145 : Authorize the Advertisement of Request for Qualifications to Prepare the 2021
Attachment: LTC Pavement Management Action (LTC-2021-8 : Authorize the Award of a Professional Services Agreement to NCE to Update the

MARIPOSA COUNTY
REQUEST FOR QUALIFICATIONS
MCLTC'S PAVEMENT MANAGEMENT PROGRAM UPDATE

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Attachment: RFQ Pavement Management 2020 (11145 : Authorize the Advertisement of Request for Qualifications to Prepare the 2021
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MARIPOSA COUNTY
REQUEST FOR QUALIFICATIONS
MCLTC'S PAVEMENT MANAGEMENT PROGRAM UPDATE

SECTION I – GENERAL INFORMATION

I-1. Request for Qualifications

The County of Mariposa, Local Transportation Commission is requesting qualifications from interested firms to prepare the 2021 Pavement Management Program Update as scheduled in the Overall Work Program for fiscal year 2020-2021. The expected work shall (at a minimum) include: (1) Review of Prior Relevant Reports and Other Research; (2) Examination of the overall condition of the county road system; (3) Implementation of Multi-Year Road Rehabilitation/Maintenance Program; (4) Develop preventative maintenance plan according to available funding; (5) Provide Recommendation for selection of most Cost Effective Repairs

Qualifications will be due by **TBD.** To be considered, four (4) copies of the Qualifications plus (1) disc must be delivered to the Mariposa County Department of Public Works, 4639 Ben Hur Road, Mariposa, CA 95338. The County reserves the right to reject any or all Qualifications submitted.

During the evaluation process Mariposa County reserves the right, where it may serve the County's best interest, to request additional information or clarification from proposers, or to allow corrections of errors or omissions. At the discretion of Mariposa County, firms submitting proposals may be requested to make oral presentations as part of the evaluation process.

The County reserves the right to retain all Qualifications submitted and to use any idea(s) included in a proposal regardless of whether that qualification is selected.

It is anticipated the selection of the firm (based on merit alone) will be completed by **TBD**. Following the notification of the selected firm, their fixed fee schedule will be reviewed by the Transportation Planner in addition to a 3rd Party Review. Negotiation may result. Once pricing has been made acceptable to all parties the project will be awarded and the contract will be written. The County retains the right to reject any or all proposals, to waive any non-material irregularities or information in any proposal, and to accept or reject any items or combination of items. The proposals also become the property of Mariposa County.

Attachment: LTC Pavement Management Action (LTC-2021-8 : Authorize the Award of a Professional Services Agreement to NCE to Update the
Attachment: RFQ Pavement Management 2020 (11145 : Authorize the Advertisement of Request for Qualifications to Prepare the 2021

MARIPOSA COUNTY
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I-2. Tentative Project Milestones

Review of Draft Pavement Management Program Update
Recommend Board Adopt the 2021 Pavement Management Program Update

I-3. Official Contacts

Questions by phone or in writing regarding the scope of services or other RFQ related questions must be directed to:

Jeannie Morvay-Clayton
Transportation Planner
(209) 966-5356
E-mail: jclayton@mariposacounty.org

I-4. Qualifications Due Date

Four (4) print; plus one (1) disc copies of the Qualifications must be delivered to the Mariposa County Department of Public Works. 4639 Ben Hur Road, Mariposa, CA 95338 no later than **TBD at 2:00 P.M.** local time. Facsimile or electronically transmitted qualifications **will not** be accepted. Late qualifications will be kept by the County, but not considered for award. Qualifications must be sealed and clearly addressed and marked with the RFQ title.

Any qualification may be withdrawn at any time before the "Qualifications Due" date and time, by providing a written request for the withdrawal of the qualification to the Transportation Planner. A duly authorized representative of the firm shall execute the request. Withdrawal of a qualification will not prejudice the right of the qualifier to file a new qualification.

I-5. Addenda

The County may modify the RFQ at any time prior to the RFQ due date. It is recommended that proposers periodically check with the Department of Public Works at (209) 966-5356,via email to the Transportation Planner at jclayton@mariposacounty.org, and on the County Web Page for any posted addenda. Proposers who have submitted proposals prior to the due date will also be notified through their contact information provided with their proposal. Addenda will be numbered consecutively. Verbal modifications to the RFQ specifications shall not be binding upon the County.

I-6. Irregularities

The County reserves the right to waive any non-material irregularities or information in the RFQ or in any proposal.

I-7. Incurred Costs

The County is not liable for any costs incurred by a proposer in the preparation and/or presentation of a proposal.

Attachment: RFQ Pavement Management 2020 (11145 : Authorize the Advertisement of Request for Qualifications to Prepare the 2021
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MARIPOSA COUNTY
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I-8 Equal Opportunity Policy for Contractors

Mariposa County requires all proposers to comply with Federal, State and Local Law and Ordinance with regard to equal opportunity practices that all programs, services, employment opportunities, and volunteer positions and contracts are open to all persons without regard to race, religion, color, national origin, sex, age, marital status, handicap, or political affiliation.

Mariposa County does not require a business license.

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SECTION II – QUALIFICATION FORM AND CONTENT

II-1 Qualification Submittal

Qualifications shall be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to satisfy the requirements of the RFQ, and should be easily reproducible. Emphasis will be on completeness and clarity of content and cost effectiveness of the qualification.

All pages of the qualification must be numbered consecutively. The qualification shall not be excessive but instead should be concise. The qualification must be organized in accordance with the list of qualification contents.

II-2 Qualification Form and Content

Qualification should minimally include the following items in their qualifications.

A. All qualifications must include a cover letter addressed to County Engineer, 4639 Ben Hur Road, Mariposa, CA 95338 and signed by a duly constituted official legally authorized to bind the applicant to the proposal. The cover letter must include name, address, and telephone number of the proposer submitting the Proposal and the name, title, address, telephone number, FAX number and email address of the person, or persons to contact whom are authorized to represent the proposer and to whom correspondence should be directed.

B. Table of Contents

Include a clear identification of the item by section and by page number.

C. Executive Summary

The qualifier may use this section to introduce the qualification or to summarize the key provisions of the Qualifications.

D. Statement of Understanding

The qualifier shall include a detailed statement of understanding of the project.

E. Project Team and Qualifications

This portion should include the name of the person who will be responsible for the management and administration of the **Pavement Management Program Update** for the County with a resume of that person's experience and qualifications, the names and resumes of their assigned staff, relevant technical experience and the availability of staff for the services. After selection of a firm by the County, no substitution of key staff or sub-contractors may occur without the written approval of the County. Sub-consultants should be listed similarly.

Attachment: LTC Pavement Management Action (LTC-2021-8 : Authorize the Award of a Professional Services Agreement to NCE to Update the Attachment: RFQ Pavement Management 2020 (11145 : Authorize the Advertisement of Request for Qualifications to Prepare the 2021

1. A list of related, recent projects should be included with the name of the contact person and the telephone number for which the firm has recently or currently provided services under the scope of work.

2. Scope of Work: The firm shall describe the proposed work by task, including any tasks that had been performed by sub-contractors.

F. Similar Pavement Management Program Update Examples and References

The qualification should include a listing of public sector assignments that can support the proposer's abilities, to fulfill the services requested in this RFQ. At a minimum, the listing should include plan title, plan location, project manager's contact information and range of project budget, and any other information that could be useful during the evaluation process.

G. Additional Information

Any other information that the proposer feels applicable to the evaluation of the proposal or of their qualification for accomplishing the project should be included in this section. You may use this section to address those aspects of your services that distinguish your firm from other firms.

h. Fee Schedule

The Qualification's submittal should include a separate, sealed envelope containing the FIXED FEE for completion of the *Pavement Management Program Update*. The work items can be further detailed according to the firm's understanding of the necessary elements.

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MARIPOSA COUNTY
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MCLTC'S PAVEMENT MANAGEMENT PROGRAM UPDATE

SECTION III – BACKGROUND & SCOPE OF WORK

III-1. General Conditions

The County of Mariposa shall not be liable for any pre-contractual expenses incurred by the consultant, nor shall any firm include such expenses as part to the proposed cost. Pre-contractual expenses include any expense incurred by a qualification and negotiation of any terms with the County.

The County reserves the right to withdraw this RFQ at any time without prior notice and to reject any or all proposals submitted without indicating any reasons. Any award of contract for services shall be made to the firms best qualified and responsive in the opinion of the County.

Qualifications may, at the County's option, be rejected if they contain any alterations, additions, conditional or alternatives, are incomplete, or contain erasures or irregularities of any kind. The County reserves the right to reject any or all proposals. The County expressly reserves the right to postpone submittal opening for its convenience and to reject any or all submittals responding to this RFQ.

The selected firm(s) must agree to indemnify, hold harmless and defend the county, its officers, agents and assigns from any liability or loss resulting from suits, claims, or actions brought against the County which result directly or indirectly from the wrongful or negligent actions of the consultant in the performance of the contract.

The selected firms will be required to comply with all existing State and Federal labor laws including those applicable to equal opportunity employment provisions.

The County reserves the right to negotiate special requirements and proposed service levels using the selected proposal as a basis. Compensation for services will be negotiated with the selected firm.

All responses to this RFQ shall become the property of the County of Mariposa and will be retained or disposed of accordingly.

No amendments, additions or alternates shall be accepted after the submission date and time.

All documents, records, designs and specifications developed by the selected firm during the course of providing services for Mariposa County shall be the property of the County. Anything considered to be proprietary should be so designated by the firm.

Acceptance by the County of any qualification submitted pursuant to this RFQ shall not constitute an implied intent to enter into a contract for services.

The County reserves the right to issue a written notice to all participating firms of any change in the proposal submission schedule should the County determine, in its sole discretion, that such changes are necessary.

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MARIPOSA COUNTY
REQUEST FOR QUALIFICATIONS
MCLTC'S PAVEMENT MANAGEMENT PROGRAM UPDATE

III-3. Scope of Services

1. Conduct Public Workshops at each major county population center or online as appropriate.

2. Conduct on-board passenger interviews, driver interviews, and interviews with interested members of the community.

3. Development of a comprehensive Pavement Management Program Update to include:

- Review of Prior Relevant Reports and Other Research
- Examination of the overall condition of the county road system
- Implementation of Multi-Year Road Rehabilitation/Maintenance Program
- Develop preventative maintenance plan according to available funding
- Provide Recommendation for selection of most Cost Effective Repairs

4. Present the 2021 Pavement Management Program Update to the LTC Board

III-4. Selection Procedure

The County intends to retain the selected firm(s) evaluated to be the best qualified to perform the work for the County, cost and other factors considered. The County shall screen all applications and the top candidates may be selected for formal in-person interviews. Proposals will be screened by a minimum of three (3) senior County staff members. Staff will determine the individuals or firms selected for interview.

In review the proposals the County will carefully weigh the following:

- The firm's approach and overall professional abilities
- The overall expertise of the team assembled by the proposer to address the various professional disciplines described herein
- The firm's experience with similar contracts and projects
- The experience and qualifications of the proposed staff in providing similar services.
- The firm's demonstrated ability to deliver work on time and within budget
- The extent of involvement by key personnel
- The extent to which previous clients have found the firm's services acceptable
- Prior experience working in similar Public Sector Project Commissions.
- Communication skills.
- Other qualifications/criteria as deemed appropriate.

The county will require the individual or firm selected to maintain general liability, automobile, workers' compensations, and errors and omissions insurance. The selected firm or individual will also be required to maintain relevant business licensure. The contract will contain provisions requiring the selected firm to indemnify the County and provide that the Consultant is an independent contractor serving at the will of the County. Other required provisions will include the County Board of Supervisors right to terminate the agreement, at its sole discretion, upon the provision of notice.

Attachment: RFQ Pavement Management 2020 (11145 : Authorize the Advertisement of Request for Qualifications to Prepare the 2021
Attachment: LTC Pavement Management Action (LTC-2021-8 : Authorize the Award of a Professional Services Agreement to NCE to Update the



Mariposa County Transportation Planning

PROPOSAL TO PROVIDE

Local Transportation Commission's Pavement Management Program Update 2021

December 10, 2020



Submitted By:
Sacramento Office
8795 Folsom Blvd., Suite 250
Sacramento, CA 95826
Phone: 916.388.5655

Attachment: NCE_County of Mariposa Pavement Management Program Update 2021_Proposal (LTC-2021-8 : Authorize the Award of a Professional

Collaboration. Commitment. Confidence.℠

December 10, 2020

Mariposa County
Department of Public Works
4639 Ben Hur Road
Mariposa, CA 95338

A. Cover Letter –Pavement Management Program Update 2021

Dear Members of the Selection Committee:

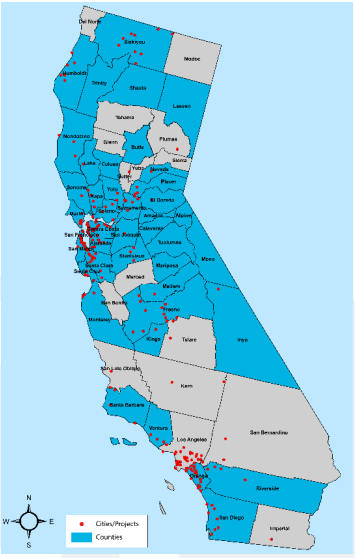
Pavement networks are often the most valuable asset that an agency owns. This asset is not only expensive to replace but is an essential component to the traveling public's safety. Agencies are looking for more cost-effective ways to perform engineering, maintenance, management, and rehabilitation of roadways more than ever before to stretch funding allocations. An essential tool to assist in cost-effective roadway maintenance planning is a current pavement management program (PMP).

Counties such as Mariposa continue to be challenged by the lack of funding for roads. NCE's recent 2018 Statewide Needs Assessment found that existing funding in rural California counties meet less than 20 percent of the annual needs. With the Road Maintenance and Rehabilitation Act (RMRA), Mariposa County is expected to receive at least an additional $1.7 million a year beginning in FY 20/21, but this is still insufficient.

NCE is a MTC certified consultant.

NCE has extensive experience in updating and maintaining PMP and working with counties and their members to maximize allocated funding. We are a nationally recognized pavement specialty firm, with broad capabilities and expertise in the areas of pavement management, asset management, civil and pavement design, and training. With more than 100 person-years of experience with the StreetSaver®, NCE has more knowledge and understanding than any other pavement consulting firm. Additionally, NCE is a Metropolitan Transportation Commission (MTC) certified consultant with widespread experience providing distress surveys for PMP implementation. For this contract, the NCE team offers the County:

- **Previous Mariposa County PMP Experience** – The implementation in 2008 and the 2014 update was successfully completed by NCE. NCE is further working with the County on the Downtown Revitalization Project, providing engineering design services on roadway, parking lot, and sanitary sewer design. Our proposed team provides the technical and management experience to deliver the 2021 PMP project on schedule and within budget.
- **County PMP experience** – NCE has implemented similar county PMP projects in the Counties of **Calaveras, Shasta, Mendocino, Lake, Humboldt, Amador, Fresno, Siskiyou, Stanislaus, Santa Cruz, and Sonoma.** We have worked for hundreds of California cities, such as Oakland, Sacramento, Berkeley, and San Francisco (see map).



Sacramento, CA
8795 Folsom Blvd., Suite 250
Sacramento, CA 95826
(916) 388-5655

www.ncenet.com

Engineering & Environmental Services

Attachment: NCE_County of Mariposa Pavement Management Program Update 2021_Proposal (LTC-2021-8 : Authorize the Award of a

- **Extensive working knowledge with StreetSaver®** – The NCE team has worked with StreetSaver® for more than 30 years. We have worked with more than 200 public agencies, throughout California, Nevada, Washington, Oregon and the nation, on similar projects.
- **Expertise in pavement engineering** – NCE has a number of pavement experts that specialize in asphalt and concrete materials evaluation, testing, and design. We will assist the County in developing practical and economical solutions for maintenance and rehabilitation (M&R) as part of the budget analyses.
- **Trained and certified inspectors** – NCE's engineers and field inspectors are certified by StreetSaver® to ensure accurate, reliable, and consistent field data. We have performed pavement distress surveys on over 100,000 centerline miles of roads in California alone.
- **Innovative pavement strategies** – NCE is on the forefront of new pavement design methods, as well as mix designs and specifications that include warm mixes, recycling, use of rubber tires, and long-life pavements.
- **Real-life knowledge** – NCE understands local agencies' needs and the types of problems frequently encountered, such as lack of trained personnel or funds, budgetary concerns, and other institutional issues inherent in the use of PMP. NCE understands the constraints and has assisted agencies in arriving at realistic solutions.
- **Rigorous quality control** – NCE's projects include a QC manager, who reports directly to the project manager and provides a thorough review of documents prepared for deliverables. Additionally, NCE's technicians undergo a mandatory internal training/calibration once a year for field condition surveys, as well as for other PMP-related activities.

Our team has worked together on many projects and will provide the County with the technical and management experience to address the data collection, work plan, analysis, and reporting required. We have developed an excellent reputation for dedication, integrity, productivity, quality of work, and service to our clients. Additionally, NCE has teamed with **märker geospatial, LLC** to perform semi-automated surveys as an option. Our team has worked together on many projects (most recently at Madera County) and will provide Mariposa County with the technical and management experience to address the data collection, inventory modification, and GIS reporting.

Contract Manager and Proposal Contact

Ms. Margot Yapp, PE is authorized to negotiate and contractually bind NCE to the County's agreement and will be the primary point of contact for clarifications during the proposal evaluation period. Additionally, NCE's proposed Project Manager, Mei-Hui Lee, PhD, PE, will be the single point of contact for questions that may arise. Their contact information is as follows:

Ms. Margot Yapp, PE
Phone: (510) 215-3620
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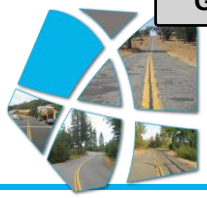
Sincerely,

NCE

Margot Yapp, PE
Principal-in-Charge

Mei-Hui Lee, PhD, PE
Project Manager

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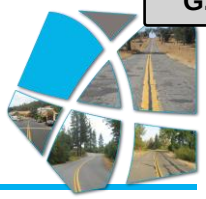
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Appendix A Example QC Plan
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C. Executive Summary

Experience and Technical Competence

NCE has completed over 200 similar projects in the last few years across California, including PMP updates for Mariposa County in 2008 and 2014. Our experienced technicians are familiar with County's pavement network and will be able to deliver the work efficiently. We also work with agencies in developing strategies for more cost-effective treatments that can save considerable costs for budgetary analysis and planning as well as assisting in developing workplans for County's paving funding.

Proposed Method to Accomplish Work

NCE has prepared a detailed scope of work to achieve the above goals for the County (see section E for scope of work). Briefly, this consists of a kickoff meeting with the County that will review key issues to assure both the County and NCE have a complete understanding of the tasks to accomplish. Optional tasks will also be discussed at the kickoff meeting.

Next, NCE will perform pavement condition surveys on approximately 365 centerline miles roads in 2021. Rigorous QC will be part of the field inspections (a QC plan will be submitted to the County prior to any field work). All inspection data will then be uploaded into County's database. Pavement condition index (PCI) will be calculated and submitted to the County.

NCE will then review M&R strategies with County staff to select appropriate treatments and update treatments and unit costs in the decision tree. NCE's experience in pavement engineering and design, as well as local conditions, allows our staff to be able to provide the County with solutions that are innovative, sustainable, practical, and workable. NCE will next perform pavement needs and budgetary scenarios analysis under different funding assumptions. This will be summarized in a report so that elected officials can make an educated decision as to future funding needs. With the pavement strategies and historical M&R records updated, NCE will work with County staff to develop a prioritized project lists with recommended treatments for existing paving funding.

The NCE Team Brings Value to the County:

- Familiarity with the County's PMP and road network;
- Nationally known expertise in pavement management systems and extensive countywide implementations in California;
- StreetSaver® certified technicians and engineers for distress data collection;
- Over 30 years of experience with pavement management systems;
- Extensive knowledge in pavement technology including sustainable and innovative methods of rehabilitation;
- Thorough understanding of the regulatory and funding climate for cities and counties, and the limitations that are imposed; and
- Training expertise from conducting workshops to more than 500 agency staff in California.

Ultimately, the PMP should provide County staff with two key pieces of information:

1. **A multi-year work plan, which will show the Board of Supervisors and the public the most cost-effective manner of spending new revenues; and**
2. **A long-term funding analysis to determine future needs that will help guide the Board of Supervisor in making informed policy decisions.**

Finally, NCE will prepare a presentation to the Board of Supervisors meeting. This will include a discussion with County staff to review items such as the goal of the presentation, the level of knowledge and backgrounds of the audience, the number of stakeholders involved and other potential issues.

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Firm Qualifications

NCE is a client-focused professional consulting firm integrating the disciplines of engineering, science, and planning to address the infrastructure and resource challenges facing our communities today and in the future. Unique from other civil engineering firms, we have specialized in pavement technology, including pavement management, evaluation, design, and research since our founding in 1990.

We have performed pavement condition surveys ranging from state highways in 12 states to local street networks in over 200 cities and counties in Idaho, Oregon, Washington and California. We have surveyed over 100,000 miles of pavements. Additionally, our field data collection ranges from walking surveys to using specialized automated equipment to collect data such as pavement distresses, roughness, structural strength (deflection testing) to asset data (signs, signals, curb ramps, marking, sidewalks, etc.) Finally, our services include pavement testing and design and the research, evaluation and design of sustainable and innovative pavement technologies.

NCE's goal is to deliver a practical and cost-effective product for developing work plans as well as a means to advocate for additional funds. NCE will also train County staff in all aspects of the pavement management system so that future updates may be conducted in-house and independently of any consultants if desired.

Our Sacramento, CA office will be responsible for the work and delivery of this project. Additionally, NCE has over 100 employees available on an as-needed basis from our Richmond, Oakland, Sacramento, and Fountain Valley, California offices, as well as from our Reno, and Lake Tahoe, Nevada offices. Additionally, NCE's civil engineers and technicians have extensive experience in collecting pavement distress data, analysis, and design, as well as developing plans, specifications, and construction cost estimates, and providing construction management for infrastructure projects. It is the fundamental goal of NCE to produce high-quality work products, while maintaining a reputation for timely service.

NCE's innovative thinking goes beyond accurate technical solutions and builds client confidence through the delivery of successful projects. NCE provides the core capabilities and services listed below to our clients. The capabilities in bold are directly relevant to this project.

- **Asset/pavement management**
- **Pavement testing, analysis, and design**
- Civil engineering design
- **GIS and database management**
- **Pavement rehabilitation and sustainability**
- Bike and pedestrian path design
- Americans with Disabilities Act (ADA) retrofit design
- Environmental studies
- Stormwater management
- Watershed planning and wetland delineation
- Regulatory compliance and permitting
- Sustainable design/low impact development
- Construction documents (PS&E)
- Construction management/inspection
- Utility relocation design
- Hydrology and hydraulic analysis
- Stakeholder facilitation/public outreach
- Water quality/erosion control systems
- Water system modeling design
- Hazardous materials assessments.

Pavement Management

NCE has extensive experience evaluating and implementing pavement management systems for numerous public agencies throughout California and the west coast. We are a nationally recognized pavement specialty firm, with

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broad capabilities and expertise in the areas of pavement management, civil engineering, and pavement design, evaluation and analysis. We are active in the pavement and asset management committees at the Transportation Research Board, a national research organization. With NCE's prior experience with hundreds of other cities on pavement management systems, as well as pavement designs, NCE will deliver accurate, reliable, consistent pavement data which may then be used by the County to develop the pavement management strategies and make future funding decisions.

NCE is an MTC certified firm and has a solid familiarity and knowledge of StreetSaver®. Not only are we StreetSaver® certified, we have also trained hundreds of city and county staff and have been actively involved in the beta testing and software development of StreetSaver® for over 30 years. Therefore, we offer the County a wealth of knowledge and skills working with the program and utilizing the data to apply and recommend new pavement technologies for design and rehabilitation.

As an indicator of our experience and the quality of work, NCE received MTC's award for "Best Pavement Management Consultant." With our extensive experience delivering PMP/PMS projects throughout California, we are very familiar with all aspects of a PMP, including:

- Pavement management software evaluation
- Database development
- Establishing pavement inventories
- Pavement data collection
- Rigorous QC/QA procedures
- Funding (or "what-if") analysis
- GIS links to PMP and development of user interfaces
- Training (both field and computer operations)
- Providing technical support
- Presentations to elected officials, advisory boards and agency staff

Pavement Design and Analysis

NCE's expertise in pavement treatment alternatives includes cost saving, cutting-edge, and green/sustainable paving technologies, such as warm mix asphalt and in-place recycling technologies. Our pavement design services emphasize realistic economic solutions and pavement design procedures tailored to our client's needs.

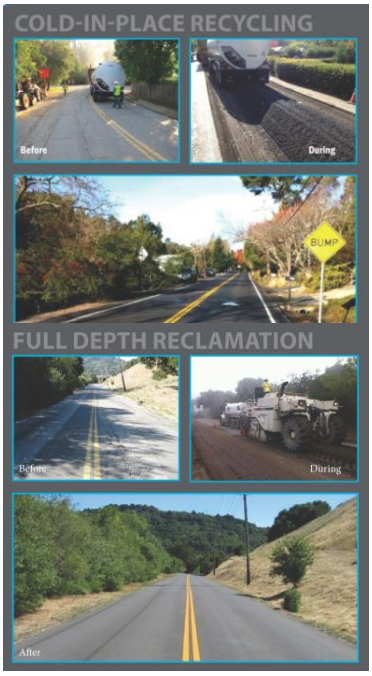
Pavement designs, plans, specifications, and estimates (PS&E) for preventive maintenance, rehabilitation, and reconstruction are NCE's specialty and we offer extensive experience and expertise with pavement treatment alternatives. Our civil and geotechnical engineers not only understand the types of pavements and treatment options, but they also understand the significance and cost implications of proper roadway support on competent subgrade soils to limit future settlement and cracking. Pavement design begins with an accurate assessment of the existing structural adequacy. Unlike traditional civil firms who rely on core samples, we employ our pavement survey expertise in conjunction with deflection data and materials testing to assess the engineering properties of the existing roadway more accurately.

Sustainable and Innovative Pavement Technologies

There are numerous pavement rehabilitation techniques available today with new binders, new additives, and polymers all of which may be applied in various layers to preserve pavement life. NCE constantly seeks to identify the most cost-efficient alternatives for cities and counties, such as CIR, full-depth reclamation, warm mix asphalt, and terminal blend asphalt rubber binders. Many of the technologies NCE can implement will meet potential County sustainability or environmental goals and policies. Some examples are described in the following paragraphs.

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- **Sustainable pavements** – NCE is involved with projects at both the national and local levels on issues, such as sustainable pavements, and premature failures. For example, Dr. Tom Van Dam is NCE's principal investigator for the FHWA on Sustainable Pavement Systems. He has developed technical guidelines and a webinar series and is an internal resource for NCE when addressing sustainability for our projects.
- **Cool pavements** – NCE prepared a report to discuss cool pavement alternatives for the City of Chula Vista as a means of mitigating the urban heat island impact. This included the use of pavement alternatives, such as porous or permeable pavements, pavers, concrete pavements, and use of light-colored aggregates.
- **Composite pavements** – NCE worked for the Strategic Highway Research Program (SHRP2 R21) to develop best practice standards for asphalt concrete (AC)/Portland cement concrete (PCC) composite pavements nationwide. This project resulted in the development of best practices in construction, specifications, and quality management procedures for these pavements. NCE taught a series of workshops for State Highway Agencies nationwide to assist them in implementing key best practices for composite pavements. While this work was funded and aimed at State Highway Agencies, the fundamental concepts of composite pavements and the best ways to implement them can be translated to cities, too.



- **Cold-In-Place Recycling (CIR)** – A cost-effective alternative to traditional mill and fill pavement treatments, cold-in-place recycling can yield cost savings of as much as 30% by the use of existing AC materials, which produces less truck hauling and better time efficiency during construction. Longer pavement sections (generally at least 500,000 square feet of pavement area) that require deeper mill and fills (typically at least three inches) are good candidates for cold-in-place recycling with potentially large cost savings.
- **Full-Depth Reclamation (FDR)** – Full-depth reclamation is a process that reconstructs failed AC pavements by recycling the existing roadway materials. The old AC and aggregate base materials are pulverized and mined utilizing specialized equipment. The full-depth reclamation method recycles the materials *in-situ* and can offer significant cost savings over conventional roadway reconstruction techniques. It is generally cost-effective for areas as little as 25,000 square feet.

Civil Engineering

NCE's civil and pavement design engineers and technicians have extensive experience developing PS&E for many city, county, and state roadway projects. The benefit of this experience is that we thoroughly understand the impact recommended pavement designs can have on the roadway system. These elements include drainage improvements, ADA curb ramps and sidewalks, curb and gutter, traffic striping and signs, and utility relocation. NCE has excellent working relationships with pavement and grading contractors and have partnered with reputable contractors to provide constructability review and cost efficiencies.

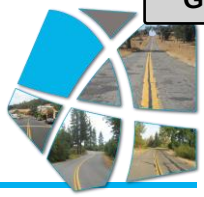


- **Special Equipment** – NCE can evaluate pavement structural conditions with deflection testing using our Falling-Weight Deflectometer (FWD). The FWD is a specialized tool that

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provides data to allow for preparation of cost-effective pavement designs. In-situ conditions can be quickly evaluated to determine issues, such as the extent of subgrade problems or the presence of voids/unstable soils. Pavement designs for phased or staged constructions are possible, as well as the ability to model and use new materials and technologies.

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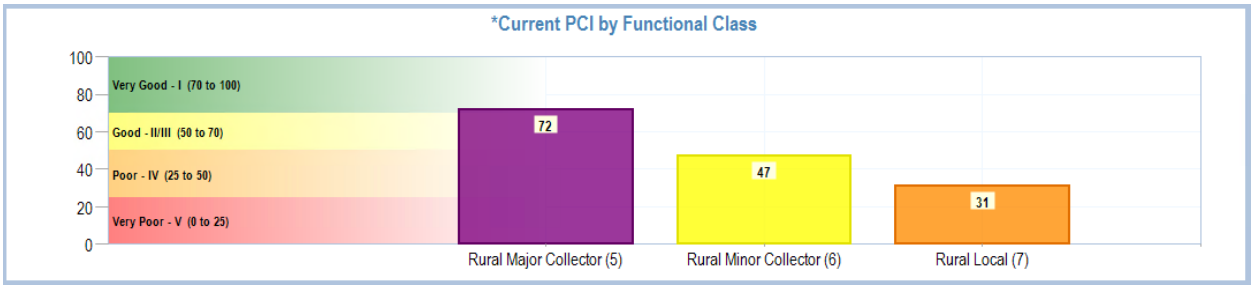


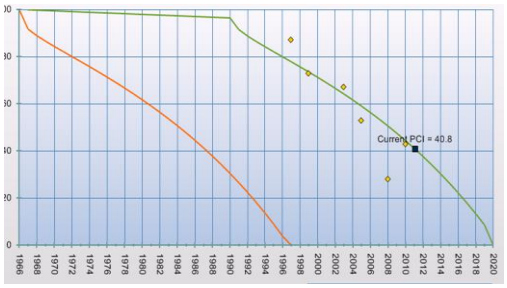
D. Statement of Understanding

Project Understanding

NCE assisted Mariposa County in updating the StreetSaver® pavement management program (PMP) with pavement condition surveys, historical maintenance and rehabilitation (M&R) records, pavement strategies, and budgetary analysis in 2008 and 2014. In both cases, the entire pavement network was surveyed. In addition, NCE prepared reports to support the County in utilizing the results to develop paving projects and predicting the future pavement condition with the existing budget. However, it is our understanding that the PMP has not been updated with pavement condition surveys or maintenance and rehabilitation strategies since 2014.

NCE understands that County is seeking a consultant to update and maintain the PMP in 2021. Approximately 365 centerline miles of paved roads are maintained by the County, with 37 centerline miles of roads identified as surface treated pavements. Although major collectors are in good condition, the remainder of the network (minor collectors and local roads) are, on average, in fair to poor condition as shown in the graph below.





Today, there is a renewed focus on roads and transportation in California as a whole, and the demand for more accurate data is expected to grow. The last three years have seen remarkable changes in the funding picture with the passage of the Road Maintenance and Rehabilitation Act (RMRA). The County is expected to receive approximately $1.7 million/year in FY20/21 (pre-COVID). In the 2014 update, the County had approximately $2.0 million per year for paving; this included $0.5 million from a new Transient Occupancy Tax (TOT). With RMRA funding, County might have sufficient paving budget to maintain County's PCI at current level (approximately $3.8 million per year was required to maintain the PCI at 53 in 2014 report). However, new revenues come with new accountability measures, and roads that will be maintained with RMRA funds will require submittal to the California Transportation Commission (CTC) for approval.

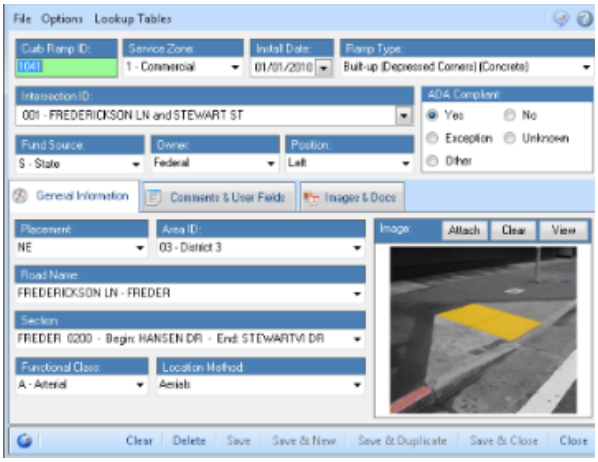
An updated PMP will assist the County in developing a cost-effective, multi-year maintenance work plan to ensure that the new funds are spent cost-effectively. As an example, the Pavement Condition Index (PCI) can be reported periodically to elected officials and/or the public. Long-term funding analysis will also be performed to determine future needs that will help guide the County in making informed policy decisions. Perhaps more importantly, the results can be used to communicate with decision makers and the public.

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Ultimately, an updated PMP will assist the County in:

1. **Developing cost-effective, multi-year maintenance work plans and ensure the existing funds are spent cost-effectively.**
2. **Performing long-term funding analysis to help make informed policy decisions. Perhaps, more importantly, the results can be used to communicate with decision makers and the public.**

Although not requested in the RFP, NCE can also assist with optional tasks such as:



- Linking the County's GIS road shapefile with StreetSaver
- Develop treatments on low traffic rural local roads (see Task 3 in Scope of Work)
- Develop multi-year work plans by treatment types or neighborhoods
- Training and technical support
- Collection of other assets such as markings, signs, ramps, curb and gutters, sidewalks, etc. and upload asset inventory to StreetSaver® Plus® Transportation Asset Management program

We will also be able to assist in recommending or implementing new paving technologies that will not just meet the PCI requirements, but any sustainability and environmental goals. Our extensive working knowledge of StreetSaver®, the County's pavement network, pavement maintenance strategies and paving funding resources will be of tremendous benefit to the County and will allow NCE to execute this project quickly and efficiently.

Rural County Challenges



NCE has worked with many rural county PMP implementations; we understand the needs of a road system that includes urbanized areas as well as sparsely populated rural portions of the County. Many of the challenges in other counties are also present in Mariposa County such as:

- Different standards or thresholds may be employed on different classes of roadways – for example, rural roads with very low traffic volumes may require a lower standard of treatment when compared to those with higher traffic volumes, or when compared to urbanized areas. About 42 percent of County's network is identified as local roads; applications on different treatments for urban and rural residential roads are one way to significantly reduce maintenance costs.

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- A much higher percentage of so called "non-engineered" or surface treated (ST) roads, e.g. those that have chip seals or adobe patches over unimproved subgrades. The performances of these roads are not the same as hot mix asphalt concrete roads and this must be recognized in the PMP and any future pavement rehabilitation design. Currently, 37 centerline miles of ST roads have been identified in the County's database. This can have significant impacts on reducing the funding estimates and future condition prediction.



- Paved roads may have deteriorated to an "unpaved" condition (see photo), and those can be excluded from the County's paved road list. In 2014 update, approximately 27 centerline miles roads were with PCI less than 10. Those roads could be excluded from paved road list or pavement condition update.
- Budget constraints for most rural counties are significantly more challenging than for urban cities and counties. Oftentimes, the gap between how much money is needed and what dollars are available can be more than an order of magnitude, even with RMRA funding.
- More conventional treatments such as hot mix asphalt may be cost-prohibitive due to either long haul distances or budget constraints. Therefore, a greater reliance may be placed on warm mixes or seals. Other more recent cost-effective methods include cold-in-place recycling and full depth reclamation techniques.

NCE's experience with pavement management for counties such as Stanislaus, Calaveras, Siskiyou, Mendocino, Humboldt, Lake, Shasta, and Madera gives us valuable local knowledge and a more thorough understanding of some of the unique aspects in Mariposa County.

The NCE Team Brings Value to the County:

- Familiarity with the County's PMP and road network
- Nationally known expertise in pavement management systems and extensive citywide and countywide implementations in California
- StreetSaver® certified technicians and engineers for distress data collection
- Over 30 years of experience with pavement management systems
- Extensive knowledge in pavement technology including sustainable and innovative methods of rehabilitation
- Thorough understanding of the regulatory and funding climate for cities and counties, and the limitations that are impose
- Training expertise from conducting workshops to over 500 agency staff in California

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E. Project Team and Qualifications

Project Team

NCE has assembled a team of highly experienced individuals who have expertise in updating PMPs similar in scope and size throughout California and the West Coast. NCE is committed to providing our clients continuity in staff and quality in service. Our staff continuously benefits from continuous training in the latest versions of software systems, design, and construction techniques. We not only frequently participate in such training, but also instruct and conduct extensive training including field distress and software workshops to 200+ technical staff in the engineering community. NCE thoroughly understands the capabilities and limitations of pavement management programs, such as StreetSaver®; our staff has worked with StreetSaver® for over 30 years and are certified in field data collection protocols.

The organizational chart illustrates the structure and team we propose for this project.

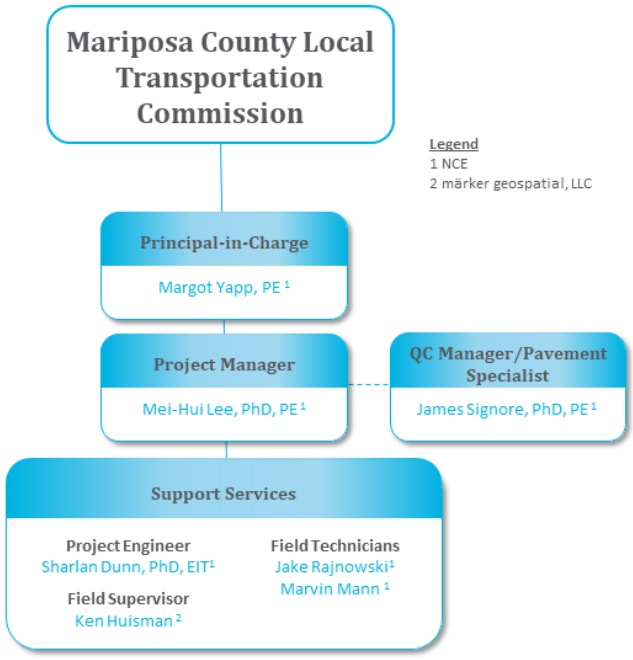


Figure 1 Project Team Organization

Additionally, the County can count on our team to provide superior, responsive service on this project. The NCE team is committed to the project for its duration; **personnel will not be substituted without prior approval from the County.**

The NCE team proposed to do the work is comprised of licensed engineers and MTC certified inspectors who have fulfilled the following roles for numerous pavement management projects similar to this one.

NCE Staff	Project Role	NCE Professional Competence
Margot Yapp, PE	Principal-in-Charge	✓ Implemented over 125 StreetSaver® PMP's ✓ NCE's technicians and engineers are verified in MTC's rater certification program ✓ NCE has trained users on the StreetSaver® software since 1997 ✓ All field employees received refresher training on StreetSaver® distresses once a year ✓ NCE staff have beta tested versions of the software since 1994 and are members of the software development team
James Signore, PhD, PE	QC Manager/ Pavement Specialist	
Mei-Hui Lee, PhD, PE	Project Manager	
Sharlan Dunn, PhD, EIT	Project Engineer (MTC Certified)	
Marvin Mann	Field Technician (MTC Certified)	
Jacob Rajnowski	Field Technician (MTC Certified)	

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Resumes

Focused resumes highlighting registrations, education, years of experience and a list of recent, relevant projects for each key member are included on the following pages.

Margot Yapp, PE – Principal-in-Charge



Education
MS, Civil Engineering, 1987, Oregon State University, Corvallis

BS, Civil Engineering, 1985, Oregon State University, Corvallis

BS, Forest Engineering, 1985, Oregon State University, Corvallis

Registrations/Certifications
Professional Engineer – Civil, CA, #45027

Affiliations
American Society of Civil Engineers

American Public Works Association

TRB Subcommittee A2B01 – Local Agency Pavement Management

Years of Experience
30 years

Joined NCE
1994

Ms. Yapp has nearly 30 years of experience in implementing and updating pavement management systems. Her experience includes numerous turnkey implementations and updates of pavement management systems for cities, counties and airports throughout California, Oregon, Nevada, Hawaii and Texas. She has worked with the StreetSaver® software since 1987 and implemented pavement management systems for over 100 agencies in California.

Her projects have included the use of various pavement management software packages, both public domain software (StreetSaver® and PAVER™) as well as proprietary software (Cartegraph). She has managed numerous PMP projects and has been involved in every aspect of PMP implementations and updates from collecting field data, performing condition surveys, calculating analyses, report preparation, and result presentations to decision makers, project management, and quality control. **She has delivered similar projects for the Cities of West Sacramento, Sacramento, Folsom, Rancho Cordova, Elk Grove, Davis, Lincoln, Placerville, Fairfield, and Yuba as well as the Counties of Mariposa, Sacramento, Placer, Lake, Tuolumne, Amador, Shasta, Siskiyou, Humboldt, Mendocino, Trinity, Sonoma, Madera, Napa, and Stanislaus.**

Currently, she is the Project Manager for MTC's StreetSaver® Training and Technical Assistance contract and provides the StreetSaver® training workshops in Oakland as well as the 2020 California Statewide Needs Assessment for the League of California Cities and the California State Association of Counties. Ms. Yapp will bring a wealth of knowledge and expertise on statewide funding issues, as well as providing a perspective from a policy level on what the transportation issues are at the State Legislature.

Representative Projects

Multiple PMP Updates and Implementations, Various Cities and Counties, CA. Project Manager. Ms. Yapp has been responsible for PMP updates for many cities and counties inside and outside of California. She is responsible for the analysis and quality control of pavement distress data collection, updating maintenance and rehabilitation decision trees and the treatment unit costs, and the development of budget scenarios and summary reports. She has developed cost-effective maintenance treatments and strategies, prepared custom multiple-year detailed street maintenance plans and budget option reports and linked Geographical Information Systems (GIS) maps with management sections in the client's PMP database. Some of her current/past PMP clients include (similar countywide implementations are in bold):

- Agoura Hills
- Alameda
- Albany
- Alpine County
- **Amador County LTC**
- Antioch
- Bakersfield
- El Cerrito
- Fairfield
- Foster City
- Fremont
- **Fresno COG**
- Hayward
- Moraga
- Napa County
- Newark
- Oakland
- Orange County Transportation Agency
- Orinda
- San Mateo County
- San Pablo
- Santa Cruz
- Santa Cruz County
- Santa Rosa
- Shasta County
- **Siskiyou LTC**

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- Benicia
- Calistoga
- Campbell
- Carson
- Contra Costa County
- Daly City
- Davis
- Dixon
- Dublin
- **Humboldt County AOG**
- Lafayette
- **Lake County APC**
- Livermore
- Los Altos
- Los Gatos
- **Mariposa County**
- **Mendocino COG**
- **Monterey County**
- Placer County
- Placerville
- Richmond
- Sacramento
- Sacramento County
- San Bruno
- San Diego County
- San Francisco
- San Jose
- Sonoma County
- St. Helena
- **Stanislaus COG**
- **Tuolumne County**
- Trinity County
- West Sacramento
- Yolo County
- Yountville
- Yuba City

Pavement Management Program Update, Stanislaus County Council of Governments, CA. Project Manager. NCE provided professional services to update their regional pavement management program in 2012-2014. StanCOG consists of nine cities that utilize the StreetSaver® pavement management program. NCE's scope of work included updating existing pavement network to include new streets, performing distress/condition surveys on approximately 1,873 paved miles of roads and implement a rigorous QC program, calculating PCI, updating all maintenance and rehabilitation (M&R) history data and M&R decision tree, performing budget scenario analyses and providing recommendations for preventive maintenance strategies and work plans, and making presentations to City Councils.

Statewide Local Streets and Roads Needs Assessment, League of California Cities/County Engineers Association of California/California State Association of Counties, CA. Project Manager. NCE is responsible for development of the needs and scenario methodologies for both pavement and non-pavement assets for 540 cities and counties. This includes the development of a website, online database and data collection and the funding analysis. The results are used to document the funding needs for the next 10 years and to advocate for additional transportation revenues. Ms. Yapp has managed the project since 2008 and is responsible for communicating the results to a wide variety of audiences, including state legislators, elected city and county officials, Directors of Public Works, engineers and planners.

StreetSaver® Training & Technical Support & PTAP 1-19, Metropolitan Transportation Commission, CA. Project Manager. NCE has been involved in numerous projects related to the development, implementation, and training of the StreetSaver® program. NCE implemented the StreetSaver® PMP in over 150 agencies since 1994. NCE has been a P-TAP consultant since Round 1 in 1998-1999. This includes NCE's technicians and engineers being certified in MTC's certification program. NCE was also involved with the beta testing of different versions of the StreetSaver® software since 1994 and has been a member of the Software Development Team. NCE has trained users on the StreetSaver® software since 1997 including the development of the training materials, ensuring interaction in the training, as well as conducting the training. .

Training, Various Cities and Counties Instructor. Ms. Yapp was the Principal Instructor for the Federal Highway Administration for a three-day course on Pavement Management Systems. This course was taught to over 20 state highway agencies in the United States; she has also taught two-day workshops on pavement management systems for local agencies and T2 Centers. These courses include the basic principles of a PMP as well as more advanced components. Elements of the course include inventory, condition assessments, budget needs, implementation, and presenting results to decision makers. She has also trained numerous local and federal agencies in the use and operations of PMP at both the technical and non-technical levels. She is currently developing a 1-day course for the FHWA entitled "Pavement Management – Characteristics of an Effective Program".

"NCE, through Ms. Yapp's leadership, has built a very good reputation implementing pavement management systems for local agencies throughout the west coast and in the San Francisco Bay Area in particular. . . . NCE has been a pleasure to work with, Ms. Yapp and her team have helped inform and increase the value of the P-TAP program for its participant jurisdictions. The firm pays attention to customer needs and has been fast to respond to the needs of MTC and its jurisdictions." **Christina Hohorst, PTAP Manager, MTC**

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Mei-Hui Lee, PhD, PE – Project Manager

Dr. Mei-Hui Lee has a PhD in civil and pavement engineering and over ten years of experience in pavement design, evaluation and maintenance projects. Currently, Dr. Lee serves as the senior engineer for pavement management and design projects at NCE. Her clients include the Counties of Madera, Shasta, Siskiyou, Mendocino, Lake, Trinity, Mariposa and Sacramento as well as multiple cities including Sacramento, Davis, Stockton, Elk Grove, Lincoln, Folsom, and Yuba. Dr. Lee is certified by the MTC inspector certification testing program. She was also involved in the Needs Assessment for the Rural Counties Task Force.



Education
PhD, Civil Engineering, National Taiwan University, Taiwan, 2009

MS, Civil Engineering, Columbia University, New York, 2012

BS, Civil Engineering, National Taiwan University, Taiwan, 2002

Registrations and Certifications
Professional Engineer – Civil, CA #87635

MTC StreetSaver® Rater Certification Program

Affiliations
American Society of Civil Engineers
American Concrete Pavement Association

Joined NCE
2014

Total Years of Experience
10 years

Representative Projects

Pavement Management System Updates, Various Cities and Counties. Project Engineer. Dr. Lee has been involved with updating Pavement Management Systems (PMS) for many Cities and Counties in the Bay Area, Central Valley, and outside of California. She is responsible for the analysis and quality control of pavement distress data collection, updating maintenance and rehabilitation decision trees and the treatment unit costs, and the development of budget scenarios and summary reports. She has developed cost-effective maintenance treatments and strategies, prepared custom multiple-year detailed street maintenance plans and budget option reports, and linked GIS maps with management sections in the client's PMS database. Some of her current/past PMS clients include:

- Amador City
- **Amador County**
- Benicia
- Calistoga
- Chula Vista
- Clearlake City
- Concord
- Contra Costa County
- Davis
- East Bay Regional Park Districts
- Elk Grove
- Fairfax
- Folsom
- Folsom
- Jackson
- Lake County
- Lakeport
- **Madera County**
- **Mariposa County**
- **Marin County**
- **Monterey County**
- Moraga
- Oakland
- Placerville
- Pleasant Hill
- Plymouth
- Rio Vista
- San Francisco
- San Pablo
- San Rafael
- **Siskiyou County**
- South San Francisco
- **Sonoma County**
- St. Helena
- Stockton
- **Trinity County**
- University of California-Davis
- Vallejo
- Yuba City
- Yountville

Pavement Management Program for Hayward Executive Airport (HEA), City of Hayward, CA. Project Engineer. Scope included updating the PAVER™ pavement management system, which covers approximately 4.4 million square feet of airside pavements, performing condition surveys as per ASTM 5340, updating historical maintenance activities in the database, updating pavement strategies and unit costs, performing budgetary/funding analyses, linking PAVER™ database to CADD drawings, and preparing multi-year work plan. HEA, a former World War II fighter base, is home to 4,400 aircraft and is located on 543 acres with two parallel runways of 5,694 and 3,107 feet each.

Pavement Management Peer Review and PMP Update, County of Madera, CA. Senior Engineer. Mei-Hui reviewed existing information for developing a pavement management program for the County. A summary of pavement inventory and date collection recommendations were summarized in the report. She also helped County to implement pavement management program and performed pavement condition update, pavement rehabilitation strategies development, GIS linkages, and budgetary analysis in 2018.

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James Signore, PhD, PE – QC Manager/Pavement Specialist



Education
PhD, Civil Engineering, University of Illinois – Urbana-Champaign, 1998
MS, Civil Engineering, University of Illinois – Urbana-Champaign, 1994
BS, Electrical Engineering, Clarkson University, 1985

Registrations/Certifications
Professional Engineer – Civil, CA, #62647

Affiliations
TRB Committee AFD70, Pavement Rehabilitation
TRB Committee AFD70-1, Pavement Interlayer Systems
ASCE Airfield Pavement Committee
FAA Pavement Technical Working Group
American Society of Civil Engineers

Years of Experience
21 years

Joined NCE
2014

Dr. Signore has over 25 years of engineering experience including 18 years in the pavement field. He specializes in pavement design and evaluation, rehabilitation and maintenance, materials assessment, and training. He has experience in designing pavements for many local agencies, Caltrans, and for heavy vehicle loading applications at airfields and ports. He has researched all types of pavement materials, directed a state-of-the-art research laboratory, and is well versed in state and local pavement practices and specifications.

Dr. Signore is currently the Project Manager for an on-call pavement engineering project with Caltrans. He has taught "Techniques for Pavement Rehabilitation" over 60 times for the National Highway Institute and ASCE, as well as graduate courses in pavement engineering at San Jose State University. He uses his practical and research experience, technical knowledge, and teaching skills to develop an understanding of client needs and the creation of design and rehabilitation strategies that offer the client agency the leading-edge in methods and materials for their pavements. Dr. Signore is a Member of the Transportation Research Board Committee AFD70, Pavement Rehabilitation, and AFD70-1, Pavement Interlayer Systems, and the FAA Airport Pavement Technical Working Group. Representative Projects.

Representative Projects

On-Call Pavement Engineering, Caltrans, Statewide, CA. Contract Manager/Task Order Manager. Dr. Signore manages this multi-year on-call contract to provide technical solutions and assist with implementing new strategies and policies that will improve the State's highway network. Key elements include sustainability, forensics, design tools, performance modeling, data analysis, and asphalt/concrete materials.

2016 Pavement Management Update, Sonoma County, CA. QC Manager/Pavement Specialist. Dr. Signore was responsible for review of field activities, including spot checks on the field crews during the pavement condition surveys on over 1000 miles of roads. In addition, he is working with County personnel to develop guidelines for pavement strategies that are more appropriate for low volume rural roads.

As-Needed Pavement Condition Survey Services 2015 - APE15117, City and County of San Francisco, CA. Pavement Specialist. Since 2016, NCE performed condition surveys on almost 1,000 centerline miles of streets to update StreetSaver®. A "particular" challenge in 2016/17 was the change in distress protocols when weathering and raveling were split into two different distresses; this resulted in an increase of the PCI that was further confirmed by a research study.

Multiple PMP Updates and Implementations, Various Cities and Counties, CA. QC Manager. Dr. Signore has been responsible for quality control for PMP updates for many cities and counties in California. He is responsible for the quality control of data and responsible for spot checks on the field crews during the pavement condition surveys. Some of his clients include:

- Clearlake
- Davis
- Concord
- Contra Costa County
- Elk Grove
- Folsom
- Hayward Airport
- **Lake County**
- Lakeport
- **Madera County**
- **Monterey County**
- San Francisco
- San Francisco Airport
- Santa Clarita
- **Siskiyou County**
- South San Francisco
- **Sonoma County**
- Thousand Oaks
- Trinity County
- Yuba City

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Sharlan Dunn, PhD, EIT – Project Engineer

Dr. Dunn joined NCE as a project engineer in 2018 and immediately began working on pavement management projects. She graduated from Purdue University in 2018 with a PhD in civil engineering with an emphasis in pavement management and pavement materials. She has extensive research experience in pavement design, management, and materials. She currently serves as a project engineer for pavement management, maintenance, rehabilitation, design, and planning projects. Dr. Dunn is certified by the Metropolitan Transportation Commission (MTC) to perform pavement distress inspections; the certification testing involves passing a rigorous field test.



Education
PhD, Civil Engineering, Purdue University, 2018

Registrations/Certifications
Engineer-in-Training (EIT)
MTC StreetSaver® Rater Certification Program

Affiliations
American Society of Civil Engineers

Years of Experience
5 years

Joined NCE
2018

Representative Projects

PMP Conversion and Update, San Diego County, CA. Project Engineer for the conversion to the StreetSaver® PMP. The first phase included performing condition surveys on 200 miles of arterials and collectors (total network is 1,950 miles). Other tasks included determining new maintenance strategies, performing budgetary analyses, developing a five-year work plan, and training/technical support to County staff.

Pavement Management System Updates, Various Cities and Counties, CA. Staff Engineer. Project Engineer. Dr. Dunn has been involved in developing and updating PMP plans for several cities and counties in Northern California. She has been responsible for pavement distress data collection, analysis and quality control; updated maintenance and rehabilitation decision trees and treatment unit costs; performed multiple-year budget scenario analyses; and prepared summary reports. Some of her current/past clients include

- **Alameda County**
- **Calaveras County**
- Campbell
- Davis
- Elk Grove
- Fairfield
- Fresno COG
- Madera County
- Marin County
- Monterey County
- Novato
- Oakland
- Sacramento
- Sacramento County
- Sacramento International Airport
- Santa Cruz County
- San Francisco
- San Francisco International Airport
- Seaside
- **Siskiyou County**
- Sonoma County

Local Agency Pavement Surface Evaluation, West Lafayette, IN. Graduate Research Assistant. Dr. Dunn evaluated the accuracy of statewide pavement surface evaluations performed by local agencies in partnership with the Indiana Local Technical Assistance Program. She determined factors influencing pavement surface evaluation and rating accuracy and variability. Her work has influenced the type, availability, and format of pavement evaluation trainings; has been incorporated in statewide pavement condition reports; and has affected state legislation and funding allocation and requirements.

Street Cut Fee Schedule, Springville, UT. Graduate Research Assistant. Dr. Dunn aided in the development of a fee schedule for street cuts based on functional classification, pavement age, and age at the time of cut. She was responsible for distress evaluations, roughness measurements, falling weight deflectometer (FWD) testing, and data analysis.


CERTIFICATE OF ACHIEVEMENT

This is to certify that

Sharlan Dunn

has completed the requirements of the

MTC StreetSaver Rater Certification Program

Certificate valid until May 22 2021

Serial no: 1075

StreetSaver

Attachment: NCE_County of Mariposa Pavement Management Program Update 2021_Proposal (LTC-2021-8 : Authorize the Award of a

Marvin Mann – Senior Field Technician

Mr. Mann joined NCE in 2011 as a pavement management technician and is experienced in collecting distress data for pavement management systems. He has completed the MTC "Distress Identification" courses for both Asphalt Concrete and Portland Cement Concrete Pavements. Mr. Mann is certified by the MTC to perform pavement distress inspections; the certification testing involves passing a rigorous field test.

Apart from conducting field inspections, Mr. Mann has performed all functions related to data collection and is an active participant in the QC process. As part of the quality control process, he performs cross-checks of data in the PMP database. Mr. Mann has performed quality control checks of field collected data and pavement maintenance history to ensure that PMP databases are accurate and up to date. During this process, he also generates detailed reports, which are needed to help perform his crosschecks of the data collected.

He has completed condition inspections for over 2,500 centerline miles of roads and streets, which include inspections on bituminous Asphalt Concrete Pavements and Portland Cement Concrete Pavements. Listed below are some of the agencies where Mr. Mann has performed condition inspections. Additionally, Marvin has inspected trails and bike paths for the Cities of Folsom, Livermore and Davis, as well as UC Davis and the East Bay Regional Parks District. He has also inspected airfield pavements in Amador County and UC Davis.



Education
Certificate – Architecture Technology – Diablo Valley College, 2010

Certificate – 3D Arts – San Francisco State University, 2002

Associates Degree in Wood Technology – Laney College, 1997

Registrations and Certifications
USGBC Green Associate 2009

MTC StreetSaver® Rater Certification Program

Joined NCE
2011

Total Years of Experience
9 years

Representative Projects

Pavement Management Inspections, Various Locations. Senior Field Technician. Projects included various forms of surveys for pavement distress data collection, this may have included walking, windshield, and/or semi-automated. His clients include the following cities and counties:

- Ada County, Idaho
- Albany
- **Amador County**
- Anaheim
- Atherton
- Bakersfield
- Benicia
- Calistoga
- Ceres
- Chula Vista
- Clearlake
- **Contra Costa County**
- Dana Point
- Davis
- Diamond Bar
- Dixon
- El Centro
- Fairfield
- Folsom
- Fort Brag
- Lake County
- Lake Forest
- Lakeport
- Lincoln
- Livermore
- **Madera County**
- Manhattan Beach
- **Mariposa County**
- **Mendocino County**
- Mission Viejo
- Modesto
- **Monterey County**
- Mt Shasta
- **Placer County**
- Richmond
- Rio Linda
- San Bruno
- San Francisco
- San Francisco Airport
- San Pablo
- St. Helena
- **Stanislaus County**
- Torrance
- **Trinity County**
- Turlock
- Ukiah
- Vallejo
- **Ventura County**
- Whittier
- Willits
- Yountville


CERTIFICATE OF ACHIEVEMENT

This is to certify that

Marvin Mann

has completed the requirements of the

MTC StreetSaver Rater Certification Program

Certificate valid until Nov 03 2021

Serial no: 1083

StreetSaver

Attachment: NCE_County of Mariposa Pavement Management Program Update 2021_Proposal (LTC-2021-8 : Authorize the Award of a

Jake Rajnowski – Field Technician

Mr. Rajnowski joined NCE in 2016 as a pavement management technician and since then, has gained in-depth knowledge and expertise in collecting distress data and coring samples for pavement management systems. His current experience includes collecting pavement distress data for the Counties of Sonoma and Lake. Mr. Rajnowski is certified by the Metropolitan Transportation Commission (MTC) to perform pavement distress inspections; the certification testing involves passing a rigorous field test. Apart from conducting field inspections, Mr. Rajnowski routinely performs all functions related to data collection and is an active participant in the QC process, including crosschecks of data in the PMP database, quality control checks of field collected data and pavement maintenance history to ensure that PMP databases are accurate and up to date. During this process, detailed reports are generated to perform crosschecks of the data collected. Additionally, Mr. Rajnowski has completed the OCTA MicroPAVER™ 'Distress Identification' course for Asphalt Concrete and Portland Cement Pavements. Also, since 2016 he has performed condition surveys at San Francisco.



Education
Sterling High School, Sterling, IL, 2003

Registrations/Certifications
OCTA Pavement Inspector Prequalification

MTC StreetSaver® Rater Certification Program

Years of Experience
3 years

Representative Projects

Pavement Management Inspections, Various Locations. Senior Field Technician. Projects included various forms of surveys for pavement distress data collection, this may have included walking, windshield, and/or semi-automated. His clients include the following cities and counties:

- Buena Park
- Burbank
- Coalinga
- Diamond Bar
- Half Moon Bay
- **Humboldt County**
- Kingsburg
- Laguna Niguel
- Lake County
- Lincoln
- **Marin County**
- Moreno Valley
- Mission Viejo
- Orange County
- Orange Cove
- **Placer County**
- Pleasant Hill
- Redondo Beach
- San Francisco
- Santa Ana
- San Gabriel
- **Sonoma County**
- Stockton
- Thousand Oaks
- **Trinity County**
- Ventura
- Walnut Creek
- Yolo County


CERTIFICATE OF ACHIEVEMENT

This is to certify that

Jake Rajnowski

has completed the requirements of the

MTC StreetSaver Rater Certification Program

Certificate valid until Jun 14 2021

Serial no: 1080

StreetSaver

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Ken Huisman – Field Supervisor



Years of Experience
27 years

Joined märker geospatial, LLC
2007

Mr. Huisman brings more than 27 years of experience in the pavement and infrastructure management consulting industry. Over the course of Mr. Huisman's career, he has provided many aspects of infrastructure management to government agencies across North America. During this time, Mr. Huisman has supervised the creation of large and complex public pavement infrastructure and GIS databases for many municipal, state, and federal projects.

Mr. Huisman has developed an extensive portfolio in providing PMP services and is proficient with most off the shelf pavement management programs in the marketplace. Mr. Huisman is routinely consulted by various agencies to provide helpful solutions that are applied throughout the entire life cycle of public infrastructure management. Mr. Huisman is a graduate of the School of Engineering at Georgian College in Canada. He spent 17+ years of his career with Stantec Consulting working his way up to Senior Associate before founding Mission Geographic in 2007, now known as märker geospatial, a firm dedicated to providing public works users and decision makers with a variety of innovative and useful infrastructure asset management tools. In summary, Mr. Huisman's experience with various operation management software technologies together with data collection and GIS mapping services—such as infrastructure asset inventories, condition assessments, GIS field infrastructure mapping, and 3D reality capture using LiDAR, has made him a great resource for all the clients that he works with.

Representative Projects

Mr. Huisman has provided valued service to many government agencies throughout North America including:

Cities and Counties:

- Anaheim, CA
- Auburn, WA
- Augusta, GA
- Austin, TX
- Bend, OR
- Beverly Hills, CA
- Calgary, CAN
- Cheyenne, WY
- Colorado Springs, CO
- Detroit, MI
- **Fresno COG, CA**
- Fort Lauderdale, FL
- Fort Worth, TX
- Honolulu, HI
- Kansas City, KS
- Milwaukee, WI
- **Monterey County and TAMC, CA**
- Napa, CA
- Newport Beach, CA
- Norfolk, VA
- Ottawa, CAN
- Pekin, IL
- Phoenix, AZ
- Pittsburg, PA
- Sacramento, CA
- Salem, OR
- San Diego, VA
- Topeka, CA
- Toronto, CAN
- Vancouver, CAN
- Adams, CO (County)
- Clackamas, OR (County)
- Clark, NV (County)
- Columbia, GA (County)
- Honolulu, HI (County)
- Los Angeles, CA (County)
- Maricopa, AZ (County)
- Oakland, MI (County)
- Onondaga, NY (County)
- Orange, CA (County)
- Rio Blanco, CO (County)
- **San Diego, CA** (County)
- **Santa Cruz, CA** (County)
- **Siskiyou County LTC**
- Weld, CO (County)

States and Provinces:

- Arizona DOT
- California DOT (Caltrans)
- New Jersey DOT
- New York DOT
- MTO, CAN
- Oregon DOT
- MHI, CAN
- Tennessee DOT

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Related Projects

Please refer to Section F for recent related projects with client contact information.

Scope of Work

NCE's project approach includes the following tasks:

Task 1. Kickoff Meeting

NCE will first meet with County staff to kick-off the project by reviewing the technical approach and any administrative matters that may be necessary. At a minimum, items to be discussed will include the following:

- Scope of work, project schedule, budget and invoicing requirements
- Communication channels and protocols
- Field work
  - Scheduling and access requirements for field work
  - Public safety concerns, requirements and procedures
  - Quality Control Plan (QCP)
  - Updated GIS map of publicly maintained roads if any
  - New roads, if any
- Maintenance and rehabilitation (M&R) practices, records, costs
- Paving or maintenance budgets
- Budgeting scenarios
- Other optional tasks

Prior to the kick-off meeting, NCE will prepare a detailed agenda, which will be sent to County staff for review. Additional meetings may be held at appropriate milestones to review the work performed and to address any questions or issues that arise as the work progresses.

Deliverable:

- Agenda and summary of meetings

Task 2. Pavement Condition Surveys & PCI Calculation



NCE will next perform pavement condition surveys on the County's pavement network as per the protocols established by MTC. The distresses present are reflective of the traffic levels as well as the local environment and climate. The "fuel" for any pavement management engine is the surface condition data. Pavement distress provides that important set of data in determining the costs to maintain the pavement network.

There are **three types of distress surveys** that are utilized for pavement management systems, and each has its advantages and disadvantages. Briefly, these are:

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Windshield Surveys – These are performed with two-person crews in a vehicle traveling at low speeds (under 15 mph). The major advantage is that 100% of the roadway is surveyed, and it can be accomplished very quickly, safely and inexpensively. However, the disadvantage is that the data collected tends to be of variable quality. In particular, low-severity distresses are typically not visible from a moving vehicle. This results in a higher than expected condition rating of the roads, and consequently, a lower estimate of the backlog and pavement M&R needs.



Walking Surveys – These are performed with one-person crews (for high volume roads like expressways or major collectors, two-person crews may be needed for safety). The major advantage of this survey method is that it is highly accurate, since cracks and all other pavement distresses are measured and recorded. However, walking surveys are more labor-intensive and are thus more expensive than windshield surveys. But it is easily taught to County staff, which allows future updates to be performed in-house with no special equipment. This procedure is recommended by MTC. **In 2008 and 2014, the County utilized this as the most desirable option as NCE was able to train County staff with the expectation that they would be prepared to perform inspections in the future.** It will also help new County engineers or technicians get a better understanding of distress identification and data collection procedures.

Semi-Automated Inspections – These are typically performed with a customized vehicle that is equipped with a digital camera and laser bars. The major advantage is that they are equipped to perform inspections very quickly and safely. However, post-processing time can offset cost-savings in the field and may not always be appropriate in urban conditions. Nonetheless the NCE team has successfully deployed this option for counties such as Madera, Shasta, and Siskiyou. **It should be noted that an accurate road centerline shapefile will be required for this option.** As an optional task, NCE has teamed with **märker geospatial, LLC** to perform semi-automated surveys in the County. Our team is well positioned to collect, measure, and map all pavement condition data using a sophisticated semi-automated approach.

NCE's field inspectors are certified by MTC to conduct StreetSaver® condition surveys. They have successfully passed rigorous field and online tests.

Regardless of methodology, our goal is to provide *accurate, repeatable and economical* pavement condition assessments.



NCE will be responsible for providing all equipment necessary to perform this task. Should County personnel wish to observe NCE's crews during the surveys, we can accommodate the County. Note that this scope of work and condition surveys do not address issues including, but not limited to traffic, safety and road hazards, geometric issues, road shoulders, sidewalks, curb and gutters, drainage issues or short-term maintenance that should be performed.

Quality Control Plan – Quality control (QC)/quality assurance checks are critical when a large amount of data needs to be collected and processed. As part of NCE's goal to provide a superior quality product for our clients, we incorporate a QC component into all of our projects. For this project, we have proposed the inclusion of a QC Manager, Dr. James Signore. He will be responsible for:

- Calibrating all data collection activities
- Reviewing field activities, including spot checks on the field crews
- Reviewing field procedures and making changes, as needed
- Comparing the field data collected with on-site conditions
- Reviewing all data entry functions, including random spot checks
- Reviewing reports generated and analyses performed to ensure a quality product



NCE will prepare a QC Plan (see Appendix A for sample QC plan) that will include the following components:

- Description of condition survey procedures (distress types, severities). All procedures, changes or modifications should be well documented in the QC plan so that future updates will be consistent.

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- Accuracy required for data collection or acceptability criteria
- Description of how data will be checked for accuracy, e.g., 5% re-inspections.

A draft QC plan will be submitted to the County for approval, and no field work will commence until a final plan has been accepted.

All data collected from the condition surveys will then be uploaded into the StreetSaver® database. This task will be performed at NCE's office in order to provide Quality Control of all data entered into the system. NCE will then perform the pavement condition index calculations, and correct any errors found.

Deliverables:

- Quality control plan
- PCI listing report
- Updated database with pavement distress data

Task 3 Maintenance and Rehabilitation Strategies & Decision Tree



NCE will review maintenance and rehabilitation (M&R) strategies with County staff. This will include the recommendation and selection of appropriate treatments and the determination of treatment unit costs. This will also be an appropriate time to review the use of new/sustainable treatments or materials, such as PCC bonded overlays, rubberized asphalt, rubberized cape seals, microsurfacing, rejuvenators, cold-in-place recycling, full depth reclamation, warm mix asphalt, etc.

NCE's experience in pavement engineering and design, as well as local conditions, allows our staff to be able to provide the County with solutions that are innovative, sustainable, practical, and workable. Dr. James Signore will share his knowledge from research on new pavement materials and designs and apply them to County roads as appropriate.



Development of the M&R decision tree is a critical step in any pavement management update as it has a direct and significant impact on the final work plan that is developed, as well as the budgeting consequences. NCE's experience in pavement engineering and design, as well as local conditions, allows our staff to be able to provide the County with solutions that are practical and workable.

Currently, about 42 percent of the County's road network is identified as local roads and the same treatment is applied on all of them, regardless of their location. Yet, pavement rehabilitation strategies, pavement condition, structure, or traffic index may be different on more urbanized vs. remote rural local roads. In order to apply more appropriate treatments on local roads, and to best estimate future costs and PCI projections, NCE recommends that urbanized and rural local roads be separated into two functional classifications with different treatments in the database as an optional task. For example, placing a crusher course with cape seal on rural local roads could potentially save up to $30 million when compared with current treatments i.e. reconstruct surface (see graphic).



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Since paving construction costs have increased dramatically since 2004 (as much as three times in some cases), NCE strongly recommends that unit costs be updated prior to any budget analyses. The unit costs will have a huge impact on the County's projections or needs assessments. Therefore, NCE will review any recent bid tabs, together with those from neighboring counties, as appropriate. Also, unit prices will be fully-loaded rates, and will include not just contractors' prices, but also design, inspection and testing costs.

Deliverable:

- M&R strategies and costs in decision tree

Task4 Budgetary Analyses and Final Report

NCE will next perform a **Budget Needs** analysis using an analysis period to be determined by the County (can be as long as 30 years). The Needs Analysis identifies road sections that need treatment and applies the M&R decision trees to each section. The costs are then summed for the entire period. This forms the basis for performing Budget Scenario evaluations, which optimize the road sections for repair under constrained budgets.

In simple terms, the Budget Needs analysis answers the questions:
"If I have unlimited funding for road maintenance and repair, which roads should I fix? When should I fix them? What treatments should I apply? How much will it cost?"

The **Budget Scenarios** evaluation prioritizes road sections for repair under constrained, realistic, budgetary assumptions.

This module answers the question: "If I only have limited funds for road maintenance and repair, which roads have the highest priority for repairs, when should I perform the repairs, and how much will it cost?

Multiple budget or target-driven scenarios will be performed after discussion with the County. Typical scenarios include:

- Impacts of existing funding levels including SB1 funding
- Funding required to maintain existing PCI
- Funding to improve the PCI
- Impacts to model changes in funding, e.g., budget impacts from COVID-19

After the analysis in above task is completed, NCE will prepare a draft Budget Options Report (BOR) for the County to review. The reports will contain, at a minimum, the following information:

- Executive Summary
- Study Objectives
- Description of methodology
- Inventory of all roads
- Current and projected PCI for all road classes
- M&R history
- Multi-year plan for road maintenance, resurfacing, rehabilitation and reconstruction
- Impact of deferred maintenance (backlog) on the overall network condition
- Recommended funding scenario
- Recommended pavement strategies
- GIS maps to show impacts of scenarios

NCE will deliver the draft report to the County for review in electronic format. Upon receipt of the comments on the draft report, NCE will complete the final report for submittal.

Deliverables:

- Draft BOR (electronic copy)

Attachment: NCE_County of Mariposa Pavement Management Program Update 2021_Proposal (LTC-2021-8 : Authorize the Award of a

- Final report (electronic copy and 3 hard-copies).
- Updated StreetSaver® database

Task 5 Board Presentation

NCE will make presentations to the Board of Supervisors. This may be a short (15 to 20 minutes) informational item or could be a longer (1-2 hours) educational/advocacy workshop, depending on the County's needs. NCE has recently completed similar presentations to the Board of Supervisors in Madera, Fresno, Santa Cruz, Siskiyou and Humboldt counties.

NCE's value to the County is the information that we can provide from other agencies, and the results of tight budgetary constraints. We can also share the perspective of our work from the California Statewide Needs Assessment study, which included an assessment of all 540 cities and counties.

This task includes one videoconference with County staff prior to the presentation to discuss items such as the goal of the presentation, the level of knowledge and backgrounds of the audience, the number of stakeholders involved and other potential issues.

> "We have been happy with the work performed by Nichols Engineering (NCE)…Margot's presentation to our City "Council was instrumental in getting their 'buy in' to use the PMS for our Pavement Rehabilitation programs."
> – **Elizabeth Chopp, PE, Senior Engineer, City of Chula Vista**

Deliverable:

- PowerPoint presentation

Task 6 GIS Linkage (Optional)

There is no accurate or updated GIS shapefile in County's StreetSaver® database currently. The GIS linkage consists of matching segments in the basemap based on road name, type and/or direction. Typical queries (or maps) include:

- PCI by road section
- Future PCI by road section
- Functional classification
- Maintenance treatment history
- Impacts of different budget scenarios
- Sections selected for treatment

Once linked, powerful maps can be generated within minutes, as shown in the example from the City of Sacramento.

Deliverable:

- Updated StreetSaver® database with GIS maps/linkages


2020

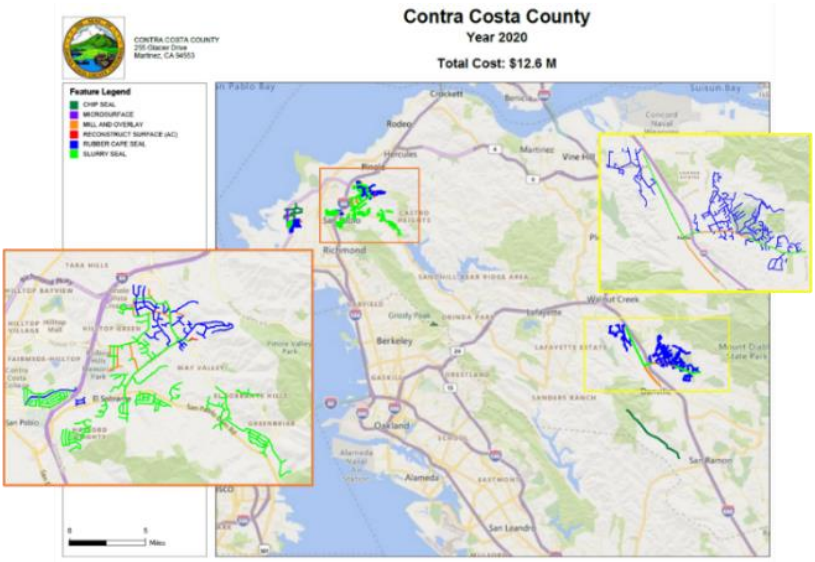

2029 with Existing Funding


2029 with funding to improve PCI to 75

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Task 7 Five-Year Work Plan (Optional)

As an optional task, NCE can develop a five-year work plan based on the results of the previous tasks. We can perform multiple StreetSaver® scenarios to evaluate impacts to the network and generate enough optional candidates for grouping, consolidation, removal of outlier streets, and determination of other conflicts.



Based on the criteria agreed upon at the kickoff meeting and pavement maintenance strategies discussion, the sections selected will be grouped together geographically in an effort to produce continuous sections for treatment and try to avoid inefficiencies with shorter and isolated street segments. NCE can distribute road selections throughout the County or zone by Supervisorial districts, depending on County preferences (see example for Contra Costa County).

This task includes consideration of key elements identified by the County, confirmation of treatments, consideration of base repair levels, aggregation or grouping of streets and separation/combination of surface seal or rehabilitation paving programs. The criteria for various funding sources available to the County (i.e. local, state, federal) will also be considered when selecting streets in the work plan. A preliminary road list and GIS map will be prepared and submitted for the County's review. Upon completion of this review, NCE will incorporate all comments and changes, and submit a final street list and GIS map.

Key Assumptions:

- The County will provide filters to be applied to roads that should be excluded based on known utility conflicts or projects, planned CIP projects, citizen complaints or other criteria.
- County's GIS module in StreetSaver is current and functioning with most current version of County road centerline shapefile

Deliverable:

- Road list and maps for a five-year work plan

Task 8 Training and Technical Support (Optional)

NCE will prepare and present a one-day training class with County staff. The class will cover the following items:

- Creating or editing street sections
- Entering pavement distress data
- Performing PCI Calculations
- Entering maintenance and rehabilitation history
- Revising the M&R decision tree
  - Determining appropriate unit costs
- Determining budget needs
  - Creating budget scenarios Identifying treatment strategies
  - Project selection tools
  - Target-driven analysis
- Generating reports and GIS maps



Attachment: NCE_County of Mariposa Pavement Management Program Update 2021_Proposal (LTC-2021-8 : Authorize the Award of a

All materials will be provided by NCE. It is assumed that the training will be conducted online and will include up to 3 participants.

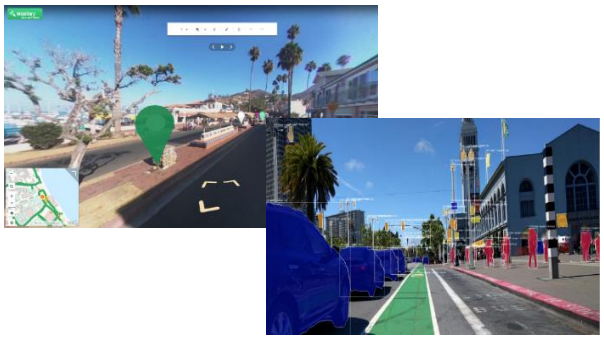
Since the onset of COVID-19 and shelter-in-place orders, NCE has transitioned to providing online training with agencies, most recently for MTC in November 2020. NCE has prepared and trained over 100 agencies in California on StreetSaver®. This includes developing all the training materials, ensuring interaction in the training as well as conducting the training. At the end of the training, County staff will be able to perform additional funding scenarios as desired and generate new or revised multi-year work plans. As an optional task, NCE will also allocate up to 40 hours of technical support per year. Typically, most technical support is related to providing one-on-one assistance, performing budget scenarios, updating M&R records, providing customized reports, providing pavement treatment recommendations, GIS maps, etc.

Deliverables:

- Training manuals
- Online training workshop

Task 9 – Asset Data Collection (Optional)

LiDAR sensor and street level 3D 360 imagery system developed in Roadway Collection Vehicle System can collect other pavement asset inventory/condition when performing pavement distress inspections. County staff can easily review and manage any roadway/roadside information collected in the field by the mobile mapping tools. The users have the ability to visualize, measure, edit, and validate infrastructure and roadway/roadside assets. Items include collection and condition assessments for pavements, utilities, properties, markings, traffic signs and signals, ADA curb ramps, drainage and bridge structures, etc. all with a high level of accuracy. County engineers, planners, and GIS technical staff can easily locate and assess important infrastructure in the office to avoid field data collection along busy streets. All collected information can be exported to shapefile format and merged to County's existing GIS system if any. Available road right of way asset data collections include:

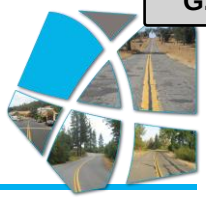


- Sign inventory/condition (good/fair/poor; FHWA MUTCD retroreflectivity)
- Sidewalk inventory/condition (good/fair/poor; trip hazards)
- Curb inventory/condition (good/fair/poor)
- ADA ramp inventory/condition (compliance)
- Pavement marking or curb marking inventory/condition (good/fair/poor)
- Cross gutter inventory/condition (good/fair/poor)
- Tree inventory (size, types, pictures located along public road right of way)
- Traffic signals/control cabinets inventory
- Street lights inventory
- Speed bump inventory
- Strom drain inventory
- Guardrail and barricade inventory

Deliverables:

- GIS shapefile with asset inventory/condition/photos
- Summary report for each asset item

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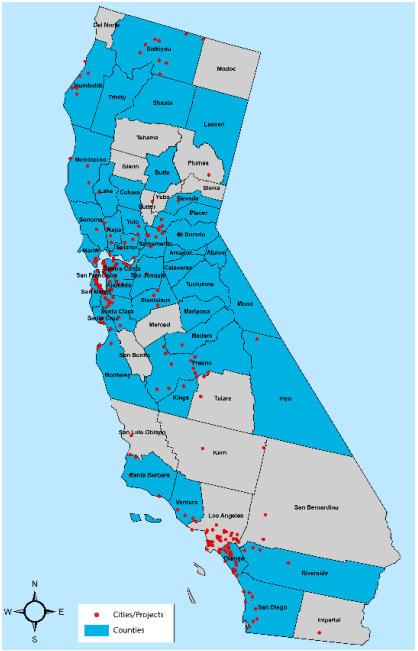


Attachment: NCE_County of Mariposa Pavement Management Program Update 2021_Proposal (LTC-2021-8 : Authorize the Award of a

F. Similar Pavement Management Program Update Examples and References

NCE has performed pavement condition surveys ranging from state highways in 12 states to local street networks in over 200 cities and counties in California, Oregon, Nevada, Washington, and Idaho. We have surveyed over 100,000 centerline miles of roads in California alone.

NCE has completed nearly 200 similar projects in the last five years throughout California. The map on the right illustrates all the agencies where we have performed pavement-related work. In Central California, we have performed similar PMP updates for over 50 cities and counties, including Fresno COG (includes cities), Stanislaus COG (includes county/cities), the Counties of Madera, Amador, Monterey, Tuolumne, and Sacramento, and the Cities of Bakersfield and Sacramento. Additionally, NCE has implemented or updated pavement management systems for more than 26 counties in California as shown in the table below. **NCE also performed the original PMP Implementation for Mariposa County in 2008 and the update in 2014.**



Client	No. of Agencies	Centerline Miles	Services
Mendocino Council of Governments	County and 4 Cities/Towns	789	PMP Implementation & Updates
Lake County Area Planning Council	County and 2 Cities/Towns	600	PMP Implementation & Updates
Humboldt County Association of Governments	County and 7 Cities	1,195	PMP Implementation & Updates
Stanislaus Council of Governments	County and 9 Cities	1,873	PMP Implementation & Updates
Siskiyou County Local Transportation Commission	County and 9 Cities	1,073	PMP Implementation & Updates
Shasta County	County	900	PMP Implementation
Mariposa County	**County**	**360**	**PMP Implementation & Updates**
Tuolumne County	County	522	PMP Implementation
Amador County	County and 5 Cities/Towns	455	PMP Implementation
Placer County	County	952	PMP Update
Sacramento County	County	730 (Partial)	PMP Implementation
Yolo County	County	657	PMP Update
Contra Costa County	County	650	PMP Update
Sonoma County	County	1,380	PMP Update
Marin County	County and 11 Cities	1,033	PMP Regional Analysis
Inyo County	County and 1 City	541	PMP Implementation & Updates
Metropolitan Transportation Commission	70+ Counties and Cities	>10,000 miles	PMP Updates
Orange County	County and 2 Cities	656	PMP Implementation & Updates
Totals	>133 agencies	24,482	

Referenced Projects

Below are examples of recent, directly related project experience with references that will allow the County to verify NCE's experience and level of satisfaction of our clients.

Madera County Pavement Management System Implementation (2018 – 2019)

Madera County began a PMP implementation more than 10 years ago, but it was not completed due to resource limitations. Much of the data collected was imported into GIS shapefiles, but were not field verified. One example of the need for field reviews is the size of road network; County road-maintained files indicate that this is approximately 1,500 miles, but data from the Caltrans Highway Performance Monitoring System (HPMS) indicates a network of 2,254 miles.

Historically, due to severe funding constraints, the need for a pavement management system was not as critical. But with more than $5 million a year expected from SB1, the demand for more accurate data was expected to grow. Residents also wanted more transparency and accountability on how roads were selected for repair. Therefore, the County selected NCE to implement a PMP in 2018. The scope of work included:

- PMP Software assessment
- Perform distress/condition surveys on road network
- Implement a rigorous QC program as part of the distress surveys
- Calculate pavement condition indices (PCI)
- Update and modify the M&R decision tree
- Perform budget scenario analyses
- Provide recommendations for preventive maintenance strategies and work plans
- Prepare final reports
- Make a presentation to the County Board of Supervisors

Client Contact

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Madera, CA 93637

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jcarter@co.madera.ca.gov

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James Signore, PhD, PE
QC Manager

Mei-Hui Lee, PhD, PE
Senior Engineer

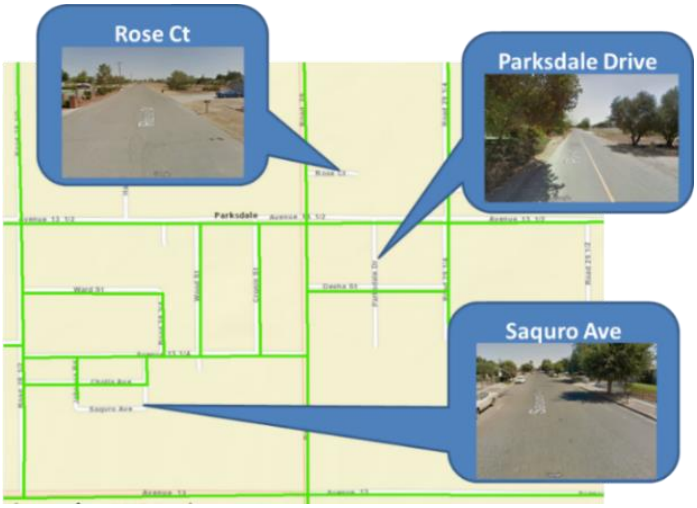
Marvin Mann
Senior Field Technician

Jake Rajnowski
Field Technician

Ken Huisman (märker geospatial)
Field Supervisor

Budget

$333,200



StreetSaver®

"Margot Yapp and the team at NCE were instrumental in collecting, evaluating, and developing the pavement network condition to successfully complete and implement the County's first fully functioning PMP…. NCE has been extremely responsive and professional and has demonstrated that they are knowledgeable and well experienced in the field of Pavement Management. We have been very pleased with the products and services we have received from them and have no regrets with selecting them to assist us."

Jared Carter, Deputy Public Works Director
County of Madera

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Calaveras COG Countywide Pavement Management Implementation (2018 – 2020)

The Calaveras Council of Governments (CCOG) selected NCE to implement a robust Pavement Management System that the County and the City of Angels Camp could access to provide more accurate information regarding their street networks. Both the County and the City had legacy software and StreetSaver was selected. Calaveras County has 767 centerline miles roads and the City of Angels Camp has 32 centerline miles for a total of 799 centerline miles. NCE's scope of work included:

- Review of legacy databases and GIS shapefiles
- Perform condition surveys on approximately 799 miles of paved roads and determining the PCI
- Update Maintenance and Rehabilitation (M&R) Strategies
- Budget Analysis and Funding Scenarios
- Selecting roads for repair using SB1 to be submitted to the CTC
- Training & Technical Support
- Presentations to City Council and staff

Client Contact

Calaveras Council of Governments
444. E. Saint Charles Street, Suite A
San Andreas, CA 95249

Amber Collins, Executive Director
(209) 754-2094

Project Team

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Project Manager

James Signore, PhD, PE
QC Manager

Sharlan Dunn, PhD, EIT
Project Engineer

Marvin Mann
Senior Field Technician

Jake Rajnowski
Field Technician

Ken Huisman (märker geospatial)
Field Supervisor

Budget

$160,000



StreetSaver®

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Monterey Countywide Pavement Management System Implementation (2017 – 2020)

In 2017, Monterey County residents passed Measure X, a 3/8 cent sales tax for transportation purposes. Measure X allocates 60% of the funds received to local road maintenance, pothole repairs & safety. It also requires each jurisdiction to develop a pavement management system, and to submit regular reports on the conditions of their streets, to ensure timely repairs and keep the public informed.

In late 2017, TAMC selected NCE to implement the StreetSaver® PMP for eight of its 13 member agencies (the other five already had a PMP). The PMP will provide each agency a management tool to inventory street pavements, assess pavement conditions, record historical maintenance, forecast budget needs, and view impacts of funding on agency pavement conditions.

Most are small cities with less than 50 miles. They include Carmel-by-the-sea, Del Rey Oaks, Greenfield, King City, Marina, Pacific Grove, Sand City and Monterey County for a total of 1,375 miles.

Client Contact

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55B Plaza Circle
Salinas, CA 93901

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rich@tamcmonterey.org

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James Signore, PhD, PE
QC Manager

Mei-Hui Lee, PhD, PE
Senior Engineer

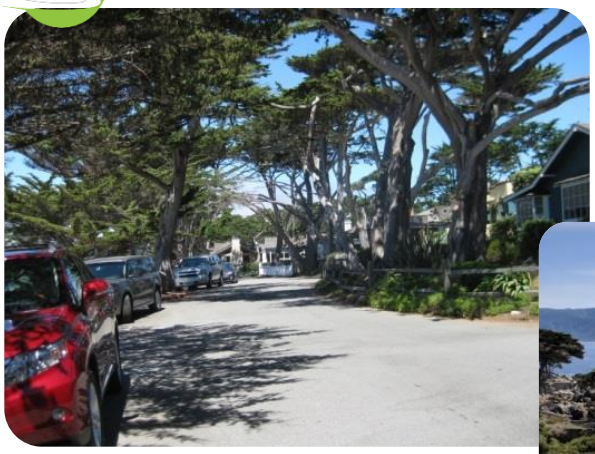
Sharlan Dunn, PhD, EIT
Project Engineer

Marvin Mann
Senior Field Technician

Jake Rajnowski
Field Technician

Budget

$302,226





"The NCE team knows the StreetSaver® software inside and out, and trains new users to be proficient. While Monterey County previously attempted to develop a pavement management system in-house, the task proved too daunting. Margot Yapp and the team at NCE tackled the task by systematically collecting, evaluating, and developing the pavement network conditions to successfully complete and implement the County's first, fully functioning Pavement Management Program.

Monterey County now has a clear understanding of the pavement conditions in their network, allowing county engineers to develop strategies for maintaining the road network based on anticipated funding. NCE' s experience in working with the nuances of both rural and urban pavement networks was a key factor in our program's success."

Rich Deal, PE, TE, PTOE Principal Engineer, Transportation Agency for Monterey County

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MTC – Various Projects/Locations, CA (1987 – ongoing)

NCE staff has been involved with the StreetSaver® program through various assignments since its inception in 1987. This has allowed NCE to develop an in-depth of understanding of the fundamental principles in the evolution of StreetSaver® and its capabilities. Details of our diverse experience and expertise are described below:

PMP Implementations: NCE has implemented the StreetSaver® PMP in over 200 cities and counties since 1994. They include many major cities such as San Francisco, San Jose, Oakland, Seattle, Boise, Fremont, and Fairfield as well as counties such as Alameda, Marin, San Mateo, Santa Cruz, Sonoma, Stanislaus, Mendocino, Mariposa, Humboldt, Lake, Lassen, and Mono. The PMP implementations included network sectionalizations, performing condition surveys and budgetary analyses presentations to elected officials and preparing capital improvement programs.

StreetSaver® Knowledge: NCE staff proposed on this project have worked with the StreetSaver® software since 1987. We have more than 100 person-years of experience with StreetSaver®, more than any other pavement consulting firm in the United States.

P-TAP Rounds 1-21 Projects: NCE has been a selected P-TAP consultant since Round 1 in 1998/99. This includes NCE's technicians and engineers being certified in MTC's rater certification program. Our PTAP clients include more than 70 cities and counties (more than half the agencies in the San Francisco Bay Area).

Beta testing: NCE has been involved with beta testing different versions of the StreetSaver® software since 1994. We have worked with MTC as well as the software developers in finding, reporting and resolving bugs from versions 5.4 to the current online version. Our staff has included users with an intimate knowledge of the PMP program and programming abilities, as well as newer engineers with limited knowledge (that better represent the typical user). Our exposures to multiple "real-life" databases have enabled us to push the program to its limits.

Software Development: NCE has been a member of the Software Development Team (SDT) since the development of Version 7.0. Since 2001, NCE has been a facilitator at the SDT meetings and worked with both MTC and the software developers (DevMecca) in the development of subsequent versions. Both of these experiences have allowed us to better understand the programming efforts, and challenges inherent in the process. It has also allowed a fuller

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QC Manager

Mei-Hui Lee, PhD, PE
Senior Engineer

Sharlan Dunn, PhD, EIT
Project Engineer

Marvin Mann
Senior Field Technician

Ken Huisman (märker geospatial)
Field Supervisor

Budget

$9,024,623



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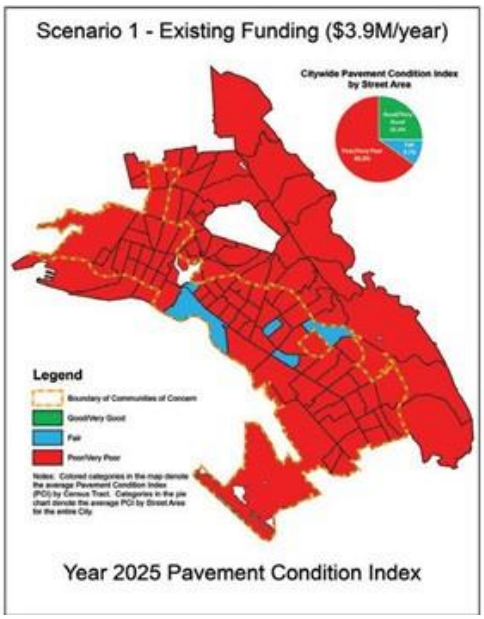
understanding of the capabilities of the program, and the bugs and enhancements that accompany each new version. This, in turn, allows us to better assist agencies.

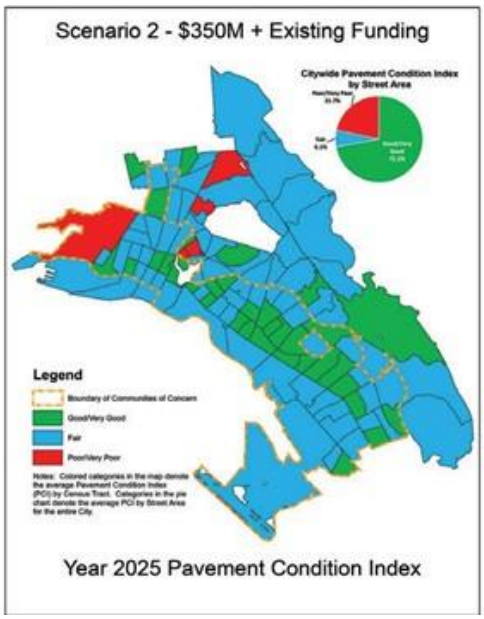


Training: NCE has trained users on the StreetSaver® software since 1997. This includes developing all the training materials, ensuring interaction in the training as well as conducting the training. Our staff has performed training on the software as early as 1988 with individual agencies. Training courses we have developed for MTC include Basic Computer Skills, Budgetary Analyses, How to be a Champion, GIS Linkage, Custom Report Wizard, and Project Selection. Currently, this training has been transitioned to being online.

Non-Pavements Needs Assessment: NCE developed a methodology for predicting non-pavement needs to incorporate in the Regional Transportation Plan. Using survey data from over 80 cities and counties NCE developed prediction models to determine the non-pavement asset value in agencies where little, if any, data were available. Over 22 different non-pavement assets were included, e.g., curb and gutters, sidewalks, traffic signals, streetlights, guardrails, sewers, sound/ retaining walls, traffic signs, and storm drains.

Challenges and Solutions: NCE has been the go-to consultant for MTC for "unusual" scope of work. The most recent was performing a funding analysis for the City of Oakland which passed a $350 million bond in 2016 for transportation improvements. The results from StreetSaver® had to be coupled with external factors such as safety, alternate modes of transportation and social equity.





StreetSaver®

NCE has been one of our top consultants since 1996 and has been our Pavement Management Technical Assistance Program (P-TAP) since its inception in 1998. It has built a reputation in implementing pavement management system for local agencies throughout the west coast. Besides P-TAP, MTC has contracted with NCE to provide StreetSaver® hotline support and training workshops. As far as a company to do business with, NCE is one of the best I have dealt with. Its practice has always been to pay attention to customer needs, and it has been fast to respond to MTC needs, technically and professionally." – **Sui Tan, MTC StreetSaver® Program Manager, MTC**

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Sacramento County Pavement Management System Update (2017 – 2019)

The County implemented the StreetSaver® PMP in the late 1990s, but the software had not been updated for more than 10 years. In the interim, the County developed an in-house Access database that calculated the PCI and Excel spreadsheets to perform the network analysis.

The decision to update to the current version of StreetSaver® was intended to assist the County in managing the road network of approximately 2,200 centerline miles. NCE assisted in converting and upgraded to the current version of StreetSaver® in 2013 and performed preliminary analyses as preparation for Measure B.

The next phase was to collect pavement distress data in District 3 which comprises the north central portion of Sacramento County. District 3 is bordered by portions of the Cities of Sacramento, Citrus Heights, Folsom, and Rancho Cordova. This area encompasses approximately 730 centerline miles of roads, which consists of 565 centerline miles of residential streets and 165 centerline miles of arterial and collector streets. This corresponds to roughly 3,470 road sections in StreetSaver®.

After SB1 was passed, NCE completed condition surveys of the remaining road network in April 2018. The data collected was entered into the StreetSaver® database and the PCI determined. In addition, NCE performed the funding analysis to determine the funding shortfalls and the results were presented to the Board of Supervisors and the public so that they understood the impacts of SB1 funding and how it will be allocated.

Additionally, the County's database was stored in a variety of Excel and Access files that had to be converted to the StreetSaver® database. In addition, the road centerline shapefile was not useable for field surveys. NCE updated and converted the database and assisted the County in removing errors and anomalies from the shapefile prior to any field work.

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9660 Ecology Lane
Sacramento, CA 95827

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wickk@saccounty.net

Project Team

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James Signore, PhD, PE
QC Manager

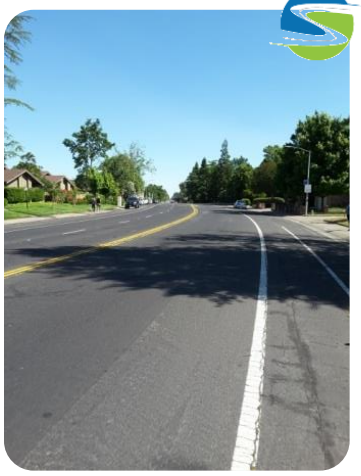
Mei-Hui Lee, PhD, PE
Senior Engineer

Marvin Mann
Senior Field Technician

Ken Huisman (**märker geospatial**)
Field Supervisor

Budget

$249,800



StreetSaver®

"We found NCE project teams to be highly knowledgeable, very professional, and responsive throughout the course of each project they have worked on for the County. In the most recent project, the NCE Project Team, headed by Margot Yapp, exemplified subject-matter expertise, project organization, and collaboration. The team was also proactive in handling the schedule and costs.

We are very pleased with the product we have received. The analysis and recommendations made by Nichols Consulting Engineers for this project have greatly helped our planning and funding efforts for the County pavement maintenance and rehabilitation program."

Reza Meghissi, Chief, Sacramento County Department of Transportation

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Contra Costa County Pavement Design Services and Pavement Management System Updates (2016 – ongoing)



NCE has updated the County's StreetSaver® PMP since 2016. This included performing condition surveys on 655 miles of roads, reviewing pavement rehabilitation strategies, performing funding analyses and developing a five-year work plan. The work plans were based on criteria such as treatment type and neighborhoods to reduce mobilization costs during construction, and also to obtain more competitive bids for seal programs.

Currently, NCE is incorporating 143 County parking lots into StreetSaver® as well as preparing designs for the parking lots at Kids Castle Center and Ygnacio Valley Center. In addition, NCE performed pavement designs for 11 miles of roads in 2017. NCE's scope of work included

- Visual evaluation of roadway surface, noted predominate distress types, estimated base repair quantities, presence of curb/gutter, curb reveal, and other apparent information relevant to treatment type selection
- Deflection testing
- Coring and dynamic cone penetrometer (DCP) testing
- Preparation of a pavement design report, which included consideration of asphalt overlays, reconstruction, full depth reclamation, cold in-place recycling, stress absorbing membrane interlayers, and asphalt rubber cape seals
- Meetings to discuss treatment alternatives with County staff

Client Contact

Contra Costa County
Public Works Department
651 Pine Street
Martinez, CA 94553

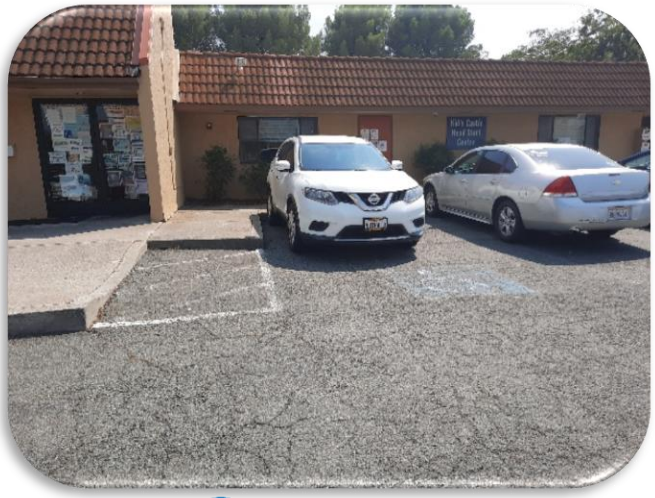
Angela Villar
Associate Civil Engineer
(925) 313-2016
Angela.villar@pw.cccounty.us

Project Team

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PIC
James Signore, PhD, PE
QC Manager
Mei-Hui Lee, PhD, PE
Project Manager/Senior Engineer
Marvin Mann
Senior Field Technician

Budget

$326,000



StreetSaver®

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Sonoma County Pavement Management System Update (2016 – 2020)



NCE was selected by Sonoma County to provide pavement condition survey services as well as other related pavement management tasks to support the Department of Public Works. Grass roots organizations such as SOS Roads (Save Our Sonoma Roads) have raised the visibility of the condition of county roads with both the public and elected officials, and in recent years, significant infusions of funding have been transferred from the General Fund for road maintenance. The Board of Supervisors adopted a Long-Term Road Plan in 2014 but there is only enough funding to execute approximately a quarter of the plan.

Nonetheless, as with all projects that involve public funding, public accountability is critical so that residents can see and understand that these new revenues are being spent in the most cost-effective manner, and that performance measures are instituted. One such measure is the PCI which is reported periodically to elected officials and/or the public.

NCE's scope of work includes:

- Performing condition surveys on the road network (1366 miles)
- Update the maintenance and rehabilitation (M&R) history in the StreetSaver® database
- Develop sustainable maintenance and rehabilitation strategies for inclusion in the decision tree
- Perform funding or budgetary analysis
- Develop multi-year work plans
- Prepare reports to ensure compliance with MTC's requirements
- Prepare graphs and exhibits for presentations to elected officials as needed

A key component of this project is to work with County staff to develop maintenance strategies that are both cost-effective and appropriate for low volume rural roads. For example, placing a crusher course with cape seal on rural local roads could potentially save up to $100 million when compared with current treatments i.e. full depth reclamation and overlay.

Client Contact

County of Sonoma
Department of Transportation & Public Works

Steve Urbanek, PE
Pavement Preservation and Special Districts Manager
2300 County Center Drive, Suite B100
Santa Rosa, CA 95403
Tel: (707) 565-3884
e: Steve.Urbanek@sonoma-county.org

Project Team

Margot Yapp, PE
PIC/Project Manager

James Signore, PhD, PE
QC Manager

Mei-Hui Lee, PhD, PE
Project Manager/Senior Engineer

Sharlan Dunn, PhD, EIT
Project Engineer

Marvin Mann
Senior Field Technician

Jake Rajnowski
Field Technician

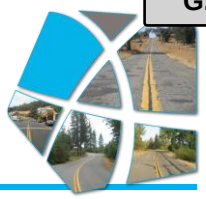
Budget

$823,000

StreetSaver®



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G. Additional Information

Non-Pavement Asset Management Projects

As part of NCE's asset management services, we collect both inventory and condition data on assets such as storm drains, sidewalks, curbs and gutters, curb ramps, paint markings, signs and signals for public agencies. We have developed customized condition rating standards where none exist. The data are entered into a database, either software such as StreetSaver, or custom databases developed by NCE. These are then analyzed to develop funding estimates for the future and work plans. The results are typically presented in reports, AutoCAD maps or GIS shape files.

One of the best illustrations of our experience is with Orange County, where we have collected the following assets since 2009:

- Sign Inventory – x, y location, (point feature class) MUTCD code
- Striping - (polyline feature class) & Stenciling (point feature class) MUTCD code
- Curb markings - x, y location (point feature class)
- Street lights - x, y location, type (point feature class)
- Manholes – x, y location (point feature class)
- Catch basins - x, y location (point feature class)
- Traffic signals – (Support x, y location, support type, signal head type)
- Traffic control cabinets – x, y location (point feature class)
- Sidewalk - (polyline – length, type and material)
- Curb and Gutter - (polyline – length, type and material)
- Medians - (polyline – length, type and material)

As an indicator of our experience and the quality of our work, **NCE was nominated by Orange County for a "Red Carpet" Award** for collecting right-of-way asset inventory such as sidewalks, curb ramps, signs, signals, storm drains and markings. This award is for agencies who have implemented **innovative policies and programs that cut through red tape and reduce costs**. In this case, the data NCE collected reduced the field time required for repairs and decreased the County's response time to complaints and requests from residents.

Cloud-Based Data Collection





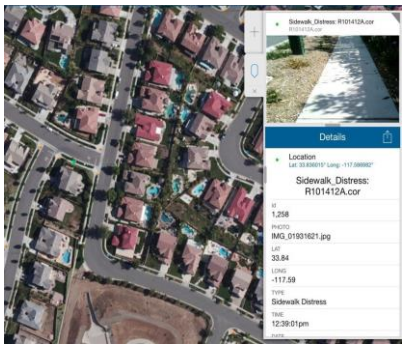
NCE leverages the ESRI software platform including ArcGIS for Desktop, ArcGIS Online (AGOL), and the Collector application loaded onto mobile devices paired with high-accuracy GPS receivers to efficiently collect spatial and attribute data. This innovative and advanced field data collection workflow is implemented across NCE's various disciplines and includes infrastructure inventories including pavement and sidewalk assessment and storm water network inventories, biological surveys and cultural resource surveys.

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The process involves developing a unique geodatabase (GDB) for each data collection effort that defines the specific data requirements for each project (e.g., feature types, subtypes, attributes, and domains), publishing the GDB to AGOL as a web service, configuring the resulting feature layer within a web map, and then accessing the web map through the Collector application on a smartphone or tablet. The mobile device must have an associated cellular data plan.

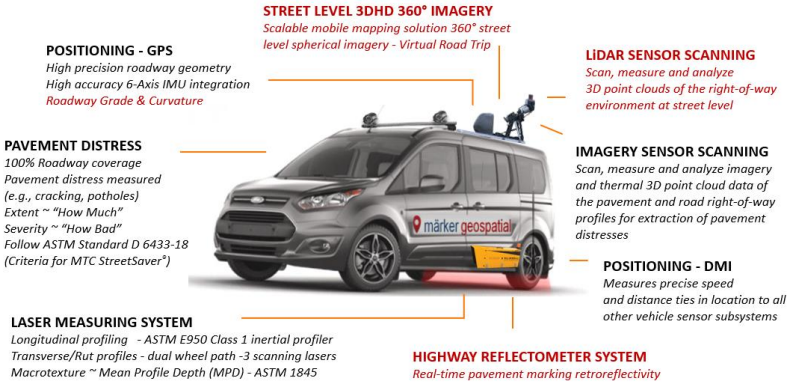
Photos are uploaded to AGOL as attachments to spatial data if one or more pictures are desired at a given location. If cellular connectivity is an issue for a particular project area, the Collector application is capable of collecting offline data and then syncing with AGOL once connectivity is re- established.

If higher accuracy spatial locations are desired, our mobile devices can be paired with Bluetooth GPS receivers such as the Trimble R1, which is capable of collecting sub-meter, real-time (SBAS) corrected spatial data. However, since GPS signal strength is related to visibility of the sky, special circumstances may dictate that the accuracy level decrease in areas with obstructions.



Another advantage of NCE's cloud-based data collection method is that data can be subjected to QC in real-time by project managers or other staff. This is important in the initial phases of data collection to correct errors quickly. It also enables quick status assessments (e.g., percent complete) throughout the life of a project. Field data does not need to be downloaded and converted from proprietary formats to a GIS in order to perform QA/QC or status update assessments – it is simply a matter of logging onto AGOL and accessing a web map or adding the map service to an ArcGIS for Desktop map document. Compared with conventional clipboard, pen and paper approaches, this method is less error prone, more efficient, and seamlessly allows for the development of figures, tables, or reports to summarize the data.

Roadway Collection Vehicle System



Our Roadway Collection Vehicle System is comprised of many sub-components in order to provide automated, real time roadway results, such as travel distances, longitudinal roughness, transverse pavement profiles, wheel track rutting depths, as well as incorporating our global positioning (GPS) system, roadway reflectivity, and innovative 3D 360° imagery LiDAR mobile mapping solutions. Our pavement distress data collection process involves the use integrated distress laser pavement roadway scanners which are all used to collect the type, severity, extent, start and stop points of all ASTM D-6433-18 pavement surface distresses.

Note: components in "black" will be utilized in this project as optional for pavement condition update. Other components will be available for optional tasks. In addition, our team complements this semi-automated process

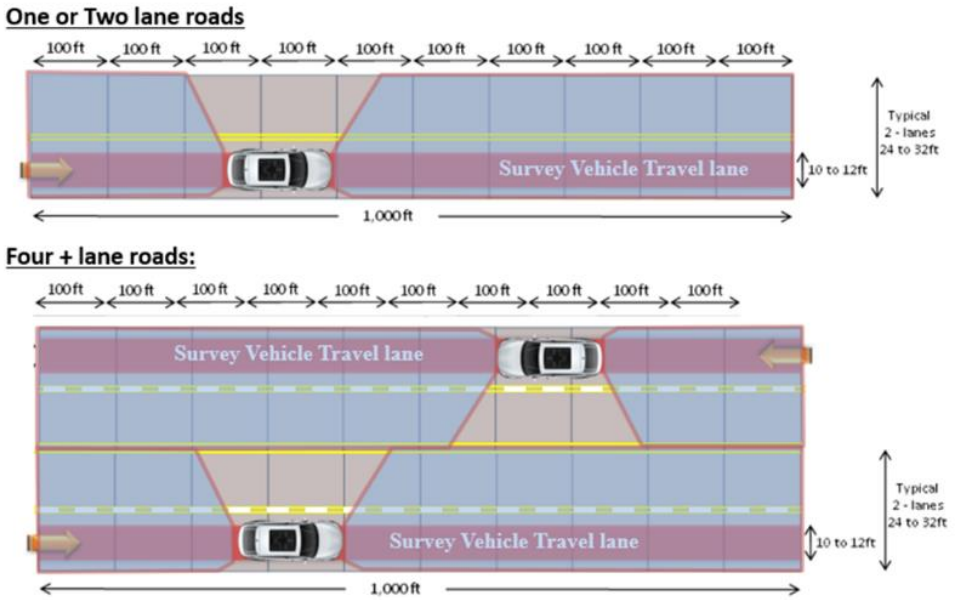
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with MTC certified inspectors in our survey vehicle to identify and confirm all the pavement distress data by using our on-board surface distress recording subsystem. These specially designed, touch screen pavement distress data entry devices are integrated with the vehicles GPS to allow inspectors to further accurately quantify the severity and location of each pavement distress.

This also allows 100 percent of the pavement area to be inspected at posted speed limits to avoid impeding or disrupting traffic flow. One survey pass per pavement section will be performed on one or two lanes streets. Additional passes will be performed on three or more lanes or divided streets (see survey area coverage on the next page).

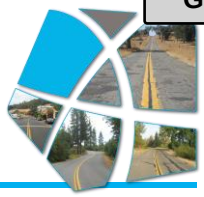
All field technicians utilized on this project have been certified by MTC (see resumes). The County can be assured that all data collected will be accurate and checked before submittal to the County.

Our team will be responsible for providing all equipment necessary for performance of this task. Should County personnel wish to observe our field crew during the inspection surveys, we will be more than happy to accommodate this.



Note that this scope of work and condition surveys do not address issues including, but not limited to traffic, safety and road hazards, geometric issues, road shoulders, sidewalks, curb and gutters, drainage issues or short-term maintenance that should be performed.

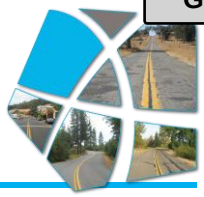
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H. Fee Schedule

Per the requirements of the RFP, NCE has included a separate sealed envelope containing the fixed fee for the completion of the Pavement Management Program Update.

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Appendix A
Example QC Plan

Metropolitan Transportation Commission

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Quality Control Plan



Submitted to:
Metropolitan Transportation Commission
Bay Area Metro Center
375 Beale Street, Suite 800
San Francisco, CA 94105

NCE
501 Canal Boulevard Suite I Richmond CA 94804
(510) 215-3620 Phone / (510) 215-2898 Fax

June 2020

The contents of this report is the confidential property of Nichols Consulting Engineers, Chtd. (NCE) and should not be copied, modified, retransmitted, or used for any purpose except with NCE's written authorization.

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Appendix A
Resumes & Certificates of Field Inspectors

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1.0 INTRODUCTION

The need for quality control is paramount when performing data collection in any field, as it is essential for accurate planning, analysis, and design. NCE's *Quality Assurance Management Plan* (QAMP) affirms that:

> *NCE is dedicated to achieving technical and management excellence and to delivering professional engineering and environmental services that meet or exceed our clients' needs. NCE's Quality Assurance (QA) Program is designed to achieve these goals. This QA Management Plan (QAMP) describes NCE's QA Program, which is based on four principles: client satisfaction, employee participation, problem prevention, and continuous quality improvements.*

NCE's QAMP establishes minimum quality standards for performance and procedures for assuring that our clients receive quality service and products. It requires the participation of employees at every level. It encourages Project Managers and technical staff to take pride in their work and to assume responsibility for ensuring that the work is done correctly the first time. The QAMP is also designed to reduce the incidence of quality-related issues and, where necessary, results in corrective actions and modifications of work procedures to increase the quality of future services and products.

NCE has also prepared detailed and specific quality control plans (QCPs) for projects; the most notable example is for the **Long Term Pavement Performance (LTPP) – Western Regional Support Contract** for the Federal Highway Administration. This 150-page document covers data collection on highways, including deflection, profile, pavement distresses, traffic, maintenance and rehabilitation history, materials testing and sampling as well as document control.

1.1 Objectives

This document constitutes a formal QCP with a focus on the collection of pavement distresses.

1.2 Outline

The following components are addressed in this QCP:

- Condition survey procedures
- Data collection accuracy requirements
- Inspector qualifications and training
- Safety procedures

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2.0 CONDITION SURVEY PROCEDURES

The documents governing the performance of pavement condition surveys are:

- Pavement Condition Index Distress Identification Manual for Flexible Pavements," Metropolitan Transportation Commission (MTC), 4th Edition, March 2016.
- Pavement Condition Index Distress Identification Manual for Rigid Pavements, MTC, 3rd Edition, March 2016.

The 2016 edition of the manual for flexible pavements defines eight distress types for asphalt concrete pavement (AC) with weathering separated from raveling. This contrasts with the seven distress types defined in previous editions, which combined weathering and raveling. The separation is based on loss of binder matrix and fine aggregate (weathering) versus loss of coarse aggregate (raveling). This revision will have a small impact on the pavement condition index (PCI) as summarized below[1]:

2. How will the PCI for individual sections differ using the 2016 MTC Distress Manual?
   - If there is weathering and raveling on the pavement section, there may be some differences in PCI, depending on the pavement extent and severity of these distresses.
   - In general, the PCI of an individual section is expected to be within ± 8 PCI points in 90% of the cases.

3. How will be the PCI be affected if a pavement section is in very good condition (PCI>70)?
   - Low weathering will result in slightly higher PCI values than low weathering and raveling (W&R).
   - Medium weathering will result in higher PCI values than low W&R.
   - High weathering will result in higher PCI values than medium W&R.
   - The PCI for the individual sections with a PCI above 70 is expected to be within ± 5 PCI points in 75% of the cases.

4. How will the PCI calculation be affected if a pavement section is in poor condition (PCI<25)?
   - Medium raveling will result in slightly higher PCI values than medium W&R.
   - High raveling will give the similar PCI values as high W&R.
   - The PCI for the individual sections with a PCI below 25 is expected to be within ± 1 PCI point in 75% of the cases.

5. How will the network PCI differ when using the 2016 MTC Distress Manual?
   - The expected changes in network PCI are minimal. The PCI network average may increase up to 4 PCI points depending on the network PCI. Higher network PCI values will increase more than lower network PCI values.

[1] Technical Note About the PCI Calculation with the 2015 MTC Distress Identification Manual, University of Texas, El Paso, September 29th, 2015.

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Any exceptions to the procedures outlined in the governing documents will be discussed before any surveys are performed. Such exceptions typically relate to distresses or situations not addressed in the manuals. Example distresses include slippage cracks, roller check marks, or edge cracking on roads with no curbs and gutters. Example situations include the use of seals or open-graded asphalt concrete mixes. Any modifications will be documented and submitted to MTC for approval.

The condition surveys will be performed as ***walking surveys*** with a minimum 10% sampling rate. Field crews typically consist of one person on residential roads and some collectors, and up to two people for major arterials, depending on traffic volumes and speeds. The safety of field personnel is a high priority in all instances.

Each sample unit selected must be representative of the entire pavement section. This assumes that the section is homogeneous; if it is not homogeneous, then the section must be split according to the criteria agreed upon by the agency. Typical criteria include:

- Pavement condition
- Construction age, if known
- Maintenance history, if known
- Traffic volumes (or functional classification as a surrogate)
- Surface types (e.g., AC or Portland cement concrete [PCC])
- Geometric elements (e.g., widths)

Any proposed modifications to the section inventory data will be documented and provided.

Typical sample unit dimensions are 100 feet in length by the width of the road for AC pavement. Since the maximum size of a sample unit allowed in StreetSaver is 4,000 square feet, roads that are more than 40 feet wide will have shorter lengths (generally 50 feet); or, if they are divided by a raised median, separate sample units will be taken in each direction. For PCC pavements, the inspection unit can vary in size from 10 to 30 slabs. When needed, imaginary joints will be placed to create slab sizes of 5 feet by 5 feet. This is consistent with best practices.

Any pavement areas that are not representative of the section will be noted and surveyed as a special sample unit.

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3.0 DATA COLLECTION ACCURACY REQUIREMENTS

Accuracy requirements for data collection include two components:

- Random and systematic reinspection
- PCI comparisons with past surveys

3.1 Random and Systematic Reinspection

A minimum of 5% of the total sample units will be reinspected by an engineer or inspector other than the original inspector. Reinspection sample units will be selected based on both a random and a systematic basis.

3.1.1 Random Reinspections

Random reinspections will include a representative selection across the following categories:

- Functional classification (i.e., arterials, collectors, locals)
- Surface types (e.g., AC or PCC)
- Pavement conditions (e.g., good, fair, poor)
- Inspectors
- Geographical areas, if applicable

3.1.2 Systematic Reinspections

Systematic reinspections may be selected due to observed trends associated with factors such as geographical area or a specific inspector. In such cases, more than 5% will be reinspected.

3.1.3 Acceptability Criteria

At the time of reinspection, the actual distresses will be reinspected, verified, and any corrections made. The following acceptance criteria shall be applied to the reinspection, as required by MTC:

- At least 50% of the PCI values for the reinspected sections must be within ± 5 PCI points of the original inspection PCI values.
- No more than 12% of the PCI values for the reinspected sections can be greater than ± 15 PCI points of the original inspection PCI values

If the above acceptance criteria are not met, an additional 5% will be reinspected. This practice will continue until the reinspected sections meet the acceptability criteria.

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3.2 PCI Comparisons with Past Surveys

As another level of quality control, the current PCIs will be compared with the corresponding previous PCIs. If they differ by more than ± 15 PCI points, these sections will be automatically flagged for further investigation.

3.2.1 PCI is More Than +15 points:

If the PCI difference is greater than 15 points, the section will be investigated to see if a maintenance and rehabilitation (M&R) event has occurred since the last survey that has been not recorded. This can only be resolved with feedback from the agency. M&R events typically include activities such as:

- Crack sealing – changes medium or high-severity cracking to low-severity
- Patching – distresses removed and patched, resulting in a PCI increase
- Surface seals
- Overlays

3.2.2 PCI is More Than -15 points

If the PCI difference is greater than negative 15 points, the section will be investigated to see if the average deterioration rate (usually 3 to 4 points per year) is exceeded. If the drop in PCI is within the acceptable range, no further action will be taken. However, if the drop exceeds the acceptable range, a reinspection will be performed. The default performance curves in the StreetSaver program form the basis for acceptable ranges.

3.3 Quality Management Report

The PCI difference between inspections and a log of reinspections will be included in the quality management report. The PCI comparison, sections selected for reinspection, and corrective actions will be documented and attached in the draft and final report.

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4.0 INSPECTOR QUALIFICATION AND TRAINING

All of NCE's inspectors on this project are certified through the MTC StreetSaver Rater Certification Program. Their resumes and certifications are provided in Appendix A.

NCE's inspectors and engineers are required to attend formal training on condition distress surveys. First, they attend the distress training provided by MTC. Then they work with an experienced inspector before working on their own. During their first month of individual work, up to 20% of their work is checked weekly for accuracy and consistency.

NCE also conducts a one-day in house training and calibration workshop once a year for all NCE staff involved with data collection.

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5.0 SAFETY PROCEDURES

NCE administers a health and safety program in compliance with the California Occupational Safety and Health Title VIII, Section 3203. The program is documented in NCE's *Workplace Safety Program Manual.*

The safety procedures require:

- Inspectors must wear safety vests at all times.
- A flashing beacon must be placed on top of all survey vehicles.
- Stopped vehicles must be parked at locations away from moving traffic (e.g., nearby parking, shoulders).

On roads with high traffic volumes or speeds, additional safety measures may be necessary, such as:

- Conducting surveys during off-peak periods (e.g., weekends)
- Providing an additional inspector
- Using traffic flaggers

In extreme cases where it is not possible to traverse the pavement surface, surveys will be performed from sidewalks or raised medians. This is most often encountered on state highways and major arterials.

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APPENDIX A

RESUMES & CERTIFICATES OF FIELD INSPECTORS

Collaboration. Commitment. Confidence.℠

Marvin Mann
Field Technician

Mr. Marvin Mann joined NCE in 2011 as a pavement management technician and is experienced in collecting distress data for Pavement Management Systems. He has completed the MTC "Distress Identification" courses for both Asphalt Concrete and Portland Cement Concrete Pavements.

Mr. Mann is certified by the Metropolitan Transportation Commission's (MTC) to perform pavement distress inspections; the certification testing involves passing a rigorous field test.

Apart from conducting field inspections, Mr. Mann has performed all functions related to data collection and is an active participant in the QC process. As part of the quality control process, he performs cross-checks of data in the PMS database. Mr. Mann has performed quality control checks of field collected data and pavement maintenance history to ensure that PMS databases are accurate and up to date. During this process, he also generates detailed reports, which are needed to help perform his cross-checks of the data collected.

He has completed condition inspections for over 2500 center line miles of roads and streets which include inspections on bituminous Asphalt Concrete Pavements and Portland Cement Concrete Pavements. Listed below are some of the agencies where Mr. Mann has performed condition inspections.

Additionally, Marvin has inspected trails and bike paths for the Cities of Folsom, Livermore and Davis, as well as UC Davis and East Bay Regional Parks Dept. He has also inspected airfield pavements in Amador and Lake Counties, and UC Davis.



Education
Certificate – Architecture Technology – Diablo Valley College, 2010
Certificate – 3D Arts – San Francisco State University, 2002
Associates Degree in Wood Technology – Laney College, 1997

Registrations and Certifications
USGBC Green Associate 2009

MTC StreetSaver Rater Certification Program (expires January 2018)

Joined NCE
2011

Total Years of Experience
9

Representative Projects

Ada County, Idaho
Albany
Amador County
Anaheim
Atherton
Bakersfield
Benicia
Calistoga
Ceres
Chula Vista
Clearlake
Contra Costa County
Dana Point
Davis
Diamond Bar
Dixon
El Centro
Fairfield
Folsom
Fort Bragg
Lake County
Lake Forest
Lakeport
Lincoln
Livermore
Manhattan Beach
Mariposa County
Mendocino County
Mission Viejo
Modesto
Mt Shasta
Placer County
Richmond
Rio Linda
San Bruno
San Pablo
St. Helena
Stanislaus County
Torrance
Trinity County
Turlock
Ukiah
Vallejo
Ventura County
Whittier
Willits
Yountville

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CERTIFICATE OF ACHIEVEMENT

This is to certify that

Marvin Mann

has completed the requirements of the

MTC StreetSaver Rater Certification Program

with the skills and knowledge on pavement condition
assessment based on the MTC's modified ASTM D6433

Certificate valid until May 02 2020

Serial no: 1056



Sui Tan, StreetSaver Program Manager
Metropolitan Transportation Commission

StreetSaver

*Certificate will be renewed in late 2020

Collaboration. Commitment. Confidence.℠

Jacob Rajnowski

Field Technician

Jake joined NCE in 2016 as a pavement management technician and is experienced in collecting distress data and coring samples for pavement management systems. He is currently collecting pavement distress data for the Counties of Sonoma and Lake.

He is certified by the Metropolitan Transportation Commission's (MTC) to perform pavement distress inspections; the certification testing involves passing a rigorous field test.

Apart from conducting field inspections, Jake performs all functions related to data collection and is an active participant in the QC process, including crosschecks of data in the PMS database, quality control checks of field collected data and pavement maintenance history to ensure that PMS databases are accurate and up to date. During this process, detailed reports are generated to perform crosschecks of the data collected. Jake has completed the OCTA PAVER™ 'Distress Identification' course for Asphalt Concrete and Portland Cement Pavements. He has performed condition surveys at San Francisco since 2016.

Representative Projects

Pavement Management

Pavement Management System Updates

Various Cities and Counties, CA

Field Technician. Projects included various forms of surveys for pavement distress data collection, this may have included walking, windshield, and/or semi-automated.

- Ada County, ID
- Buena Park
- Coalinga
- Half Moon Bay
- Kingsburg
- Humboldt County
- Lake County
- Lincoln
- Martinez
- Mendota
- Mission Viejo
- Moreno Valley
- Orange Cove
- Placer County
- Pleasant Hill
- San Francisco
- Sonoma County
- Stockton
- Trinity County
- Ventura County
- Walnut Creek
- Yolo County



Education

Sterling High School, Sterling, IL, 2003

Joined NCE

2016

Registrations and Certifications

OCTA PAVER™ Certification (expires 2022)
MTC Certification (expires 2022)

Total Years of Experience

4 years

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Attachment: NCE_County of Mariposa Pavement Management Program Update 2021_Proposal (LTC-

CERTIFICATE OF ACHIEVEMENT

This is to certify that

Jake Rajnowski

has completed the requirements of the

MTC StreetSaver Rater Certification Program

with the skills and knowledge on pavement condition
assessment based on the MTC's modified ASTM D6433

Certificate valid until Jun 14 2021

Serial no: 1080

Sui Tan, StreetSaver Program Manager
Metropolitan Transportation Commission

StreetSaver

Joseph De Leon

Field Technician



Joseph joined NCE in 2017 as a pavement management technician and is experienced in collecting distress data for pavement management systems. Apart from conducting field inspections, he has performed all functions related to data collection and is an active participant in the quality control process. As part of this process, he performs cross-checks of data in the PMS database. Joseph has performed quality control checks of field collected data and pavement maintenance history to ensure that PMS databases are accurate and up to date. During this process, he generates detailed reports, needed to help perform his crosschecks of the data collected.

Education
Mendocino College

Registrations and Certifications
OCTA PAVER Certification (expires 2021)
MTC StreetSaver Rater Certification Program (expires November 2021)

Joined NCE
2017

Total Years of Experience
3 years

Representative Projects

Pavement Asset and Management

Pavement Condition Surveys
Various Cities and Counties, CA

Field Technician. Listed below are a collection of agencies that he has performed condition inspections. Projects included various forms of inspections for pavement distress data collection, such as walking, windshield and/or semi-automated.

- Buena Park
- El Cajon
- Elk Grove
- Fairfield
- Garden Grove
- King City
- Lake County
- Martinez
- Oakland
- Pacific Grove
- Sand City
- Santa Ana
- Santa Cruz County
- Sonoma County
- Stockton
- Thousand oaks
- Torrance
- Ventura

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Attachment: NCE_County of Mariposa Pavement Management Program Update 2021_Proposal (LTC-

CERTIFICATE OF ACHIEVEMENT

This is to certify that

Joseph DeLeon

has completed the requirements of the

MTC StreetSaver Rater Certification Program

with the skills and knowledge on pavement condition
assessment based on the MTC's modified ASTM D6433

Certificate valid until Mar 23 2020

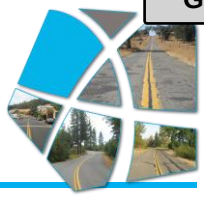
Serial no: 1052



Sui Tan, StreetSaver Program Manager
Metropolitan Transportation Commission

StreetSaver

*Certificate will be renewed in late 2020



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Appendix B
Example PMP Report

Pavement Condition Report



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Sacramento Today

With over 3,000 lane-miles of streets, the City of Sacramento owns and maintains the fifth largest city street network in California. Only the cities of Los Angeles, San Diego, San Jose, and Fresno have larger street systems in California.

In addition, Sacramento has the highest population density in the region and serves as a regional hub, so the streets carry a correspondingly higher traffic volume than most other cities.

This large street network is a significant public asset, valued at over $1.9 billion and is used by hundreds of thousands of automobiles, buses, trucks, bikes, and pedestrians daily.

With this in mind, the Department of Public Works is committed to cost-effective maintenance strategies that will fulfill their mission and vision to "keep the City of Sacramento operating and moving forward."

To achieve this, the Department has utilized a pavement management program (PMP) for many years. A PMP is a planning tool that answers questions such as:

- What does the City's street network consist of?
- What is the existing condition of the City's streets?
- What maintenance and rehabilitation strategies are deployed to improve street conditions?
- Is the current funding adequate?
- What is the most cost-effective way to implement a multi-year resurfacing program?
- What are the impacts of additional funding?

This report summarizes some of the key information on the City's street network and answers the above questions.



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Pavement Condition

In order to determine the health or condition of the streets, a standard called the Pavement Condition Index (PCI) is used. The PCI is a scale from 0 to 100, with zero being a pothole-riddled street and 100 a newly surfaced street. A PCI score of 70 to 100 is considered "Excellent/Good," 50 to 69 is "Fair," 25 to 49 is "Poor," and 0 to 24 is "Very Poor." The PCI may be considered similar to a "grade" for each street section. Generally, it is desirable to achieve a PCI of 75 or above because pavement in this condition can be much more economically maintained. The photos to the right illustrate a range of city streets in different conditions.

A portion of the street network is surveyed every year using the ASTM D6433 pavement distress protocols, which are nationally accepted and used by many cities and counties in the United States, as well as internationally. The arterials are inspected annually and approximately one-third of the residentials are inspected every year. This provides an up-to-date snapshot for planning purposes.

In 2019, Sacramento's streets had an average PCI of 60, which is considered to be in "Fair" condition. For comparison, Figure 1 indicates that Sacramento is in the mid-range compared to other large cities[1]. However, Sacramento is in the bottom third compared to other cities in Sacramento County. The statewide average is 65.

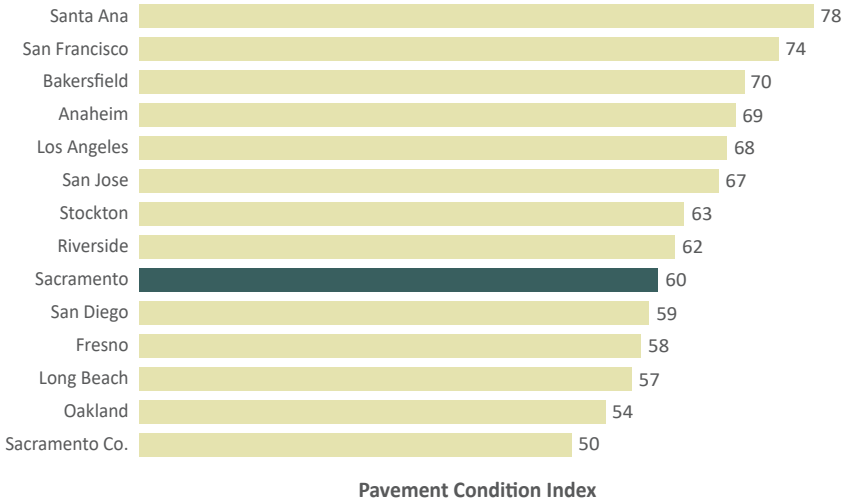


Figure 1. PCI Comparison with Other Large Cities



[1] PCI data are from the 2018 *California Statewide Local Streets and Roads Needs Assessment*, October 2018, with exception of Oakland, Fresno, Sacramento City, and San Francisco (2019).

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The pavement network is composed of different classifications, such as arterials, collectors, and residential streets. Arterials are characterized by higher speed; more truck, bus, and automobile traffic; and typically have four lanes or more. Residential streets are typically two lanes and have much lower speed and traffic. Collectors are in-between; their function is to "collect" traffic from residential streets and funnel them to arterials. Like all cities, Sacramento has significantly more residential streets (60 percent) than any other classification (Figure 2). Arterials have a slightly lower PCI (59) than collectors (61) and residential streets (60). This illustrates the impact of higher traffic volumes with a greater percentage of trucks.

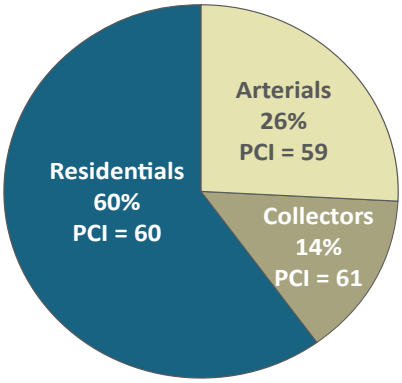


Figure 2. Pavement Network Breakdown

There are significant financial implications to a decreasing PCI. Obviously, pavements deteriorate over time. The deterioration is slow at first, but then accelerates when the PCI drops below 70 (see Figure 3). As the pavement deteriorates, the cost of repair also increases rapidly. If there is inadequate funding to maintain streets in their current condition, the unfunded backlog will grow rapidly in the future.

The unfunded backlog consists of pavement repairs that cannot be performed due to lack of funding. This includes street maintenance, rehabilitation, and reconstruction activities. Deferring maintenance to future years will result in higher costs, as streets that need to be overlaid now will require reconstruction later. The City's current unfunded backlog is approximately $225 million.

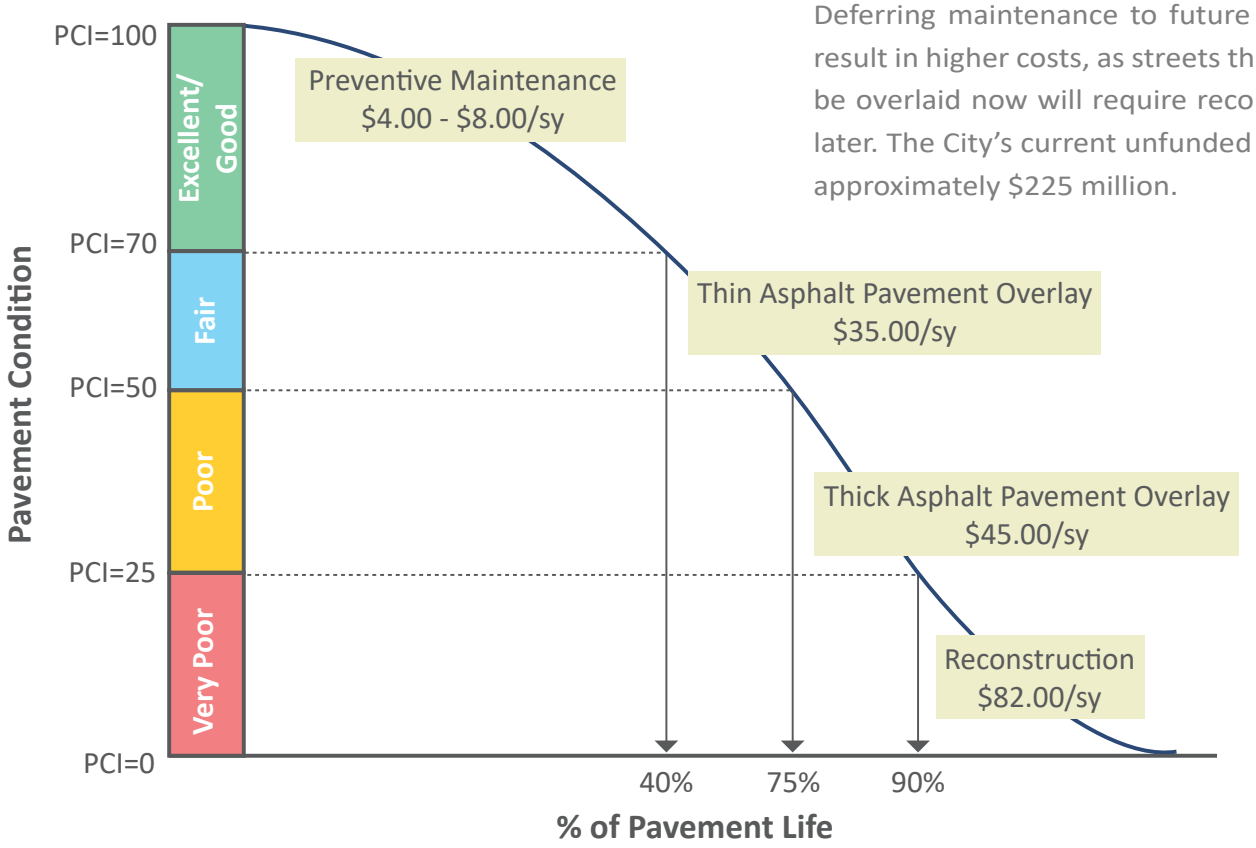


Figure 3. Pavement Life Cycle and Repair Costs

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Council Districts

The street network is almost evenly divided among the eight council districts, but the roads are not necessarily all in the same condition. Figure 4 indicates that District 1 has the highest PCI (72) and District 2 the lowest PCI (52), with the remaining districts in the high 50s to low 60s. This is due to the fact that the streets in District 1 are newer than those in most other districts; in addition, deferred maintenance on older streets results in faster deterioration and hence a lower PCI.

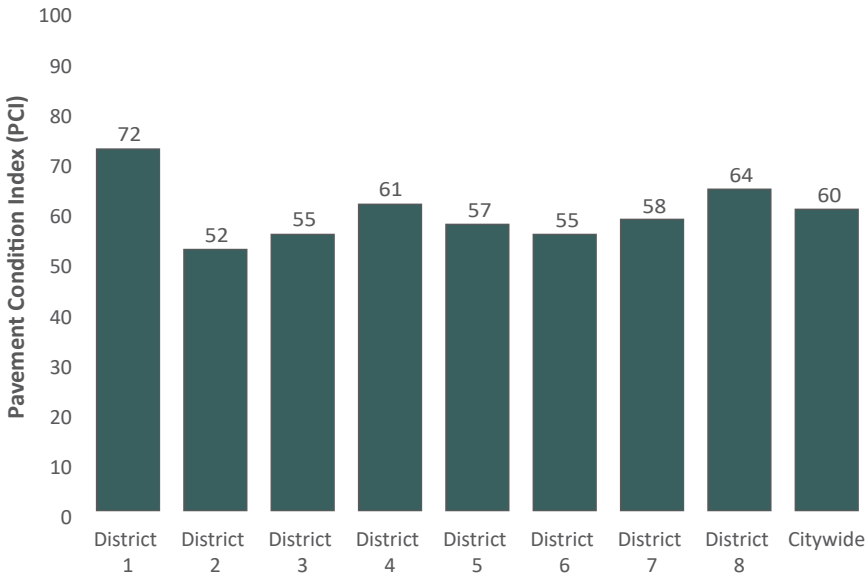


Figure 4. Average PCI by Council District

Pavement age is just one factor in today's pavement condition; traffic levels, the underlying subgrade soils, drainage flows, and past maintenance practices are also contributing factors. Therefore, it should not be surprising that the PCIs for each district are not identical (Figure 5 shows the percentage of streets in each condition category for each district). Consequently, it is not always possible to implement a "one size fits all" approach to maintenance. Each district will have different funding and maintenance needs.

Appendix A, included in the back of this report, contains maps of each council district and the condition of the streets in those districts, as well as the unfunded backlog.



Figure 5. Breakdown of Condition Categories for Each Council District

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Maintenance Strategies

The street condition is affected by the type and timing of maintenance strategies. Historically, the Department has implemented a variety of maintenance treatments to repair streets. These techniques include a combination of relatively inexpensive pavement preservation treatments such as slurry seals on streets in good condition to significantly more expensive overlays and reconstruction for streets in fair and poor condition. The Department follows best management practices to extend the paving dollar as much as possible by implementing an aggressive pavement preservation policy. Some of the treatments that have been applied include rubberized overlays and seals, recycled asphalt pavements, and bonded wearing courses.

Figure 3 (on page 3) summarized the general costs of repair for streets in different conditions. For example, streets that are in good condition require seals at an average cost of $4 per square yard. In contrast, streets that are in very poor condition will require reconstruction at costs of as much as $82 per square yard, which is 20 times more expensive. Or to put it another way, the cost of reconstructing one failed street is equivalent to the cost of preserving 20 good streets.

Reconstructing one failed street is equivalent to preserving 20 good streets.

Maintaining streets is, in many ways, similar to maintaining a car. For example, inexpensive oil changes are much more cost-effective in the long run than foregoing maintenance and replacing the engine when it fails.

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Americans with Disabilities Act (ADA) Requirements

The maintenance of streets also requires a "complete streets" approach to design, operation, and maintenance to enable safe access for users of different ages and abilities, regardless of the mode of transportation. This affects all aspects, such as restriping for bike lanes, traffic signals, or modifications to reduce speeds. A key component of this is the Americans with Disabilities Act (ADA), which requires public entities to ensure that persons with disabilities have access to the pedestrian routes within the public right-of-way.

In July 2013, a joint technical guidance was published by the Department of Justice and the U.S. Department of Transportation to clarify which road maintenance activities would trigger the need to upgrade affected curb ramps to current standards. Essentially, any street maintenance defined as an "alteration" triggers the requirement to upgrade ADA curb ramps.

Almost all of the treatments utilized by the Department are considered "alterations;" this affects an estimated 25,400 curb ramps and will accelerate the schedule to upgrade non-compliant ramps. The upgrading/replacement of curb ramps represents a significant opportunity for the City to improve ADA access during the completion of pavement rehabilitation and maintenance activities, but the costs for these ramp upgrades need to be planned and accounted for in the City's paving costs. As an older city, most of Sacramento's streets were built prior to current ADA standards. It is estimated that upgrading curb ramps adds as much as 37 percent to street paving costs. The City has committed at least 20 percent of its annual transportation funds for ADA compliance.

The photos show examples of compliant and non-compliant curb ramps.



Compliant curb ramp



Non-compliant curb ramp



Non-compliant curb ramp

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Historical Funding and Pavement Maintenance

When sufficient funding is available, it is possible for any city to maintain streets at an acceptable level. However, for Sacramento, Figure 6 illustrates two trends that have occurred since 2008:

1. Reduced Treatment Area: Between 2008 and 2010, almost 180 lane-miles of streets were maintained or repaired each year. However, since 2011, this has dropped to an average of 52 lane-miles per year, or about a third of the previous level of effort.

2. Declining Pavement Condition: The result is a downward trend in pavement condition as illustrated by the Pavement Quality Index (PQI). The PQI is a measure that was used between 2008 to 2016; beginning in 2017, the City switched to the more widely accepted PCI as discussed in the previous section. Note that there was no resurfacing program in 2017 (due to lack of funding) or in 2019 (due to high bids).

There are several reasons for the decreased number of streets treated:

- The City's funding levels reached a high of $14.3 million in 2009 (primarily ARRA[2]) (see Figure 7), and then dropped sharply to $5.3 million in 2010. Funding did not improve significantly until 2019, when SB1 was passed (see next section).
- The cost of complying with regulatory requirements has increased (e.g., ADA compliance).
- Construction costs have steadily increased since 2012.
- Operational costs have also increased.

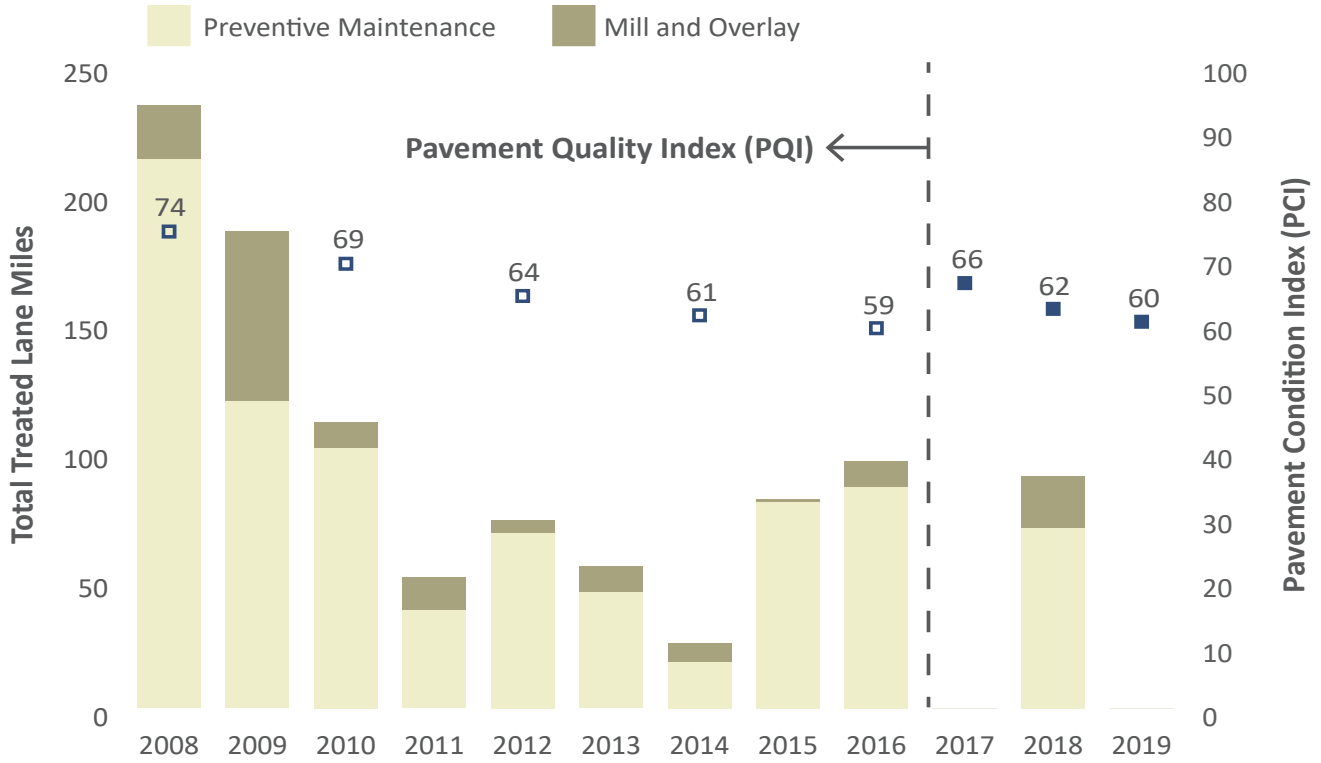


Figure 6. Historical PQI/PCI and Total Treated Lane Miles

[2] *American Recovery and Reinvestment Act* of 2009.

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Funding Sources

Funding for pavement maintenance typically comes from dedicated sources, including the State gas tax and voter-approved dedicated transportation sales tax. These funds are used for all transportation-related expenses, not just pavement maintenance. These expenses include meeting operational needs; performing emergency repairs; complying with regulatory requirements; and maintaining, replacing and modernizing aging infrastructure and equipment.

The City's funding for pavement repairs comes from a combination of federal, State, and local sources (see Figure 7). Each is briefly described in the following paragraphs.

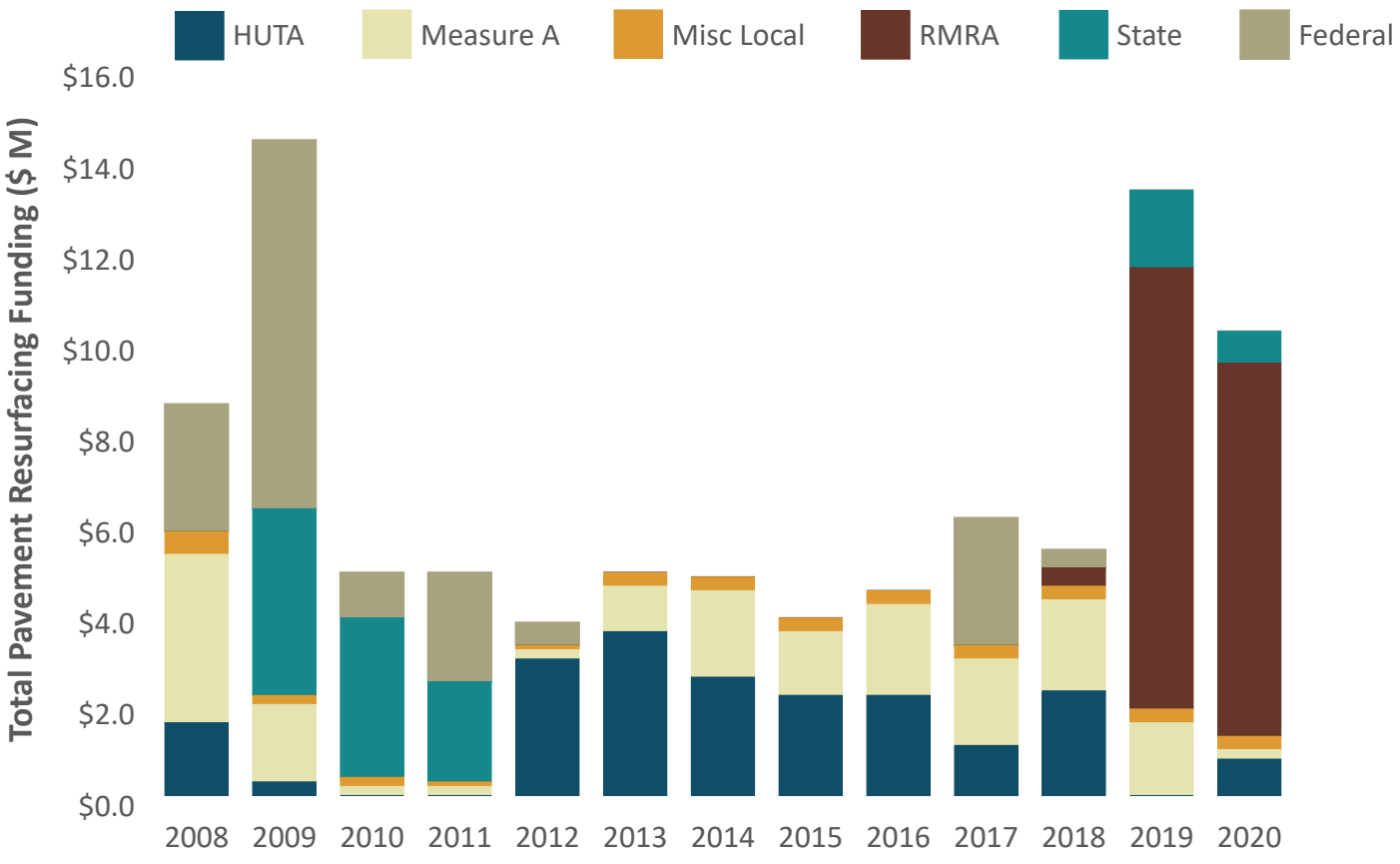


Figure 7. Historical Funding for Pavement Resurfacing

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Federal Funding

Federal funding for road rehabilitation historically was available through the Regional Surface Transportation Program (RSTP), the largest and most flexible source of federal transportation funding. Regional shares of RSTP is allocated to the Sacramento Area Council of Governments (SACOG) using a population-based formula.

Prior to 2002, Sacramento received a proportionate share of RSTP to use on priority pavement rehabilitation projects. In 2002, SACOG revised its program to require the four-county region to compete for all regional funding. Over time, it planned to phase out funding for roadway rehabilitation, with the expectation that State funding would increase. Additional sources of State funding did become available, but they were generally one-time funds.

With the great recession, the federal government provided one-time federal stimulus funding to the region, known as the America Recovery and Rehabilitation Act (ARRA), leading to a spike in funding in 2009.

Since that time, federal funding for pavement rehabilitation from RSTP funds, allocated by SACOG, has been very limited. In addition, SACOG's total funding for pavement rehabilitation declined, particularly for its larger member agencies. This corresponded with declines in gas tax, resulting in overall lack of available funds for investment in pavement maintenance at a critical time.

In general, the City of Sacramento receives a substantially lower amount of federal funding per capita than other agencies in the region, particularly smaller and suburban cities. As a result, federal RSTP is no longer considered a reliable or significant source of pavement rehabilitation funding for Sacramento.

Gas Tax (Highway Users Tax Account or HUTA)

California has a per-gallon excise tax on gasoline and diesel which is distributed to cities and counties using a formula based on population and mileage. The gas tax is restricted to specific transportation uses for public roads and associated facilities.

The gas tax was historically the City's single largest source of transportation funding. Until 2017, the base excise tax of 18 cents per gallon had not been raised for over 20 years, so its purchasing power had eroded by about half since 1994.

In 2010-11, the State implemented a complicated process where the sales tax on gasoline was eliminated in favor of a variable excise tax (the so-called "tax swap"), which made gas tax revenues even more volatile. This led to an overall decrease in gas tax revenues of nearly 40 percent between 2013 and 2017. The new State transportation package addresses this volatility and allows for inflation adjustments every three years.

Forecasts of future gas tax revenues are challenging, as they are highly dependent on oil prices and demand. Overall, the long-term expectation is that this will be a declining revenue source as more fuel-efficient and alternative-fuel vehicles comprise a larger portion of the vehicle fleet. In the short-term, gas tax revenues should increase slightly as the result of population growth and adjustments that index to inflation.

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Measure A (Countywide Transportation Sales Tax)

Sacramento County has a voter-approved half-cent sales tax to fund transportation improvements such as transit and street maintenance. Sales tax revenues are dependent on the strength of the economy as evidenced by the dramatic decline during the recession in 2009 to 2012. Since then, sales taxes have shown steady but modest increases; barring any future economic downturns, Measure A revenues are expected to grow by about two percent annually through 2025.

The Sacramento Transportation Authority is exploring a supplemental half-cent sales tax measure for voter consideration on the November 2020 ballot. As of February 2020, the components of the measure and a final determination to include such a measure have not been finalized. If approved, this measure would support additional funding for pavement maintenance.

Road Maintenance and Rehabilitation Account (RMRA)

In April 2017, the Governor signed Senate Bill 1 (SB1), also known as the Road Repair and Accountability Act, a State transportation funding package that increases the gas tax, diesel tax, and vehicle registration fees. The new measure also indexed the gas tax to inflation so that its purchasing power will not be eroded as occurred with HUTA.

Half of the funding is allocated to cities and counties through the Road Maintenance and Rehabilitation Account (RMRA); the City began receiving revenues in 2018 and is expected to receive as much as $9.7 million annually.

RMRA is expected to provide $9.7 million a year to Sacramento.

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Operating and Capital Expenditures

Operating Expenses

The City's operating expenses include on-going operations to maintain a transportation system used by hundreds of thousands of automobiles, trucks, cyclists, buses, and pedestrians daily. It includes labor, supplies, materials, equipment, and vehicles.

The Public Works Department is tasked with, among other responsibilities, planning, building, and maintaining transportation infrastructure (including roads, bridges, sidewalks, bikeways, streetlights, traffic signals, traffic control devices, street signs, and markings) and providing for safety and accessibility, with over 250 employees assigned to these tasks. In Sacramento's budget model, the costs of providing these services are fully offset with transportation funds and reimbursements from other sources.

Historically, about 70 percent of transportation funding has been needed to maintain ongoing operations, emergency repairs, and day-to-day upgrades.

Capital Expenses

Investments in infrastructure or facilities that exceed $20,000 are included in the City's Capital Improvement Program (CIP). The CIP is made of individual projects, each with its own budget established by funding type. Typically, the largest capital expenses are major transportation projects, most of which have federal funding.

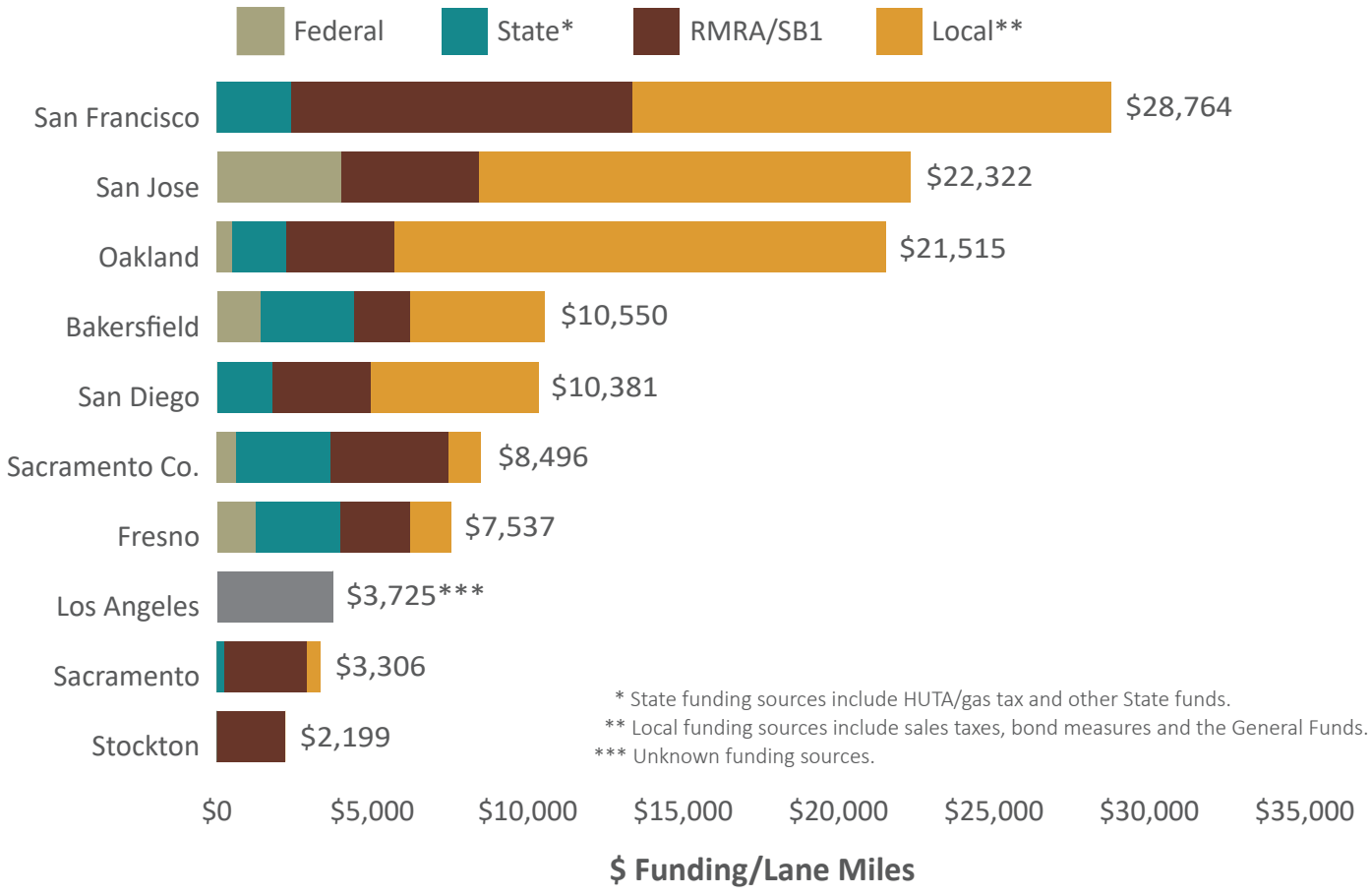
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Funding Comparison to Similar Cities

When compared to its peers, Sacramento is near the bottom of the list in terms of pavement funding. Figure 8 examines the funding available as well as the sources of funding[3]. Much of this information was compiled from both the 2018 California Needs Assessment and the cities' websites. Although many of these cities have unique characteristics that dictate different levels of funding (e.g., composite pavements which are more expensive to construct); nonetheless, one trend is clear. The top five cities (San Francisco, San Jose, Oakland, Bakersfield, and San Diego) rely heavily on local funding; more than 40 percent of their budgets come primarily from sales and parcel taxes. For example, Oakland passed a parcel tax (Measure KK) in 2018, which resulted in a bond measure totaling $350 million for street maintenance. San Francisco and San Diego also receive General Funds.

Note that the data includes funding for pavement repairs only such as seals, overlays, and reconstruction. Operational expenses are not included.

Sacramento is at the bottom of the list for pavement funding compared to its peers.



* State funding sources include HUTA/gas tax and other State funds.
** Local funding sources include sales taxes, bond measures and the General Funds.
*** Unknown funding sources.

Figure 8. Comparison of Paving Funding with Other Cities

[3] Pavement funding and funding sources are from 2018 *California Statewide Local Streets and Roads Needs Assessment*, and cities' websites. Funding sources for Los Angeles are unknown. Note that the data includes funding for pavement repairs only such as seals, overlays, and reconstruction. Operational expenses are not included.

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Sacramento Tomorrow

The City faces significant challenges in the future for providing adequate roadway conditions, even with new RMRA funding. The pavement condition is, as noted, in "fair" condition and will continue to deteriorate very quickly. Three alternate funding scenarios were performed to determine potential outcomes.

Scenario 1: Current Funding Levels

Assuming that $9.7 million annually in RMRA funding is available beginning in FY 20/21, the City will receive a total of $97.0 million over the next 10 years. Given this funding level, Figure 9 indicates that the following is predicted to occur by 2029:

1. The PCI will deteriorate to 42.
2. The current unfunded backlog ($225 million) will more than triple to $706 million.
3. Approximately 60 percent of the street network will be in poor or very poor condition.

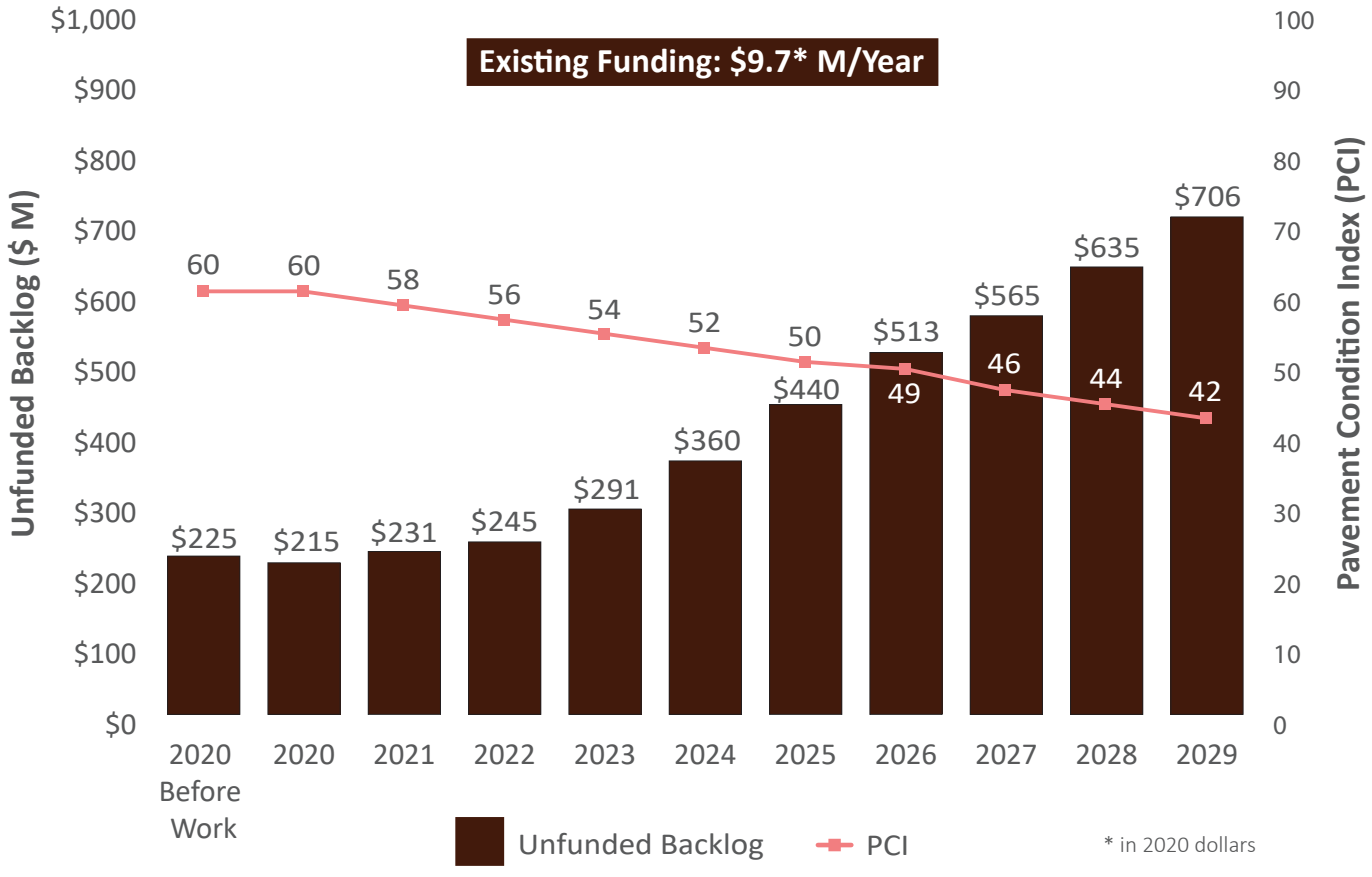


Figure 9. Projected PCI and Unfunded Backlog with Current Funding

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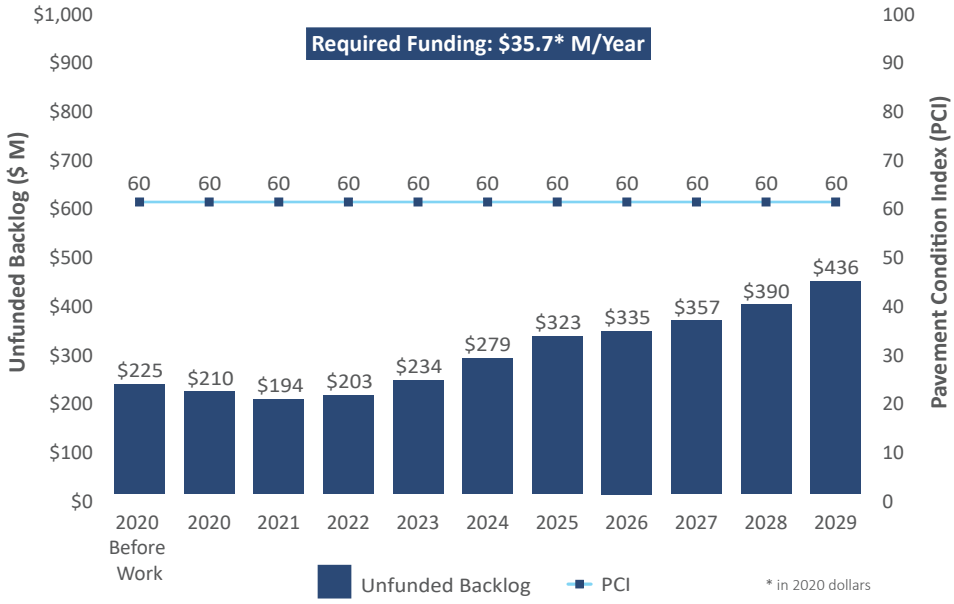


Figure 10. Projected PCI and Unfunded Backlog for Scenario 2

Scenario 2: Maintain Current Conditions (PCI = 60)

In order to maintain current conditions (i.e., PCI at 60), at least $357 million will be required over the next 10 years. This equates to $35.7 million per year, which is $26 million more than the amount currently available. Even with this level of investment, the unfunded backlog would still increase to over $436 million since the current condition represents a "fair" condition (Figure 10).

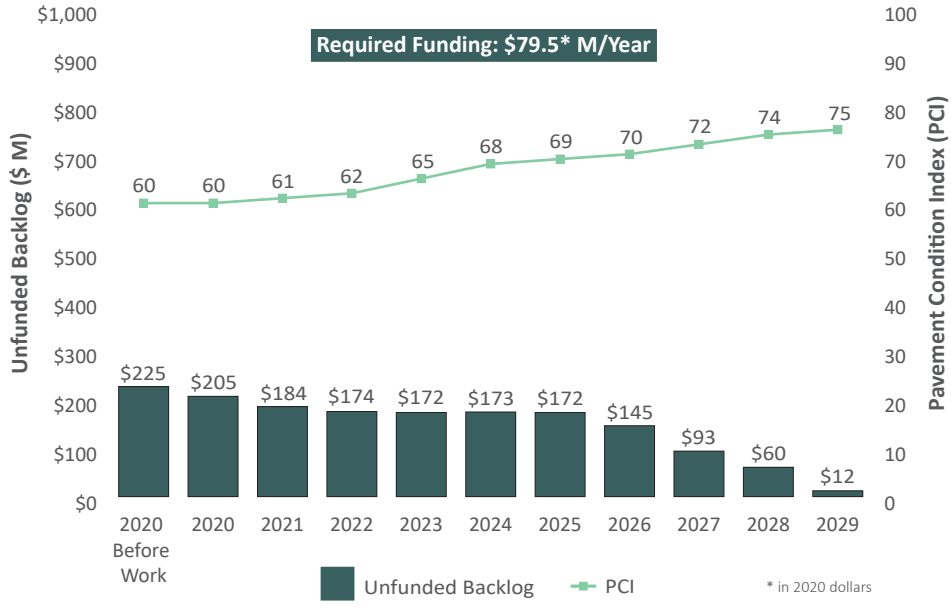


Figure 11. Projected PCI and Unfunded Backlog for Scenario 3

Scenario 3: Improve Conditions to a State of Good Repair (PCI = 75)

To improve the network condition to a state of good repair within 10 years would require $795 million over the next 10 years. For subsequent years, approximately $58.5 million per year would be required to maintain the PCI at that level. This unfunded backlog would decrease to less than $12 million by 2029 (Figure 11).

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Finally, Figure 12 shows the impacts on the street network by condition. Currently, 70 percent of the network is in good or fair condition, with the remaining 30 percent in poor to very poor condition. Under the current funding levels, it is predicted that streets in poor to very poor condition will double to 60 percent by 2029.

The other two funding scenarios illustrate marked improvements; Scenario 2 would result in less pavement in very poor condition (11 percent) while Scenario 3 would result in less than 1 percent in poor/very poor condition by 2029.

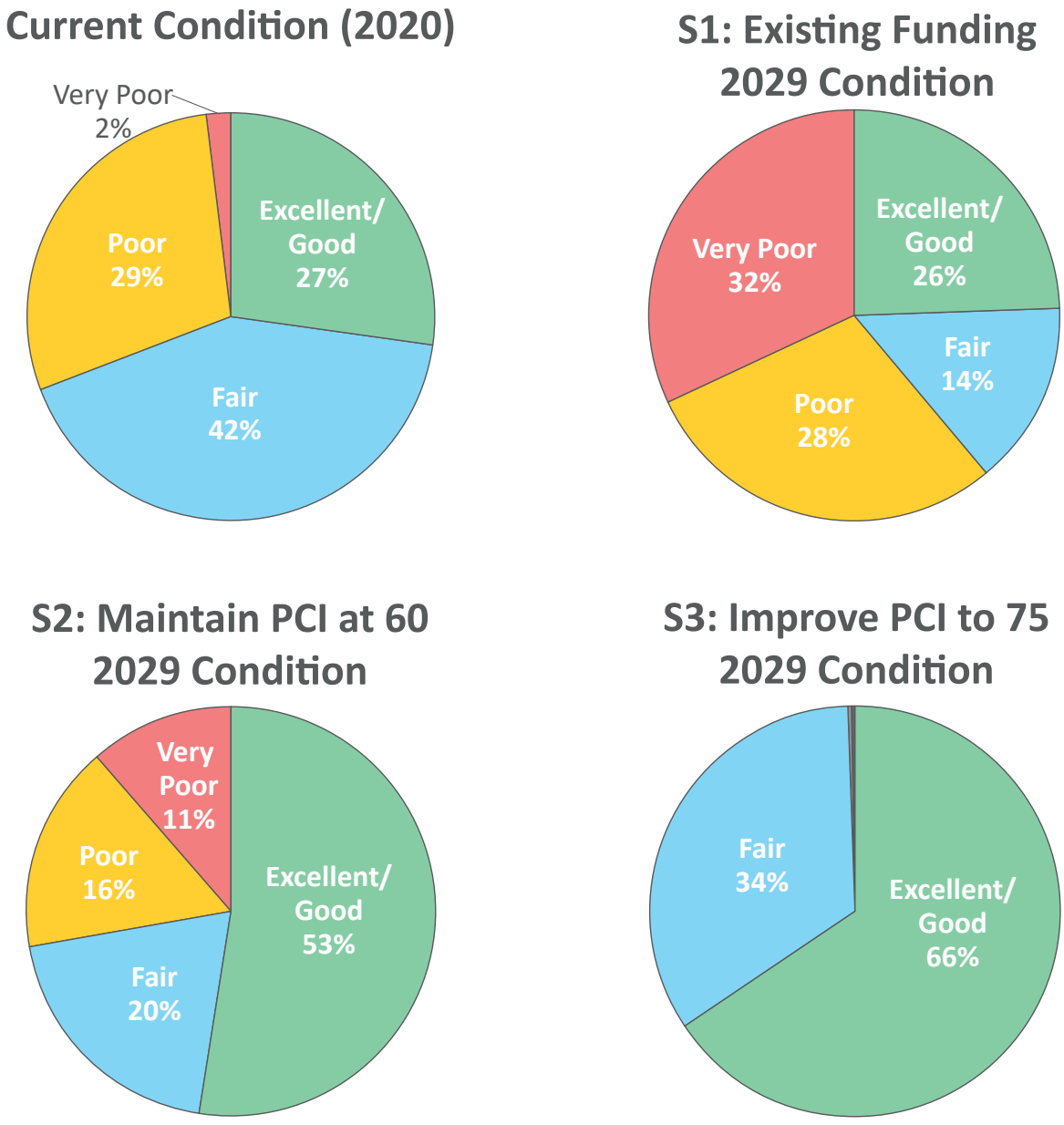


Figure 12. Comparison of Network Condition by Funding Scenario

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Conclusions

To summarize, the City has a substantial asset of over $1.9 billion in the pavement network (this does not include sidewalks, signals, landscapes, storm drains etc.) Overall, the street network is in "Fair" condition with a network PCI of 60. About 70 percent of the streets currently fall into the "Fair" to "Good" condition categories.

In the previous Pavement Condition Report (August 2017), it was predicted that if current funding levels remained, the PCI would drop from 66 to 62 by 2020. During that period, the funding level did remain the same and the PCI has actually dropped to 60, two points lower than estimated. The dramatic decline in PCI over the last two years reflects the effects of delayed investments in preventive maintenance combined with the effects of the severe drought followed by high levels of rain. Major new revenue sources will be needed to prevent significant ongoing deterioration.

The analyses indicate that the City needs approximately $79.5 million annually for pavement maintenance in order to improve the average PCI to 75. By doing so, streets can be maintained in good condition with on-going preventive maintenance.

The City's projected funding level (average of $9.7 million/year) will result in a decrease of the network PCI to 42 over the next 10 years and the unfunded backlog will triple to $706 million by 2029. The new funding with SB1 came too late to arrest the steep decline without significant additional investment.

Sacramento needs at least $79.5 million/year to improve the PCI to 75.

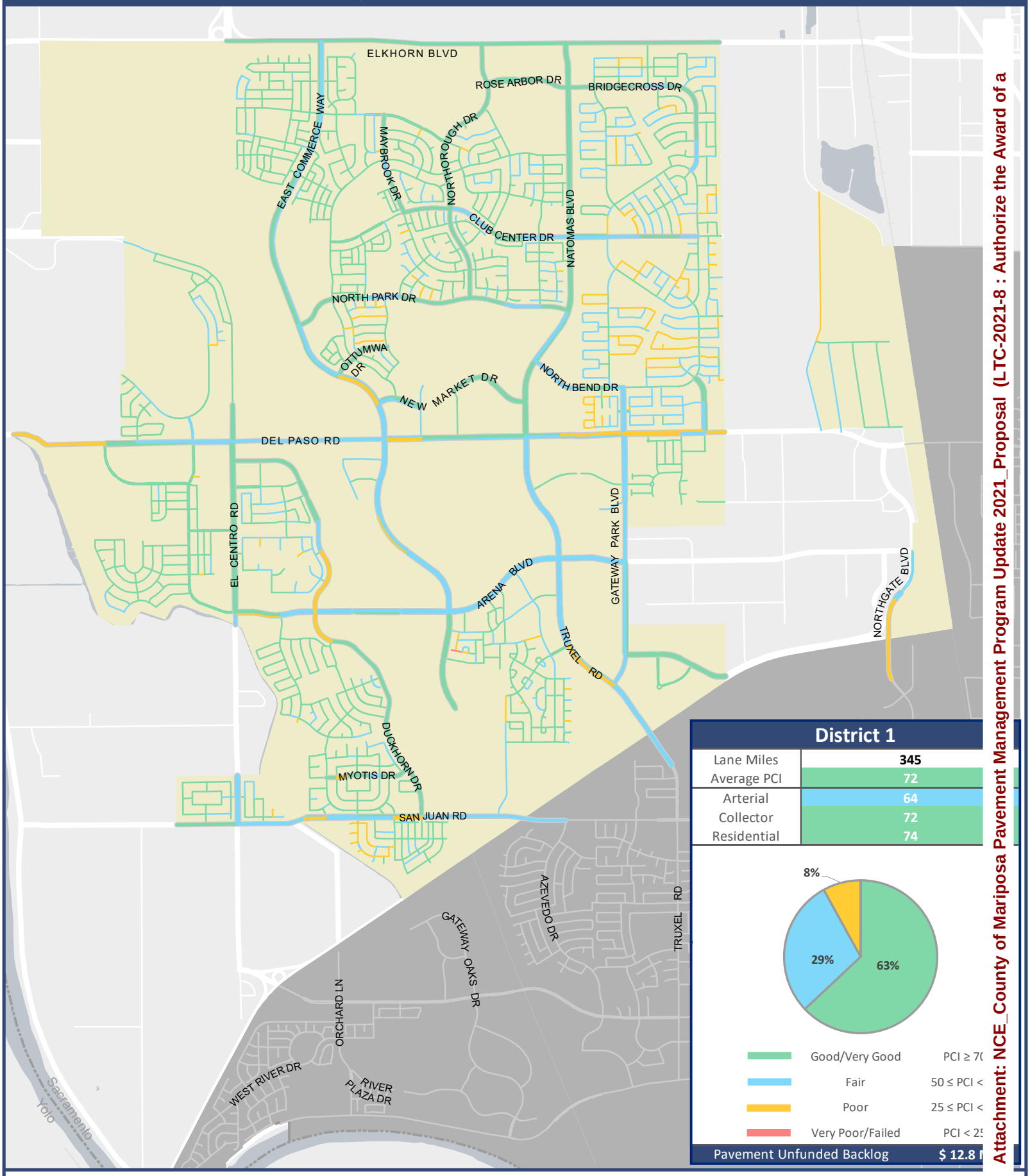
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Appendix A

PCI Maps for Council Districts

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City of Sacramento



District 1	
Lane Miles	345
Average PCI	72
Arterial	64
Collector	72
Residential	74

Good/Very Good	PCI ≥ 7(
Fair	50 ≤ PCI <
Poor	25 ≤ PCI <
Very Poor/Failed	PCI < 2
Pavement Unfunded Backlog	$ 12.8

Attachment: NCE_County of Mariposa Pavement Management Program Update 2021_Proposal (LTC-2021-8 : Authorize the Award of a

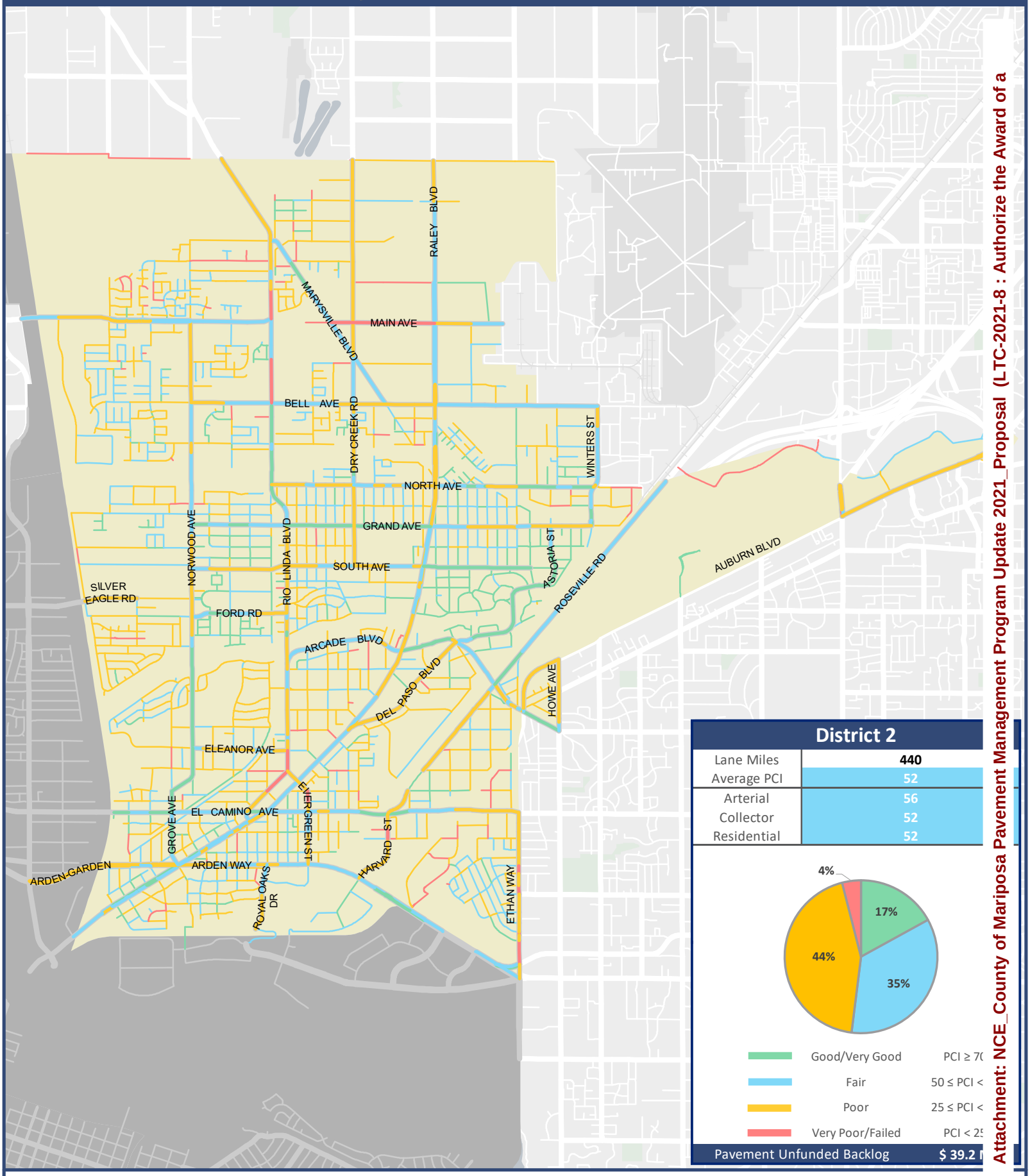
City of SACRAMENTO
Department of Public Works

January 2020

Pavement Condition Index (PCI)
Council District 1

0 0.5 1

City of Sacramento



District 2	
Lane Miles	440
Average PCI	52
Arterial	56
Collector	52
Residential	52

	Good/Very Good	PCI ≥ 7(
	Fair	50 ≤ PCI <
	Poor	25 ≤ PCI <
	Very Poor/Failed	PCI < 2[
Pavement Unfunded Backlog		$ 39.2

Attachment: NCE_County of Mariposa Pavement Management Program Update 2021_Proposal (LTC-2021-8 : Authorize the Award of a

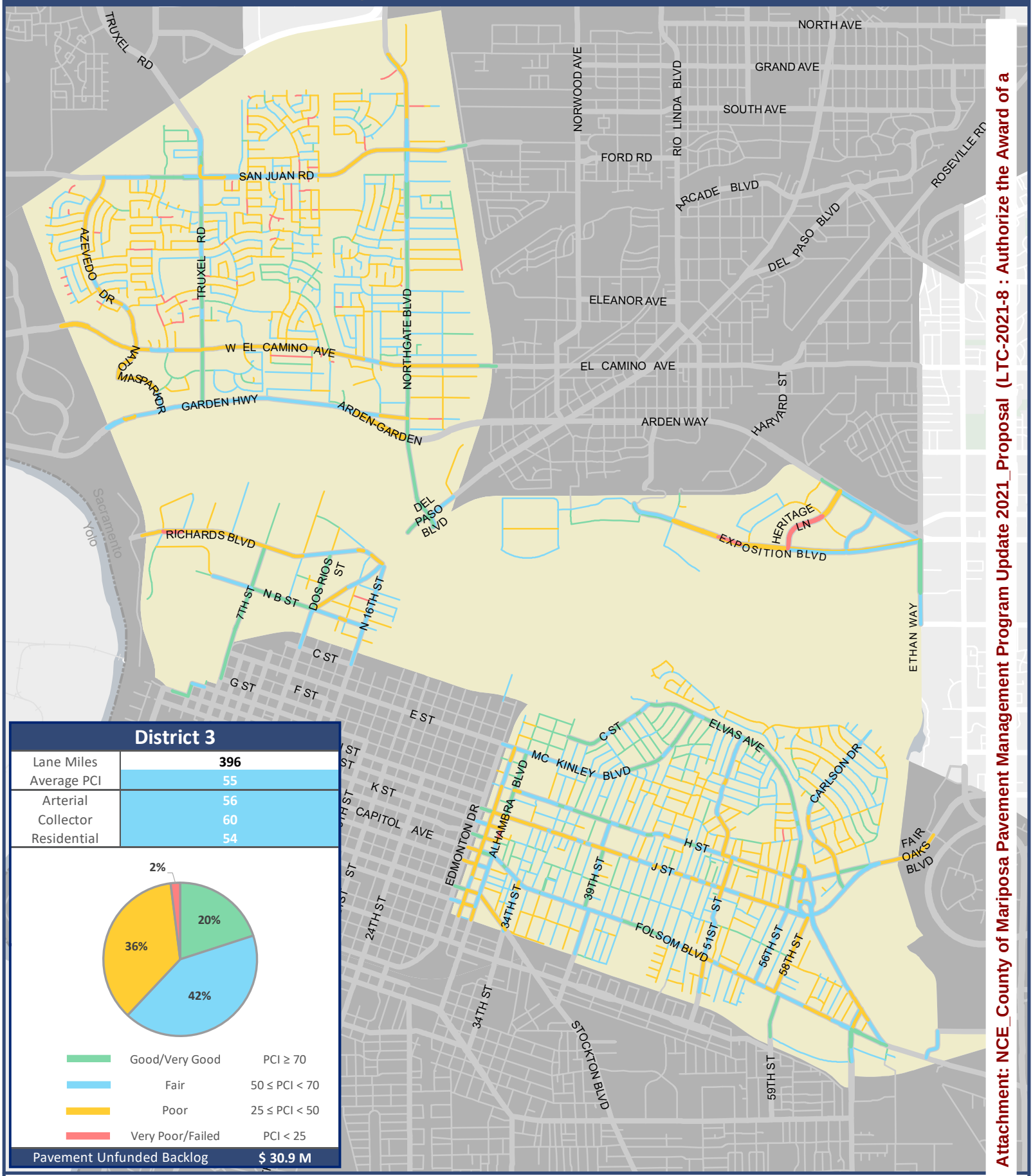
City of SACRAMENTO Department of Public Works

January 2020

Pavement Condition Index (PCI)
Council District 2

0 0.5 1 Miles

City of Sacramento



District 3

Lane Miles	396
Average PCI	55
Arterial	56
Collector	60
Residential	54

Good/Very Good	PCI ≥ 70
Fair	50 ≤ PCI < 70
Poor	25 ≤ PCI < 50
Very Poor/Failed	PCI < 25
Pavement Unfunded Backlog	$ 30.9 M

City of SACRAMENTO
Department of Public Works

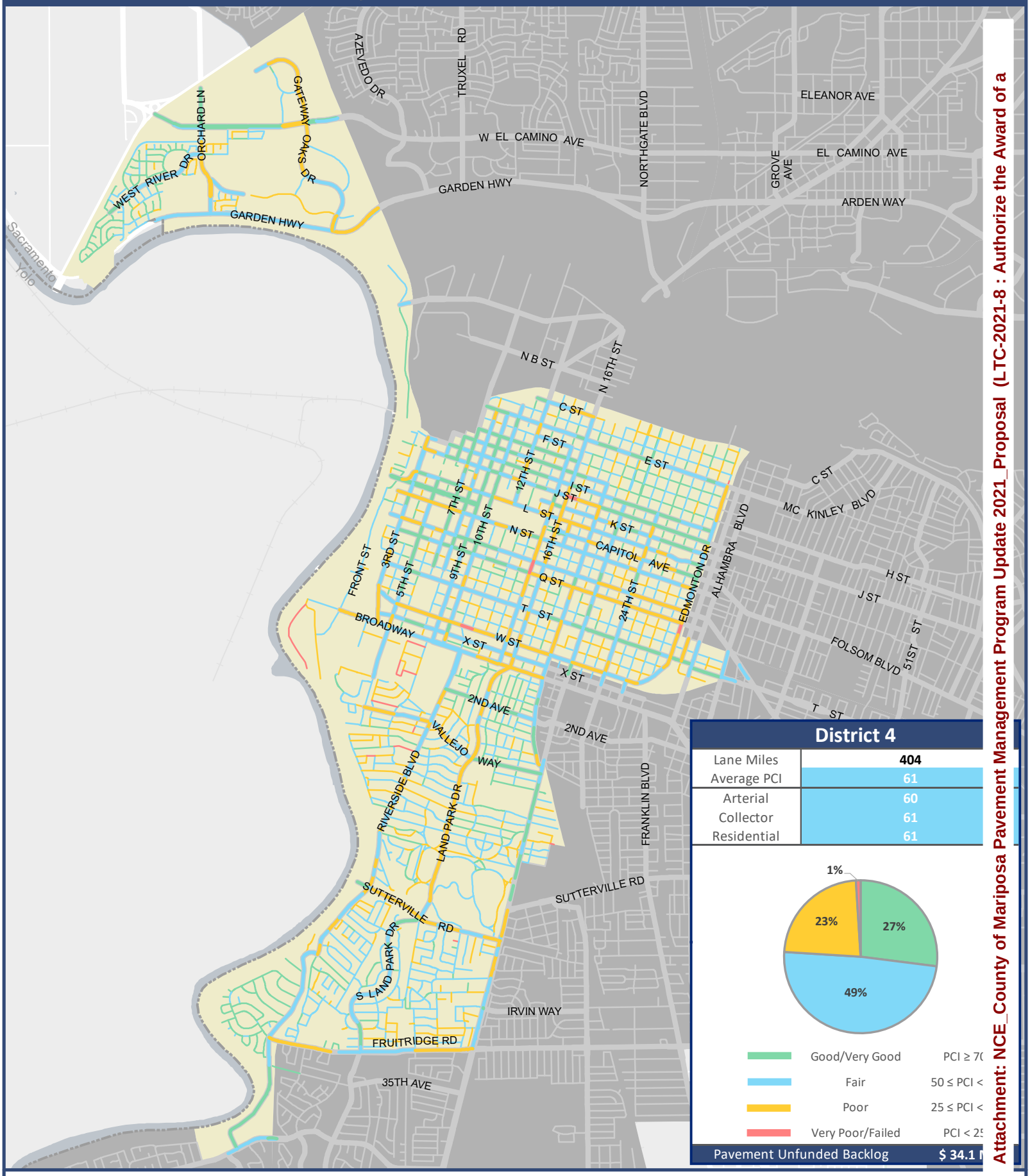
January 2020

Pavement Condition Index (PCI)
Council District 3

0 0.5 1

Attachment: NCE_County of Mariposa Pavement Management Program Update 2021_Proposal (LTC-2021-8 : Authorize the Award of a

City of Sacramento



District 4

Lane Miles	404
Average PCI	61
Arterial	60
Collector	61
Residential	61

Good/Very Good	PCI ≥ 7(
Fair	50 ≤ PCI <
Poor	25 ≤ PCI <
Very Poor/Failed	PCI < 25
Pavement Unfunded Backlog	$ 34.1

Attachment: NCE_County of Mariposa Pavement Management Program Update 2021_Proposal (LTC-2021-8 : Authorize the Award of a

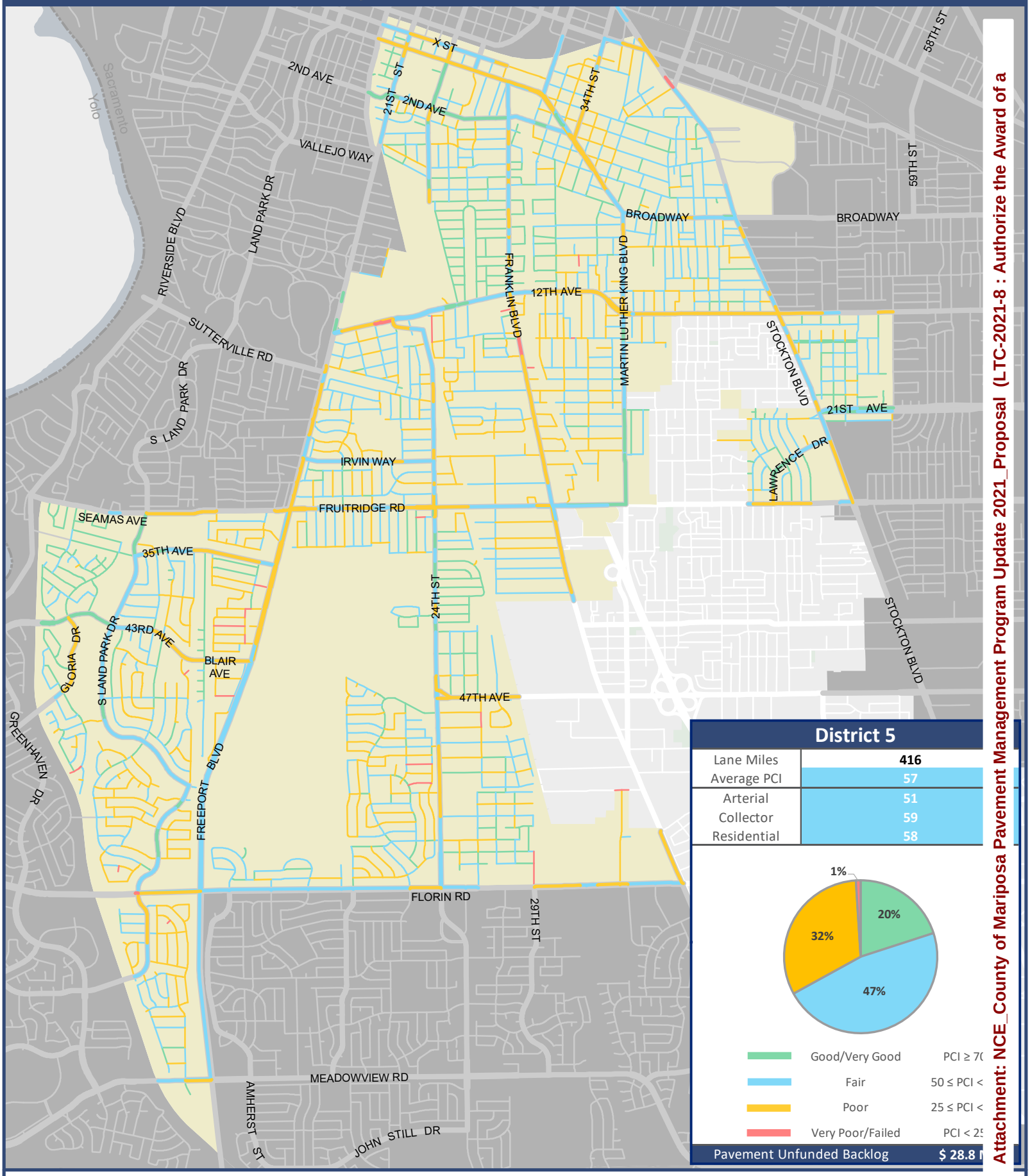
City of SACRAMENTO Department of Public Works

January 2020

Pavement Condition Index (PCI)
Council District 4

0 0.5 1

City of Sacramento



District 5	
Lane Miles	416
Average PCI	57
Arterial	51
Collector	59
Residential	58

	Good/Very Good	PCI ≥ 7(
	Fair	50 ≤ PCI <
	Poor	25 ≤ PCI <
	Very Poor/Failed	PCI < 25
Pavement Unfunded Backlog		$ 28.8

Attachment: NCE_County of Mariposa Pavement Management Program Update 2021_Proposal (LTC-2021-8 : Authorize the Award of a

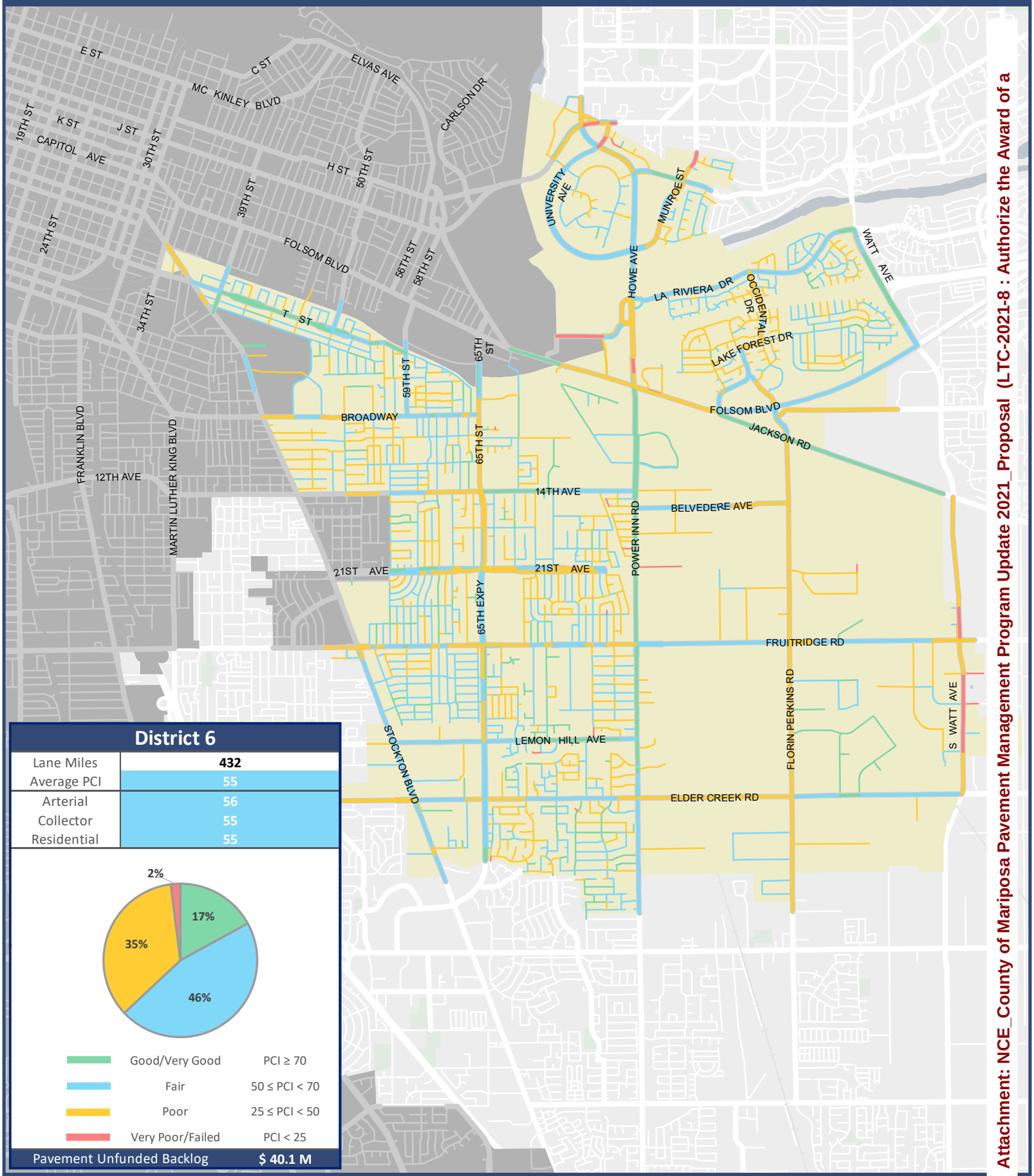
City of SACRAMENTO Department of Public Works

January 2020

Pavement Condition Index (PCI)
Council District 5

0 0.5 1

City of Sacramento



District 6

Lane Miles	432
Average PCI	55
Arterial	56
Collector	55
Residential	55

Good/Very Good	PCI ≥ 70
Fair	50 ≤ PCI < 70
Poor	25 ≤ PCI < 50
Very Poor/Failed	PCI < 25
Pavement Unfunded Backlog	$ 40.1 M

City of SACRAMENTO Department of Public Works

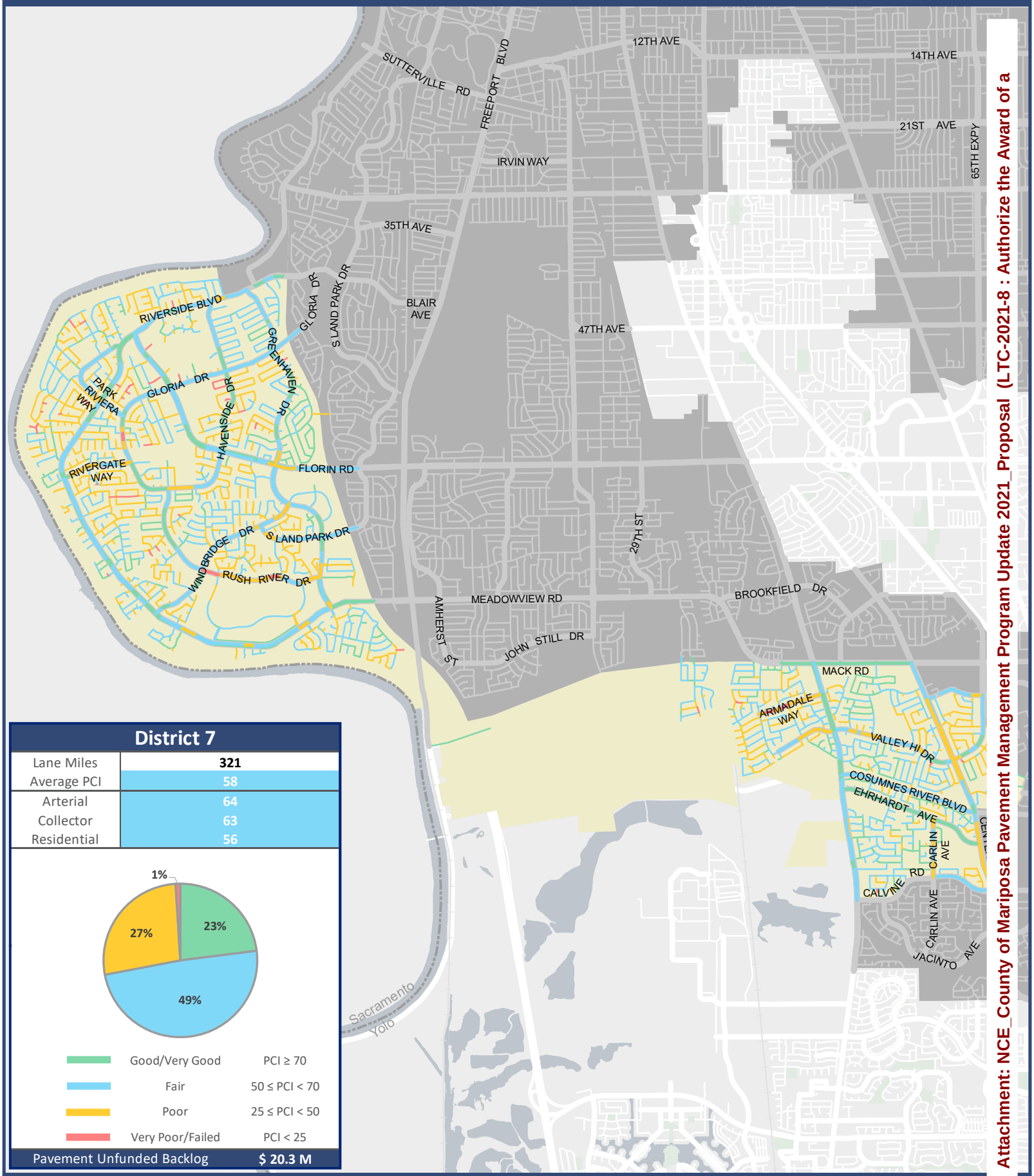
January 2020

Pavement Condition Index (PCI)
Council District 6

0 0.5 1

Attachment: NCE_County of Mariposa Pavement Management Program Update 2021_Proposal (LTC-2021-8 : Authorize the Award of a

City of Sacramento



District 7

Lane Miles	321
Average PCI	58
Arterial	64
Collector	63
Residential	56

Good/Very Good	PCI ≥ 70
Fair	50 ≤ PCI < 70
Poor	25 ≤ PCI < 50
Very Poor/Failed	PCI < 25
Pavement Unfunded Backlog	$ 20.3 M

City of SACRAMENTO
Department of Public Works

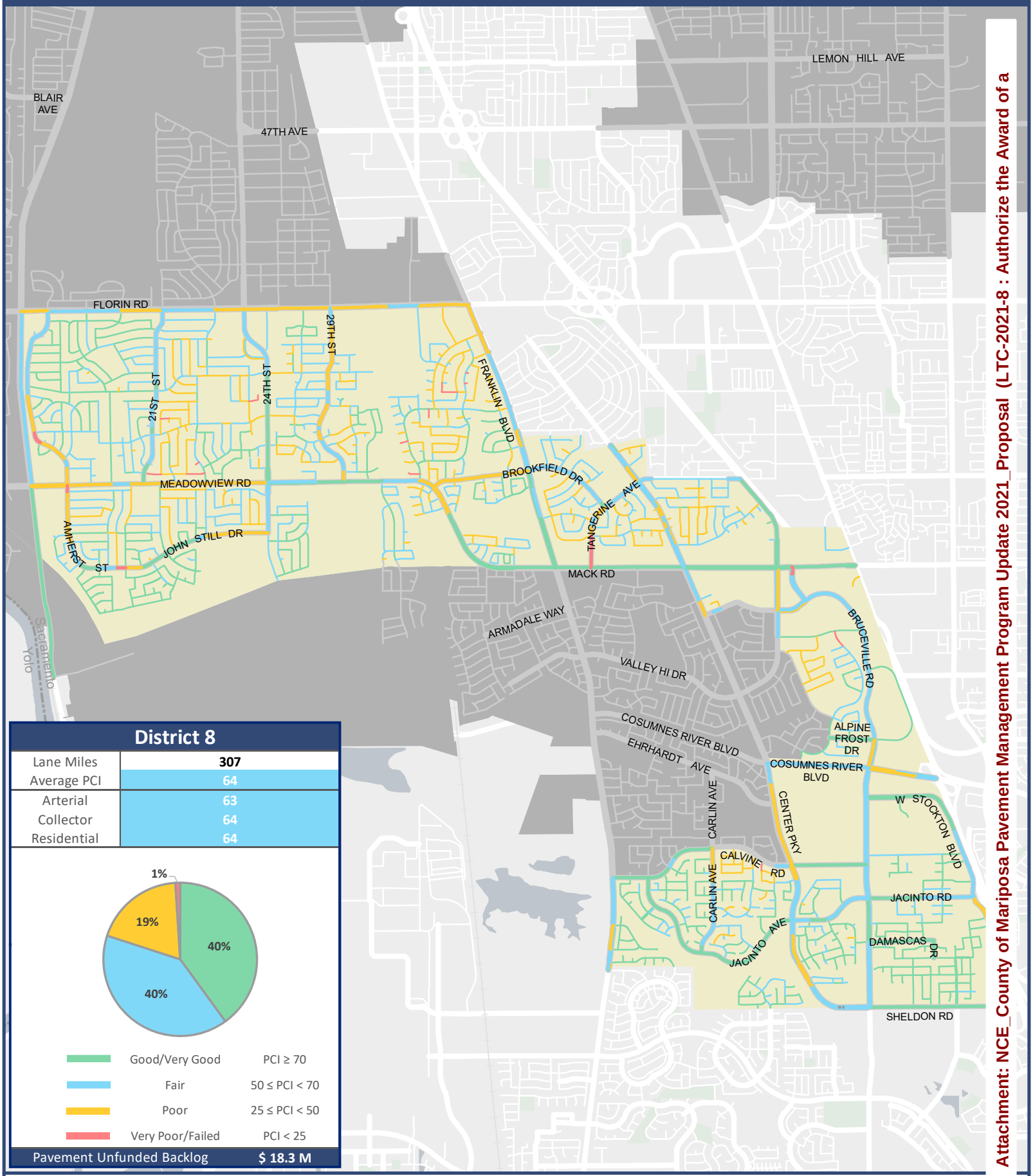
January 2020

Pavement Condition Index (PCI)
Council District 7

0 0.5 1 Miles

Attachment: NCE_County of Mariposa Pavement Management Program Update 2021_Proposal (LTC-2021-8 : Authorize the Award of a

City of Sacramento



District 8

Lane Miles	307
Average PCI	64
Arterial	63
Collector	64
Residential	64

Good/Very Good	PCI ≥ 70
Fair	50 ≤ PCI < 70
Poor	25 ≤ PCI < 50
Very Poor/Failed	PCI < 25
Pavement Unfunded Backlog	$ 18.3 M

City of SACRAMENTO Department of Public Works

January 2020

Pavement Condition Index (PCI)
Council District 8

0 0.5 1 Miles

Attachment: NCE_County of Mariposa Pavement Management Program Update 2021_Proposal (LTC-2021-8 : Authorize the Award of a

City of
SACRAMENTO
Department of Public Works

Attachment: NCE_County of Mariposa Pavement Management Program Update 2021_Proposal (LTC-2021-8 : Authorize the Award of a Professional

21-021

AGREEMENT FOR PAVEMENT MANAGEMENT PROGRAM UPDATE

THIS AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2021, by and between the County of Mariposa, a political subdivision of the State of California, ("County"), and NCE, ("Contractor"), pursuant to the following terms and conditions.

W I T N E S S E T H:

1. TERM

The term of this Agreement shall commence on February 9, 2021 and terminate on December 31, 2021unless extended as provided by this Agreement.

2. SERVICES

Contractor shall perform Pavement Management Program Update as described in Exhibit A, "Scope of Work," which is attached hereto and incorporated herein by reference. Contractor shall provide all staffing and materials necessary to perform the Scope of Work.

3. COMPENSATION

Contractor shall be compensated for services performed in an amount not to exceed $55,000. The Contractor's rates are listed in Exhibit B, "Cost Proposal." The County shall pay Contractor within thirty (30) days of receipt of an approved invoice.

4. INSURANCE

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

A. MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

(1) Commercial General Liability (CGL): Insurance Services Office (ISO)Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than $1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

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(2) Automobile Liability: ISO Form Number CA 00 01 covering any auto, (Code 1), or if Contractor has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than $1,000,000 per accident for bodily injury and property damage.

(3) Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than $1,000,000 per accident for bodily injury or disease.

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

If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

B. OTHER INSURANCE PROVISIONS

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

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

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

(3) Notice of Cancellation: Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the County.

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

(5) Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the County. The County may require the

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Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

(6) Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the County.

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

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

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

5. HOLD HARMLESS/INDEMNIFICATION

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

6. INDEPENDENT CONTRACTOR

It is the expressed intention of the parties that Contractor is an independent contractor and not an employee, agent, joint venturer or partner of County. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between County and Contractor or any employee or agent of Contractor. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Agreement.

7. PUBLIC EMPLOYEES RETIREMENT SYSTEM (CALPERS)

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Public Employees Retirement System (CalPERS) to be eligible for enrollment in CalPERS as an employee of the County, Contractor shall indemnify, defend, and hold harmless County for the

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payment of any employee and/or employer contributions for CalPERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

8. STATE AND FEDERAL TAXES

As Contractor is not County's employee, Contractor is responsible for paying all required state and federal taxes. In particular:

a. County will not withhold FICA (Social Security) from Contractor's payments;
b. County will not make state or federal unemployment insurance contributions on behalf of Contractor;
c. County will not withhold state or federal income tax from payment to Contractor;
d. County will not make disability insurance contributions on behalf of Contractor;
e. County will not obtain workers' compensation insurance on behalf of Contractor.

9. ASSIGNMENT

It is understood and agreed that this Agreement contemplates personal performance by the Contractor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Contractor under this Agreement will be permitted only with the express written consent of the County.

10. NOTICE

Any and all notices, reports or other communications to be given to County or Contractor shall be given to the persons representing the respective parties at the following addresses:

CONTRACTOR:
NCE
8795 Folsom Blvd.
Sacramento, CA 95826
916.388.5655

COUNTY:
Public Works
4639 Ben Hur Rd.
Mariposa, CA 95338
209.966.5356

11. COMPLIANCE

Contractor shall comply with all federal, state and local laws, codes, ordinance and regulations applicable to Contractor's performance under this Agreement, including, but not limited to, laws related to prevailing wages. Specifically, Contractor shall not engage in unlawful employment discrimination, including, but not limited to, discrimination based upon a person's race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship or sexual orientation, as prohibited by state or federal law.

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12. PUBLIC RECORDS ACT

Contractor is aware that this Agreement and any documents provided to the County may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of the Contractor to clearly identify information in those documents that it considers to be confidential under the California Public Records Act. To the extent that the County agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

13. ENTIRE AGREEMENT AND MODIFICATION

This Agreement contains the entire agreement of the parties relating to the subject matter of this Agreement and supersedes all prior agreements and representations with respect to the subject matter hereof. This Agreement may only be modified by a written amendment hereto, executed by both parties; however, matters concerning the scope of services which do not affect the agreed price may be modified by mutual written consent of the Contractor and the Director of Public Works & Transportation. If there are exhibits attached hereto, and a conflict exists between the terms of this Agreement and any exhibit, the terms of this Agreement shall control.

14. ENFORCEABILITY AND SEVERABILITY

The invalidity or enforceability of any term or provisions of this Agreement shall not, unless otherwise specified, affect the validity or enforceability of any other term or provision, which shall remain in full force and effect.

15. TERMINATION AND RIGHTS UPON TERMINATION

A. This Agreement may be terminated upon mutual written consent of the parties, or as a remedy available at law or in equity. In the event of the termination of this Agreement, Contractor shall immediately be paid all fees earned as of the effective date of termination.

B. Either party may terminate this Agreement for convenience upon Thirty (30) calendar days' written notice to the other party. Upon termination for convenience, Contractor shall be entitled to compensation for services performed acceptably up to the effective date of termination, as set forth in Exhibit B.

C. Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County, at its option, may terminate this Agreement by giving written notification to Contractor. The termination date shall be the effective date of the notice. For the purposes of this subsection, default or material breach of this Agreement shall include, but not be limited to, any of the following: failure to perform required services in a timely manner, willful destruction of County property, dishonesty, or theft.

D. If County terminates this Agreement for default or material breach, then Contractor shall be liable for any reasonable costs in excess of the Agreement amount incurred by County in order to complete Exhibit A, "Scope of Work." In addition, Contractor understands and agrees that County may, in County's sole discretion, refuse to pay Contractor

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for that portion of Contractor's services which were performed by Contractor prior to the termination date and which remain unacceptable to County as of the termination date.

16. NO WAIVER

The failure to exercise any right to enforce any remedy contained in this Agreement shall not operate as to be construed to be a waiver or relinquishment of the exercise of such right or remedy, or of any other right or remedy herein contained.

17. DISPUTES

Should it become necessary for a party to this Agreement to bring an action in connection with this Agreement, the prevailing party in any claim or action shall be entitled to reimbursement for all expenses so incurred, including reasonable attorney's fees.

It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Mariposa, State of California.

18. CAPTIONS

The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

19. NUMBER AND GENDER

In this Agreement, the neutral gender includes the feminine and masculine, the singular includes the plural, and the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

20. MANDATORY AND PERMISSIVE

"Shall" is mandatory. "May" is permissive.

21. SUCCESSORS AND ASSIGNS

All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

22. COUNTERPARTS

This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

Attachment: NCE 21-021 Pavement Mgmnt (LTC-2021-8 : Authorize the Award of a Professional Services Agreement to NCE to Update the

23. OTHER DOCUMENTS

The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and, to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

24. CONTROLLING LAW

The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

25. AUTHORITY

Each party and each party's signatory warrant and represent that each has full authority and capacity to enter into this Agreement in accordance with all requirements of law. The parties also warrant that any signed amendment or modification to the agreement shall comply with all requirements of law, including capacity and authority to amend or modify the Agreement.

26. NEGOTIATED AGREEMENT

This Agreement has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this Agreement within the meaning of California Civil Code section 1654. Each party represents and warrants that in executing this Agreement it does so with full knowledge of the rights and duties it may have with respect to the other party. Each party also warrants and represents that it has received independent legal advice from its attorney with respect to the matters set forth in this Agreement and the rights and duties arising out of this Agreement, or that such party willingly foregoes any such consultation.

27. NO RELIANCE ON REPRESENTATIONS

Each party warrants and represents that it is not relying and has not relied upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this Agreement, have been independently verified. Each party further understands that it is responsible for verifying the representations of law or fact provided by the other party.

28. WARRANTY

County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby warrants that all work shall be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by County shall not operate as a waiver or release.

29. FUNDING AVAILABILITY

It is mutually agreed that if the County budget of the current fiscal year and/or any subsequent fiscal years covered under this Agreement does not appropriate sufficient funds for this

Attachment: NCE 21-021 Pavement Mgmnt (LTC-2021-8 : Authorize the Award of a Professional Services Agreement to NCE to Update the

Agreement, this Agreement shall terminate and be of no further force and effect upon the day notice is provided by County to Contractor of such event. Upon termination of this Agreement, the County shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement except for services rendered prior to such termination and Contractor shall not be obligated to perform any provisions of this Agreement. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement. County budget decisions are subject to the discretion of the Board of Supervisors.

If funding for any fiscal year is reduced or deleted by the County budget for purposes of this Agreement, the County shall have the option to either cancel this Agreement with no liability occurring to the County, except County must reimburse Contractor for services rendered prior to such reduction or modification of the County budget, or offer an Agreement amendment to Contractor to reflect the reduced amount.

Funding Source: 033-0251-577-0418

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

COUNTY OF MARIPOSA	CONTRACTOR
Marshall Long, Chair Board of Supervisors	NCE
ATTEST:	APPROVED AS TO FORM:
Rene LaRoche Clerk of the Board	Steven W. Dahlem County Counsel

Attachment: NCE 21-021 Pavement Mgmnt (LTC-2021-8 : Authorize the Award of a Professional Services Agreement to NCE to Update the

Related Projects

Please refer to Section F for recent related projects with client contact information.

Scope of Work

NCE's project approach includes the following tasks:

Task 1. Kickoff Meeting

NCE will first meet with County staff to kick-off the project by reviewing the technical approach and any administrative matters that may be necessary. At a minimum, items to be discussed will include the following:

- Scope of work, project schedule, budget and invoicing requirements
- Communication channels and protocols
- Field work
  - Scheduling and access requirements for field work
  - Public safety concerns, requirements and procedures
  - Quality Control Plan (QCP)
  - Updated GIS map of publicly maintained roads if any
  - New roads, if any
- Maintenance and rehabilitation (M&R) practices, records, costs
- Paving or maintenance budgets
- Budgeting scenarios
- Other optional tasks

Prior to the kick-off meeting, NCE will prepare a detailed agenda, which will be sent to County staff for review. Additional meetings may be held at appropriate milestones to review the work performed and to address any questions or issues that arise as the work progresses.

Deliverable:

- Agenda and summary of meetings

Task 2. Pavement Condition Surveys & PCI Calculation



NCE will next perform pavement condition surveys on the County's pavement network as per the protocols established by MTC. The distresses present are reflective of the traffic levels as well as the local environment and climate. The "fuel" for any pavement management engine is the surface condition data. Pavement distress provides that important set of data in determining the costs to maintain the pavement network.

There are three types of distress surveys that are utilized for pavement management systems, and each has its advantages and disadvantages. Briefly, these are:

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Windshield Surveys – These are performed with two-person crews in a vehicle traveling at low speeds (under 15 mph). The major advantage is that 100% of the roadway is surveyed, and it can be accomplished very quickly, safely and inexpensively. However, the disadvantage is that the data collected tends to be of variable quality. In particular, low-severity distresses are typically not visible from a moving vehicle. This results in a higher than expected condition rating of the roads, and consequently, a lower estimate of the backlog and pavement M&R needs.



Walking Surveys – These are performed with one-person crews (for high volume roads like expressways or major collectors, two-person crews may be needed for safety). The major advantage of this survey method is that it is highly accurate, since cracks and all other pavement distresses are measured and recorded. However, walking surveys are more labor-intensive and are thus more expensive than windshield surveys. But it is easily taught to County staff, which allows future updates to be performed in-house with no special equipment. This procedure is recommended by MTC. **In 2008 and 2014, the County utilized this as the most desirable option as NCE was able to train County staff with the expectation that they would be prepared to perform inspections in the future.** It will also help new County engineers or technicians get a better understanding of distress identification and data collection procedures.

Semi-Automated Inspections – These are typically performed with a customized vehicle that is equipped with a digital camera and laser bars. The major advantage is that they are equipped to perform inspections very quickly and safely. However, post-processing time can offset cost-savings in the field and may not always be appropriate in urban conditions. Nonetheless the NCE team has successfully deployed this option for counties such as Madera, Shasta, and Siskiyou. **It should be noted that an accurate road centerline shapefile will be required for this option.** As an optional task, NCE has teamed with **märker geospatial, LLC** to perform semi-automated surveys in the County. Our team is well positioned to collect, measure, and map all pavement condition data using a sophisticated semi-automated approach.

NCE's field inspectors are certified by MTC to conduct StreetSaver® condition surveys. They have successfully passed rigorous field and online tests.

Regardless of methodology, our goal is to provide *accurate, repeatable and economical* pavement condition assessments.



NCE will be responsible for providing all equipment necessary to perform this task. Should County personnel wish to observe NCE's crews during the surveys, we can accommodate the County. Note that this scope of work and condition surveys do not address issues including, but not limited to traffic, safety and road hazards, geometric issues, road shoulders, sidewalks, curb and gutters, drainage issues or short-term maintenance that should be performed.

Quality Control Plan – Quality control (QC)/quality assurance checks are critical when a large amount of data needs to be collected and processed. As part of NCE's goal to provide a superior quality product for our clients, we incorporate a QC component into all of our projects. For this project, we have proposed the inclusion of a QC Manager, Dr. James Signore. He will be responsible for:

- Calibrating all data collection activities
- Reviewing field activities, including spot checks on the field crews
- Reviewing field procedures and making changes, as needed
- Comparing the field data collected with on-site conditions
- Reviewing all data entry functions, including random spot checks
- Reviewing reports generated and analyses performed to ensure a quality product



NCE will prepare a QC Plan (see Appendix A for sample QC plan) that will include the following components:

- Description of condition survey procedures (distress types, severities). All procedures, changes or modifications should be well documented in the QC plan so that future updates will be consistent.

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- Accuracy required for data collection or acceptability criteria
- Description of how data will be checked for accuracy, e.g., 5% re-inspections.

A draft QC plan will be submitted to the County for approval, and no field work will commence until a final plan has been accepted.

All data collected from the condition surveys will then be uploaded into the StreetSaver® database. This task will be performed at NCE's office in order to provide Quality Control of all data entered into the system. NCE will then perform the pavement condition index calculations, and correct any errors found.

Deliverables:

- Quality control plan
- PCI listing report
- Updated database with pavement distress data

Task 3 Maintenance and Rehabilitation Strategies & Decision Tree



NCE will review maintenance and rehabilitation (M&R) strategies with County staff. This will include the recommendation and selection of appropriate treatments and the determination of treatment unit costs. This will also be an appropriate time to review the use of new/sustainable treatments or materials, such as PCC bonded overlays, rubberized asphalt, rubberized cape seals, microsurfacing, rejuvenators, cold-in-place recycling, full depth reclamation, warm mix asphalt, etc.

NCE's experience in pavement engineering and design, as well as local conditions, allows our staff to be able to provide the County with solutions that are innovative, sustainable, practical, and workable. Dr. James Signore will share his knowledge from research on new pavement materials and designs and apply them to County roads as appropriate.



Development of the M&R decision tree is a critical step in any pavement management update as it has a direct and significant impact on the final work plan that is developed, as well as the budgeting consequences. NCE's experience in pavement engineering and design, as well as local conditions, allows our staff to be able to provide the County with solutions that are practical and workable.

Currently, about 42 percent of the County's road network is identified as local roads and the same treatment is applied on all of them, regardless of their location. Yet, pavement rehabilitation strategies, pavement condition, structure, or traffic index may be different on more urbanized vs. remote rural local roads. In order to apply more appropriate treatments on local roads, and to best estimate future costs and PCI projections, NCE recommends that urbanized and rural local roads be separated into two functional classifications with different treatments in the database as an optional task. For example, placing a crusher course with cape seal on rural local roads could potentially save up to $30 million when compared with current treatments i.e. reconstruct surface (see graphic).



Attachment: NCE 21-021 Pavement Mgmnt (LTC-2021-8 : Authorize the Award of a Professional Services Agreement to NCE to Update the

Since paving construction costs have increased dramatically since 2004 (as much as three times in some cases), NCE strongly recommends that unit costs be updated prior to any budget analyses. The unit costs will have a huge impact on the County's projections or needs assessments. Therefore, NCE will review any recent bid tabs, together with those from neighboring counties, as appropriate. Also, unit prices will be fully-loaded rates, and will include not just contractors' prices, but also design, inspection and testing costs.

Deliverable:

- M&R strategies and costs in decision tree

Task4 Budgetary Analyses and Final Report

NCE will next perform a **Budget Needs** analysis using an analysis period to be determined by the County (can be as long as 30 years). The Needs Analysis identifies road sections that need treatment and applies the M&R decision trees to each section. The costs are then summed for the entire period. This forms the basis for performing Budget Scenario evaluations, which optimize the road sections for repair under constrained budgets.

In simple terms, the Budget Needs analysis answers the questions:
"If I have unlimited funding for road maintenance and repair, which roads should I fix? When should I fix them? What treatments should I apply? How much will it cost?"

The **Budget Scenarios** evaluation prioritizes road sections for repair under constrained, realistic, budgetary assumptions.

This module answers the question: "If I only have limited funds for road maintenance and repair, which roads have the highest priority for repairs, when should I perform the repairs, and how much will it cost?

Multiple budget or target-driven scenarios will be performed after discussion with the County. Typical scenarios include:

- Impacts of existing funding levels including SB1 funding
- Funding required to maintain existing PCI
- Funding to improve the PCI
- Impacts to model changes in funding, e.g., budget impacts from COVID-19

After the analysis in above task is completed, NCE will prepare a draft Budget Options Report (BOR) for the County to review. The reports will contain, at a minimum, the following information:

- Executive Summary
- Study Objectives
- Description of methodology
- Inventory of all roads
- Current and projected PCI for all road classes
- M&R history
- Multi-year plan for road maintenance, resurfacing, rehabilitation and reconstruction
- Impact of deferred maintenance (backlog) on the overall network condition
- Recommended funding scenario
- Recommended pavement strategies
- GIS maps to show impacts of scenarios

NCE will deliver the draft report to the County for review in electronic format. Upon receipt of the comments on the draft report, NCE will complete the final report for submittal.

Deliverables:

- Draft BOR (electronic copy)

Attachment: NCE 21-021 Pavement Mgmnt (LTC-2021-8 : Authorize the Award of a Professional Services Agreement to NCE to Update the

- Final report (electronic copy and 3 hard-copies).
- Updated StreetSaver® database

Task 5 Board Presentation

NCE will make presentations to the Board of Supervisors. This may be a short (15 to 20 minutes) informational item or could be a longer (1-2 hours) educational/advocacy workshop, depending on the County's needs. NCE has recently completed similar presentations to the Board of Supervisors in Madera, Fresno, Santa Cruz, Siskiyou and Humboldt counties.

NCE's value to the County is the information that we can provide from other agencies, and the results of tight budgetary constraints. We can also share the perspective of our work from the California Statewide Needs Assessment study, which included an assessment of all 540 cities and counties.

This task includes one videoconference with County staff prior to the presentation to discuss items such as the goal of the presentation, the level of knowledge and backgrounds of the audience, the number of stakeholders involved and other potential issues.

> "We have been happy with the work performed by Nichols Engineering (NCE)...Margot's presentation to our City "Council was instrumental in getting their 'buy in' to use the PMS for our Pavement Rehabilitation programs."
> **– Elizabeth Chopp, PE, Senior Engineer, City of Chula Vista**

Deliverable:

- PowerPoint presentation

Task 6 GIS Linkage (Optional)

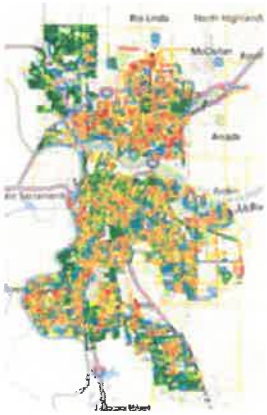
There is no accurate or updated GIS shapefile in County's StreetSaver® database currently. The GIS linkage consists of matching segments in the basemap based on road name, type and/or direction. Typical queries (or maps) include:

- PCI by road section
- Future PCI by road section
- Functional classification
- Maintenance treatment history
- Impacts of different budget scenarios
- Sections selected for treatment

Once linked, powerful maps can be generated within minutes, as shown in the example from the City of Sacramento.

Deliverable:

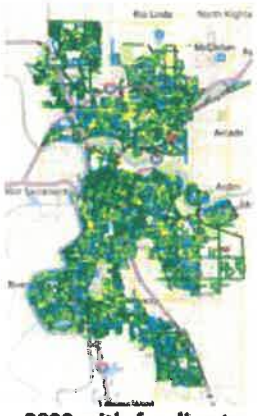
- Updated StreetSaver® database with GIS maps/linkages



2020



2029 with Existing Funding



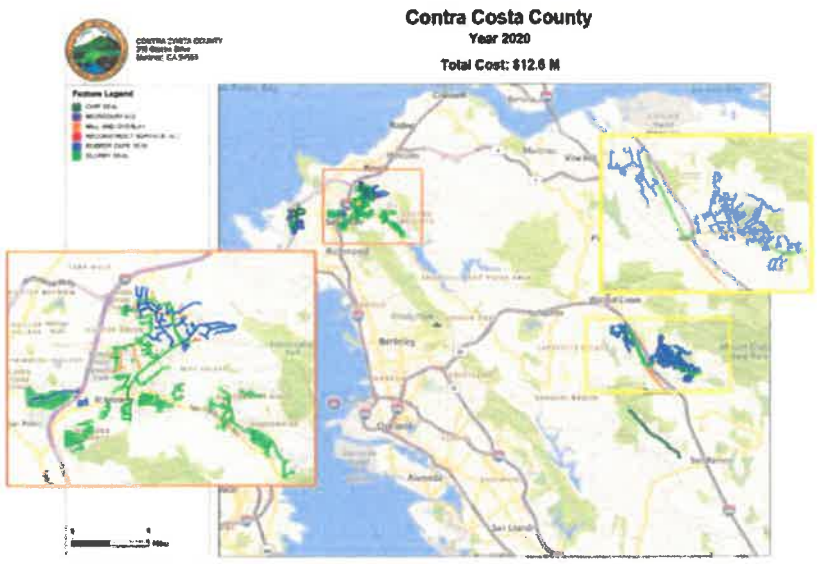
2029 with funding to improve PCI to 75

Attachment: NCE 21-021 Pavement Mgmnt (LTC-2021-8 : Authorize the Award of a Professional Services Agreement to NCE to Update the

Task 7 Five-Year Work Plan (Optional)

As an optional task, NCE can develop a five-year work plan based on the results of the previous tasks. We can perform multiple StreetSaver® scenarios to evaluate impacts to the network and generate enough optional candidates for grouping, consolidation, removal of outlier streets, and determination of other conflicts.

Based on the criteria agreed upon at the kickoff meeting and pavement maintenance strategies discussion, the sections selected will be grouped together geographically in an effort to produce continuous sections for treatment and try to avoid inefficiencies with shorter and isolated street segments. NCE can distribute road selections throughout the County or zone by Supervisorial districts, depending on County preferences (see example for Contra Costa County).



This task includes consideration of key elements identified by the County, confirmation of treatments, consideration of base repair levels, aggregation or grouping of streets and separation/combination of surface seal or rehabilitation paving programs. The criteria for various funding sources available to the County (i.e. local, state, federal) will also be considered when selecting streets in the work plan. A preliminary road list and GIS map will be prepared and submitted for the County's review. Upon completion of this review, NCE will incorporate all comments and changes, and submit a final street list and GIS map.

Key Assumptions:

- The County will provide filters to be applied to roads that should be excluded based on known utility conflicts or projects, planned CIP projects, citizen complaints or other criteria.
- County's GIS module in StreetSaver is current and functioning with most current version of County road centerline shapefile

Deliverable:

- Road list and maps for a five-year work plan

Task 8 Training and Technical Support (Optional)

NCE will prepare and present a one-day training class with County staff. The class will cover the following items:

- Creating or editing street sections
- Entering pavement distress data
- Performing PCI Calculations
- Entering maintenance and rehabilitation history
- Revising the M&R decision tree
  - Determining appropriate unit costs
- Determining budget needs
  - Creating budget scenarios Identifying treatment strategies
  - Project selection tools
  - Target-driven analysis
- Generating reports and GIS maps



Attachment: NCE 21-021 Pavement Mgmnt (LTC-2021-8 : Authorize the Award of a Professional Services Agreement to NCE to Update the

All materials will be provided by NCE. It is assumed that the training will be conducted online and will include up to 3 participants.

Since the onset of COVID-19 and shelter-in-place orders, NCE has transitioned to providing online training with agencies, most recently for MTC in November 2020. NCE has prepared and trained over 100 agencies in California on StreetSaver®. This includes developing all the training materials, ensuring interaction in the training as well as conducting the training. At the end of the training, County staff will be able to perform additional funding scenarios as desired and generate new or revised multi-year work plans. As an optional task, NCE will also allocate up to 40 hours of technical support per year. Typically, most technical support is related to providing one-on-one assistance, performing budget scenarios, updating M&R records, providing customized reports, providing pavement treatment recommendations, GIS maps, etc.

Deliverables:

- Training manuals
- Online training workshop

Task 9 – Asset Data Collection (Optional)

LiDAR sensor and street level 3D 360 imagery system developed in Roadway Collection Vehicle System can collect other pavement asset inventory/condition when performing pavement distress inspections. County staff can easily review and manage any roadway/roadside information collected in the field by the mobile mapping tools. The users have the ability to visualize, measure, edit, and validate infrastructure and roadway/roadside assets. Items include collection and condition assessments for pavements, utilities, properties, markings, traffic signs and signals, ADA curb ramps, drainage and bridge structures, etc. all with a high level of accuracy. County engineers, planners, and GIS technical staff can easily locate and assess important infrastructure in the office to avoid field data collection along busy streets. All collected information can be exported to shapefile format and merged to County's existing GIS system if any. Available road right of way asset data collections include:



- Sign inventory/condition (good/fair/poor; FHWA MUTCD retroreflectivity)
- Sidewalk inventory/condition (good/fair/poor; trip hazards)
- Curb inventory/condition (good/fair/poor)
- ADA ramp inventory/condition (compliance)
- Pavement marking or curb marking inventory/condition (good/fair/poor)
- Cross gutter inventory/condition (good/fair/poor)
- Tree inventory (size, types, pictures located along public road right of way)
- Traffic signals/control cabinets inventory
- Street lights inventory
- Speed bump inventory
- Strom drain inventory
- Guardrail and barricade inventory

Deliverables:

- GIS shapefile with asset inventory/condition/photos
- Summary report for each asset item

Attachment: NCE 21-021 Pavement Mgmnt (LTC-2021-8 : Authorize the Award of a Professional Services Agreement to NCE to Update the

EXHIBIT "B"

County of Mariposa
Pavement Management Program Update 2021
Detailed Cost Breakdown by Task

Task Description	Hours by Personnel						Marker	Total Cost
	Principal-in-Charge	Project Manager	QA/QC Mgr	Project Engineer	Technician	Clerical		
1. Kickoff Meeting	1	2		4				$ 1,500
2. Pavement Condition Surveys and PCI Calculation		3	1	12	128		$ 14,853	$ 37,000
3. M&R Strategies and Decision Tree		2	4	12				$ 3,500
4. Budgetary Analyses & Final Reports	2	4	2	40		4		$ 9,000
5. GIS Linkage		2		8	40			$ 5,500
Totals	2	11	7	72	168	4	$ 14,853	$ 55,000

Assumptions

Assumes County has active StreetSaver license.

Tasks 1 and 3 assume video-conferencing for meetings.

Task 2 assumes windshield surveys on all residential roads and sections with PCI less than 25 (approx. 210 centerline miles roads)

Task 2 assumes semi-automated surveys on all major and minor collectors with PCI greater than 25 (approx. 151 centerline miles roads)

Task 3 assumes County will update historical M&R records. Treatments and unit costs will be updated in decision tree.

Task 5 assumes County will pay MTC for GIS mapping integration fee.

Submitted by: NCE

Date Revised: January 20, 2021

ACORD

NICHCON-02 MCGRAWM

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 5/28/2020

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

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

PRODUCER License # 0E67768
IOA Insurance Services
4370 La Jolla Village Drive
Suite 600
San Diego, CA 92122

CONTACT NAME: Erica Wilson
PHONE (A/C, No, Ext): (858) 754-0063 50233 FAX (A/C, No): (619) 574-6288
E-MAIL ADDRESS: Erica.Wilson@ioausa.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : RLI Insurance Company	13056
INSURER B : Interstate Fire & Casualty Company	22829
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Nichols Consulting Engineers, CHTD
1885 S. Arlington Ave., #111
Reno, NV 89509

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY							
	CLAIMS-MADE X OCCUR	X	X	PSB0003222	5/17/2020	5/17/2021	EACH OCCURRENCE	$ 1,000,000
	X Cont Liab/Sev of Int						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 1,000,000
							MED EXP (Any one person)	$ 10,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						PERSONAL & ADV INJURY	$ 1,000,000
	POLICY X PRO-JECT LOC						GENERAL AGGREGATE	$ 2,000,000
	OTHER:						PRODUCTS - COMP/OP AGG	$ 2,000,000
							Deductible	$ 0
A	AUTOMOBILE LIABILITY							
	X ANY AUTO						COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
	OWNED AUTOS ONLY / SCHEDULED AUTOS	X	X	PSA0001184	5/17/2020	5/17/2021	BODILY INJURY (Per person)	$
	HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						BODILY INJURY (Per accident)	$
	X Comp.: $500 X Coll.: $500						PROPERTY DAMAGE (Per accident)	$
								$
A	UMBRELLA LIAB X OCCUR							
	X EXCESS LIAB CLAIMS-MADE			PSE0003030	5/17/2020	5/17/2021	EACH OCCURRENCE	$ 5,000,000
	DED X RETENTION $ 0						AGGREGATE	$ 5,000,000
								$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						X PER STATUTE / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N	N/A	X	PSW0001955	5/17/2020	5/17/2021	E.L. EACH ACCIDENT	$ 1,000,000
	(Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000
B	Professional Liab.			USF00807820	5/17/2020	5/17/2021	Per Claim	2,000,000
B	Ded.: $25k Per Claim			USF00807820	5/17/2020	5/17/2021	Aggregate	2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Re: Design Services for the Mariposa Downtown Renovation No. 20-059

County of Mariposa, its officers, officials, employees, and volunteers are Additional Insureds with respect to General and Auto Liability per the attached endorsements as required by written contract. Insurance is Primary and Non-Contributory. Waiver of Subrogation applies to General Liability, Auto Liability and Workers' Compensation in favor of the Additional Insureds.

30 Days Notice of Cancellation with 10 Days Notice for Non-Payment of Premium in accordance with the policy provisions.

CERTIFICATE HOLDER

County of Mariposa
Attn: Jean Dordan
4639 Ben Hur Road
Mariposa, CA 95338

CANCELLATION

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

AUTHORIZED REPRESENTATIVE
T. Kelly Howell

ACORD 25 (2016/03)

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NICHCON-02 MCGRAWM

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	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT	$ 1,000,000
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AUTHORIZED REPRESENTATIVE
T. Kelly Harrell

ACORD 25 (2016/03)

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Attachment: NCE 21-021 Pavement Mgmnt (LTC-2021-8 : Authorize the Award of a Professional Services Agreement to NCE to Update the

Named Insured: Nichols Consulting Engineers, CHTD
Policy Number: PSB0003222

RLI Insurance Company

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

RLIPack® FOR DESIGN PROFESSIONALS BLANKET ADDITIONAL INSURED ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM - SECTION II – LIABILITY

1. **C. WHO IS AN INSURED** is amended to include as an additional insured any person or organization that you agree in a contract or agreement requiring insurance to include as an additional insured on this policy, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by you or those acting on your behalf:
   a. In the performance of your ongoing operations;
   b. In connection with premises owned by or rented to you; or
   c. In connection with "your work" and included within the "product-completed operations hazard".
2. The insurance provided to the additional insured by this endorsement is limited as follows:
   a. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this policy.
   b. This insurance does not apply to the rendering of or failure to render any "professional services".
   c. This endorsement does not increase any of the limits of insurance stated in **D. Liability And Medical Expenses Limits of Insurance**.
3. The following is added to **SECTION III H.2. Other Insurance – COMMON POLICY CONDITIONS (BUT APPLICABLE ONLY TO SECTION II – LIABILITY)**

   However, if you specifically agree in a contract or agreement that the insurance provided to an additional insured under this policy must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with that other insurance, provided that:
   a. The "bodily injury" or "property damage" for which coverage is sought occurs after you have entered into that contract or agreement; or
   b. The "personal and advertising injury" for which coverage is sought arises out of an offense committed after you have entered into that contract or agreement.
4. The following is added to **SECTION III K. 2. Transfer of Rights of Recovery Against Others to Us – COMMON POLICY CONDITIONS (BUT APPLICABLE TO ONLY TO SECTION II – LIABILITY)**

   We waive any rights of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal and advertising injury" arising out of "your work" performed by you, or on your behalf, under a contract or agreement with that person or organization. We waive these rights only where you have agreed to do so as part of a contract or agreement with such person or organization entered into by you before the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" offense is committed.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

Attachment: NCE 21-021 Pavement Mgmnt (LTC-2021-8 : Authorize the Award of a Professional Services Agreement to NCE to Update the

Named Insured: Nichols Consulting Engineers, CHTD
This endorsement modifies insurance provided under the following:

Policy Number: PSA0001184

BUSINESS AUTO COVERAGE FORM

A. Broad Form Named Insured

The following is added to the **SECTION II – LIABILITY Coverage,** Paragraph **A.1. Who Is An Insured** Provision:

Any business entity newly acquired or formed by you during the policy period, provided you own fifty percent (50%) or more of the business entity and the business entity is not separately insured for Business Auto Coverage. Coverage is extended up to a maximum of one hundred eighty (180) days following the acquisition or formation of the business entity.

This provision does not apply to any person or organization for which coverage is excluded by endorsement.

B. Employees As Insureds

The following is added to the **SECTION II – LIABILITY COVERAGE,** Paragraph **A.1. Who Is An Insured** Provision:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

C. Blanket Additional Insured

The following is added to the **SECTION II – LIABILITY COVERAGE,** Paragraph **A.1. Who Is An Insured** Provision:

Any person or organization that you are required to include as an additional insured on this coverage form in a contract or agreement that is executed by you before the "bodily injury" or "property damage" occurs is an "insured" for liability coverage, but only for damages to which this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in **SECTION II – LIABILITY COVERAGE**.

The insurance provided to the additional insured will be on a primary and non-contributory basis to the additional insured's own business auto coverage if you are required to do so in a contract or agreement that is executed by you before the "bodily injury" or "property damage" occurs.

D. Blanket Waiver Of Subrogation

The following is added to the **SECTION IV – BUSINESS AUTO CONDITIONS, A. Loss Conditions, 5. Transfer Of Rights Of Recovery Against Others To Us:**

We waive any right of recovery we may have against any person or organization to the extent required of you by a contract executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.

E. Employee Hired Autos

1. The following is added to the **SECTION II – LIABILITY COVERAGE,** Paragraph **A.1. Who Is An Insured** Provision:

   An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. Changes in General Conditions:

   Paragraph **5.b.** of the **Other Insurance** Condition in the **BUSINESS AUTO CONDITIONS** is deleted and replaced with the following:

   b. For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

   (1) Any covered "auto" you lease, hire, rent or borrow; and

   (2) Any covered "auto" hired or rented by your "employee" under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

F. Fellow Employee Coverage

SECTION II – LIABILITY COVERAGE, Exclusion B.5. does not apply if you have workers compensation insurance in force covering all of your employees.

G. Auto Loan Lease Gap Coverage

SECTION III – PHYSICAL DAMAGE COVERAGE, C. Limit Of Insurance, is amended by the addition of the following:

In the event of a total "loss" to a covered "auto" shown in the Schedule of Declarations, we will pay any unpaid amount due on the lease or loan for a covered "auto", less:

Attachment: NCE 21-021 Pavement Mgmnt (LTC-2021-8 : Authorize the Award of a Professional Services Agreement to NCE to Update the

Named Insured: Nichols Consulting Engineers, CHTD

Policy Number: PSW0001955

WORKERS' COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

WC 04 03 06

(Ed. 04-84)

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT–CALIFORNIA

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be _____% of the California workers' compensation premium otherwise due on such remuneration.

Schedule

Person or Organization	Job Description
All persons or organizations that are party to a contract that requires you to obtain this agreement, provided you executed the contract before the loss	Jobs performed for an person or organization that you have agreed with in a written contract to provide this agreement

Attachment: NCE 21-021 Pavement Mgmnt (LTC-2021-8 : Authorize the Award of a Professional Services Agreement to NCE to Update the

MARIPOSA COUNTY

Public Works · 209 966 5356

RESOLUTION - ACTION REQUESTED 2021-89

MEETING: February 23, 2021

TO: The Board of Supervisors

FROM: Mike Healy, Public Works Director

RE: Approve Advertisement and Accept Bids for Removal of Obsolete Conveyor Equipment at the Landfill

---

RECOMMENDATION AND JUSTIFICATION:
Approve Advertisement and Acceptance of Bids for the Removal of an Obsolete Conveyor System at the Mariposa County Landfill; and Authorize the Public Works Director to Award and Sign the Agreement (Subject to Approval as to Form by County Counsel).

This project will cause the removal of a roughly 25 foot long conveyor system which will become obsolete given the new mixer that the County will receive as part of a grant funded through the Zero Landfill Initiative funded by the Subaru Corporation. The conveyor system in it's present location is in the space required for the new mixer unit and is no longer needed given the operational capability of the new mixer equipment.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The Board accepted a very generous Grant from the Subaru Corporation which will provide new and improved mixer capability at our Landfill facility. This Board action is Resolution 2020-537 which is attached to this item.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Do not approve, the large unit will sit without use.

FINANCIAL IMPACT:
This project will be funded through appropriated funds.

ATTACHMENTS:
RFP Sort Line Removal (PDF)
Board Res 2020 537 (PDF)

RESULT: **ADOPTED [UNANIMOUS]**
MOVER: Tom Sweeney, District II Supervisors
SECONDER: Wayne Forsythe, District IV Supervisor
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

Mariposa County
Department of Public Works

Roads – Parks & Recreation – Facilities - Airport
Engineering – Surveying – Transportation – Utility Operations
Fleet Maintenance – Solid Waste - Cemeteries

Team, Service, Stewardship

4639 Ben Hur Road
Mariposa, CA 95338
(209) 966-5356 office
(209) 966-2828 fax
www.mariposacounty.org

February 18, 2021

REQUEST FOR PROPOSALS
Removal and Relocation of Sorting Line Machinery
at the Mariposa County Land Fill
Project # 0404-2101

Mariposa County Public Works is seeking Contractors to bid on this Project that will remove the "Sorting Line" from its current location,and haul it to another location at the landfill – a distance of approximately 400 feet.

The County expects this project to be completed during Spring 2021.

The Work shall include all items required to move the "Sorting Line" and supports to the required location. The pricing shall be shown on the bid schedule, and described as follows:

REMOVE AND RELOCATE THE SORTING LINE MACHINERY

The contractor will be expected to cut the support bent (as necessary) in order to separate it from the currently installed location. The contractor will then haul the 25 foot long "sorting line" and cut support bent to the location described on the site plan.

No permits will be required for this work. The contractor should have a valid C21 Demolition License, or equivalent and will need to pay all labor by the latest prevailing wage rates.

The written proposal submittal shall include the completed Bid Sheets. The Deadline for submittals is 2:00 pm on March 12, 2021. The proposals must be received at Public Works. Email submittals will not be accepted. Any questions should be directed to: scerveny@mariposacounty.org

Attachment: RFP Sort Line Removal (RES-2021-89 : Approve Advertisement and Accept Bids for Removal of Obsolete Conveyor Equipment at

MARIPOSA COUNTY PUBLIC WORKS

BID SCHEDULE & ACKNOWLEGEMENT

Removal and Relocation of Sorting Line Machinery
at the Mariposa County Land Fill

Project # 0404-2101

ITEM	ITEM DESCRIPTION	AMOUNT
A	REMOVE & RELOCATE SORTING LINE MACHINERY	

BID SCHEDULE TOTAL, IN FIGURES: $_____

SIGNATURE OF BIDDER: _____ DATE: _____

NAME OF BIDDER (PRINT): _____

CONTRACTOR COMPANY NAME & LICENSE: _____

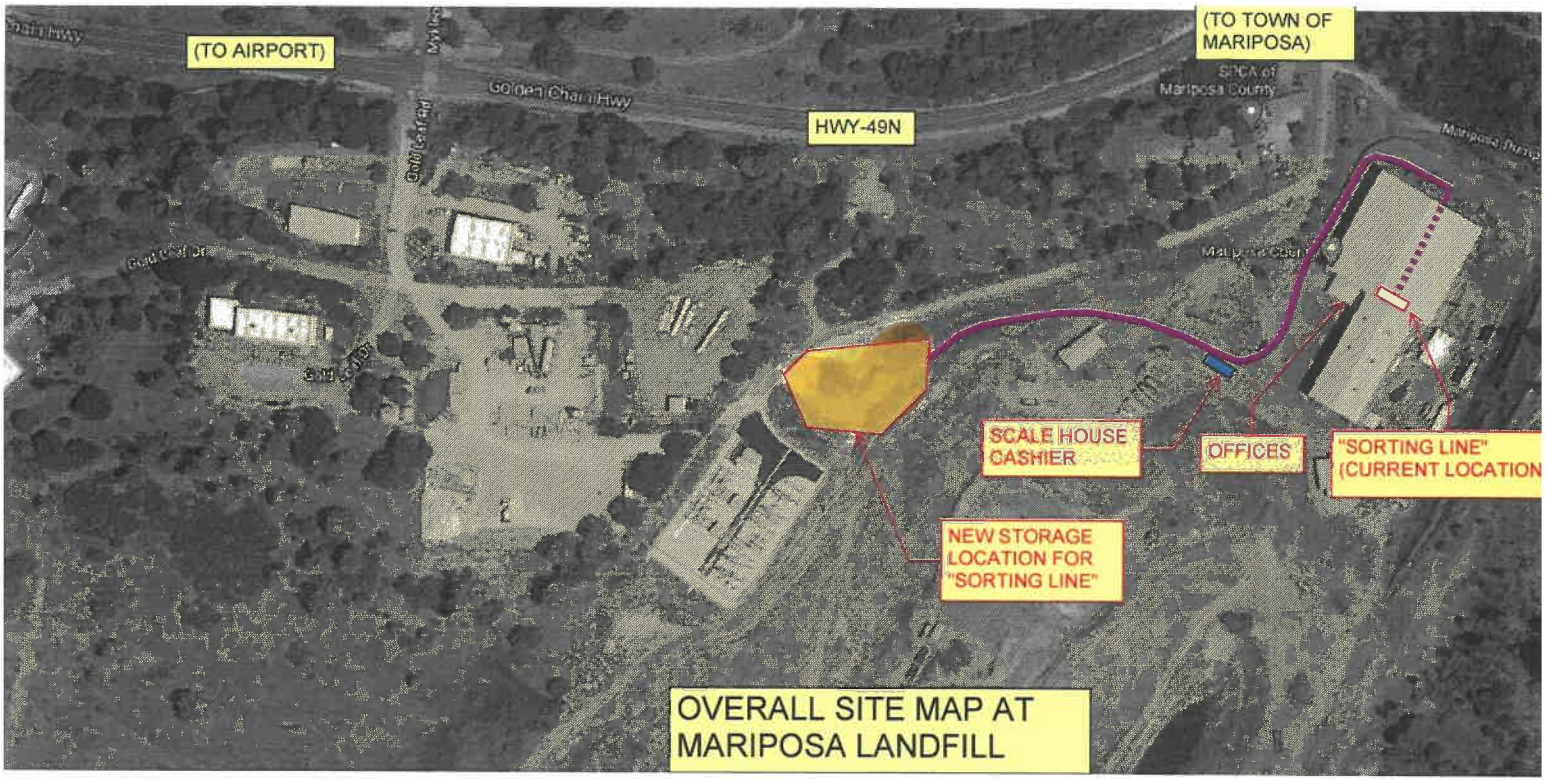
ASSUMPTIONS AND EXCLUSIONS:
(PROVIDE A NARRATIVE OR EXPLANATION FOR ANY ITEMS THAT COULD AFFECT AN ITEM IN THE BID SCHEDULE.)

1. _____

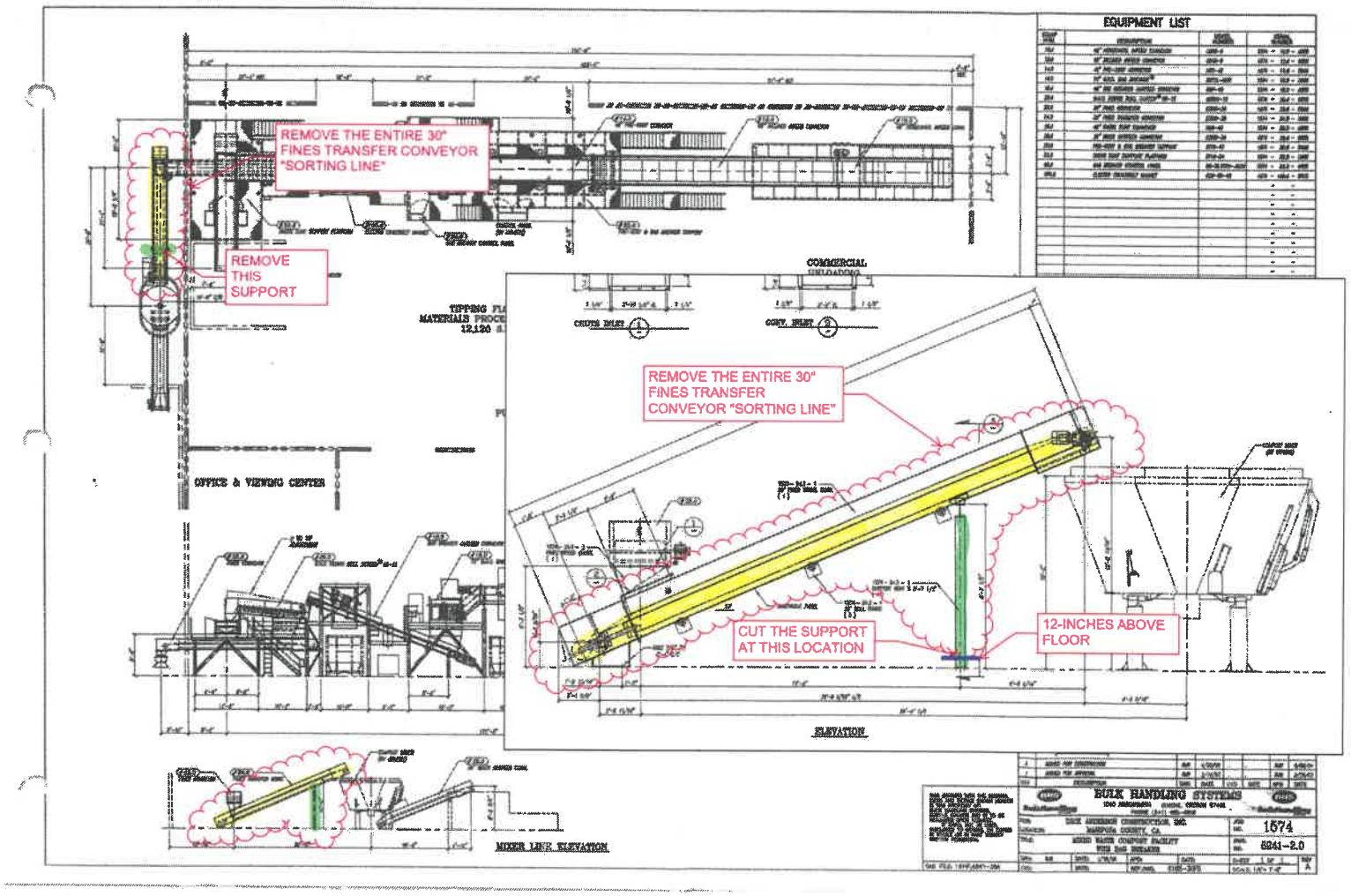
2. _____

3. _____

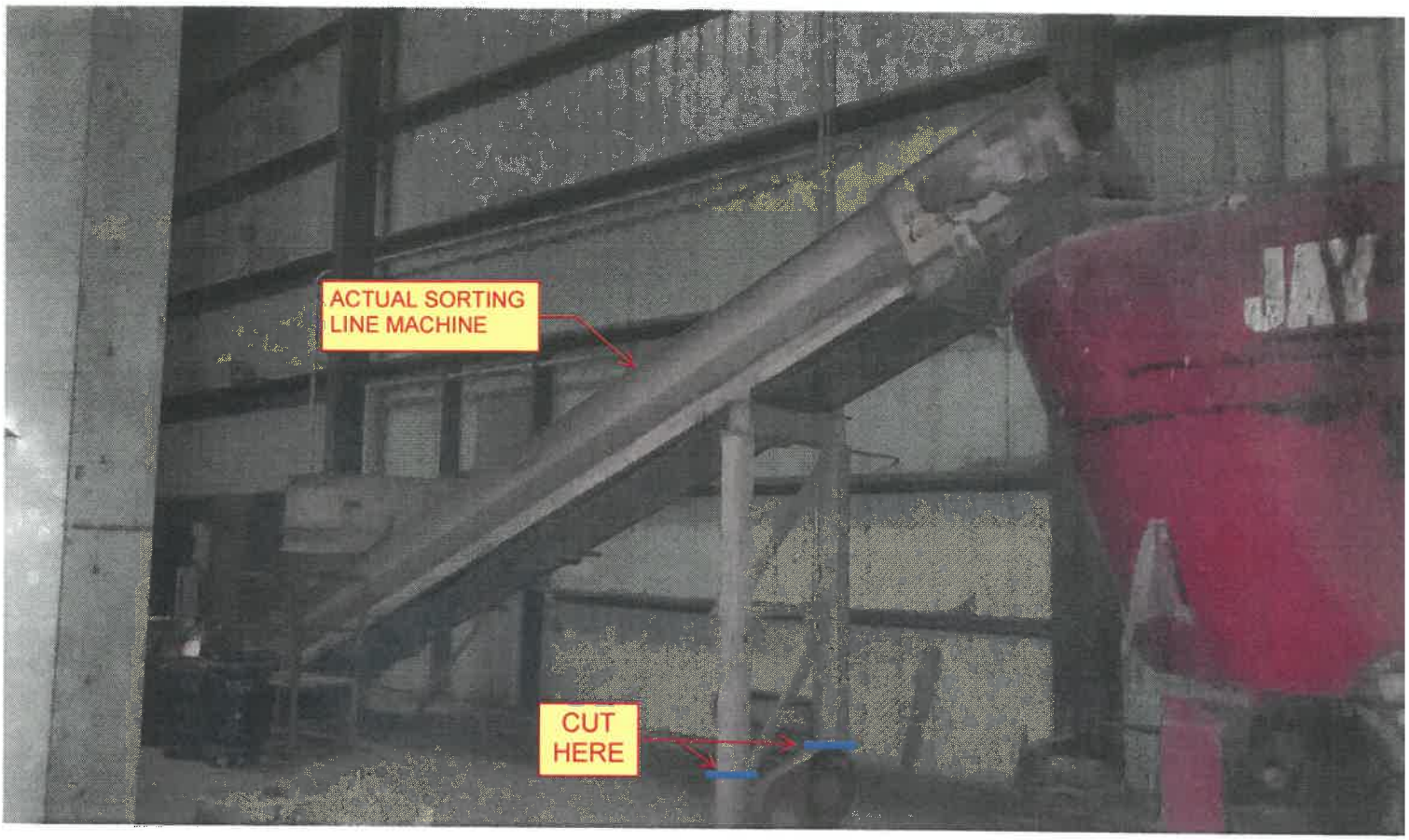
Attachment: RFP Sort Line Removal (RES-2021-89 : Approve Advertisement and Accept Bids for Removal of Obsolete Conveyor Equipment at



Attachment: RFP Sort Line Removal (RES-2021-89 : Approve Advertisement and Accept Bids for Removal of Obsolete Conveyor Equipment at



Attachment: RFP Sort Line Removal (RES-2021-89 : Approve Advertisement and Accept Bids for Removal of Obsolete Conveyor Equipment at


ACTUAL SORTING
LINE MACHINE
CUT
HERE
JAY

MARIPOSA COUNTY

Public Works · 209 966 5356

RESOLUTION - ACTION REQUESTED 2020-537

MEETING: September 1, 2020

TO: The Board of Supervisors

FROM: Mike Healy, Public Works Director

RE: Accept a Grant for the Purchase of a Mixer for the Landfill

---

RECOMMENDATION AND JUSTIFICATION:
Accept an Equipment Grant ($127,920.30) from Yosemite Conservancy, in Conjunction with the Subaru "Zero Landfill Initiative" and the National Park Foundation, Which Will Purchase a Laird Vertical Stationary Mixer for the Landfill Composting Operation.

This mixer equipment will be a welcome addition to the efficiency and effectiveness of our Composting Operation. This mixer will aid in a better quality end compost product through a much improved mixing of green waste, food waste and wood chips type product.

Public Works would like to express our gratitude to the Subaru Corporation for their Environmental Stewardship exhibited through their "Zero Landfill Initiative" Program, The National Park Foundation and Yosemite Conservancy for their support of this project and to Gene Smith of the National Park Service at Yosemite National Park who along with Sam Cerveny who have been a tremendous advocates in favor of this project for our Landfill.

Toward the completion of this Project Public Works will bring both an updated status report on the project as well as a Formal Resolutions of Gratitude to those through their efforts and support made this project a reality.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The Board has accepted donations through the Subaru "Zero Landfill Initiative" in the past to the benefit of the Landfill Operations.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Should the Board not accept this donation compost mixing will continue which expends a good amount of manual labor.

FINANCIAL IMPACT:

Attachment: Board Res 2020 537 (RES-2021-89 : Approve Advertisement and Accept Bids for Removal of Obsolete Conveyor Equipment at the

Resolution - Action Requested 2020-537

Long term there will be costs associated with improving the delivery process of materials to the mixer but these will be offset rather quickly by labor savings

ATTACHMENTS:
Landfill Mixer Grant Award (PDF)

RESULT: **ADOPTED [UNANIMOUS]**
MOVER: Merlin Jones, District II Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Rosemarie Smallcombe, Merlin Jones, Marshall Long, Miles Menetrey
EXCUSED: Kevin Cann

Attachment: Board Res 2020 537 (RES-2021-89 : Approve Advertisement and Accept Bids for Removal of Obsolete Conveyor Equipment at the

MARIPOSA COUNTY

Administration · 966-3222

RESOLUTION - ACTION REQUESTED 2021-90

MEETING: February 23, 2021

TO: The Board of Supervisors

FROM: Dallin Kimble, County Administrative Officer

RE: Renew Microsoft 365 License Agreement for $92,700 July 2020 to July 2021

RECOMMENDATION AND JUSTIFICATION:
Approve the Renewal Agreement with Tangent for 10 Microsoft 365 Licenses, and Adding 370 New Licenses, in an Amount Not to Exceed $92,700 with a Term of July 5, 2020 through July 5, 2021; and Authorize the Board of Supervisors Chair to Sign the Agreement.

Mariposa County has completed the transition to Microsoft 365 for the majority of staff. Technical Services is still working to meet requirements from the Department of Justice to enable the Sheriff's department to make the transition as well. We anticipate that will occur later this year.

We want to acknowledge that this contract is retroactive from July 5, 2020. The work to implement, transition and train staff overshadowed the work to finalize the contract. The COVID-19 Pandemic forced Mariposa County to support teleworking staff more rapidly than originally anticipated, which exacerbated the delay in the contracting process. When invoices were received, we realized that we had not taken this step to ensure approval of the contract and pay for the licenses.

Microsoft 365 has been tremendously valuable for staff, particularly as we struggle with a new normal in terms of teleworking and flex schedules. This is a terrific step in ensuring we maintain and improve productivity and community services in our constantly changing world.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The board routinely reviews and approves contracts of this size and scope.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Do not approve, and staff would return to server-based, computer-specific mechanisms of document generation, storage, and communication.

FINANCIAL IMPACT:
The budget for this contract is included in the FY21 budget.

ATTACHMENTS:
Tangent Contract (PDF)
Tangent Email Contract Change Request Confirmation (PDF)
Tangent and Microsoft 365 Memo (PDF)

RESULT: **ADOPTED [UNANIMOUS]**
MOVER: Rosemarie Smallcombe, District I Supervisor
SECONDER: Wayne Forsythe, District IV Supervisor
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

tangent

Terms and Conditions

These Terms & Conditions (this "Terms", "Conditions", "Agreement") is between Tangent Computers, Corporation ("Tangent", "Us", "Company", "Tangent Inc.") and the individual or entity that has executed this Agreement ("You"). This Agreement sets forth the terms and conditions that govern orders placed by You for Services under this Agreement. If you are entering into this agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to the terms and conditions of this agreement and, in such event, "you" and "your" as used in this agreement shall refer to such entity. If you do not have such authority, or if you or such entity do not agree to the terms and conditions of this agreement, you may not use the services.

Terms & Services. These conditions are valid for the order which these condition accompany. Services provided under this Agreement shall be provided for the Services Period defined in Your order, unless earlier suspended or terminated in accordance with this Agreement or the order. If stated in the Service Specifications, certain Cloud Services that are ordered will Auto Renew for additional Services Periods unless (i) You provide Tangent with written notice no later than thirty (30) days prior to the end of the applicable Services Period of Your intention not to renew such Cloud Services, or (ii) Tangent provides You with written notice no later than ninety (90) days prior to the end of the applicable Services Period of its intention not to renew such Cloud Services.

Upon the end of the Services, You no longer have rights to access or use the Services, including the associated Tangent Programs and Services Environments; however, at Your request, and for a period of up to 60 days after the end of the applicable Services Period, Tangent will make available Your Content and Your Applications then in the Services Environment for the purpose of retrieval by You. At the end of such 60 day period, and except as may be required by law, Tangent will delete or otherwise render inaccessible any of Your Content and Your Applications that remain in the Services Environment.

Tangent may temporarily suspend Your password, account, and access to or use of the Services if You or Your Users violate any provision within the 'Rights Granted', 'Ownership and Restrictions', 'Fees and Taxes', 'Use of the Services', or 'Export' sections of this Agreement, or if in Tangent's reasonable judgment, the Services or any component thereof are about to suffer a significant threat to security or functionality. Tangent will provide advance notice to You of any such suspension in Tangent's reasonable discretion based on the nature of the circumstances giving rise to the suspension. Tangent will use reasonable efforts to re-establish the affected Services promptly after Tangent determines, in its reasonable discretion, that the situation giving rise to the suspension has been cured; however, during any suspension period, Tangent will make available to You Your Content and Your Applications as existing in the Services Environment on the date of suspension. Tangent may terminate the Services under an order if any of the foregoing causes of suspension is not cured within 30 days after Tangent's initial notice thereof. Any suspension or termination by Tangent under this paragraph shall not excuse You from Your obligation to make payment(s) under this Agreement.

Fees. All fees payable to Tangent are due on the invoice date. Once placed, Your order is non-cancelable and the sums paid nonrefundable, except as provided in this Agreement or Your order. You will pay any sales, value-added or other similar taxes imposed by applicable law that Tangent must pay based on the Services You ordered, except for taxes based on Tangent's income. All Fees for Services are listed in ANNEX A or in the preceding order form.

Attachment: Tangent Contract (RES-2021-90 : Renew Microsoft 365 License Agreement for $92,700 July 2020 to July 2021)

tangent

Terms and Conditions

New Licenses and Additions for Customers Billed Monthly. New licenses and additions will be prorated for the days remaining in the current month & include charges for the following month on the next invoice sent on the invoice date of the following month. Ex. "Your next invoice date is June 1. You place an order on May 15, Your June 1 invoice will be for the last 16 days of May, plus all of June."

New Licenses and Additions for Customers Billed Annually. New licenses and additions will be prorated for the days remaining on the annual agreement and customers will be invoiced within 5 business days. Ex. "Your annual agreement is due to renew on December 15st. You place an order on May 15, You will be invoiced for the remaining 214 days of the annual agreement."

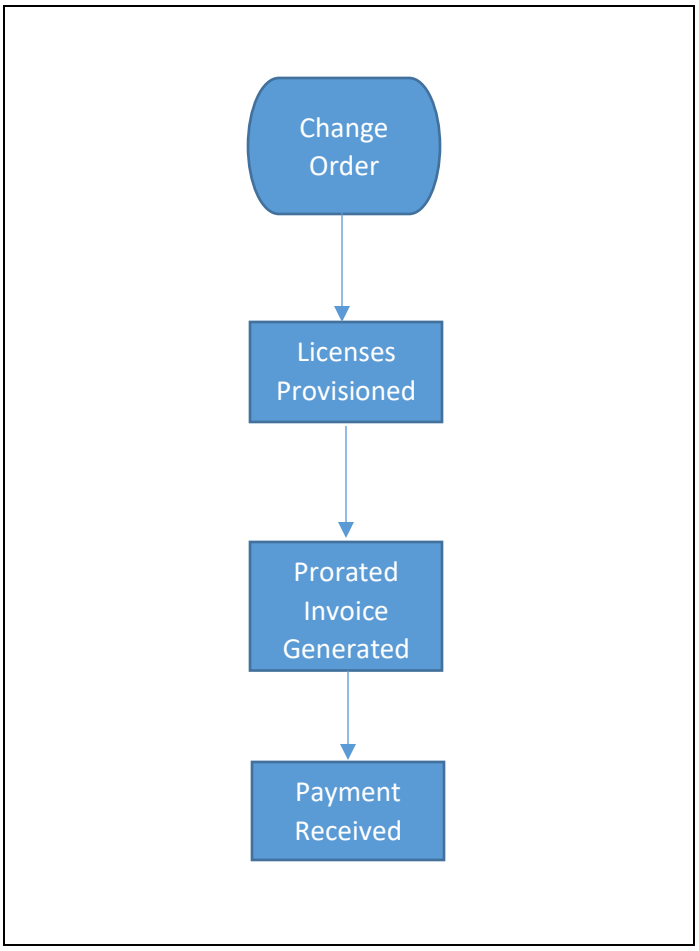
New Licenses and Additions for Customers Billed Quarterly. New licenses and additions will be prorated for the days remaining on the quarterly agreement and customers will be invoiced within 5 business days. Ex. "Your quarterly agreement is due to renew on March 31st. You place an order on March 1, You will be invoiced for the remaining 31 days of the quarterly agreement."

Changes to services. Any change to your invoice will reflect a proration on a daily basis.

- **Upgrades**: You Are allowed & will be prorated based the numbers of days remaining in the agreement for the price difference between the old SKU and the new SKU
- **Downgrades**: You Are allowed but you will not be credited back the difference in the plans. Charges for the new SKU will reflect on the next invoice.
- **Adding licenses**: You are permitted to add licenses mid-way through the agreement. Invoices will be prorated to the remaining days of the agreement.

Non-Payment and Service Shut Off. Services invoiced are subject to shut-off if the associated invoice is left unpaid over 30 days past the invoice due date.

Change Order Process Overview.



Attachment: Tangent Contract (RES-2021-90 : Renew Microsoft 365 License Agreement for $92,700 July 2020 to July 2021)

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Terms and Conditions

Termination. You can cancel an agreement contract at any point in time. NO partial credits will be issued for cancelations. Notwithstanding anything contained in these Terms, we reserve the right, without notice and in our sole discretion, to terminate your right to access or use the Sites and to order, receive and use the Services, at any time and for any or no reason, and you acknowledge and agree that we shall have no liability or obligation to you in such event and that you will not be entitled to a refund of any amounts that you have already paid to us, to the fullest extent permitted by applicable law.

If either party breaches a material term of this Agreement and fails to correct the breach within 30 days of written specification of the breach, then the breaching party is in default and the non-breaching party may terminate the order under which the breach occurred.

If Tangent terminates the order as specified in the preceding sentence, You must pay within 30 days all amounts that have accrued prior to such termination, as well as all sums remaining unpaid for the Services under such order plus related taxes and expenses. Except for nonpayment of fees, the nonbreaching party may agree in its sole discretion to extend the 30 day period for so long as the breaching party continues reasonable efforts to cure the breach. You agree that if You are in default under this Agreement, You may not use those Services ordered.

Provisions that survive termination or expiration of this Agreement are those relating to limitation of liability, indemnification, payment and others which by their nature are intended to survive.

Rights Granted. For the duration of the Service Period and subject to Your payment obligations, and except as otherwise set forth in this Agreement or Your order, You have the non-exclusive, non-assignable, royalty free, worldwide limited right to access and use the Services that You ordered, including anything developed by Tangent and delivered to You as part of the Services, solely for Your internal business operations and subject to the terms of this Agreement and Your order, including the Service Specifications. You may allow Your Users to use the Services for this purpose and You are responsible for Your Users' compliance with this Agreement and the order. You do not acquire under this Agreement any right or license to use the Services, including the Tangent Programs and Services Environment, in excess of the scope and/or duration of the Services stated in Your order. Upon the end of the Services ordered, Your right to access and use the Services will terminate.

To enable Tangent to provide You and Your Users with the Services, You grant Tangent the right to use, process and transmit, in accordance with this Agreement and Your order, Your Content and Your Applications for the duration of the Services Period plus any additional post-termination period during which Tangent provides You with access to retrieve an export file of Your Content and Your Applications. If Your Applications include third party programs, You acknowledge that Tangent may allow providers of those third party programs to access the Services Environment, including Your Content and Your Applications, as required for the interoperation of such third party programs with the Services. Tangent will not be responsible for any use, disclosure, modification or deletion of Your Content or Your Applications resulting from any such access by third party program providers or for the interoperability of such third party programs with the Services.

Except as otherwise expressly set forth in Your order for certain Cloud Services offerings (e.g., a private cloud hosted at Your facility), You acknowledge that Tangent has no delivery obligation for Tangent Programs and will not ship copies of such programs to You as part of the Services.

Attachment: Tangent Contract (RES-2021-90 : Renew Microsoft 365 License Agreement for $92,700 July 2020 to July 2021)

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Terms and Conditions

The Services may contain or require the use of Separately Licensed Third Party Technology. You are responsible for complying with the Separate Terms specified by Tangent that govern Your use of Separately Licensed Third Party Technology. Tangent may provide certain notices to You in the Service Specifications, Program Documentation, readme or notice files in connection with such Separately Licensed Third Party Technology. The third party owner, author or provider of such Separately Licensed Third Party Technology retains all ownership and intellectual property rights in and to such Separately Licensed Third Party Technology.

As part of certain Cloud Services offerings, Tangent may provide You with access to Third Party Content within the Services Environment. The type and scope of any Third Party Content is defined in the Service Specifications applicable to Your order. The third party owner, author or provider of such Third Party Content retains all ownership and intellectual property rights in and to that content, and Your rights to use such Third Party Content are subject to, and governed by, the terms applicable to such content as specified by such third party owner, author or provider.

Ownership and Restrictions. You retain all ownership and intellectual property rights in and to Your Content and Your Applications. Tangent or its licensors retain all ownership and intellectual property rights to the Services, including Tangent Programs and Ancillary Programs, and derivative works thereof, and to anything developed or delivered by or on behalf of Tangent under this Agreement.

You may not, and may not cause or permit others to: a) remove or modify any program markings or any notice of Tangent's or its licensors' proprietary rights; b) make the programs or materials resulting from the Services (excluding Your Content and Your Applications) available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific Services You have acquired); c) modify, make derivative works of, disassemble, decompile, reverse engineer, reproduce, distribute, republish or download any part of the Services (the foregoing prohibitions include but are not limited to review of data structures or similar materials produced by programs) unless required to be permitted by law for interoperability, or access or use the Services in order to build or support, and/or assist a third party in building or supporting, products or Services competitive to Tangent; d) perform or disclose any benchmark or performance tests of the Services, including the Tangent Programs; e) perform or disclose any of the following security testing of the Services Environment or associated infrastructure: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, or penetration testing; and f) license, sell, rent, lease, transfer, assign, distribute, host, outsource, permit timesharing or service bureau use, or otherwise commercially exploit or make available the Services, Tangent Programs, Ancillary Programs, Services Environments or Tangent materials to any third party, other than as expressly permitted under the terms of the applicable order.

Use of the Services. You are responsible for identifying and authenticating all Users, for approving access by such Users to the Services, for controlling against unauthorized access by Users, and for maintaining the confidentiality of usernames, passwords and account information. By federating or otherwise associating Your and Your Users' usernames, passwords and accounts with Tangent, You accept responsibility for the confidentiality and timely and proper termination of user records in Your local (intranet) identity infrastructure or on Your local computers. Tangent is not responsible for any harm caused by Your Users, including individuals who were not authorized to have access to the Services but who were able to gain access because

Attachment: Tangent Contract (RES-2021-90 : Renew Microsoft 365 License Agreement for $92,700 July 2020 to July 2021)

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Terms and Conditions

usernames, passwords or accounts were not terminated on a timely basis in Your local identity management infrastructure or Your local computers. You are responsible for all activities that occur under Your and Your Users' usernames, passwords or accounts or as a result of Your or Your Users' access to the Services, and agree to notify Tangent immediately of any unauthorized use. You agree to make every reasonable effort to prevent unauthorized third parties from accessing the Services.

You agree not to use or permit use of the Services, including by uploading, emailing, posting, publishing or otherwise transmitting any material, including Your Content, Your Applications and Third Party Content, for any purpose that may (a) menace or harass any person or cause damage or injury to any person or property, (b) involve the publication of any material that is false, defamatory, harassing or obscene, (c) violate privacy rights or promote bigotry, racism, hatred or harm, (d) constitute unsolicited bulk e-mail, "junk mail", "spam" or chain letters; (e) constitute an infringement of intellectual property or other proprietary rights, or (f) otherwise violate applicable laws, ordinances or regulations. In addition to any other rights afforded to Tangent under this Agreement, Tangent reserves the right, but has no obligation, to take remedial action if any material violates the restrictions in the foregoing sentence (the "Acceptable Use Policy"), including the removal or disablement of access to such material. Tangent shall have no liability to You in the event that Tangent takes such action. You shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and ownership of all of Your Content and Your Applications. You agree to defend and indemnify Tangent against any claim arising out of a violation of Your obligations under this section.

You are required to accept all patches, bug fixes, updates, maintenance and service packs (collectively, "Patches") necessary for the proper function and security of the Services, including for the Tangent Programs, as such Patches are generally released by Tangent as described in the Service Specifications. Tangent is not responsible for performance or security issues encountered with the Cloud Services that result from Your failure to accept the application of Patches that are necessary for the proper function and security of the Services. Except for emergency or security related maintenance activities, Tangent will coordinate with You the scheduling of application of Patches, where possible, based on Tangent's next available standard maintenance window.

Non-disclosure. By virtue of this Agreement, the parties may have access to information that is confidential to one another ("Confidential Information"). We each agree to disclose only information that is required for the performance of obligations under this Agreement. Confidential information shall be limited to the terms and pricing under this Agreement, Your Content and Your Applications residing in the Services Environment, and all information clearly identified as confidential at the time of disclosure.

A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

We each agree not to disclose each other's Confidential Information to any third party other than as set forth in the following sentence for a period of three years from the date of the disclosing party's disclosure of the Confidential Information to the receiving party; however, Tangent will hold Your Confidential Information

Attachment: Tangent Contract (RES-2021-90 : Renew Microsoft 365 License Agreement for $92,700 July 2020 to July 2021)

tangent

Terms and Conditions

that resides within the Services Environment in confidence for as long as such information resides in the Services Environment. We each may disclose Confidential Information only to those employees, agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than required under this Agreement. Tangent will protect the confidentiality of Your Content or Your Applications residing in the Services Environment in accordance with the Tangent security practices defined as part of the Service Specifications applicable to Your order. In addition, Your Personal Data will be treated in accordance with these terms below. Nothing shall prevent either party from disclosing the terms or pricing under this Agreement or orders placed under this Agreement in any legal proceeding arising from or in connection with this Agreement or from disclosing the Confidential Information to a governmental entity as required by law.

Data Protection. In performing the Services, Tangent will comply with the Tangent Services Privacy Policy and incorporated herein by reference. The Tangent Services Privacy Policy is subject to change at Tangent's discretion; however, Tangent policy changes will not result in a material reduction in the level of protection provided for Your Personal Data provided as part of Your Content during the Services Period of Your order. You agree to provide any notices and obtain any consents related to Your use of the Services and Tangent's provision of the Services, including those related to the collection, use, processing, transfer and disclosure of Personal Data.

The Service Specifications applicable to Your order define the administrative, physical, technical and other safeguards applied to Your Content residing in the Services Environment, and describe other aspects of system management applicable to the Services. You are responsible for any security vulnerabilities, and the consequences of such vulnerabilities, arising from Your Content and Your Applications, including any viruses, Trojan horses, worms or other programming routines contained in Your Content or Your Applications that could limit or harm the functionality of a computer or that could damage, intercept or expropriate data. You may not provide Tangent access to health, payment card or similarly sensitive personal information that imposes specific data security obligations for the processing of such data unless specified in Your order.

Third Party Web Sites, Content, Products and Services. The Services may enable You to link to, transmit Your Content to, or otherwise access, other Web sites, content, products, services, and information of third parties. Tangent does not control and is not responsible for such Web sites or any such content, products, services and information accessible from or provided through the Services, and You bear all risks associated with access to and use of such Web sites and third party content, products, services and information.

Any Third Party Content made accessible by Tangent in or through the Services Environment is provided on an "as-is" and "as available" basis without any warranty of any kind. Third Party Content may be indecent, offensive, inaccurate, infringing or otherwise objectionable or unlawful, and You acknowledge that Tangent is not responsible for and under no obligation to control, monitor or correct Third Party Content; however, Tangent reserves the right to take remedial action if any such content violates applicable restrictions under this Agreement, including the removal of, or disablement of access to, such content.

You acknowledge that: (i) the nature, type, quality and availability of Third Party Content may change at any time during the Services Period, and (ii) features of the Services that interoperate with third parties such as Facebook™, YouTube™ and Twitter™, etc. (each, a "Third

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Party Service"), depend on the continuing availability of such third parties' respective application programming interfaces (APIs) for use with the Services. Tangent may update, change or modify the Services under this Agreement as a result of a change in, or unavailability of, such Third Party Content, Third Party Services or APIs. If any third party ceases to make its Third Party Content or APIs available on reasonable terms for the Services, as determined by Tangent in its sole discretion, Tangent may cease providing access to the affected Third Party Content or Third Party Services without any liability to You. Any changes to Third Party Content, Third Party Services or APIs, including their availability or unavailability, during the Services Period does not affect Your obligations under this Agreement or the applicable order, and You will not be entitled to any refund, credit or other compensation due to any such changes. Any Third Party Content that You store in Your Services Environment will count towards any storage or other allotments applicable to the Cloud Services that You ordered.

Services Tools and Ancillary Programs. Tangent may use tools, scripts, software, and utilities (collectively, the "Tools") to monitor and administer the Services and to help resolve Your Tangent service requests. The Tools will not collect or store any of Your Content or Your Applications residing in the Services Environment, except as necessary to provide the Services or troubleshoot service requests or other problems in the Services. Information collected by the Tools (excluding Your Content and Your Applications) may also be used to assist in managing Tangent's product and service portfolio, to help Tangent address deficiencies in its product and service offerings, and for license and Services management. As part of the Cloud Services, Tangent may provide You with on-line access to download certain Ancillary Programs for use with the Services. If Tangent does not specify separate terms for such Ancillary Programs, then, subject to Your payment obligations, You have the non-exclusive, non-assignable, royalty free, worldwide limited right to use such Ancillary Programs solely to facilitate Your access to, operation of, and/or use of the Services Environment, subject to the terms of this Agreement and Your order, including the Services Specifications. Your right to use such Ancillary Programs will terminate upon the earlier of Tangent's notice (which may be through posting on a URL designated by Tangent), the end of the Cloud Services associated with the Ancillary Programs, or the date on which the license to use the Ancillary Programs ends under the Separate Terms specified for such programs.

Service Analyses. Tangent may (i) compile statistical and other information related to the performance, operation and use of the Services, and (ii) use data from the Services Environment in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (clauses i and ii are collectively referred to as "Service Analyses"). Tangent may make Service Analyses publicly available; however, Service Analyses will not incorporate Your Content or Confidential Information in a form that could serve to identify You or any individual, and Service Analyses do not constitute Personal Data. Tangent retains all intellectual property rights in Service Analyses.

Export. Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Services. You agree that such export laws govern Your use of the Services (including technical data) and any Services deliverables provided under this Agreement, and You agree to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). You agree that no data, information, software programs and/or materials resulting from Services (or direct product thereof) will be

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exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology. You acknowledge that the Cloud Services are designed with capabilities for You and Your Users to access the Services Environment without regard to geographic location and to transfer or otherwise move Your Content and Your Applications between the Services Environment and other locations such as User workstations. You are solely responsible for the authorization and management of User accounts, as well as export control and geographic transfer of Your Content and Your Applications.

Third Party consent. You shall obtain at Your sole expense any rights and consents from third parties necessary for Your Content, Your Applications, and Third Party Content, as well as other vendor's products provided by You that You use with the Services, including such rights and consents as necessary for Tangent to perform the Services under this Agreement. You agree to provide Tangent with all information, access and full good faith cooperation reasonably necessary to enable Tangent to provide the Services and You will perform the actions identified in Your order as Your responsibilities.

Government Rules, Regulation, and Compliance. You remain solely responsible for Your regulatory compliance in connection with Your use of the Services. You are responsible for making Tangent aware of any technical requirements that result from Your regulatory obligations prior to entering into an order governed by this Agreement. Tangent will cooperate with Your efforts to determine whether use of the standard Tangent Services offering is consistent with those requirements. Additional fees may apply to any additional work performed by Tangent or changes to the Services.

Audit. Tangent may audit Your use of the Services (e.g., through use of software tools) to assess whether Your use of the Services is in accordance with Your order and the terms of this Agreement. You agree to cooperate with Tangent's audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with Your normal business operations. You agree to pay within 30 days of written notification any fees applicable to Your use of the Services in excess of Your rights. If You do not pay, Tangent can end Your Services and/or Your order. You agree that Tangent shall not be responsible for any of Your costs incurred in cooperating with the audit.

Assignment. You may not assign this Agreement or give or transfer the Services (including the Tangent Programs) or an interest in them to another individual or entity. Additionally no provision shall be construed to grant rights You may otherwise not have with respect to Separately Licensed Third Party Technology licensed under open source or similar license terms.

No Joint Venture. Tangent is an independent contractor and we agree that no partnership, joint venture, or agency relationship exists between us. We each will be responsible for paying our own employees, including employment related taxes and insurance. You understand that Tangent's business partners and other third parties, including any third party firms retained by You to provide consulting or implementation services or applications that interact with the Cloud Services, are independent of Tangent and are not Tangent's agents. Tangent is not liable for, bound by, or responsible for any problems with the Services arising due to, any acts of any such business partner or third party, unless the business partner or third party is providing Services as an Tangent subcontractor on an engagement ordered under this Agreement and, if so, then only to the same extent as Tangent

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would be responsible for Tangent resources under this Agreement.

Warranties, Disclaimer, and Limitation Of Liability. Tangent warrants that it will perform (i) Services in all material respects as described in the Service Specifications Annex A or preceding order form, and (ii) Professional Services in a professional manner in accordance with the Service Specifications. If the Services provided to You were not performed as warranted, You must promptly provide written notice to Tangent that describes the deficiency in the Services (including, as applicable, the service request number notifying Tangent of the deficiency in the Services).

TANGENT DOES NOT GUARANTEE THAT (A) THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT TANGENT WILL CORRECT ALL SERVICES ERRORS, (B) THE SERVICES WILL OPERATE IN COMBINATION WITH YOUR CONTENT OR YOUR APPLICATIONS, OR WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEMS, SERVICES OR DATA NOT PROVIDED BY TANGENT, AND (C) THE SERVICES WILL MEET YOUR REQUIREMENTS, SPECIFICATIONS OR EXPECTATIONS. YOU ACKNOWLEDGE THAT TANGENT DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. TANGENT IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. TANGENT IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM YOUR CONTENT, YOUR APPLICATIONS OR THIRD PARTY CONTENT. TANGENT DOES NOT MAKE ANY REPRESENTATION OR WARRANTY REGARDING THE RELIABILITY, ACCURACY, COMPLETENESS, CORRECTNESS, OR USEFULNESS OF THIRD PARTY CONTENT OR SERVICES, AND DISCLAIMS ALL LIABILITIES ARISING FROM OR RELATED TO THIRD PARTY CONTENT OR SERVICES.

FOR ANY BREACH OF THE SERVICES WARRANTY, YOUR EXCLUSIVE REMEDY AND TANGENT'S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF TANGENT CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALLY REASONABLE MANNER, YOU MAY END THE DEFICIENT SERVICES AND TANGENT WILL REFUND TO YOU THE FEES FOR THE TERMINATED SERVICES THAT YOU PRE-PAID TO TANGENT FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION.

TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND ALL OTHER WARRANTIES OR CONDITIONS, WHETHER EXPRESS OR IMPLIED, ARE EXPRESSLY EXCLUDED, INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR LIMITATION OF LIABILITY NOTHING IN THIS AGREEMENT SHALL LIMIT TANGENT'S LIABILITY FOR PERSONAL INJURY OR DEATH CAUSED BY THE NEGLIGENCE OF TANGENT, OR TANGENT'S LIABILITY IN THE TORT OF DECEIT. NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS (EXCLUDING FEES UNDER THIS

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AGREEMENT), DATA, OR DATA USE. TANGENT'S AGGREGATE LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR YOUR ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE TOTAL AMOUNTS ACTUALLY PAID TO TANGENT FOR THE SERVICES UNDER THE ORDER GIVING RISE TO THE LIABILITY IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY LESS ANY REFUNDS OR CREDITS RECEIVED BY YOU FROM TANGENT UNDER SUCH ORDER.

Indemnification. Subject to the terms of this Section 14 (Indemnification), if a third party makes a claim against either You or Tangent ("Recipient" which may refer to You or Tangent depending upon which party received the Material), that any information, design, specification, instruction, software, service, data, hardware, or material (collectively, "Material") furnished by either You or Tangent ("Provider" which may refer to You or Tangent depending on which party provided the Material) and used by the Recipient infringes the third party's intellectual property rights, the Provider, at the Provider's sole cost and expense, will defend the Recipient against the claim and indemnify the Recipient from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by the Provider, if the Recipient does the following: a. notifies the Provider promptly in writing, not later than 30 days after the Recipient receives notice of the claim (or sooner if required by applicable law); b. gives the Provider sole control of the defense and any settlement negotiations; and c. gives the Provider the information, authority and assistance the Provider needs to defend against or settle the claim.

If the Provider believes or it is determined that any of the Material may have violated a third party's intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require return of, the applicable Material and refund any unused, prepaid fees the Recipient may have paid to the other party for such Material. If such return materially affects Tangent's ability to meet its obligations under the relevant order, then Tangent may, at its option and upon 30 days prior written notice, terminate the order.

The Provider will not indemnify the Recipient if the Recipient (a) alters the Material or uses it outside the scope of use identified in the Provider's user or program documentation or Service Specifications, (b) uses a version of the Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was made available to the Recipient, or continues to use the applicable Material after the end of the license to use that Material. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon any information, design, specification, instruction, software, service, data, hardware or material not furnished by the Provider. Tangent will not indemnify You for any portion of an infringement claim that is based upon the combination of any Material with any products or Services not provided by Tangent. Tangent will not indemnify You to the extent that an infringement claim is based on Third Party Content or any Material from a third party portal or other external source that is accessible to You within or from the Services (e.g., a social media post from a third party blog or forum, a third party Web page accessed via a hyperlink, etc.). Tangent will not indemnify You for infringement caused by Your actions against any third party if the Services as delivered to You and used in accordance with the

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terms of this Agreement would not otherwise infringe any third party intellectual property rights. Tangent will not indemnify You for any intellectual property infringement claim(s) known to You at the time Services rights are obtained.

The term "Material" defined above does not include Separately Licensed Third Party Technology. Solely with respect to Separately Licensed Third Party Technology that is part of or is required to use the Cloud Services and that is used: (a) in unmodified form; (b) as part of or as required to use the Cloud Services; and (c) in accordance with the usage grant for the relevant Cloud Services and all other terms and conditions of this Agreement, Tangent will indemnify You for infringement claims for Separately Licensed Third Party Technology to the same extent as Tangent is required to provide infringement indemnification for Materials under the terms of the Agreement.

Notice; Informal Dispute Resolution. You and Tangent agree that each party will notify the other party in writing of any arbitrable or small claims Dispute within thirty (30) days of the date it arises, so that the parties can attempt in good faith to resolve the Dispute informally. Notice to Tangent shall be sent by certified mail or courier to 191 Airport Boulevard Burlingame, CA 94010 USA. Your notice must include (a) your name, postal address, telephone number, the email address you use or used for your Tangent account and, if different, an email address at which you can be contacted, (b) a description in reasonable detail of the nature or basis of the Dispute, and (c) the specific relief that you are seeking. Our notice to you will be sent electronically in accordance with this agreement and will include (x) our name, postal address, telephone number and an email address at which we can be contacted with respect to the Dispute, (y) a description in reasonable detail of the nature or basis of the Dispute, and (z) the specific relief that we are seeking. If you and Tangent cannot agree how to resolve the Dispute within thirty (30) days after the date notice is received by the applicable party, then either you or Tangent may, as appropriate and in accordance with this Section, commence an arbitration proceeding or, to the extent specifically provided for or, file a claim in court.

Process. EXCEPT FOR DISPUTES ARISING OUT OF OR RELATED TO A VIOLATION OF SECTION OR DISPUTES IN WHICH EITHER PARTY SEEKS TO BRING AN INDIVIDUAL ACTION IN SMALL CLAIMS COURT OR SEEKS INJUNCTIVE OR OTHER EQUITABLE RELIEF FOR THE ALLEGED UNLAWFUL USE OF INTELLECTUAL PROPERTY, INCLUDING, WITHOUT LIMITATION, COPYRIGHTS, TRADEMARKS, TRADE NAMES, LOGOS, TRADE SECRETS OR PATENTS, YOU AND TANGENT AGREE THAT ANY DISPUTE MUST BE COMMENCED OR FILED BY YOU OR TANGENT WITHIN ONE (1) YEAR OF THE DATE THE DISPUTE AROSE, OTHERWISE THE UNDERLYING CLAIM IS PERMANENTLY BARRED (WHICH MEANS THAT YOU AND TANGENT WILL NO LONGER HAVE THE RIGHT TO ASSERT SUCH CLAIM REGARDING THE DISPUTE). You and Tangent agree that (a) any arbitration will occur in the State of California, (b) arbitration will be conducted confidentially by a single arbitrator in accordance with the rules of the Judicial Arbitration and Mediation Services ("JAMS"), which are hereby incorporated by reference, and (c) that the state or federal courts of the State of California and the United States, respectively, have exclusive jurisdiction over any appeals and the enforcement of an arbitration award. You may also litigate a Dispute in the small claims court located in the county of your billing address if the Dispute meets the requirements to be heard in small claims court.

Authority of Arbitrator. As limited by the FAA, these Terms and the applicable JAMS rules, the

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arbitrator will have (a) the exclusive authority and jurisdiction to make all procedural and substantive decisions regarding a Dispute, including the determination of whether a Dispute is arbitrable, and (b) the authority to grant any remedy that would otherwise be available in court; provided, however, that the arbitrator does not have the authority to conduct a class arbitration or a representative action, which is prohibited by these Terms. The arbitrator may only conduct an individual arbitration and may not consolidate more than one individual's claims, preside over any type of class or representative proceeding or preside over any proceeding involving more than one individual.

Rules of Jams. The rules of JAMS and additional information about JAMS are available on the JAMS website. By agreeing to be bound by these Terms, you either (a) acknowledge or agree that you have read and understand the rules of JAMS, or (b) waive your opportunity to read the rules of JAMS and any claim that the rules of JAMS are unfair or should not apply for any reason.

Opt-Out Right. You have the right to opt out of binding arbitration within thirty (30) days of the date you first accepted the terms of this Section by writing to: 191 Airport Boulevard Burlingame, CA 94010 USA. In order to be effective, the-opt out notice must include your full name and clearly indicate your intent to opt out of binding arbitration.

Governing Law and Venue. These Terms, your access to and use of the Sites and your order, receipt and use of the Services shall be governed by and construed and enforced in accordance with the laws of the State of California, without regard to conflict of law rules or principles (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any other jurisdiction. Any Dispute between the parties that is not subject to arbitration or cannot be heard in small claims court, shall be resolved in the state or federal courts of the State of California and the United States, respectively, sitting in the State of California.

Severability. If any term, clause or provision of these Terms is held invalid or unenforceable, then that term, clause or provision will be severable from these Terms and will not affect the validity or enforceability of any remaining part of that term, clause or provision, or any other term, clause or provision of these Terms.

Miscellaneous. These Terms constitute the entire agreement between you and Tangent relating to your access to and use of the Sites and your order, receipt and use of Services. These Terms, and any rights and licenses granted hereunder, may not be transferred or assigned by you without the prior written consent of Tangent. No waiver of any provision of these Terms will constitute a waiver of such provision in any prior, concurrent or subsequent circumstance, and Tangent's failure to assert any right or provision under these Terms shall not constitute a waiver of such right or provision. Except as otherwise provided herein, these Terms are intended solely for the benefit of the parties and are not intended to confer third party beneficiary rights upon any other person or entity.

Entire Agreement. You agree that these Conditions and the information which is incorporated into this Agreement by written reference (privacy policy) and order form, together is the complete agreement for the Services ordered by You and supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such Services. Nothing in this terms excludes or limits Tangent's liability for deceit or fraudulent misrepresentation. It is expressly agreed that the terms of this Agreement and any Tangent order shall supersede the terms in any purchase order, procurement internet portal, or other similar non-Tangent document and no terms included in any such purchase order, portal, or other non-

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Tangent document shall apply to the Services ordered. In the event of any inconsistencies between the terms of an order and these terms, the order shall take precedence. This Agreement and orders hereunder may not be modified and the rights and Cloud restrictions may not be altered or waived except in a writing signed or accepted online through Tangent by authorized representatives of You and of Tangent. No third party beneficiary relationships are created by this Agreement.

Contact Us. In order to resolve a complaint regarding the Site or to receive further information regarding use of the Site, please contact us at:

TANGENT SOLUTIONS
191 Airport Boulevard
Burlingame, CA 94010
PHONE: (800)342-9388
EMAIL: O365Admins@tangent.com

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Customer Signature			
Organization Name	Mariposa County		
Signatory Name			
Signatory Position			
Signatory Phone			
Signatory E-Mail			
Signature		Date	

Vendor Signature			
Organization Name	Tangent Inc.		
Signatory Name	Michael Waltner		
Signatory Position	Account Manager		
Signatory Phone	650-342-9388 x 2133		
Signatory E-Mail	michaelw@tanegnt.com		
Signature		Date	

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Microsoft Volume Licensing

Microsoft Cloud Agreement

US Government Community Cloud

This Microsoft Cloud Agreement is incorporated into the Customer Agreement and entered into between the customer who is a Community member ("Customer") and the person or entity who has entered into a prime contract with the Customer ("Contractor") as an addendum and governs Customer's use of the Microsoft Products. It consists of the terms and conditions below, Use Rights, SLA, and all documents referenced within those documents (together, the "agreement"). It is effective on the date that the Contractor provisions the Customer's Subscription. Key terms are defined in Section 13.

1. Grants, rights and terms.

All rights granted under this agreement are non-exclusive and non-transferable and apply as long as neither Customer nor any of its Affiliates is in material breach of this agreement.

a. **Software.** Upon acceptance of each order, Microsoft grants Customer a limited right to use the Software in the quantities ordered.

(i) ***Use Rights.*** The Use Rights in effect when Customer orders Software will apply to Customer's use of the version of the Software that is current at the time. For future versions and new Software, the Use Rights in effect when those versions and Software are first released will apply. Changes Microsoft makes to the Use Rights for a particular version will not apply unless Customer chooses to have those changes apply.

(ii) ***Temporary and perpetual licenses.*** Licenses available on a subscription basis are temporary. For all other licenses, the right to use Software becomes perpetual upon payment in full.

b. ***Online Services.*** Customer may use the Online Services as provided in this agreement.

(i) ***Online Services Terms.*** The Online Services Terms in effect when Customer orders or renews a Subscription to an Online Service will apply for the applicable Subscription term. For Online Services that are billed periodically based on consumption, the Online Services Terms current at the start of each billing period will apply to usage during that period.

(ii) ***Suspension.*** Microsoft may suspend use of an Online Service during Customer's violation of the Acceptable Use Policy or failure to respond to a claim of alleged infringement. Microsoft will give Customer notice before suspending an Online Service when reasonable.

(iii) ***End Users.*** Customer controls access by End Users, and is responsible for their use of the Product in accordance with this agreement. For example, Customer will ensure End Users comply with the Acceptable Use Policy.

(iv) ***Customer Data.*** Customer is solely responsible for the content of all Customer Data. Customer will secure and maintain all rights in Customer Data necessary for Microsoft to provide the Online Services to Customer without violating the rights of any third party or otherwise obligating Microsoft to Customer or to any third party. Microsoft does not and will not assume any obligations with respect to Customer Data or to Customer's use of the Product other than as expressly set forth in this agreement or as required by applicable law.

(v) ***Responsibility for your accounts.*** Customer is responsible for maintaining the confidentiality of any non-public authentication credentials associated with Customer's use of the Online Services. Customer must promptly notify customer support about any possible misuse of Customer's accounts or authentication credentials or any security incident related to the Online Services.

c. ***License transfers.*** License transfers are not permitted, except that Customer may transfer only fully-paid perpetual licenses to (1) an Affiliate or (2) a third party, solely in connection with the transfer of hardware or employees to whom the licenses have been assigned to the third party as part of (a) a divestiture of all or part of an Affiliate or (b) a merger involving Customer or an Affiliate. Upon such transfer, Customer and its Affiliates must uninstall and discontinue using the licensed Product and render any copies unusable. Attempted license transfers that do not comply with this agreement are void.

d. ***Reservation of rights.*** Products are protected by copyright and other intellectual property rights laws and international treaties. Microsoft reserves all rights not expressly granted in this agreement. No rights will be granted or implied by waiver or estoppel. Rights to access or use Software on a device do not give Customer any right to implement Microsoft patents or other Microsoft intellectual property in the device itself or in any other software or devices.

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e. ***Restrictions.*** Customer may use the Product only in accordance with this agreement. Customer may not (and is not licensed to): (1) reverse engineer, decompile or disassemble any Product or Fix, or attempt to do so; (2) install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to any other license terms; or (3) work around any technical limitations in a Product or Fix or restrictions in Product documentation. Customer may not disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters Customer's use of the Online Services. Except as expressly permitted in this agreement or Product documentation, Customer may not distribute, sublicense, rent, lease, lend, resell or transfer and Products, in whole or in part, or use them to offer hosting services to a third party.

f. ***Preview releases.*** Microsoft may make Previews available. **Previews are provided "as-is," "with all faults," and "as-available," and are excluded from the SLA and all limited warranties provided in this agreement.** Previews may not be covered by customer support. Previews may be subject to reduced or different security, compliance, and privacy commitments, as further explained in the Online Services Terms and any additional notices provided with the Preview. Microsoft may change or discontinue Previews at any time without notice. Microsoft also may choose not to release a Preview into "General Availability."

g. ***Verifying compliance for Products.***

(i) ***Right to verify compliance.*** Customer must keep records relating to all use and distribution of Products by Customer and its Affiliates. Microsoft has the right, at its expense, to verify compliance with the Products' license terms. Customer must promptly provide any information reasonably requested by the independent auditors retained by Microsoft in furtherance of the verification, including access to systems running the Products and evidence of licenses for Products that Customer hosts, sublicenses, or distributes to third parties. Customer agrees to complete Microsoft's self-audit process, which Microsoft may request as an alternative to a third party audit.

(ii) ***Remedies for non-compliance.*** If verification or self-audit reveals any unlicensed use of Products, then within 30 days Customer must order sufficient licenses to cover its use. If unlicensed use or distribution is 5% or more, the Customer may be completely responsible for the costs Microsoft has incurred in verification, to the extent permitted by 31 U.S.C. § 1341 (Anti-Deficiency Act) and other applicable Federal law or similar state law (as applicable). The unlicensed use percentage is based on the total number of licenses purchased compared to actual install base. Notwithstanding the foregoing, nothing in this section prevents the Customer from disputing any invoice in accordance with the Contract Disputes Act (41 U.S.C. §§7101-7109), if and as applicable. If there is no unlicensed use, Microsoft will not subject Customer to another verification for at least one year. By exercising the rights and procedures described above, Microsoft does not waive its rights to enforce this agreement or to protect its intellectual property by any other legal means.

(iii) ***Verification process.*** Microsoft will notify Customer at least 30 days in advance of its intent to verify Customers' compliance with the license terms for the Products Customer and its Affiliates use or distribute. Microsoft will engage an independent auditor, which will be subject to a confidentiality obligation. Any information collected in the self-audit will be used solely for purposes of determining compliance. This verification will take place during normal business hours and in a manner that does not unreasonably interfere with Customer's operations.

2. ***Subscriptions, ordering.***

a. ***Available Subscription offers.*** The Subscription offers available to Customer will be established by the Customer Agreement and generally can be categorized as one or a combination of the following:

(i) ***Online Services Commitment Offering.*** Customer commits in advance to purchase a specific quantity of Online Services for use during a Term and to pay upfront or on a periodic basis for continued use of the Online Service.

(ii) ***Consumption Offering (also called Pay-As-You-Go).*** Customer pays based on actual usage with no upfront commitment.

(iii) ***Limited Offering.*** Customer receives a limited quantity of Online Services for a limited term without charge (for example, a free trial) or as part of another Microsoft offering (for example, MSDN). Provisions in this agreement with respect to the SLA and data retention may not apply.

(iv) ***Software Commitment Offering.*** Customer commits in advance to purchase a specific quantity of Software for use during a Term and to pay upfront or on a periodic basis for continued use of the Software. ***b. Ordering.***

(i) Orders must be placed through the Contractor. Customer may place orders for its Affiliates under this agreement and grant its Affiliates administrative rights to manage the Subscription, but, Affiliates may not place orders under

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this agreement. Customer also may assign the rights granted under Section 1.a and 1.b to a third party for use by that third party in Customer's internal business. If Customer grants any rights to Affiliates or third parties with respect to Software or Customer's Subscription, such Affiliates or third parties will be bound by this agreement

and Customer agrees to be jointly and severally liable for any actions of such Affiliates or third parties related to their use of the Products.

(ii) The Contractor may permit Customer to modify the quantity of Online Services ordered during the Term of a Subscription. Additional quantities of Online Services added to a Subscription will expire at the end of that Subscription.

c. Pricing and payment. Prices for each Product and any terms and conditions for invoicing and payment will be established by the Contractor.

d. Renewal.

(i) Upon renewal of a Subscription, Customer may be required to sign a new agreement, a supplemental agreement or an amendment to this agreement.

(ii) Customer's Subscription will automatically renew unless Customer provides the Contractor notice of its intent not to renew prior to the expiration of the Term.

e. Eligibility for Academic, Government and Nonprofit versions. Customer agrees that if it is purchasing an academic, government or nonprofit offer, Customer meets the respective eligibility requirements listed at the following sites:

(i) For academic offers, the requirements for educational institutions (including administrative offices or boards of education, public libraries, or public museums) listed at www.aka.ms/academiceligibility; ***(ii)*** For government offers, the requirements listed at www.aka.ms/governmenteligibility; and ***(iii)*** For nonprofit offers, the requirements listed at www.aka.ms/nonprofiteligibility.

As an exception to the foregoing, if Customer is not a government entity but has been verified by Contractor to be an eligible member of the Community, then the requirements in (ii) above shall not apply. Microsoft reserves the right to verify eligibility at any time and suspend the Online Service if the eligibility requirements are not met.

f. Taxes. The parties are not liable for any of the taxes of the other party that the other party is legally obligated to pay and which are incurred or arise in connection with or related to the transactions contemplated under this agreement, and all such taxes will be the financial responsibility of the party who is obligated by operation of law to pay such tax.

3. Term, termination.

a. Agreement term and termination. This agreement will remain in effect until the expiration or termination of the Customer Agreement Contract, whichever is earliest.

b. Cancel a Subscription. The Customer Agreement will establish the terms and conditions, if any, upon which Customer may cancel a Subscription.

4. Security, privacy, and data protection.

a. Reseller Administrator Access and Customer Data. Customer acknowledges and agrees that (i) the Contractor will be the primary administrator of the Online Services for the Term and will have administrative privileges and access to Customer Data, however, Customer may request additional administrator privileges from its Contractor; (ii) Customer can, at its sole discretion and at any time during the Term, terminate its Contractor's administrative privileges; (iii) the Contractor's privacy practices with respect to Customer Data or any services provided by the Contractor are subject to the terms of the Customer Agreement and may differ from Microsoft's privacy practices; and (iv) the Contractor may collect, use, transfer, disclose, and otherwise process Customer Data, including personal data. Customer consents to Microsoft providing the Contractor with Customer Data and information that Customer provides to Microsoft for purposes of ordering, provisioning and administering the Online Services.

b. If Customer plans to include criminal justice information or federal tax information with its Customer Data, it is Customer's responsibility to ensure compliance with FBI CJIS Policy, including ensuring that all of Customer's and/or Contractor's employees that will have unencrypted access to Customer Data meet the FBI background check. Customer must contact Contractor to obtain an applicable amendment to this Government Agreement for that purpose.

c. Customer consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this agreement. Customer may choose to provide personal information to Microsoft on behalf of third parties (including your contacts, resellers, distributors, administrators, and employees) as part of this agreement. Customer

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will obtain all required consents from third parties under applicable privacy and data protection laws before providing personal information to Microsoft.

d. Additional privacy and security details are in the Online Services Terms. The commitments made in the Online Services Terms only apply to the Online Services purchased under this agreement and not to any services or products provided by the Contractor. If Customer uses software or services that are hosted by a Reseller, that use will be subject to Reseller's privacy practices, which may differ from Microsoft's.

e. As and to the extent required by law, Customer shall notify the individual users of the Online Services that their data may be processed for the purpose of disclosing it to law enforcement or other governmental authorities as directed by the Contractor or as required by law, and Customer shall obtain the users' consent to the same.

f. Customer appoints the Contractor as its agent for purposes of interfacing with and providing instructions to Microsoft for purposes of this Section 4.

5. Warranties.

a. Limited warranty.

(i) Software. Microsoft warrants that each version of the Software will perform substantially as described in the applicable Product documentation for one year from the date Customer is first licensed for that version. If it does not, and Customer notifies Microsoft within the warranty term, then Microsoft will, at its option, (1) return the price Customer paid for the Software license or (2) repair or replace the Software.

(ii) Online Services. Microsoft warrants that each Online Service will perform in accordance with the applicable SLA during Customer's use. Customer's remedies for breach of this warranty are in the SLA. The remedies above are Customer's sole remedies for breach of the warranties in this section. Customer waives any breach of warranty claims not made during the warranty period.

b. Exclusions. The warranties in this agreement do not apply to problems caused by accident, abuse or use inconsistent with this agreement, including failure to meet minimum system requirements. These warranties do not apply to free or trial products, Previews, Limited Offerings, or to components of Products that Customer is permitted to redistribute.

c. Disclaimer. **Except for the limited warranties above, to the extent not prohibited by applicable law, Microsoft provides no warranties or conditions for Products and disclaims any other express, implied, or statutory warranties for Products, including warranties of quality, title, non-infringement, merchantability and fitness for a particular purpose.**

6. Defense of third party claims.

a. By Microsoft. Microsoft will defend Customer against any third-party claim to the extent it alleges that a Product or Fix made available by Microsoft for a fee and used within the scope of the license granted under this agreement (unmodified from the form provided by Microsoft and not combined with anything else), misappropriates a trade secret or directly infringes a patent, copyright, trademark or other proprietary right of a third party. If Microsoft is unable to resolve a claim of infringement under commercially reasonable terms, it may, as its option, either: (1) modify or replace the Product or fix with a functional equivalent; or (2) terminate Customer's license and refund any prepaid license fees (less depreciation on a five-year, straight-line basis) for perpetual licenses and any amount paid for Online Services for any usage period after the termination date.

Microsoft will not be liable for any claims or damages due to Customer's continued use of a Product or Fix after being notified to stop due to a third-party claim.

b. Customer's agreement. Customer agrees that use of Customer Data or non-Microsoft software Microsoft provides or otherwise makes available on Customer's behalf will not infringe any third party's patent, copyright or trademark or make unlawful use of any third party's trade secret. In addition, Customer will not use an Online Service to gain unauthorized access to or disrupt any service, data, account or network in connection with the use of the Online Services.

c. Rights and remedies in case of possible infringement or misappropriation. If Microsoft reasonably believes that a claim under this section may result in a legal bar prohibiting Customer's use of the Product or Fix, Microsoft will seek to obtain the right for Customer to keep using it or modify or replace it with a functional equivalent, in which case Customer must discontinue use of the prior version immediately. If these options are not commercially reasonable, Microsoft may terminate Customer's right to the Product or Fix and refund any amounts Customer has paid for those rights to Software and Fixes and, for Online Services, any amount paid for a usage period after the termination date.

d. Other terms. Customer must notify Microsoft promptly in writing of a claim subject to this section; give Microsoft sole control over the defense and settlement (provided that for any Federal Agency Customers, the control of the defense

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and settlement is subject to 28 U.S.C. 516); and provide reasonable assistance in defending the claim. Microsoft will reimburse Customer for reasonable out of pocket expenses that it incurs in helping. The remedies provided in this section are the exclusive remedies for the claims described in this section.

Notwithstanding the foregoing, and solely with respect to Federal Agency Customers, Microsoft's rights set forth in this section (and the rights of the third party claiming infringement) shall be governed by the provisions of 28 U.S.C. § 1498.

7. ***Limitation of liability.*** For each Product, each party's maximum, aggregate liability to the other under this agreement is limited to direct damages finally awarded in an amount not to exceed the amounts Customer was required to pay for the applicable Products during the term of this agreement, subject to the following:

   a. ***Online Services.*** For Online Services, Microsoft's maximum liability to Customer for any incident giving rise to a claim will not exceed the amount Customer paid for the Online Service during the 12 months before the incident; provided that in no event will Microsoft's aggregate liability for any Online Service exceed the amount paid for that Online Service during the Subscription.

   b. ***Free Products and distributable code.*** For Products provided free of charge and code that Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to direct damages finally awarded up to US$5,000.

   c. ***Exclusions.*** **In no event will either party be liable for loss of revenue or indirect, special, incidental, consequential, punitive, or exemplary damages, or damages for loss of use, lost profits, revenues, business interruption, or loss of business information, however caused or on any theory of liability.**

   d. ***Exceptions.*** The limits of liability in this section apply to the fullest extent permitted by applicable law, but do not apply to: (1) the parties' obligations under section 6; or (2) violation of the other's intellectual property rights.

   For Customers that are Federal Agencies, this Section shall not impair the Customer's right to recover for fraud or crimes arising out of or related to this agreement under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

8. ***ITAR Covered Services.*** This section applies to only the ITAR Covered Services, defined below, Customer buys subject to this Agreement. These terms ***only apply if*** Customer provides express notice to Microsoft of Customer's intent to manage ITAR controlled data in the Customer Data during the eligibility validation phase of the online application process. ***a. Customer Prerequisites:***

   (i) Customer is responsible for ensuring that the prerequisites established or required by the ITAR are fulfilled prior to introducing ITAR-controlled data into the ITAR Covered Services.

   (ii) Customer acknowledges that the ITAR Covered Services ordered by Customer under this Agreement enable End Users optionally to access and use a variety of additional resources, applications, or services that are (a) provided by third parties, or (b) provided by Microsoft subject to their own terms of use or privacy policies (collectively, for convenience, "add-ons"), as described in services documentation and/or in the portal through which Customer's administrator(s) will manage and configure the ITAR Covered Services.

   (iii) Customer is responsible for reviewing Online Services documentation, configuring the ITAR Covered Services, and adopting and implementing such policies and practices for Customer's End Users' use of ITAR Covered Services, together with any add-ons, as Customer determines are appropriate to comply with the ITAR or other legal or regulatory requirements applicable to Customer and not generally applicable to Microsoft as an IT service provider.

   (iv) Customer acknowledges that only ITAR Covered Services will be delivered subject to the terms of this Section. Processing and storage of ITAR-controlled data in other services, including without limitation add-ons, is not supported. Without limiting the foregoing, data that Customer elects to provide to the Microsoft technical support organization, if any, or data provided by or on Customer's behalf to Microsoft's billing or commerce systems in connection with purchasing or ordering ITAR Covered Services, if any, is not subject to the provisions of this Section. Customer is solely responsible for ensuring that ITAR-controlled data is not included in support information or support case artifacts.

   b. Special Terms.

   (i) ITAR Covered Services. The ITAR Covered Services are cloud services operated in a standardized manner with features and processes common across multiple customers. As part of Customer's preparation to use the ITAR Covered Services for the storage, processing, or transmission of ITAR-controlled data, Customer should review applicable services documentation. Customer's compliance with the ITAR will be dependent, in part, on Customer's configuration of the services and adoption and implementation of policies and practices for

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Customer's End Users' use of ITAR Covered Services. Customer is solely responsible for determining the appropriate policies and practices needed for compliance with the ITAR.

c. ***Personnel.*** Microsoft personnel and contractors authorized by Microsoft to access Customer Data (that may include ITAR-controlled data) in the ITAR Covered Services, will be limited to U.S. persons, as that term is defined in the ITAR. Customer may also authorize Microsoft personnel and contractors to access its Customer Data. Customer is solely responsible for ensuring any such authorization is permissible under the ITAR.

d. ***Use of Subcontractors.*** As set forth in the OST, Microsoft may hire subcontractors to provide services on its behalf. Any such subcontractors used in delivery of the ITAR Covered Services will be permitted to obtain Customer Data (that may include ITAR-controlled data) only to deliver the ITAR Covered Services Microsoft has retained them to provide and will be prohibited from using Customer Data for any other purpose. Storage and processing of Customer Data in the ITAR Covered Services is subject to Microsoft security controls at all times and, to the extent subcontractor personnel perform services in connection with ITAR Covered Services, they are obligated to follow Microsoft's policies, including without limitation the geographic restrictions and controls selected by you in the configuration of the ITAR Covered Services. Microsoft remains responsible for its subcontractors' compliance with Microsoft's obligations.

e. ***Notification.*** The Security Incident handling process defined in the OST will apply to the ITAR Covered Services. In addition, the parties agree to the following:

(i) Customer acknowledges that effective investigation or mitigation of a Security Incident involving ITAR-controlled data may be dependent upon information or services configurations within Customer's control. Accordingly, proper treatment of ITAR-controlled data will be a joint obligation between Microsoft and Customer. If Customer becomes aware of any unauthorized release of ITAR-controlled data to Microsoft or the use of a service other than the ITAR Covered Service to store, process, or transmit ITAR-controlled data, Customer will promptly notify Microsoft of such event and provide reasonable assistance and information necessary for Microsoft to investigate and report such event.

(ii) If, subsequent to notification of a Security Incident by Microsoft, Customer determines that ITAR-controlled data may have been subject to unauthorized inspection or disclosure, it is Customer's responsibility to notify the appropriate authorities of such event, or to notify impacted individuals, if Customer determines such notification is required under applicable law or regulation or your internal policies.

(iii) If either party determines it is necessary or prudent to make a voluntary disclosure to the Directorate of Defense Trade Controls regarding the treatment of ITAR-controlled data in the Online Services, such party will work in good faith to notify the other party of such voluntary disclosure prior to providing such voluntary disclosure. The parties will work together in good faith in the development and reporting of any such voluntary disclosure.

f. Conflicts. If there is any conflict between any provision in this Section and any provision in the agreement, this Section shall control.

9. IRS 1075 Covered Services. This section applies to only the IRS 1075 Covered Services, defined below, Customer buys under the Subscription. These terms only apply if Customer provides express notice to Microsoft of its intent to purchase IRS 1075 Covered Services.

a. ***Customer Prerequisites.***

(i) Customer is responsible to ensure that the prerequisites established or required by IRS Publication 1075 are fulfilled prior to introducing FTI into the IRS 1075 Covered Services.

(ii) Customer acknowledges that the IRS 1075 Covered Services ordered by Customer under the Subscription enable End Users optionally to access and use a variety of additional resources, applications, or services that are (a) provided by third parties, or (b) provided by Microsoft subject to their own terms of use or privacy policies (collectively, for convenience, "add-ons"), as described in services documentation and/or in the portal through which your administrator(s) will manage and configure the IRS 1075 Covered Services.

(iii) Customer is responsible for reviewing Online Services documentation, configuring the services, and adopting and implementing such policies and practices for your End Users' use of IRS 1075 Covered Services, together with any add-ons, as Customer determines are appropriate in order for Customer to comply with IRS Publication 1075 or other legal or regulatory requirements applicable to Customer and not generally applicable to Microsoft as an IT service provider.

(iv) Customer acknowledges that only IRS 1075 Covered Services will be delivered subject to the terms of this section. No other services are supported by the terms of this section. Without limiting the foregoing, data that Customer elects to provide to the Microsoft technical support organization ("Support Data"), if any, or data provided by or on Customer's behalf to Microsoft's billing or commerce systems in connection with purchasing/ordering IRS 1075 Covered Services ("Billing Data"), if any, is not subject to the provisions of this

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section. Customer is solely responsible for ensuring that FTI is not provided as Support Data or Billing Data. ***b. IRS Publication 1075 Special Terms.***

IRS 1075 Covered Services. The IRS 1075 Covered Services are cloud services operated in a standardized manner with features and processes common across multiple customers. As part of your preparation to use the services for FTI, Customer should review applicable services documentation. Customer's compliance with IRS Publication 1075 will be dependent, in part, on Customer's configuration of the services and adoption and implementation of policies and practices for Customer's End Users' use of IRS 1075 Covered Services. Customer is solely responsible for determining the appropriate policies and practices needed for compliance with IRS Publication 1075.

(i) Attachment 1 contains the Safeguarding Contract Language for Technology Services specified by IRS Publication 1075. Microsoft and Customer has agreed that certain requirements of the Safeguarding Contract Language and IRS Publication 1075 will be fulfilled as set forth in the remainder of this section.

(ii) ***Background Checks.*** Notwithstanding anything to the contrary in Attachment 1, all screened personnel authorized to have logical access to Customer Data (that may include FTI) in the IRS 1075 Covered Services will meet background check requirements equivalent to those defined in IRS Publication 1075.

(iii) ***Personnel Records and Training.*** Microsoft will maintain a list of screened personnel authorized to access Customer Data (that may include FTI) in the IRS 1075 Covered Services, which will be available to Customer or to the IRS upon written request. Customer will treat Microsoft personnel personally identifiable information (PII) as Microsoft trade secret or security-sensitive information exempt from public disclosure to the maximum extent permitted by applicable law, and, if required to provide such Microsoft personnel PII to the IRS, will require the IRS to treat such personnel PII the same.

(iv) ***Training Records.*** Microsoft will maintain security and disclosure awareness training records as required by IRS Publication 1075, which will be available to Customer upon written request.

(v) ***Confidentiality Statement.*** Microsoft will maintain a signed confidentiality statement, and will provide a copy for inspection upon request.

(vi) ***Cloud Computing Environment Requirements.*** The IRS 1075 Covered Services are provided in accordance with the FedRAMP System Security Plan for the applicable services. Microsoft's compliance with controls required by IRS Publication 1075, including without limitation encryption and media sanitization controls, can be found in the applicable FedRAMP System Security Plan.

(vii) ***Use of Subcontractors.*** Notwithstanding anything to the contrary in Attachment 1, as set forth in the OST, Microsoft may use subcontractors to provide services on its behalf. Any such subcontractors used in delivery of the IRS 1075 Covered Services will be permitted to obtain Customer Data (that may include FTI) only to deliver the services Microsoft has retained them to provide and will be prohibited from using Customer Data for any other purpose. Storage and processing of Customer Data in the IRS 1075 Covered Services is subject to Microsoft security controls at all times and, to the extent subcontractor personnel perform services in connection with IRS 1075 Covered Services, they are obligated to follow Microsoft's policies. Microsoft remains responsible for its subcontractors' compliance with Microsoft's obligations. Subject to the preceding, Microsoft may employ subcontractor personnel in the capacity of augmenting existing staff, and understands IRS Publication 1075 reference to employees to include employees and subcontractors acting in the manner specified herein. It is the responsibility of the Customer to gain approval of the IRS for the use of all subcontractors.

(viii) Microsoft maintains a list of subcontractor companies who may potentially provide personnel authorized to access Customer Data in the Online Services, published for Azure branded services at http://azure.microsoft.com/en-us/support/trust-center/ , or successor locations identified by Microsoft. Microsoft will update these websites at least 14 days before authorizing any new subcontractor to access Customer Data, Microsoft will update the website and provide Customer with a mechanism to obtain notice of that update.

(ix) ***Security Incident Notification.*** The Security Incident handling process defined in the OST will apply to the IRS 1075 Covered Services. In addition, the parties agree to the following:

1. Customer acknowledges that effective investigation or mitigation of a Security Incident may be dependent upon information or services configurations within Customer's control. Accordingly, compliance with IRS Publication 1075 Incident Response requirements will be a joint obligation between Microsoft and Customer.

2. If, subsequent to notification from Microsoft of a Security Incident, Customer determines that FTI may have been subject to unauthorized inspection or disclosure, it is Customer responsibility to notify the appropriate Agent-in-Charge, TIGTA (Treasury Inspector General for Tax Administration) and/or the IRS of a Security Incident, or to notify impacted individuals, if Customer determines this is required under IRS Publication 1075, other applicable law or regulation, or Customer internal policies.

c. Customer Right to Inspect.

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(i) ***Audit by Customer.*** Customer will, (i) be provided quarterly access to information generated by Microsoft's regular monitoring of security, privacy, and operational controls in place to afford you an ongoing view into the effectiveness of such controls, (ii) be provided a report mapping compliance of the IRS 1075 Covered Services with NIST 800-53 or successor controls, (iii) upon request, be afforded the opportunity to communicate with Microsoft's subject matter experts for clarification of the reports identified above, and (iv) upon request, and at Customer's expense, be permitted to communicate with Microsoft's independent third party auditors involved in the preparation of audit reports. Notwithstanding anything to the contrary in Attachment 1, Customer will use this information above to satisfy any inspection requirements under IRS Publication 1075 and agrees that the audit rights described in this section are the sole rights to be provided in full satisfaction of any audit that may otherwise be requested by the IRS or the Customer. Notwithstanding anything to the contrary in Attachment 1, Microsoft will not grant any inspection rights to the IRS or access to Microsoft data centers or other facilities that may cause Microsoft to be non-compliant with its contractual obligations under FedRAMP, ISO 27001/27018, other US Government security related operations, or its internal security policies.

(ii) *Confidentiality of Audit Materials.* Audit information provided by Microsoft to Customer will consist of highly confidential proprietary or trade secret information of Microsoft. Microsoft may request reasonable assurances, written or otherwise, that information will be maintained as confidential and/or trade secret information subject to this agreement prior to providing such information to Customer, and Customer will ensure Microsoft's audit information is afforded the highest level of confidentiality available under applicable law. Notwithstanding the foregoing, upon request and pursuant to appropriate confidentiality protections, Customer shall be permitted to provide Microsoft's audit information described in Section 9.c(i) to the IRS to satisfy the IRS inspection requirements under IRS Publication 1075.

(iii) This Section, 9.c, is in addition to compliance information available to Customer under the OST.

10. Criminal Justice Information Services (CJIS). This section applies only to the Government CJIS Covered Services, defined below, you buy under the Subscription. These terms only apply if Customer provides express notice to Microsoft of its intent to purchase CJIS Covered Services. ***a. Customer Prerequisites. (i)*** Microsoft's representations as it relates to its CJIS Covered Services' compliance with the FBI Criminal Justice Information Systems ("CJIS") Security Addendum (Appendix H of FBI CJIS Policy) are subject to Customer's incorporation of applicable state-specific CJIS Amendment terms and conditions into Customer's order with the Contractor. They are also subject to Customer's incorporation and flow down of such terms in Customer's contracts with a Covered Entity.

(ii) Please visit https://www.microsoft.com/en-us/TrustCenter/Compliance/CJIS for additional information about CJIS Covered States and CJIS Covered Services. Note that not all states are CJIS Covered States and that different CJIS Covered Services may apply in different CJIS Covered States. For more information about how to sign up for CJIS Covered Services through an Enterprise Agreement, please visit https://azure.microsoft.com/en-us/pricing/enterprise-agreement/. For purposes of this section, if Customer is not in a CJIS Covered State, then Microsoft is unable to provide CJIS-related representations at this time, and no CJIS Amendment will apply.

(iii) Customer can access the terms and conditions of Microsoft's adherence to the FBI CJIS Policy by contacting the CSA in a CJIS Covered State. The Security Addendum for Private Contractors (Cloud Providers) referenced in the FBI CJIS Policy and CSA-provided terms and conditions is incorporated herein by reference, and you acknowledge that Microsoft's support for CJI will be in accordance with those terms agreed to and/or signed by the applicable state CSA. Customer also acknowledges that it is Customer's responsibility to contact the applicable state CSA for this and any additional information. Customer is required to, and acknowledge it will, work directly with the applicable state CSA for any CJIS-related documentation and audit requirements.

(iv) Customer is responsible to ensure that the CJIS Security Addendum has been signed by the CSA, that the CSA has approved Customer's use of the Covered Services to store or process CJI, and that any other prerequisites established or required by either the FBI, state CSA, or Customer is fulfilled prior to introducing CJI into the Covered Services.

(v) Customer acknowledges that it will keep records of any Covered Entity to which it provides CJIS State Agreements or other CJIS-related documentation Customer obtains from the state CSA and shall make such records available to Microsoft promptly upon request.

b. If there is any conflict between any provision in this section and any provision in the agreement, this section shall control.

11. Government Community requirements. Customer certifies that it is a member of the Community and agrees to use Government Community Cloud Services solely in its capacities as a member of the Community and for the benefit of end users that are members of the Community. Use of Government Community Cloud Services by an entity that is not a member of the Community or to provide services to non-Community members is strictly prohibited. Customer acknowledges that only Community members may use Government Community Cloud Services.

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a. All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted in the Use Rights and this Agreement.

b. Customer may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.

c. Any Customer that uses Government Community Cloud Services must maintain its status as a member of the Community. Maintaining status as a member of the Community is a material requirement for such services.

d. ***Use Rights for Government Community Cloud Services.*** For Government Community Cloud Services, notwithstanding anything to the contrary in the Use Rights:

(i) Government Community Cloud Services will be offered only within the United States.

(ii) Additional European Terms, as set forth in the Use Rights, will not apply.

(iii) References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States.

e. All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted herein.

f. Customer may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain. Additionally, Office 365 US Government may not be deployed or used in the same domain as other Government Community Cloud Services.

g. Notwithstanding the Data Processing Terms section of the Online Services Terms, Office 365 GCC High and Azure Government Services are not subject to the same control standards and frameworks as the Microsoft Azure Core Services. The Compliance Trust Center Page describes the control standards and frameworks with which Office 365 GCC High and Azure Government Services comply.

h. ***Operational and Ordering Consideration for GCC High:***

(i) Customer (a) acknowledges that its Tenant administrator console (when available) will appear to include more licenses than it has ordered and is entitled to; and (ii) agrees that it must order licenses for every User account it assigns. Notwithstanding anything to the contrary in the order and Product Terms, Licenses will be deemed "Reserved" for each user (and thereby subject to a True-Up Order requirement in accordance with the terms and conditions of the order), as of the day that User's account is reserved, unless a License for each such User is ordered in advance. Customer is solely responsible for keeping accurate records of the month each User is assigned to a User account, and will provide such records to Microsoft with its True-Up orders.

(ii) Customer acknowledges that (a) availability of its Office 3635 GCC High tenant may follow several weeks after its initial order, and (a) the service components provided pursuant to its orders for "Suite" SKUs such as E1 and E3, as listed in the Office 365 GCC High, may differ from those components available in similar suites available in other forms of Office 365 Services.

12. Miscellaneous.

a. ***Notices.*** You must send notices by mail, return receipt requested, to the address below.

Notices should be sent to:
Microsoft Corporation Volume Licensing Group One Microsoft Way Redmond, WA 98052 USA

Customer agrees to receive electronic notices from us, which will be sent by email to the account administrator(s) named for your Subscription. Notices are effective on the date on the return receipt or, for email, when sent. You are responsible for ensuring that the email address for the account administrator(s) named for your Subscription is accurate and current. Any email notice that we send to that email address will be effective when sent, whether or not Customer actually receives the email.

b. ***Assignment.*** Customer may not assign this agreement either in whole or in part. Microsoft may transfer this agreement without Customer's consent, but only to one of Microsoft's Affiliates. Any prohibited assignment is void.

c. ***Severability.*** If any part of this agreement is held unenforceable, the rest remains in full force and effect.

d. ***Waiver.*** Failure to enforce any provision of this agreement will not constitute a waiver.

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e. ***No agency.*** This agreement does not create an agency, partnership, or joint venture.

f. ***No third-party beneficiaries.*** There are no third-party beneficiaries to this agreement.

g. ***Use of contractors.*** Microsoft may use contractors to perform services, but will be responsible for their performance, subject to the terms of this agreement.

h. ***Microsoft as an independent contractor.*** The parties are independent contractors. Customer and Microsoft each may develop products independently without using the other's confidential information.

i. ***Agreement not exclusive.*** Customer is free to enter into agreements to license, use or promote non-Microsoft products or services.

j. ***Entire agreement.*** This agreement is the entire agreement concerning its subject matter and supersedes any prior or concurrent communications. In the case of a conflict between any documents in this agreement that is not expressly resolved in those documents, their terms will control in the following order of descending priority: (1) this agreement, (2) the Product Terms, (3) the Online Services Terms, and (4) any other documents in this agreement.

k. ***Survival.*** All provisions survive termination of this agreement except that requiring performance only during the term of the agreement.

l. **U*.S. export jurisdiction.*** Products are subject to U.S. export jurisdiction. Customer must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use and destination restrictions issued by U.S. and other governments related to Microsoft products, services, and technologies.

m. ***Force majeure.*** Neither party will be liable for any failure in performance due to causes beyond that party's reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of Online Services). This Section will not, however, apply to your payment obligations under this agreement.

n. ***Contracting authority.*** If you are an individual accepting these terms on behalf of an entity, you represent that you have the legal authority to enter into this agreement on that entity's behalf.

o. ***Additional Terms Applicable when the Customer is a U.S. Federal Agency.***

(i) No provisions of any shrink-wrap or any click-through agreement (or other similar form of agreement) that may be provided in conjunction with any Product(s) acquired under this agreement shall apply in place of, or serve to modify any provision of this agreement, even if a user or authorized officer of Customer purports to have affirmatively accepted such shrink-wrap or click through provisions. For the avoid of doubt and without limiting the foregoing, in the event of a conflict between any such shrink-wrap or click-through provisions (irrespective of the products or services that such provisions attach to) and any term or condition of this agreement, then the relevant term or condition of this agreement shall govern and supersede the purchase of such Product(s) to the extent of any such conflict. All acceptance of agreements and renewals shall be executed in writing.

(ii) If any document incorporated by reference into this agreement, including the Product Terms and Online Service Terms included and/or referenced or incorporated herein and/or therein, contains a provision (1) allowing for the automatic termination of your license rights or Online Services; (2) allowing for the automatic renewal of services and/or fees; (3) requiring the governing law to be anything other than Federal law; and/or (4) otherwise violates applicable Federal law, then, such terms shall not apply with respect to the Federal Government. If any document incorporated by reference into this agreement, including the Product Terms and Online Service Terms included and/or referenced or incorporated herein and/or therein contains an indemnification provision, such provision shall not apply as to the United States indemnifying Microsoft or any other party.

13. Definitions.

Any reference in this agreement to "day" will be a calendar day.

"Acceptable Use Policy" is set forth in the Online Services Terms.

"Affiliate" means any legal entity that a party owns, that owns a party, or that is under common ownership with a party. "Ownership" means, for purposes of this definition, control of more than a 50% interest in an entity.

"Azure Government Services" means one or more of the services or features Microsoft makes available to Customer under this Enrollment and identified at http://azure.microsoft.com/en-us/regions/#services, which are Government Community Cloud Services.

"CJI" means Criminal Justice Information, as defined in FBI CJIS Policy.

Attachment: Tangent Contract (RES-2021-90 : Renew Microsoft 365 License Agreement for $92,700 July 2020 to July 2021)

"CJIS Covered State" means a state, as shown at https://www.microsoft.com/en-us/TrustCenter/Compliance/CJIS or another site Microsoft may provide, with which Microsoft and the applicable state have entered into a CJIS State Agreement.

"CJIS Covered Service" means, for any state-specific CJIS Amendment, the Microsoft Online Services that are listed as such in that amendment, and for which Microsoft's CJIS representations apply.

"CJIS State Agreement" means an agreement between Microsoft and a Covered State's CSA (or another entity to which the CSA has delegated its duties) containing terms and conditions under which the Covered State and Microsoft will comply with the applicable requirements of the CJIS Policy. Each CJIS State Agreement is consistent with the applicable state-specific CJIS Amendment, and includes Microsoft CJIS Security Addendum Certifications. For clarity, a CJIS State Agreement may be titled "CJIS Information Agreement" or "CJIS Management Agreement."

"Community" means the community consisting of one or more of the following: (1) a Government, (2) a Customer using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) a Customer with Customer Data that is subject to Government regulations for which the Customer determines, and Microsoft agrees, that the use of Government Community Cloud Services is appropriate to meet the Customer's regulatory requirements. Membership in the Community is ultimately at Microsoft's discretion, which may vary by Government Community Cloud Service.

"Compliance Trust Center Page" means the compliance page of the Microsoft Trust Center, published by Microsoft at https://www.microsoft.com/en-us/TrustCenter/Compliance/default.aspx or a successor site Microsoft later identifies. "Consumption Offering", "Commitment Offering", or "Limited Offering" describe categories of Subscription offers and are defined in Section 2.

"Covered Entity" means any State/Local Entity in a Covered State with which you maintain a contractual relationship whose use of CJIS Covered Services is subject to CJIS Policy.

"CSA" means, for each CJIS Covered State, that state's CJIS Systems Agency, as defined in FBI CJIS Policy.

"Customer Agreement" means the binding agreement between the Contractor and Customer under which Customer orders Products from the Contractor and the Contractor binds Customer to the terms of the this agreement.

"Customer Data" is defined in the Online Services Terms.

"End User" means any person you permit to access Customer Data hosted in the Online Services or otherwise use the Online Services. With respect to ITAR Covered Services, End User means an individual that accesses the ITAR Covered Services. With respect to IRS 1075 Covered Services, End User means an individual that accesses the IRS 1075 Covered Services.

"Federal Agency" means a bureau, office, agency, department or other entity of the United States Government. "Fix" means a Product fix, modifications or enhancements, or their derivatives, that Microsoft either releases generally (such as Product service packs) or provides to Customer to address a specific issue.

"FTI" is defined as in IRS Publication 1075.

"Government" means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

"Government Community Cloud Services" means Microsoft Online Services that are provisioned in Microsoft's multitenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

"IRS 1075 Covered Services" means Azure Government services listed as being in the scope for IRS 1075 at http://azure.microsoft.com/en-us/support/trust-center/compliance/irs1075/ or its successor site. Without limitation, IRS 1075 Covered Services do not include any other separately branded Online Services.

"IRS Publication 1075" means the Internal Revenue Services (IRS) Publication 1075 effective September 30, 2016, including updates (if any) released by the IRS during the term of the Enrollment.

"ITAR" means the International Traffic in Arms Regulations, found at 22 C.F.R. §§ 120 - 130.

"ITAR-controlled data" means Customer Data that is regulated by the ITAR as Defense Articles or Defense Services.

"ITAR Covered Services" means, solely with respect to this Amendment, the (i) Office 365 GCC High services; and (ii) Azure Government services, listed as being in the scope for the ITAR at https://www.microsoft.com/enus/TrustCenter/Compliance/itar or its successor site.

Attachment: Tangent Contract (RES-2021-90 : Renew Microsoft 365 License Agreement for $92,700 July 2020 to July 2021)

"Microsoft Trust Center Compliance Page" is Microsoft's website accessible at https://www.microsoft.com/enus/TrustCenter/Compliance/ or a successor upon which Microsoft provides information about how each of its Online Services complies with, and/or is certified under, various government and industry control standards.

"Licensing Site" means http://www.microsoft.com/licensing/contracts or a successor site.

"Non-Microsoft Product" is defined in the Online Services Terms.

"Office 365 Service Descriptions" means, collectively and solely for this Amendment, the Service Descriptions for Office 365 High, published by Microsoft at https://technet.microsoft.com/en-us/library/mt774581.aspx (for the product superset, Office 365 US Government) and https://technet.microsoft.com/en-us/library/mt774968.aspx (for the product subset, Office 365 GCC High), or at successor sites Microsoft later identifies.

"Office 365 US Government" means the Government Community Cloud Service described by the Office 365 Service Descriptions

"Office 365 GCC High" means the Government Community Cloud Service described by the Office 365 Service Descriptions.

"Online Services" means any of the Microsoft-hosted online services subscribed to by Customer under this agreement, including Government Community Cloud Services, Microsoft Dynamics Online Services, Office 365 Services, Microsoft Azure Services, or Microsoft Intune Online Services.

"Online Services Terms" means the additional terms that apply to Customer's use of Online Services published on the Licensing Site and updated from time to time.

"Previews" means preview, beta, or other pre-release version or feature of the Online Services or Software offered by Microsoft to obtain customer feedback.

"Product" means all products identified in the Product Terms, such as all Software, Online Services and other web-based services, including Previews. "Product Terms" means the document that provides information about Microsoft Products and Professional Services available through volume licensing. The Product Terms document is published on the Licensing Site and is updated from time to time.

"SLA" means Service Level Agreement, which specifies the minimum service level for the Online Services and is published on the Licensing Site.

"State/Local Entity" means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state' jurisdiction and geographic boundaries.

"Software" means licensed copies of Microsoft software identified on the Product Terms. Software does not include Online Services, but Software may be a part of an Online Service.

"Subscription" means an enrollment for Online Services for a defined Term as established by your Reseller.

"Technical Data" has the meaning provided in 22 C.F.R. § 120.

"Term" means the duration of a Subscription (e.g., 30 days or 12 months).

"Tribal Entity" means a federally-recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

"Use Rights" means the use rights or terms of service for each Product published on the Licensing Site and updated from time to time. The Use Rights supersede the terms of any end user license agreement that accompanies a Product. The Use Rights for Software are published by Microsoft in the Product Terms. The Use Rights for Online Services are published in the Online Services Terms.

ATTACHMENT 1
Internal Revenue Services
Federal Tax Information
Safeguarding Addendum

Attachment: Tangent Contract (RES-2021-90 : Renew Microsoft 365 License Agreement for $92,700 July 2020 to July 2021)

In performance of its obligations to deliver the IRS 1075 Covered Services under the Agreement, Microsoft agrees to comply with the requirements contained in Exhibit 7 (Safeguarding Contract Language for Technology Services) from IRS Publication 1075, as set forth below. For purposes of this Attachment 1, "contractor" refers to Microsoft, "agency" refers to Customer, "contract" refers to the Customer Agreement, inclusive of the Amendment, "Exhibit" refers to IRS Publication 1075 exhibit, and "Section" refers to IRS Publication 1075 section.

I. PERFORMANCE.

In performance of this contract, the contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

(1) All work will be performed under the supervision of contractor or the contractor's responsible employees.

(2) The contractor and the contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.

(3) Any return or return information made available shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Addendum. Disclosure to anyone other than an officer or employee of the contractor will be prohibited.

(4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.

(5) The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of their computer facility, and no output will be retained by contractor at the time the work is completed. If immediate purging of all data storage components is not possible, contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.

(6) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.

(7) All computer systems receiving, processing, storing, or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal Tax Information.

(8) No work involving Federal Tax Information furnished under this contract will be subcontracted without prior written approval of the IRS.

(9) The contractor will maintain a list of employees authorized access. Such list will be provided to the Company and, upon request, to the IRS reviewing office.

(10) The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.

II. **CRIMINAL/CIVIL SANCTIONS.**

(1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as $5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than $1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

(2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as $1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of $1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant

Attachment: Tangent Contract (RES-2021-90 : Renew Microsoft 365 License Agreement for $92,700 July 2020 to July 2021)

is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

(3) Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(4) Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

III. INSPECTION.

The IRS and the Agency, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with contract safeguards.

Customer Signature			
Organization Name	Mariposa County		
Signatory Name			
Signatory Position			
Signatory Phone			
Signatory E-Mail			
Signature		Date	

Attachment: Tangent Contract (RES-2021-90 : Renew Microsoft 365 License Agreement for $92,700 July 2020 to July 2021)

Vendor Signature			
Organization Name	Tangent Inc.		
Signatory Name	Michael Waltner		
Signatory Position	Account Manager		
Signatory Phone	650-342-9388 x 2133		
Signatory E-Mail	michaelw@tanegnt.com		
Signature		Date	



Attachment: Tangent Contract (RES-2021-90 : Renew Microsoft 365 License Agreement for $92,700 July 2020 to July 2021)

tangent

Mariposa County - Attachment 2: Scope of Work and Cost Estimate

Anthony Rios
Mariposa County
arios@mariposacounty.org
P.O. Box 1268
5100 Bullion St., 1st Flr
Mariposa, CA 95338
USA

Ship To:

Reference# QUO-01544-S6S9Z1
Prepared: 1/27/2021 12:40 PM
Expires: 3/1/2021
Prepared by: La Ne Scott
Customer Success Manager
LaNeS@tangent.com

Products & Services

Item	Qty	Unit Price	Extended
O365 GCC G3	380	$240.00	$91,200.00
Office 365 Support	1	$1,500.00	$1,500.00

Subtotal	$92,700.00
Freight	
Total	**$92,700.00**

This total does not include any applicable taxes.

Notes:
Term of contract: July 5, 2020 - July 5, 2021
Scope of Work: 380 Annual Microsoft 365 Cloud Licenses

Questions? Contact me



La Ne Scott
LaNeS@tangent.com
Customer Success Manager
(800) 342-9388 x 2139

Attachment: Tangent Contract (RES-2021-90 : Renew Microsoft 365 License Agreement for $92,700 July 2020 to July 2021)

RE: Contract with Tangent for Microsoft 365

Michael Waltner <michaelw@tangent.com>

Tue 2/16/2021 10:43 AM

To: Leigh Westerlund <lwesterlund@mariposacounty.org>; Tom Holmes <tomh@tangent.com>; Chris Lee <chrisl@tangent.com>
Cc: Anthony Rios <arios@mariposacounty.org>; Elaine Jaramillo <ejaramillo@mariposacounty.org>; La Ne Scott <LaNeS@tangent.com>

1 attachments (72 KB)

Attachment 2 Scope of Work and Cost Estimate.pdf;

Hi Leigh,

Does this work better for you?

Thanks,
Mike

Michael Waltner

Account Manager | **Tangent** | 800-342-9388 x2133 | US Mobile: +1 508-446-1656 | michaelw@tangent.com

---

From: Leigh Westerlund <lwesterlund@mariposacounty.org>
Sent: Tuesday, February 16, 2021 12:49 PM
To: Michael Waltner <michaelw@tangent.com>; Tom Holmes <tomh@tangent.com>; Chris Lee <chrisl@tangent.com>
Cc: Anthony Rios <arios@mariposacounty.org>; Elaine Jaramillo <ejaramillo@mariposacounty.org>; La Ne Scott <LaNeS@tangent.com>
Subject: Re: Contract with Tangent for Microsoft 365

I need to ask for one more change to the document. Hopefully you have already sent the signatures in the mail. But if you could modify the attachment in the following ways and resend, that will help get this approved next week.

- At the top I need for it to say "Attachment 2: Scope of Work and Cost Estimate"
- In the notes section I need for it to say "Term of contract: July 5, 2020 - July 5, 2021" and in the next line "Scope of Work: 380 Annual Microsoft 365 Cloud Licenses"

If you could modify and email back today that will help me get this thing through our legal review process.
Thanks,
Leigh

Attachment: Tangent Email Contract Change Request Confirmation (RES-2021-90 : Renew Microsoft 365 License Agreement for $92,700 July

Attachment: Tangent Email Contract Change Request Confirmation (RES-2021-90 : Renew Microsoft 365 License Agreement for $92,700 July

Leigh Westerlund
Assistant County Administrative Officer
Phone: (209) 742-1234
Cell: (209) 617-1865
www.mariposacounty.org

From: Michael Waltner <michaelw@tangent.com>
Sent: Thursday, February 11, 2021 2:28 PM
To: Leigh Westerlund <lwesterlund@mariposacounty.org>; Tom Holmes <tomh@tangent.com>; Chris Lee <chrisl@tangent.com>
Cc: Anthony Rios <arios@mariposacounty.org>; Elaine Jaramillo <ejaramillo@mariposacounty.org>; La Ne Scott <LaNeS@tangent.com>
Subject: RE: Contract with Tangent for Microsoft 365

Hi Leigh,

The invoice is the same and the Terms and conditions and Microsoft Cloud Services Agreement are the DocuSign document separated and with appropriate places for signatures.
‘

Thanks,
Mike

Michael Waltner

Account Manager | **Tangent** | 800-342-9388 x2133 | US Mobile: +1 508-446-1656 | michaelw@tangent.com

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From: Leigh Westerlund <lwesterlund@mariposacounty.org>
Sent: Thursday, February 11, 2021 4:48 PM
To: Michael Waltner <michaelw@tangent.com>; Tom Holmes <tomh@tangent.com>; Chris Lee <chrisl@tangent.com>
Cc: Anthony Rios <arios@mariposacounty.org>; Elaine Jaramillo <ejaramillo@mariposacounty.org>; La Ne Scott <LaNeS@tangent.com>
Subject: Re: Contract with Tangent for Microsoft 365

You are the best! I will replace the previous terms and conditions doc with this one. The invoice doc stayed the same, correct?

And yes, 2 copies to our address (as much as it pains me to admit that we use these antiquated processes) is important.

Leigh

Leigh Westerlund
Assistant County Administrative Officer
Phone: (209) 742-1234
Cell: (209) 617-1865
www.mariposacounty.org

From: Michael Waltner <michaelw@tangent.com>
Sent: Thursday, February 11, 2021 1:40 PM
To: Leigh Westerlund <lwesterlund@mariposacounty.org>; Tom Holmes <tomh@tangent.com>; Chris Lee <chrisl@tangent.com>
Cc: Anthony Rios <arios@mariposacounty.org>; Elaine Jaramillo <ejaramillo@mariposacounty.org>; La Ne Scott <LaNeS@tangent.com>
Subject: RE: Contract with Tangent for Microsoft 365

Hi Leigh,

I want to be sure that I have everything correct.

I took a look at the Admin Tangent document and that was for the migration done in 2019. Since it is not relevant I do not plan on sending that. If you do need that included let me know.

I have attached the invoice, the Terms and conditions and Microsoft Cloud Services Agreement.

I plan to sign all the document and send 2 copies for each of the attached.

If there is anything else you need from me, let me know.

Thanks,
Mike

Michael Waltner

Account Manager | **Tangent** | 800-342-9388 x2133 | US Mobile: +1 508-446-1656 | michaelw@tangent.com

Attachment: Tangent Email Contract Change Request Confirmation (RES-2021-90 : Renew Microsoft 365 License Agreement for $92,700 July

From: Leigh Westerlund <lwesterlund@mariposacounty.org>
Sent: Thursday, February 11, 2021 1:27 PM
To: Michael Waltner <michaelw@tangent.com>; Tom Holmes <tomh@tangent.com>; Chris Lee <chrisl@tangent.com>
Cc: Anthony Rios <arios@mariposacounty.org>; Elaine Jaramillo <ejaramillo@mariposacounty.org>
Subject: Re: Contract with Tangent for Microsoft 365

Unfortunately, yes. And I can only blame our bonkers, old-school process requirements for that.

I've got everything submitted and approved, so we should be good to go.

Thank you for your understanding and cooperation with this.
Leigh

Leigh Westerlund
Assistant County Administrative Officer
Phone: (209) 742-1234
Cell: (209) 617-1865
www.mariposacounty.org

From: Michael Waltner <michaelw@tangent.com>
Sent: Thursday, February 11, 2021 9:46 AM
To: Leigh Westerlund <lwesterlund@mariposacounty.org>; Tom Holmes <tomh@tangent.com>; Chris Lee <chrisl@tangent.com>
Cc: Anthony Rios <arios@mariposacounty.org>; Elaine Jaramillo <ejaramillo@mariposacounty.org>
Subject: RE: Contract with Tangent for Microsoft 365

Hi Leigh,

I have attached the updated invoice with the notes of “Annual License Renewal” and “7/5/2020-7/5/202”, I believe this is what you requested.

If not or there are any issues let me know.

Will you still need the physical contracts send with the wet signatures as well?

Thanks,
Mike

Michael Waltner

Account Manager | **Tangent** | 800-342-9388 x2133 | US Mobile: +1 508-446-1656 | michaelw@tangent.com

Attachment: Tangent Email Contract Change Request Confirmation (RES-2021-90 : Renew Microsoft 365 License Agreement for $92,700 July

Attachment: Tangent Email Contract Change Request Confirmation (RES-2021-90 : Renew Microsoft 365 License Agreement for $92,700 July

From: Leigh Westerlund <lwesterlund@mariposacounty.org>
Sent: Thursday, February 11, 2021 12:29 PM
To: Michael Waltner <michaelw@tangent.com>; Tom Holmes <tomh@tangent.com>; Chris Lee <chrisl@tangent.com>
Cc: Anthony Rios <arios@mariposacounty.org>; Elaine Jaramillo <ejaramillo@mariposacounty.org>
Subject: Re: Contract with Tangent for Microsoft 365

I now see that she had prepared the board item for the 23rd already. She has the cost estimate and terms and conditions loaded. The only thing I see missing is the dates for the contract and the indication of what it is for "license renewal". If you can modify the invoice to include those things I think we will be good.

Leigh

Leigh Westerlund
Assistant County Administrative Officer
Phone: (209) 742-1234
Cell: (209) 617-1865
www.mariposacounty.org

From: Leigh Westerlund <lwesterlund@mariposacounty.org>
Sent: Thursday, February 11, 2021 9:14 AM
To: Michael Waltner <michaelw@tangent.com>; Tom Holmes <tomh@tangent.com>; Chris Lee <chrisl@tangent.com>
Cc: Anthony Rios <arios@mariposacounty.org>; Elaine Jaramillo <ejaramillo@mariposacounty.org>
Subject: Fw: Contract with Tangent for Microsoft 365

Hello,

Elaine is out this week and I am stepping in to help her help Anthony with the contract and invoice approval process.

I have to apologize, but after reviewing the attached documents and discussing with Anthony, I am realizing that we have a few more steps to take before we can cut the check. I know you have been after this for awhile, and I truly apologize for the additional effort and delay, but we have to follow state-mandated processes using our antiquated systems, and so here we are.

1. Please send me a PDF of a 2021 version of the "Admin-Tangent" document attached (minus the cover page) - essentially the terms and conditions, scope of work (simply providing licenses as I understand it), and the new cost (the Mariposa County Office 365 document attached).
2. If you send this morning, I will get it on the board agenda for the February 23rd meeting for approval.

3. Please send 2 copies of what you send to me with your "wet signature" in the mail, so we can have the board chair sign once approved. PO Box 784, Mariposa, CA 95389. You can send to my attention.
4. We will cut a check on 2/25, once the board has approved.

I apologize again for all of this, but we will get this wrapped up asap, with your prompt response.

Best,
Leigh

Leigh Westerlund
Assistant County Administrative Officer
Phone: (209) 742-1234
Cell: (209) 617-1865
www.mariposacounty.org

From: Anthony Rios <arios@mariposacounty.org>
Sent: Thursday, February 11, 2021 8:32 AM
To: Leigh Westerlund <lwesterlund@mariposacounty.org>
Subject: FW: Contract with Tangent for Microsoft 365

Leigh: Here are the files Michael and Elaine were sharing. I also added the DocuSign document that was mentioned in the first email.

Anthony

From: Michael Waltner <michaelw@tangent.com>
Sent: Monday, February 1, 2021 9:36 AM
To: Elaine Jaramillo <ejaramillo@mariposacounty.org>; Anthony Rios <arios@mariposacounty.org>
Cc: Tom Holmes <tomh@tangent.com>; Chris Lee <chrisl@tangent.com>
Subject: RE: Contract with Tangent for Microsoft 365

Hi Elaine,

I believe I would be the one to sign the document through Zorro Sign.

All of the work has been completed so there is no SOW that would be applicable and I have attached our annual renewal for licenses and support.

Let me know if you have any questions.

Thanks,
Mie

Attachment: Tangent Email Contract Change Request Confirmation (RES-2021-90 : Renew Microsoft 365 License Agreement for $92,700 July

Michael Waltner

Account Manager | **Tangent** | 800-342-9388 x2133 | US Mobile: +1 508-446-1656 |
michaelw@tangent.com

From: Elaine Jaramillo <ejaramillo@mariposacounty.org>
Sent: Wednesday, January 27, 2021 5:52 PM
To: Anthony Rios <arios@mariposacounty.org>
Cc: Michael Waltner <michaelw@tangent.com>
Subject: Re: Contract with Tangent for Microsoft 365

I will go ahead and route this for ZorroSign. I do have just a couple questions before I can get going. 1 - Who will be signing for Tangent and what is their email address? They will be receiving the documents directly through ZS. And 2 - I've attached the agreement from last year that includes a bit more information than the previously attached this go round. It has information our County Counsel will require before approving such as, scope of work and the cost to the county. Please look it over and let me know if you can provide something similar for the renewal.

Many thanks,

Elaine Jaramillo
Executive Assistant
Mariposa County Administration

From: Anthony Rios <arios@mariposacounty.org>
Sent: Wednesday, January 27, 2021 11:37 AM
To: Elaine Jaramillo <ejaramillo@mariposacounty.org>
Cc: Michael Waltner <michaelw@tangent.com>
Subject: Contract with Tangent for Microsoft 365

Michael: I downloaded the agreement for FY2021. Normally, we require two paper copies with original wet signatures mailed to us. However, if you're agency can accept the contract via ZorroSign, we might be able to take care of this electronically.

Elaine: Please see the attached contract with Tangent for Microsoft 365. Please let us know if we can execute via ZorroSign.

Anthony Rios
Technical Services Manger
Phone: (209) 742-6022
www.mariposacounty.org

Attachment: Tangent Email Contract Change Request Confirmation (RES-2021-90 : Renew Microsoft 365 License Agreement for $92,700 July

Attachment: Tangent Email Contract Change Request Confirmation (RES-2021-90 : Renew Microsoft 365 License Agreement for $92,700 July

DATE: February 18, 2021
TO: The Board of Supervisors
FROM: Anthony Rios, Technical Services Manager
RE: Tangent and Microsoft 365

The timeline with Tangent for migration and Microsoft 365 licenses started in January of 2020. We contracted with Tangent for migration services and an initial test group of licenses for $9,180. This allowed Technical Services to explore the use of Microsoft 365 and develop a plan for implementation throughout the County. Over the next few months, test groups of users were brought into Microsoft 365 to pilot the solution and to provide feedback on necessary changes. In addition, COVID forced us to prepare our workforce for telework. This created a demand to implement and deploy Microsoft 365 to all staff quicker than planned. By July 2020, Technical Services had identified the required licensing structure for implementation and purchased 380 licenses to begin deploying to users.

Attachment: Tangent and Microsoft 365 Memo (RES-2021-90 : Renew Microsoft 365 License Agreement for $92,700 July 2020 to July 2021)

MARIPOSA COUNTY

Administration · 966-3222

RESOLUTION - ACTION REQUESTED 2021-91

MEETING: February 23, 2021

TO: The Board of Supervisors

FROM: Dallin Kimble, County Administrative Officer

RE: Renew ZorroSign License Agreement and Add Licenses for Behavioral Health and Sheriff

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RECOMMENDATION AND JUSTIFICATION:
Approve the Renewal Agreement with ZorroSign for 32 Licenses, including a prorated amount for 17 New Licenses, in an Amount Not to Exceed $15,675 with a Term of February 23, 2021 through July 16, 2022; and Authorize the Board of Supervisors Chair to Sign the Agreement.

Mariposa County uses ZorroSign for electronic signature processing. The software is Americans with Disabilities Act compliant and is endorsed by the California Secretary of State.

Behavioral Health and Sheriff have requested software to process client documents using an electronic signature, so we are adding seventeen licenses to accommodate their needs.

The original ZorroSign agreement was executed via CAO signed agreements with a term from April 2020 to April 2021 for 23 users. A second agreement was done via CAO signature for 4 new users with term dates of July 2020 to July 2021. This contract consolidates all previous contracts executed when licenses were added and extends the contract through July 16th, 2022. This timeline covers the first year using Oracle for an ERP solution at which point, we will likely decide that we can reduce the number of ZorroSign licenses significantly.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The Board approves agreements often.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Do not approve, and staff would use an alternative, possibly much more expensive solution for digital signature software.

FINANCIAL IMPACT:
The budget for this contract is included in the FY21 budget.

ATTACHMENTS:

Final Maripoa County - 17 Prorated 49 Renewed (PDF)

RESULT: **ADOPTED [UNANIMOUS]**
MOVER: Rosemarie Smallcombe, District I Supervisor
SECONDER: Miles Menetrey, District V Supervisor
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

ZorroSign

ZorroSign Customer Solution Proposal & Price Quote

Company Name: Mariposa County

Company Address: Mariposa County
Attn: Dallin Kimble
P.O. Box 784
Mariposa, CA 95338

Company Contact: Dallin Kimble, CAO

Proposal Date: 2/11/21
Valid Through: 3/31/21

Dear Dallin,

We are so happy to hear that ZorroSign is working well for Mariposa County and that the team is interested in bringing 17 more users on board while renewing services for another year! Since your account currently has multiple licenses with different start/end dates, we have provided a prorated rate for 17 new users and the extension of 28 of the current 32 users. All 49 users will then have the same start/end date when renewing into 2022. Please find the breakdown below:

ZorroSign Offering

Service	Cost
17 Prorated Business Licenses 2/23/21 – 7/16/21	$1,438.62
28 Business Licenses Extended Through 7/16/21	$1,411.99
49 Business Licenses Renewed 7/17/21 – 7/16/22	$10,584
Standard Support (E-Mail Support within One Business Day)	Included
Premium Support (Phone, Screen Share, and E-Mail)	$2,240
ZorroSign mobile app (iOS and Android) for Mobile signing	Included
Blockchain incliding audit trail, chain of custody, and secure 4n6 (Forensics) Tokenization AKA Tamper seal.	Included
Total Cost:	**$15,674.61**

Attachment: Final Maripoa County - 17 Prorated 49 Renewed (RES-2021-91 : Renew ZorroSign License Agreement and Add Licenses for Behavioral

ZorroSign

Optional Services

1. Professional Services: $50/Hour. Discount available based on size of the project.
2. On-site training: $1400/Day plus all related travel expenses. Multiple-day discount available.
3. Additional Online training: $100/hour

Resources

1. ZorroSign Resource Library: https://www.zorrosign.com/resources/
2. ZorroSign Blog: https://www.zorrosign.com/blog/

ZorroSign Transformers: Product Champions

As part of the training, ZorroSign shall support cultivating ZorroSign Digital Transformer(s); select members of your team who will work with ZorroSign to champion the cause of Digital Transformation at your company.

Payment Terms and Methods

Full payment for licenses and infrastructure must be made in net 21. If applicable, all professional services and training invoices (billed separately) must be paid within 30 days of receipt of invoice.

ZorroSign Contact Information Allyson Hoogers, Account Manager	Allyson@ZorroSign.com Mobile: 480-518-2479

SIGNATORIES

By signing below, I/We approve the pricing proposal in this document.

Customer: Mariposa County	ZorroSign, Inc.
Name:	
Signature:	
Date:	

Attachment: Final Maripoa County - 17 Prorated 49 Renewed (RES-2021-91 : Renew ZorroSign License Agreement and Add Licenses for Behavioral

MARIPOSA COUNTY

Administration · 966-3222

RESOLUTION - ACTION REQUESTED 2021-92

MEETING: February 23, 2021

TO: The Board of Supervisors

FROM: Dallin Kimble, County Administrative Officer

RE: Approve FY20-21 Mid-Year Budget Adjustments and Review Variance Explanations

---

RECOMMENDATION AND JUSTIFICATION:
Approve FY20-21 Mid-Year Budget Adjustments and Review Variance Explanations.

Please see the attached staff report, recommended mid-year adjustments, General Purpose Revenue spreadsheet, and revenue/appropriations analysis for additional information.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The Board has traditionally reviewed the County's financial position at mid-year and approved adjustments.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Budget adjustments could be denied or amended and revenues would not be recognized and additional appropriations would not be allowed.

FINANCIAL IMPACT:
General Fund revenue and appropriations are adjusted a net amount of $319,672. Transient Occupancy Tax revenue increased to balance the general fund. Further explanation is in the staff memo.

ATTACHMENTS:
FY21 Midyear Staff Memo (PDF)
FY21 General Purpose Revenue Mid Year Analysis (PDF)
FY21 Revenue Mid Year Analysis (PDF)
FY21 Appropriations Mid Year Analysis (PDF)
Mid Year Change Requests Budget Action FY21 Searchable (PDF)
Mid Year Change Requests Budget Action FY21 Signed Copy (PDF)

RESULT: **ADOPTED [UNANIMOUS]**
MOVER: Rosemarie Smallcombe, District I Supervisor
SECONDER: Wayne Forsythe, District IV Supervisor
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

DALLIN KIMBLE
County Administrative Officer

5100 Bullion Street
P.O. Box 784
Mariposa, CA 95338
209-966-3222
dkimble@mariposacounty.org

To: Board of Supervisors

From: Dallin Kimble, County Administrative Officer
Leigh Westerlund, Assistant County Administrative Officer

Date: February 16, 2021

Subject: Fiscal Year 2020-21 Midyear Budget Review

At the mid-point of each fiscal year, staff complete a thorough review of the County's actual revenues and expenditures. This review then informs a selection of requested revisions to ensure the amended budget is aligned with financial realities. What follows here is a summary of the aforementioned review and recommended revisions for the Board's information and consideration.

Overview:
Mariposa County is experiencing significant financial impacts resulting from the COVID-19 pandemic. Transient Occupancy Taxes (TOT) are budgeted to be 50% of typical expected revenue, a significant reduction given that TOT constitutes over half of the County's total discretionary revenue. In addition, a third quarter comparison of 2020 sales tax revenue to 2019 reveals that Mariposa County is one of only 4 counties in California experiencing a double digit drop in sales tax revenue at 23%, second only to San Francisco County. All indicators support continuing current austerity measures, holding vacancies, reducing or eliminating most travel and training, restricting new unfunded spending, etc.

As we look to the future it is going to be critical that we develop a plan for revenue growth, prior to it becoming a reality. General Fund reserves are currently 2.4% of the total expected GF operating expenditures. The Reserve Policy adopted in 2019 indicates that Mariposa County should maintain an absolute minimum reserve of 16.7% or two months of average total operating expenditures. In addition, the County has maintained 65 vacancies. A plan for returning to "normal" should include a county-wide position analysis to determine how best to increase our workforce given changes in technology and associated staff processes. When an employee can submit a time card in The Enterprise, which is approved, charged to appropriate projects and grants, and recorded in leave balances, for example, significant employee time will be saved and available information will increase. That is just one of many examples of the streamlining and simplification that we hope to achieve that will fundamentally change the work employees are doing, and will ultimately result in improved quality and quantity of services we are able to offer the community. With the potential for enhanced services for the community, there are a number of investments that could be made in services, facilities, and infrastructure, which should also be considered as funds become available.

We owe it to the Mariposa County community to carefully consider all of these priorities and opportunities to be sure that funds are leveraged to go as far as possible in support of as many community priorities as possible.

Attachment: FY21 Midyear Staff Memo (RES-2021-92 : Approve FY20-21 Mid-Year Budget Adjustments and Review Variance Explanations)

Revenues:
Through December 31, 2020, the County has collected forty-one percent (41%) of projected general fund revenues. This percentage is consistent with previous non-disaster years, however, it is important to repeatedly point out that the budget for general purpose revenue was reduced by $7.6 million in TOT alone, so that is 41% of a reduced number or a smaller goal.

Revenue highlights include:

- Transient Occupancy Tax revenue increased $301,762 to balance the General Fund. We believe this is reasonable and conservative given the County's experience with TOT revenue in October and November when we were in the less restrictive Orange Tier and visitors were allowed to stay in County. Indicators suggest that Mariposa County could move back into the Orange Tier later this spring, and restrictions in other counties combined with the outdoor recreation opportunities that are relatively safe and available in Mariposa County, make a return to Orange Tier 50% revenue collection in the spring likely. Spring is also the season in which TOT collection tends to be highest, typically yielding 40% of annual TOT numbers in the last 33% of the fiscal year or March through June.
- Elections reimbursement revenue was reduced by $32,000 to correct a budgeting error.
- Engineering recognized $8,202 in revenue received from NatureBridge to support analysis of the Yosemite West water expansion proposal.
- Victim Witness federal revenue increased $35,044 as a result of adjustments to timing of expenditures covered by federal grants. Adjustments to federal funding are common, because the federal fiscal year is different than Mariposa's and it is difficult to predict exactly when expenditures will be incurred.
- Mariposa County received $65,864 in Mutual Aid Reimbursement for staff help with the Camp Fire. The General Fund incurred the expenses in staff time and travel in Fiscal Year 2018-2019. Therefore this revenue reimburses the General Fund, but no additional offsetting appropriations should be added.
- Planning increased Permitting Fee revenue by $24,250, because they are seeing a significant, steady increase in permit requests.
- Several adjustments were made to Health and Human Services Agency revenue as grant funding has come in and activities and priorities have shifted. The General Fund contribution has decreased substantially following the consolidation with Public Health (including Environmental Health) and Community Services. The revenue adjustments continue to decrease the contribution as more and more grants are received in support of their operations.
- Parks and Recreation received a $500 donation in support of the Water Aquatics recreation program.
- Mariposa County Unified School District was notified that they received their Tobacco Law Enforcement grant one again, which covers a portion of the salary, benefits, and expenses associated with providing a School Resource Officer at the high school ($121,047).
- HHSA transferred $500,000 to support the ERP implementation costs, which reduced the amount to be financed by a corresponding $500,000.
- Workers Compensation and General Liability Insurance fund contributions were adjusted to reflect the fact that the workers comp fund is super funded by ~$1.4 million and the liability fund is underfunded by ~$660 thousand. The contributions coming from departments will not change.

Attachment: FY21 Midyear Staff Memo (RES-2021-92 : Approve FY20-21 Mid-Year Budget Adjustments and Review Variance Explanations)

Appropriations:
On the appropriation side, departments have been prudent in their spending and general fund expenditures are currently at 46% of the total budgeted operating expenditures. Again, this is notable because appropriations were reduced by $11.8 million from the requested to the recommended and approved budget.

Appropriations highlights include:

- Administration is sharing a staff member with Public Works Administration to support ERP implementation staffing requirements ($13,842).
- Auditors office increased overtime and associated benefits to cover hours incurred by the Payroll Specialist due to current, manual, cumbersome processes ($8,291).
- County Counsel professional services increased by $26,063 to cover anticipated costs associated with legal analysis of Yosemite West water expansion.
- Unemployment increased $103,446 in the general fund due to higher than "normal" unemployment claims and the fact that salaries and benefits budgets do not include most vacancies, so the margin for unexpected expenses in this category is lower.
- Human Resources increased professional services $35,000 to cover additional support provided by our interim consultant Carl Crown.
- Visitors Center operations expense increased to cover an increase in monthly expenses for the remainder of the year.
- Technical Services software expense increased by $71,488 due to a budgeting error on quarterly Oracle expense payments and an increase in the number of ZorroSign licenses.
- Technical Services also moved $140,000 from the fixed asset line to the software line because we will be using a software solution to replace our phone system, which will reach end-of-life later this year.
- We transferred $25,000 to the LAFCo fund to support an analysis beginning this fiscal year.
- Accrued benefits increased by $78,118 due to thinner than "normal" margins in the salaries and benefits category and the Board's decision to move forward allowing accrued benefit payouts at the end of the calendar year.
- We transferred $53,000 out of the general fund to cover Bailiff expenses due to an increase in expenses due to COVID requirements.
- Planning department will be filling a vacancy in an Office Technician position given the significant increase in volume of activity and resulting strain of staff.
- $126,406 in COVID response expenses were budgeted based on actuals through January.
- HHSA staff made adjustments to staffing distribution to reflect actual, reported time allocations.
- Library reduced book expense appropriations to fund additional Extra Help staff ($20,000).
- Roads reduced salaries and benefits due to a few vacant positions to allow for an increase of $121,000 in materials appropriations.
- Fire Chief Ward made adjustments to the Fire Station Improvement fund to reflect priorities in Mount Bullion, Coulterville, and Lush Meadows fire stations.
- Solid Waste adjusted appropriations to purchase a bailer ($6,650).
- Transit adjusted appropriations to purchase a van ($37,100).

Recommended Adjustments:
As outlined in the sections above, staff recommends the Board recognize $319,672 net changes in general fund revenues and expenses. No changes are recommended for the general fund contingency, which currently has a balance of $382,517.

Staff will continue to exhibit fiscal responsibility in managing expenses and pursuing grant funding whenever possible.

Attachment: FY21 Midyear Staff Memo (RES-2021-92 : Approve FY20-21 Mid-Year Budget Adjustments and Review Variance Explanations)

Outlook:
The budget is a predictive tool that helps to ensure that enough revenue is secured to achieve priorities and provide services to the community. Now more than ever before, the word "predictive" is the operative word in that sentence. We intend to continue to seek advisement from our Public Health Doctor Sergienko; monitor global and national political, economic, pandemic, and environmental trends; and plan for a return to "normal" in such a way that the Board is equipped with objective, data-driven guidelines within which to make appropriations decisions as revenue increases.

As Winston Churchill once said, "Never waste a good crisis." The COVID pandemic and its resulting long-term, far-reaching, economic, social, and educational repercussions provides a tremendous opportunity for Mariposa to learn and grow, returning better than we were before.

Attachment: FY21 Midyear Staff Memo (RES-2021-92 : Approve FY20-21 Mid-Year Budget Adjustments and Review Variance Explanations)

GENERAL PURPOSE REVENUE
MID YEAR STATUS
FISCAL YEAR 2020-21

Account		20-21 Adopted	Collected As of 12/31/2020	20-21 Percent Collected
CURRENT SECURED		$6,241,308	$3,777,295	61%
CURRENT UNSECURED		$400,000	$385,104	96%
DELINQUENT SECURED		$180,000	$0	0%
DELINQUENT UNSECURED		$10,000	$0	0%
PENALTIES		$180,000	$62,052	34%
SUPPLEMENTAL TAXES		$134,000	$0	0%
PROP TAX IN LIEU OF VLF		$2,329,283	$0	0%
SALES TAX		$1,650,000	$707,353	43%
PROPERTY TRANSFER TAX		$150,000	$120,751	81%
TRANSIENT OCCUPANCY TAX		$8,048,666	$5,108,059	63%
TIMBER TAX		$6,000	$1,431	24%
FRANCHISES		$174,703	$0	0%
PC1463.001 CRIMINAL FINES		$10,000	$2,365	24%
PC1464 PENALTY (30%)		$30,000	$7,024	23%
PC 1464 COUNTY PEN ASSESS		$600	$261	44%
PC 1463.001/COURTS		$100	$1	1%
PC 1463.11 RED LIGHT VIOL		$100	$0	0%
INTEREST		$150,000	$51,055	34%
INTEREST FROM LOANS		$600	$0	0%
RENTS & CONCESSIONS		$3	$1	33%
VL IN EXCESS-11001.5(b)		$12,500	$0	0%
PROP TAX RELIEF DISASTER		$0	($1,224)	
HOMEOWNERS' EXEMPTION		$70,000	$33,733	48%
SB 90 REIMBURSEMENT		$1,000	$0	0%
GRAZING FEES		$600	$0	0%
FEDERAL IN-LIEU OF TAXES		$1,342,953	$0	0%
COST ALLOCATION		$1,990,445	$995,240	50%
SUPP ADMIN/ST REDEMP FEE		$10,000	$2,850	29%
PROBATION OVERHEAD		$5,000	$1,683	34%
COURT FEES - DEPT 2		$100	$2	2%
PUBLIC DEFENDER PC987.5		$2,000	$696	35%
ADM SCREEN PC1463.07		$3,000	$660	22%
$24 TRAF SCH VC42007.1		$13,000	$4,301	33%
TRANS FEE VC40611 66%		$2,500	$512	20%
TRAF SCH VC42007 UNIFORM		$85,000	$32,440	38%
OTHER REVENUE - GENERAL		$286,835	$1,319	0%
CHILD SUPP RECOUPMENT		$6,000	$3,192	53%
MEDICARE PART D SUBSIDY		$0	$159	
HORNITOS GRAZING LEASE		$2,601	$0	0%
TRANSFERS IN		$426,456	$0	0%
REVENUE STABILIZATION		$58,000	$0	0%
BEGINNING FUND BALANCE		$3,452,223	$0	0%
TOTAL:		**$27,465,576**	**$11,298,315**	**41%**

Attachment: FY21 General Purpose Revenue Mid Year Analysis (RES-2021-92 : Approve FY20-21 Mid-Year Budget Adjustments and Review Variance Explanations)

MID YEAR ANALYSIS -- FISCAL YEAR 2020-21				
REVENUE AS OF DECEMBER 31, 2020				
	20-21	20-21	20-21	
	Adjusted	Actual	Percent	
Department / Fund	Budget	Collected	Collected	Explanation
GENERAL FUND				
General Purpose Revenue	$ 27,465,576	$ 11,298,315	41%	
Annual Audit	$ 4,700	$ -	0%	Will be paid in Q4
Auditor	$ 44,000	$ 35,918	82%	The majority of revenue is collected in September; courts paid annual fees earlier than usual
Treasurer/Tax Collector	$ 315,952	$ 100,475	32%	
Assessor/Recorder	$ 104,000	$ 71,621	69%	
County Counsel	$ 34,133	$ -	0%	Court should release funds from a case in Q3/Q4
County Clerk	$ 28,300	$ 10,682	38%	
Elections	$ 119,855	$ 3,394	3%	Waiting for State Reimbursement
Facilities Maintenance	$ 107,527	$ 47,884	45%	
Economic Development	$ -	$ -		
Surveyor/Engineering	$ 119,500	$ 59,153	50%	
Intrafund Transfers	$ 2,588,058	$ 2,257,672	87%	COVID economic challenges forced transfers to earlier in the fiscal year
Property Management	$ 32,982	$ 13,498	41%	
Indigent Defense	$ 58,490	$ 24,397	42%	
Child Support Services	$ 605,101	$ 1,086	0%	Funds not transferred from holding fund until Q3 / Q4
DA - Prosecution	$ 100,860	$ 1,776	2%	Transfers occur in Q3 and Q4
Victim Witness	$ 439,341	$ 103,946	24%	Pending State Payment
Sheriff	$ 2,481,034	$ 1,425,110	57%	
Boating Safety	$ 231,827	$ 61,410	26%	PENDING STATE PAYMENT
Jail	$ 163,233	$ 24,968	15%	REVENUE FLUCTUATION BASED ON INMATE POPULATION MEETING REQUIREMENTS FOR SSI RECOUP; TRANSFERS OCCUR IN Q3/Q4
Probation	$ 116,543	$ 32,997	28%	Budget estimates based on previous years; Transfers scheduled in Q3 and Q4; Fees pending
Fire	$ 1,317,340	$ 23,461	2%	currently awaiting approx $480K for equipment rental and transfers occur in Q3 Q4
Agricultural Commissioner	$ 377,764	$ 63,689	17%	Bulk of funding received in Q3/Q4
Planning	$ 175,250	$ 73,584	42%	
Public Works Administration	$ 251,726	$ 103,612	41%	
Public Works Executive	$ 2,500	$ -	0%	Executive services will be billed at year's end
Surveyor	$ 40,000	$ 10,652	27%	LDA' s and LLA's will be billed at year's end
Regional Transit Services	$ 191,000	$ -	0%	Transfer occurs in Q4
Health	$ 1,012,878	$ 206,799	20%	Transfers to occur in Q3 and Q4
Behavioral Health	$ 5,444,639	$ 2,933,325	54%	
Alcohol & Drug	$ 1,242,240	$ 52,198	4%	State slow to release SAPT funds
Environmenta Heath	$ 393,507	$ 268,559	68%	

Attachment: FY21 Revenue Mid Year Analysis (RES-2021-92 : Approve FY20-21 Mid-Year Budget

MID YEAR ANALYSIS -- FISCAL YEAR 2020-21				
REVENUE AS OF DECEMBER 31, 2020				
	20-21	20-21	20-21	
	Adjusted	Actual	Percent	
Department / Fund	**Budget**	**Collected**	**Collected**	**Explanation**
Social Services	$ 7,822,623	$ 2,023,221	26%	Only Q1 claim submitted/transferred
Social Service Programs	$ 3,280,223	$ 1,247,445	38%	
Human Services Admin.	$ 1,231,942	$ 501,190	41%	
Veterans' Services	$ 15,000	$ 16,483	110%	Additional funding received due to COVID
Employment & Community Services	$ 6,174,711	$ 1,727,806	28%	Only Q1 claim submitted/transferred
Library	$ 83,143	$ 27,003	32%	
Parks & Recreation	$ 64,561	$ 4,673	7%	Revenues that would have been earned in Jul and Aug were not due to closure - due to COVID 19. This will adversely affect the year-end total.
Total:				
OTHER FUNDS				
Local Transportation	$ 551,833	$ 179,633	33%	
State Transit Assistance	$ 255,529	$ 43,257	17%	State reimbursement occurs in Q4
Transportation Planning	$ 506,626	$ 88,486	17%	SRPA remaining revenue will be received in Mar, Apr and Jun
Pedestrian Bikeway	$ 166,960	$ 1,058	1%	Skewed by beginning fund balance
Roads	$ 5,907,149	$ 1,917,661	32%	
Fish & Game	$ 16,995	$ 425	3%	Skewed by beginning fund balance
Law Library	$ 10,818	$ 6,150	57%	
Yosemite West Bond Admin.	$ 11,938	$ 4,970	42%	
CSA #3 Fire Assessment	$ 1,651,327	$ 597,374	36%	
Don Pedro Fire Protection	$ 135,838	$ 63,760	47%	
Water Agency	$ 189,797	$ 1,224	1%	Skewed by beginning fund balance
Coulterville Lighting	$ 56,593	$ 7,287	13%	Skewed by beginning fund balance
Coulterville Service Area	$ 163,692	$ 62,330	38%	
Don Pedro 1M	$ 38,351	$ 218	1%	Skewed by beginning fund balance
Don Pedro Sewer	$ 152,548	$ 70,801	46%	
Hornitos Lighting	$ 40,176	$ 3,138	8%	Skewed by beginning fund balance
Mariposa Lighting	$ 508,965	$ 42,164	8%	Skewed by beginning fund balance
Mariposa Parking	$ 30,485	$ 4,541	15%	Skewed by beginning fund balance
Mariposa Pines Sewer	$ 55,029	$ 31,532	57%	
Wawona Service Area	$ 153,079	$ 37,904	25%	Skewed by beginning fund balance
Yosemite West Maintenance	$ 1,393,339	$ (32,816)	-2%	Skewed by beginning fund balance
Asset Forfeiture	$ 37	$ -	0%	No qualifying cases
Sheriff - Asset Forfeiture	$ 9	$ -	0%	No qualifying cases
CHDP CHILD HLTH & DISABIL	$ 5,407	$ 36	1%	Expected revenue to occur Q3 and Q4

Attachment: FY21 Revenue Mid Year Analysis (RES-2021-92 : Approve FY20-21 Mid-Year Budget

MID YEAR ANALYSIS -- FISCAL YEAR 2020-21				
REVENUE AS OF DECEMBER 31, 2020				
	20-21	20-21	20-21	
	Adjusted	Actual	Percent	
Department / Fund	Budget	Collected	Collected	Explanation
SO - Asset Forfeiture	$ 9,723	$ 65	1%	No qualifying cases
Community Child Abuse Prevtn	$ 30,516	$ (2)	0%	Federal funding received in Q3/Q4
SLESF	$ 173,989	$ 114,182	66%	
CDBG	$ 203,465	$ 1,360	1%	Skewed by beginning fund balance
Community Energy Grants	$ 532,866	$ 167,680	31%	
CSBG GRANTS	$ 40,000	$ 33,398	83%	This grant is based on calendar year and initially expired 12/31/20 so the revenue and spending was on track to finish in December.
TANF Incentives	$ 91,894	$ -	0%	Skewed by beginning fund balance
Senior Services	$ 26,723	$ 635	2%	Transfers occur in Q3/Q4
Senior Nutrition C-1	$ 265,281	$ 63,198	24%	Transfers occur in Q3/Q4
Senior Nutrition C-2	$ 149,966	$ 35,015	23%	Transfers occur in Q3/Q4
Forest Reserve	$ 80,905	$ 290	0%	Skewed by beginning fund balance; transfers occur in Q3/Q4
JJCPA - Probation	$ 256,481	$ 51,617	20%	Skewed by beginning fund balance
HUD Continuum of Care	$ 57,865	$ 39,703	69%	
Rural Crime Prevention	$ 960,661	$ 237,893	25%	Skewed by beginning fund balance - Awaiting quarterly payments
DNA Identification	$ 49,516	$ 1,982	4%	Skewed by beginning fund balance
Domestic Violence - Probation	$ 623	$ 30	5%	Estimate based on previous year, collections down due to COVID
County Inmate Welfare	$ 95,441	$ 15,582	16%	Reduced inmate population due to COVID
Incentives - Social Services	$ 19,209	$ 126	1%	Skewed by beginning fund balance
Assistance Advance - Services and Supplies	$ 2,183,134	$ 850,953	39%	
Administration Advance	$ 7,707,005	$ 4,367,716	57%	
Assistance Repayment	$ 6,600	$ 435	7%	Majority of revenue is realignment transfer that will only be done if needed.
Cash Difference - Tax Coll.	$ 1,794	$ 405	23%	Skewed by beginning fund balance
Department of Justice - DA	$ 7,694	$ 299	4%	Skewed by beginning fund balance
Probation Drug Program	$ 6,800	$ 276	4%	Estimate based on previous year, collections down due to COVID
Tobacco Settlement	$ 183,712	$ 183	0%	Revenue received in Q3/Q4
Sund Pelosso Advance	$ 13,282	$ -	0%	Skewed by beginning fund balance and revenue received in Q3/Q4
LAFCo	$ 2,675	$ (21)	-1%	Transfers occur in Q3/Q4
Child Support Advance	$ 604,101	$ 295,907	49%	
Don Pedro Bond Administration	$ 19,248	$ 9,555	50%	
Children's Trust	$ 22,332	$ 158	1%	Transfers occur in Q3/Q4
Finger Print ID - Sheriff	$ 71,537	$ 1,138	2%	Skewed by beginning fund balance - Reduced activity due to COVID
Emergency Medical Service	$ 125,320	$ 5,188	4%	Skewed by beginning fund balance
Recorders Modernization	$ 97,259	$ 14,858	15%	Skewed by beginning fund balance
Drug & Alcohol Prevention	$ 926	$ 315	34%	
Public Administrator	$ 31,207	$ 182	1%	No qualifying cases

Attachment: FY21 Revenue Mid Year Analysis (RES-2021-92 : Approve FY20-21 Mid-Year Budget

MID YEAR ANALYSIS -- FISCAL YEAR 2020-21				
REVENUE AS OF DECEMBER 31, 2020				
	20-21	20-21	20-21	
	Adjusted	Actual	Percent	
Department / Fund	Budget	Collected	Collected	Explanation
Welfare Trust - Social Services	$ 3,430	$ -	0%	Skewed by beginning fund balance
Alcohol Program	$ 1,148	$ 260	23%	Skewed by beginning fund balance
Tobacco Cessation	$ 197,341	$ 75,143	38%	
Recorders Cash Difference	$ 3,367	$ 599	18%	Skewed by beginning fund balance
Criminalistics Lab	$ 20,022	$ 372	2%	Skewed by beginning fund balance
Micro-Conversion	$ 24,704	$ 3,331	13%	Skewed by beginning fund balance
Tax Collectors Cost	$ 121,812	$ 2,050	2%	Skewed by beginning fund balance
Realignment - Health	$ 785,020	$ 462,967	59%	
Realignment - Mental Health	$ 2,193,538	$ 711,574	32%	
Realignment - Social Services	$ 5,821,057	$ 1,330,078	23%	Skewed by beginning fund balance
Vital Health - Recorder	$ 59,781	$ 2,029	3%	Skewed by beginning fund balance
Vital Health - Clerk	$ 2,044	$ 62	3%	Skewed by beginning fund balance
STC Program	$ 25,765	$ 10,094	39%	
Public Health Emerg. Program	$ 132,499	$ 61,896	47%	
Local Enforcement Agency	$ 16,542	$ 16,522	100%	Funding received in Q1/Q2
First Five Visiting PHN	$ 3	$ -	0%	Closing fund
Automated Warrant System	$ 38,805	$ 612	2%	Skewed by beginning fund balance
Mental Health Services Act	$ 3,304,805	$ 979,887	30%	
Mental Health Services Act/PEI	$ 1,140,024	$ 226,501	20%	60% of state MHSA revenue is posted in Q3/Q4
Mental Health Services Act/WET	$ (43,732)	$ -	0%	60% of state MHSA revenue is posted in Q3/Q4
Mental Health Services Act/INN	$ 10,800	$ 56,625	524%	60% of state MHSA revenue is posted in Q3/Q4
Housing Development	$ 70,000	$ -	0%	Revenue was redirected to the NPLH Competive "Mariposa Village" project
IHSS Public Authority	$ 219,528	$ 68,704	31%	
Sheriff - Civil Matters	$ 4,997	$ 714	14%	Skewed by beginning fund balance
Revenue & Recovery - Probation	$ 120,935	$ 21,271	18%	Skewed by beginning fund balance; transfers occur in Q4
Youthful Offender - Probation	$ 245,016	$ 55,785	23%	Skewed by beginning fund balance
SSN Truncation - Recorder	$ 14,605	$ 3,114	21%	Skewed by beginning fund balance
Hazardous Material Cleanup	$ 1,746	$ -	0%	Skewed by beginning fund balance
Sheriff Civil GC26746	$ 1,468	$ 246	17%	Skewed by beginning fund balance
Micro-Enterprise Grant	$ 78,935	$ 650	1%	Skewed by beginning fund balance
Business Relief Grant	$ 78,500	$ -	0%	Transfers occur in Q3/Q4
CMSP Wellness	$ 358	$ -	0%	Grant on a Federal Year Calendar. Expected in Q4
Prop 56 Tobacco Tax	$ 214,357	$ 75,000	35%	
Pandemic Influenza	$ 66,147	$ 31,844	48%	
Library Private Donation	$ 366,776	$ 2,429	1%	Skewed by beginning fund balance
Community Corrections	$ 2,869,305	$ 306,208	11%	Skewed by beginning fund balance

MID YEAR ANALYSIS -- FISCAL YEAR 2020-21				
REVENUE AS OF DECEMBER 31, 2020				
	20-21	20-21	20-21	
	Adjusted	Actual	Percent	
Department / Fund	Budget	Collected	Collected	Explanation
2011 Realignment - Human Services	$ 3,606,941	$ 1,103,190	31%	
Community Corrections SB678	$ 701,730	$ 51,972	7%	Skewed by beginning fund balance
CalMMET Grant - Sheriff	$ 144,273	$ 57,924	40%	
State Parole DA Section 30027	$ 87,012	$ 8,424	10%	Skewed by beginning fund balance
DEA Grant Investigations	$ 78,647	$ 64,399	82%	Skewed by beginning fund balance; federal funding received in Q3/Q4
Bailiff	$ 276,029	$ 95,240	35%	
Public Protection - Drug Task Force	$ 252,105	$ 19,971	8%	This Revenue is actual for Q4 of 19/20 ; Revenue reimbursement will occur in Q3/Q4
Fire Special Grants	$ 153,324	$ 12,073	8%	Skewed by beginning fund balance; Revenue received in Q3/Q4
Technical Services Reserve	$ 981,051	$ -	0%	Skewed by beginning fund balance
Tree Mortality	$ -	$ 69,875		Wrapping up the grant; must spend down by February 2020
Whole Person Care MHSA	$ 970,188	$ -	0%	Revenue received in Q3 and claimed in two lump sum reimbursements
MID Settlement	$ 1,674,020	$ 6,779	0%	Skewed by beginning fund balance
Emergency Planning Grant OES	$ 261,931	$ -	0%	Transfers occur in Q3/Q4
Tobacco Law Enforcement	$ 43,695	$ 199	0%	Skewed by fund balance; Revenue reimbursement will occur in Q3 and Q4
JBCT Grant	$ 410,438	$ 64,263	16%	Skewed by fund balance; Revenue reimbursement will occur in Q3 and Q4
County Assessor's Grant	$ 521,531	$ 227,495	44%	
Transient Occupancy Tax 2%	$ 2,321,510	$ 1,022,331	44%	
CMSP Grant	$ 120,000	$ 96,000	80%	
DISTANCE LEARN & TELE MED	$ 252,647	$ -	0%	Revenue received in Q3 and claimed in a single invoice reimbursement
CREATIVE PLACEMAKING MPSA	$ 31,208	$ 31,208	100%	Contract completed
Homeless Housing - WPC	$ 1,021,011	$ 6,855	1%	Fund did not exist when budget was approved
PUBLIC SAFE POWER SHUTOFF	$ -	$ 14		Fund is shutting off
AIDS/HIV SURVEILLANCE	$ 3,000	$ (4)	0%	Expect to receive revenue in Q3 and Q4
CCS CALIF CHILDRENS SVCS	$ 96,820	$ (100)	0%	Expect to receive revenue in Q3 and Q4
AIR POLLUTION SUBVENTION	$ 64,955	$ 5,750	9%	Expect to receive revenue in Q3 and Q4
CHDP CHILD HLTH & DISABIL	$ 74,837	$ (47)	0%	Expect to receive revenue in Q3 and Q4
MCAH MTRNL CHILD & ADOLES	$ 109,212	$ (110)	0%	Expect to receive revenue in Q3 and Q4
IAP IMMUNIZATION ASSIST	$ 52,079	$ (34)	0%	Expect to receive revenue in Q3 and Q4
CUPA CERT UNIFIED PRO AGY	$ 110,000	$ 67,399	61%	
CAL-FRESH	$ 150,000	$ (168)	0%	Expect to receive revenue in Q3 and Q4
COHP CALIF ORAL HLTH PLAN	$ 144,088	$ (104)	0%	Expect to receive revenue in Q3 and Q4
CLPPP CHILD LEAD PREVENT	$ 71,305	$ (75)	0%	Expect to receive revenue in Q3 and Q4
WOODSMOKE REDUCTION	$ 28,605	$ (24)	0%	Expect to receive revenue in Q3 and Q4
CARB CALIF AIR RESOURCES	$ 35,352	$ 15,349	43%	
HCPCFC HLTH CHILD/FOSTER	$ 37,124	$ (20)	0%	Expect to receive revenue in Q3 and Q4
SAFE GRANT	$ 20,000	$ (29)	0%	Expect to receive revenue in Q3 and Q4

MID YEAR ANALYSIS -- FISCAL YEAR 2020-21				
REVENUE AS OF DECEMBER 31, 2020				
	20-21	20-21	20-21	
	Adjusted	Actual	Percent	
Department / Fund	Budget	Collected	Collected	Explanation
COVID-19 CDSS	$ -	$ -		Grant is complete.
COVID-19 HHAP/COC	$ 2,361	$ 13,927	590%	Received final payment on completed grant.
COVID-19 CMSP	$ -	$ (50,000)		Budget inadvertently left out of September adjustment entries. Mid year entries will correct.
COVID-19 CDPH/PHEP	$ 167,158	$ -	0%	Final grant payment due to be received in Q4.
IDP INFECTIOUS DISEASE	$ 30,309	$ (23)	0%	Expect to receive revenue in Q3 and Q4
CAP INCENTIVES	$ 138,194	$ 139,007	101%	Expect to receive revenue in Q3 and Q4
CAPP	$ 15,924	$ (17)	0%	Expect to receive revenue in Q3 and Q4
PBE	$ 281,368	$ 2,557	1%	Expect to receive revenue in Q3 and Q4
CARES ACT	$ 546,674	$ 1,844,494	337%	Large negative fund balance from prior year expenses is reducing the Adjusted Budget amount.
TERRA COUNT	$ 100,000	$ -	0%	Grant work was delayed due to Covid 19 and methodology issues between the state and our contractor
SALC	$ 257,921	$ -	0%	Grant work was delayed due to Covid 19
ELC ENHANCING DETECTION	$ -	$ 403,133		The Budget Action for this grant was approved by the Board 12/15/2020 (Res. 2020-724), and the grant did not become operational until August. We are submitting claims and journalling payroll to receive funding reimbursements on pace with the budget by year end.
ELC CARES	$ 158,948	$ -	0%	The grant agreement was not fully executed until 1/21/21. Claims dating back to July 2020 have now been submitted, and we expect to receive revenue by the end of February.
Building	$ 1,169,805	$ 373,902	32%	
Solid Waste & Recycling	$ 2,896,282	$ 1,039,283	36%	
Solid Waste Closure	$ 1,793,760	$ 11,103	1%	Skewed by beginning fund balance
Transit	$ 587,744	$ 31,990	5%	Transfers occur in Q3/Q4
Airport Operations	$ 95,700	$ 33,352	35%	
Airport Planning Grant	$ 183,714	$ -	0%	New project to begin in spring. Reimbursement will be received incremetally through closeout.
Plant Operations	$ 439,818	$ 137,331	31%	
Airport Apron Rehabilitation	$ -	$ -		Project complete; reimbusement package denied. Resubmitting
Fleet Maintenance	$ 1,457,111	$ 509,650	35%	
Solid Waste Equipment Replacement	$ 146,638	$ 11,212	8%	Skewed by beginning fund balance
Fire Vehicle Replacement	$ 4,104,145	$ 189,676	5%	Skewed by beginning fund balance
Vehicle Replacement	$ 1,655,125	$ 193,641	12%	Skewed by beginning fund balance
Heavy Equipment Replacement	$ 1,321,239	$ 113,672	9%	Skewed by beginning fund balance
General Insurance	$ 1,906,292	$ 1,269,754	67%	
Workers' Compensation	$ 1,798,035	$ 904,097	50%	
Liability Insurance	$ 748,800	$ 373,478	50%	

MID YEAR ANALYSIS -- FISCAL YEAR 2020-21				
REVENUE AS OF DECEMBER 31, 2020				
	20-21	20-21	20-21	
	Adjusted	Actual	Percent	
Department / Fund	**Budget**	**Collected**	**Collected**	**Explanation**
Yosemite West Bond 2004	$ 381,347	$ 174,702	46%	
Yosemite West Bond Reserve	$ 171,280	$ (291)	0%	Skewed by beginning fund balance
Yosemite West Renewal & Extension	$ 132,029	$ 18,867	14%	Bond fund
Don Pedro Bond 2006	$ 407,240	$ 307,831	76%	Bond fund
Don Pedro Bond Reserve	$ 37,595	$ 30,812	82%	Bond fund
Special Assessment - CSA#3	$ 553,196	$ 667	0%	Skewed by beginning fund balance; transfers occur in Q4
CAPITAL IMPROVEMENT FUNDS				
Land, Building, and Improvements	$ 110,793	$ -	0%	Skewed by beginning fund balance
Courthouse Construction	$ 342,714	$ 12,430	4%	Skewed by beginning fund balance
Criminal Justice Fund (MCCJF) Construction	$ 106,347	$ 3,104	3%	Skewed by beginning fund balance
PTMISA Projects	$ 394,191	$ 2,638	1%	Skewed by beginning fund balance
Sidewalk Projects	$ 747,838	$ -	0%	Projects are inactive
County Road Projects	$ 1,225,000	$ -	0%	Skewed by beginning fund balance which was negative $146,605
Bridge Replacement	$ 4,732,649	$ 425,117	9%	Revenue received on a reimbursement basis; payments often delayed; expenditures are 100% reimbursed
Coulterville Drainage	$ 55,360	$ -	0%	Project complete. Remaining balance to be accounted by Economic Development
Fire Station Improvements	$ 232,569	$ -	0%	Skewed by beginning fund balance
Bridge Maintenance	$ 138,742	$ 8,663	6%	Skewed by beginning fund balance and receipt of federal revenue from prior fiscal year but not budgeted in current fiscal year
Storm Projects	$ 702,613	$ -	0%	Bull Creek and Ben Hur close-outs are being prepared for billing
March 2018 Storms	$ 1,357,519	$ -	0%	Skewed by beginning fund balance
March 2019 Storms	$ 455,559	$ -	0%	Skewed by beginning fund balance
Coulterville Utility Capital	$ 2,272	$ 15	1%	Skewed by beginning fund balance
Don Pedro Sewer Utility Capital	$ 1,481	$ 2,025	137%	A change in practice of posting standby fee revenue in this fund, which is inconsistent with budget and therefore has inflated revenue collection beyond budgeted amounts.
Mariposa Pines Utility Capital	$ 120,842	$ 997	1%	Skewed by beginning fund balance
Yosemite West Utility Capital	$ 123,182	$ 9,081	7%	Skewed by beginning fund balance
Downtown Revitalization	$ 6,293,929	$ -	0%	Reimbursement package for this project has not yet been prepared
Don Pedro Waste Water TP	$ 12,220	$ -	0%	Skewed by beginning fund balance
Cathey's Valley Park Expansion	$ 10,221	$ -	0%	Skewed by beginning fund balance
ORACLE ERP	$ 1,630,002	$ -	0%	Revenue received on loan as reimbursement as expenses are incurred on a milestone basis

MID YEAR ANALYSIS -- FISCAL YEAR 2020-21				
APPROPRIATIONS AS OF DECEMBER 31, 2020				
	20-21	20-21	20-21%	
	Adjusted	Actual	Percent	
Department / Fund	Budget	Expended	Expended	Explanation
GENERAL FUND				
Board of Supervisors	$ 845,210	$ 448,352	53%	
Administration	$ 721,388	$ 373,000	52%	
Audits	$ 60,250	$ -	0%	Audits have not yet been paid
Contingency - General	$ 382,517	$ -	0%	Contingency should be at least 1% of general fund appropriations or $642K - as it is used the budget is reduced - at midyear 60% of required contingency remains
Assessment Appeals	$ 700	$ -	0%	Done on an as needed basis; none occurred in Q1/Q2
Auditor	$ 1,158,253	$ 608,728	53%	
Treasurer/Tax Collector	$ 544,187	$ 290,413	53%	
Assessor/Recorder	$ 1,122,217	$ 555,571	50%	
County Counsel	$ 644,441	$ 325,533	51%	
Human Res./Risk Management	$ 567,764	$ 263,670	46%	
County Clerk	$ 171,398	$ 88,906	52%	
Elections	$ 365,616	$ 172,934	47%	
Facilities Maintenance	$ 2,069,004	$ 961,824	46%	
Economic Development	$ 135,046	$ 71,445	53%	
Community & Cultural Events	$ 351,890	$ 199,175	57%	
Surveyor/Engineering	$ 687,183	$ 383,043	56%	
Technical Services	$ 1,489,256	$ 569,624	38%	
Interfund Transfers	$ 1,068,320	$ 105,139	10%	Transfers typically occur in Q4
Grand Jury	$ 23,670	$ 12,246	52%	
Indigent Defense	$ 525,000	$ 197,618	38%	
Child Support Services	$ 605,101	$ 265,587	44%	
DA - Prosecution	$ 1,324,307	$ 677,474	51%	
Victim Witness	$ 439,341	$ 203,001	46%	
Sheriff	$ 8,933,728	$ 4,606,236	52%	
Boating Safety	$ 339,863	$ 180,152	53%	
Jail	$ 3,319,966	$ 1,579,342	48%	
Juvenile Detention	$ 141,576	$ 72,709	51%	
Probation	$ 1,300,894	$ 723,723	56%	
Fire	$ 3,035,580	$ 827,900	27%	CalFire contract payments are delayed; awaiting Q2, Q3 invoices
Agricultural Commissioner	$ 556,582	$ 185,955	33%	
Planning	$ 1,790,142	$ 896,737	50%	
COVID	$ -	$ 113,110		County does not typically plan and budget for disasters
Public Works Administration	$ 617,423	$ 332,098	54%	

MID YEAR ANALYSIS -- FISCAL YEAR 2020-21				
APPROPRIATIONS AS OF DECEMBER 31, 2020				
	20-21	20-21	20-21%	
	Adjusted	Actual	Percent	
Department / Fund	**Budget**	**Expended**	**Expended**	**Explanation**
Public Works Executive	$ 393,886	$ 193,904	49%	
Surveyor	$ 187,993	$ 52,596	28%	Revenue reduced at midyear - engineering to receive revenue previously budgeted for surveyor
Regional Transit Services	$ 191,000	$ 143,250	75%	Q1-Q3 payments made in first half of the year
Health	$ 1,131,728	$ 427,051	38%	
Behavioral Health	$ 5,444,639	$ 2,405,692	44%	
Alcohol & Drug	$ 1,242,240	$ 475,823	38%	
Environmental Health	$ 694,013	$ 326,197	47%	
Social Services	$ 7,822,623	$ 3,437,090	44%	
Social Service Programs	$ 3,280,223	$ 1,561,971	48%	
Human Services Administration	$ 1,237,339	$ 1,060,319	86%	December Interfund transfers not yet posted. Transfers will cover all expenditures by year end.
Veterans' Services	$ 43,871	$ 17,699	40%	
Employment & Comm Service	$ 6,174,711	$ 2,432,565	39%	
Library	$ 598,835	$ 331,941	55%	
Cooperative Extension Services	$ 205,431	$ 96,403	47%	
Parks & Recreation	$ 295,714	$ 189,043	64%	
TOTAL:	$ 64,282,059	$ 29,442,789	46%	
OTHER FUNDS				
Local Transportation	$ 551,833	$ -	0%	Transfer out will occur in Q4
State Transit Assistance	$ 255,529	$ -	0%	Transfer out will occur in Q4
Transportation Planning	$ 506,626	$ 102,293	20%	Will expend large allocation for professional services in Q3/Q4; transfers out occur in Q4
Pedestrian Bikeway	$ 166,960	$ -	0%	Place holder for funds to be used on future projects
Roads	$ 5,907,149	$ 1,859,139	31%	
Fish & Game	$ 16,995	$ -	0%	No new funding requests
Law Library	$ 10,818	$ 4,151	38%	
Yosemite West Bond Admin.	$ 11,938	$ 4,795	40%	
CSA #3 Fire Assessment	$ 1,651,327	$ 15,478	1%	This fund retains revenue collected from fire assessments for the future purchase of fire equipment and for capital improvements to fire statons
Don Pedro Fire Protection	$ 135,838	$ 4,419	3%	The fire protection contract expense is paid in Q4 (40%); the balance is a placeholder for future projects
Water Agency	$ 189,797	$ 2,567	1%	Funds held for future projects
Coulterville Lighting	$ 56,593	$ 2,832	5%	Other than utilities, expenditure in this category is based on need

MID YEAR ANALYSIS -- FISCAL YEAR 2020-21				
APPROPRIATIONS AS OF DECEMBER 31, 2020				
	20-21	20-21	20-21%	
	Adjusted	Actual	Percent	
Department / Fund	**Budget**	**Expended**	**Expended**	**Explanation**
Coulterville Service Area	$ 163,692	$ 70,292	43%	
Don Pedro 1M	$ 38,351	$ 618	2%	No expense incurred thus far other than Tuolumne County tax
Don Pedro Sewer	$ 152,548	$ 87,801	58%	
Hornitos Lighting	$ 40,176	$ 1,223	3%	Other than utilities, expenditure in this category is based on need
Mariposa Lighting	$ 508,965	$ 6,592	1%	Other than utilities, expenditure in this category is based on need
Mariposa Parking	$ 30,485	$ 3,607	12%	Other than lease payments, expenditure is based on need
Mariposa Pines Sewer	$ 55,029	$ 17,423	32%	
Wawona Service Area	$ 153,079	$ 51,859	34%	
Yosemite West Maintenance	$ 1,393,339	$ 281,955	20%	Contingency designation as well as other appropriations increased to balance fund when an increase in utility rates was approved. When the rate increase was successfully appealed, both revenue and appropriations were reduced substantially.
Asset Forfeiture	$ 37	$ -	0%	No qualifying cases
Sheriff - Asset Forfeiture	$ 9	$ -	0%	No qualifying cases
DA - Asset Forfeiture	$ 5,407	$ -	0%	Holding fund for assets seized pending further Court procedure
SO - Asset Forfeiture	$ 9,723	$ -	0%	No qualifying cases
Community Child Abuse Prevtn	$ 30,516	$ 4,356	14%	Vendor has been slow to bill this fiscal year; should use all budget
SLESF	$ 173,989	$ 101,384	58%	
CDBG	$ 203,465	$ -	0%	Revolving loan fund; no current loan applications received
Community Energy Grants	$ 532,866	$ 175,664	33%	
CSBG Grants	$ 40,000	$ 33,398	83%	This grant is based on calendar year and initially expired 12/31/20 so the revenue and spending was on track to finish in December.
TANF Incentives	$ 91,894	$ 3,063	3%	Funds only used as needed
Senior Services	$ 26,723	$ 14,038	53%	
Senior Nutrition C-1	$ 265,281	$ 115,410	44%	
Senior Nutrition C-2	$ 149,966	$ 64,719	43%	
Forest Reserve	$ 80,905	$ -	0%	Currently working on noticing process to determine appropriation of funds
JJCPA	$ 256,481	$ 50,479	20%	Funds held for future projects; transfers out occur in Q4
HUD Continuum of Care	$ 57,865	$ 32,827	57%	
Rural Crime Prevention	$ 960,661	$ 285,128	30%	
DNA Identification	$ 49,516	$ 144	0%	MINIMAL PROGRAM ACTIVITY / VACANT POSITION
Domestic Violence - Probation	$ 623	$ -	0%	Payment to Mountain Crisis made in Q4
County Inmate Welfare	$ 95,441	$ 6,369	7%	Inmate population reduced due to COVID
Incentives - Social Services	$ 19,209	$ -	0%	Placeholder-only used as needed
Assistance Advance	$ 2,183,134	$ 736,614	34%	
Administrative Advance	$ 7,707,005	$ 1,755,550	23%	Only Q1 claim submitted/transferred

MID YEAR ANALYSIS -- FISCAL YEAR 2020-21				
APPROPRIATIONS AS OF DECEMBER 31, 2020				
	20-21	20-21	20-21%	
	Adjusted	Actual	Percent	
Department / Fund	**Budget**	**Expended**	**Expended**	**Explanation**
Assistance Repayment	$ 6,600	$ 126	2%	Waiting for billing from the state
Cash Difference - Tax Collector	$ 1,794	$ 402	22%	Slowly accumulating fund - expenditures made as needed
Department of Justice - DA	$ 7,694	$ -	0%	No program activity
Probation Drug Program	$ 6,800	$ -	0%	No program activity
Tobacco Settlement	$ 183,712	$ -	0%	Transfers out will occur in Q4
Sund Pelosso Advance	$ 13,282	$ 1,800	14%	Annual invoice in the amount of $10,000.00 paid in January 2021.
LAFCo	$ 2,675	$ 1,249	47%	
Child Support Advance	$ 604,101	$ -	0%	Transfers out will occur in Q4; Amounts driven by activity
Don Pedro Bond Administration	$ 19,248	$ 4,659	24%	Bond fund
Children's Trust	$ 22,332	$ 9,234	41%	
Finger Print ID	$ 71,537	$ -	0%	No program activity
Emergency Medical Service	$ 125,320	$ -	0%	No program activity
Recorders Modernization	$ 97,259	$ 20,345	21%	Minimal program activity
Drug & Alcohol Prevention	$ 926	$ -	0%	Transfers out occur in Q3/Q4
Public Administrator	$ 31,207	$ -	0%	No program activity
Welfare Trust	$ 3,430	$ 368	11%	No program activity
Alcohol Program	$ 1,148	$ -	0%	Transfers out occur in Q3/Q4
Tobacco Cessation	$ 197,341	$ 64,044	32%	
Recorder Cash Difference	$ 3,367	$ 356	11%	Minimal program activity
Criminalistics Lab	$ 20,022	$ -	0%	Minimal program activity
Micro-Conversion - Recorder	$ 24,704	$ 1,596	6%	Minimal program activity
Tax Collector Cost	$ 121,812	$ 5,034	4%	Minimal program activity
Realignment - Health	$ 785,020	$ -	0%	Transfers to occur 3rd & 4th Qtrs
Realignment - Mental Health	$ 2,193,538	$ 7,608	0%	This is a good thing. The mental health fund has not required the usual Realignment transfers out because of increased Medi-Cal revenue received. The budget has been reduced in this mid-year budget action to ($1,002,336)
Realignment - Social Services	$ 5,821,057	$ 1,842,803	32%	
Vital Health - Recorder	$ 59,781	$ -	0%	No program activity
Vital Health - Clerk	$ 2,044	$ -	0%	No program activity
STC Program	$ 25,765	$ 3,216	12%	Training on hold due to COVID
Public Health Emerg. Program	$ 132,499	$ 34,133	26%	Transfers scheduled for Q3 / Q4
Local Enforcement Agency	$ 16,542	$ 6,723	41%	
First Five Visiting PHN	$ 3	$ -	0%	Scheduled transfer will occur in Q3/Q4
Automated Warrant System	$ 38,805	$ -	0%	No program activity
Mental Health Services Act	$ 3,304,805	$ 1,261,953	38%	

MID YEAR ANALYSIS -- FISCAL YEAR 2020-21				
APPROPRIATIONS AS OF DECEMBER 31, 2020				
	20-21	20-21	20-21%	
	Adjusted	Actual	Percent	
Department / Fund	Budget	Expended	Expended	Explanation
Mental Health Services Act/PEI	$ 1,140,024	$ 196,653	17%	20-21 PEI expenditures have been reduced because of the discontinuance/non-renewal of high dollar contracts with the school district. Our MHSA PEI unspent funds are now reduced to zero, allowing us to cut back these contracts.
Mental Health Services Act/WET	$ -	$ -		
Mental Health Services Act/INN	$ 10,800	$ 6,529	60%	
Housing Development	$ 70,000	$ -	0%	Revenue sent directly to non-profit partner; budget corrections will reflect lower revenue and expenses
IHSS Public Authority	$ 219,528	$ 56,152	26%	Only Q1 claim submitted/transferred
Sheriff - Civil Matters	$ 4,997	$ -	0%	No program activity
Revenue & Recovery - Probation	$ 120,935	$ 48,756	40%	
Youthful Offenders - Probation	$ 245,016	$ 44,144	18%	Minimal services activity
SS# Truncation - Recorder	$ 14,605	$ -	0%	No program activity
Hazardous Material Cleanup	$ 1,746	$ -	0%	No incidents to date
Sheriff Civil GC26746	$ 1,468	$ -	0%	No program activity
Micro-Enterprise Assistance Grant	$ 78,935	$ -	0%	No program activity
Business Relief Program	$ 78,500	$ 333	0%	CDBG approval was delayed - forgivable loans will be distributed in Q3 and Q4
CMSP Wellness	$ 358	$ -	0%	Transfers scheduled for Q3 / Q4
Prop 56 Tobacco Tax	$ 214,357	$ 64,386	30%	
Pandemic Influenza	$ 66,147	$ 15,938	24%	The majority of the transfers will occur in Q3/Q4
Library Private Donation	$ 366,776	$ -	0%	No project activity
Community Corrections Program	$ 2,869,305	$ 339,944	12%	Minimal program activity; Transfers will occur in Q3/Q4
2011 Realignment - Human Services	$ 3,606,941	$ 1,060,902	29%	State revenue payments delayed due to COVID. Anticipating they will increase prior to year end.
Community Corrections SB678	$ 701,730	$ 148,344	21%	Services and supply costs not incurred as budgeted
CalMMET Grant - Sheriff	$ 144,273	$ 66,602	46%	
State Parole DA Section 30027	$ 87,012	$ -	0%	Transfers will occur in Q4; planned projects pending approval
DEA Grant Investigations	$ 78,647	$ 3,705	5%	Transfer out will occur in Q4
Bailiff	$ 276,029	$ 160,649	58%	
Public Protection - Drug Task Force	$ 252,105	$ -	0%	Invoiced Q1 waiting on payment from the state to transfer funds
Fire Special Grants	$ 153,324	$ 41,944	27%	Used as needed to fund safety equipment.
Technical Services Reserve	$ 981,051	$ 981,051	100%	Transfer out will occur in Q4
Tree Mortality	$ -	$ -		
Whole Person Care Mental Health	$ 970,188	$ 198,641	20%	The program ramped down on December 31, 2020. We are processing final invoices and payables this month. The budget anticipated DHCS would extend the program to a 6th calendar year, but this did not happen perhaps due to COVID.

MID YEAR ANALYSIS -- FISCAL YEAR 2020-21				
APPROPRIATIONS AS OF DECEMBER 31, 2020				
	20-21	20-21	20-21%	
	Adjusted	Actual	Percent	
Department / Fund	**Budget**	**Expended**	**Expended**	**Explanation**
MID Settlement	$ 1,674,020	$ 928,660	55%	
Emergency Planning Grant - Public Pro	$ 261,931	$ 97,602	37%	
Tobacco Law Enforcement	$ 43,695	$ 19,907	46%	
JBCT Grant	$ 410,438	$ 24,011	6%	Transfer out will occur in Q4; Large Invoices from contractors are expected in Q3-Q4
County Assessor's Grant	$ 521,531	$ -	0%	Project delayed by COVID and vendor issues - funds will be spent when project is done
Transient Occupancy Tax 2%	$ 2,321,510	$ 947,341	41%	
CMSP Grant	$ 120,000	$ 62,121	52%	
Distance Learning Tele Med	$ 252,647	$ -	0%	Expenses are claimed in a single invoice lump in Q3 or Q4
Creative Placemaking	$ 31,208	$ 31,208	100%	Contract is complete
Homeless Housing WPC	$ 1,021,011	$ 4,241	0%	Expenditures in this fund will be charged in Q3 or Q4 ($375,000 + $600,000 for the St. Andrews Chalets and No Place Like Home "Creekside Terrace" Projects)
AIDS / HIV	$ 3,000	$ 1,920	64%	
CCS California Children's Services	$ 96,820	$ 25,407	26%	Program off to a slow start due to vacancies
AIR POLLUTION SUBVENTION	$ 64,955	$ 25,195	39%	
CHDP CHILD HLTH & DISABIL	$ 74,837	$ 19,333	26%	Program off to a slow start due to vacancies
MCAH MTRNL CHILD & ADOLES	$ 109,212	$ 45,598	42%	
IAP IMMUNIZATION ASSIST	$ 52,079	$ 13,525	26%	Program off to a slow start due to vacancies
CUPA CERT UNIFIED PRO AGY	$ 110,000	$ 52,863	48%	
CAL-FRESH	$ 150,000	$ 66,946	45%	
COHP CALIF ORAL HLTH PLAN	$ 144,088	$ 40,834	28%	Program off to a slow start due to vacancies
CLPPP CHILD LEAD PREVENT	$ 71,305	$ 30,704	43%	
WOODSMOKE REDUCTION	$ 28,605	$ 9,991	35%	
CARB CALIF AIR RESOURCES	$ 35,352	$ 24,246	69%	
HCPCFC HLTH CHILD/FOSTER	$ 37,124	$ 8,422	23%	Program off to a slow start due to vacancies
SAFE GRANT	$ 20,000	$ 12,396	62%	
COVID-19 CDSS	$ -	$ 32,340		Final invoice for grant. Will create mid year entry to budget.
COVID-19 HHAP/COC	$ 2,361	$ 2,362	100%	Grant expired on June 30, 2020 and is fully expended.
COVID-19 CDPH/PHEP	$ 167,158	$ 142,519	85%	Grant expires March 31, 2021. Expending all funds prior to expiration.
IDP INFECTIOUS DISEASE	$ 30,309	$ 9,669	32%	
CAP INCENTIVES	$ 138,194	$ 8,305	6%	Expenses expected Q3 and Q4
CAPP	$ 15,924	$ 7,196	45%	
PBE	$ 281,368	$ 234,313	83%	Majority of grant expenses occured Q1 and Q2
CARES ACT	$ 546,674	$ 256,786	47%	
TERRA COUNT	$ 100,000	$ -	0%	Pending
SALC	$ 257,921	$ -	0%	Pending

MID YEAR ANALYSIS -- FISCAL YEAR 2020-21				
APPROPRIATIONS AS OF DECEMBER 31, 2020				
	20-21	20-21	20-21%	
	Adjusted	Actual	Percent	
Department / Fund	**Budget**	**Expended**	**Expended**	**Explanation**
ELC ENHANCING DETECTION	$ -	$ 11,206		The Budget Action for this grant was approved by the Board 12/15/2020 (Res. 2020-724), and the grant did not become operational until August. We are submitting claims and journalling payroll that will put this fund on pace with the budget.
ELC CARES	$ 158,948	$ 102,551	65%	
Building	$ 1,169,805	$ 464,889	40%	
Solid Waste & Recycling	$ 2,896,282	$ 1,329,325	46%	
Solid Waste Closure	$ 1,793,760	$ -	0%	No project activity
Transit	$ 587,744	$ 146,144	25%	Transfers made in Q3 and Q4
Airport Operations	$ 95,700	$ 40,058	42%	
Airport Planning Grant	$ 183,714	$ -	0%	The AIP consultant fees will fully expend this account this fiscal year
Plant Operations	$ 439,818	$ 224,954	51%	
Fleet Maintenance	$ 1,457,111	$ 733,589	50%	
Solid Waste Equipment Replacement	$ 146,638	$ -	0%	Holding account; Expenditures anticipated in Q3/Q4
Fire Apparatus Replacement	$ 4,104,145	$ 314,768	8%	Holding account. Expensed as needed.
Vehicle Replacement	$ 1,655,125	$ 1,050,638	63%	
Heavy Equipment Replacement	$ 1,321,239	$ 178,116	13%	Holding account; Expenditures anticipated in Q3/Q4
General Insurance	$ 1,906,292	$ 1,725,335	91%	Expenses incorrectly coded to this fund; corrections will be made in Q3/Q4
Workers' Compensation	$ 1,798,035	$ 401,225	22%	Claims are hard to estimate; best practices keep a higher balance in this fund than is typically used
Liability Insurance	$ 748,800	$ 164,102	22%	Expenses will be journaled to this fund from General Insurance - spending will be within threshold for variance explanation
Health Building	$ -	$ 36,000		Fund established after the budget was finalized; will be added at midyear
Yosemite West Bond 2004	$ 381,347	$ 114,427	30%	
Yosemite West Bond Reserve	$ 171,280	$ -	0%	Funding held in reserve
YW Renewal and Extension	$ 132,029	$ -	0%	Funding held in reserve
Don Pedro Bond 2006	$ 407,240	$ 90,899	22%	Bond fund
Don Pedro Bond Reserve	$ 37,595	$ -	0%	Funding held in reserve
Special Assessment - CSA#3	$ 553,196	$ 180,510	33%	

MID YEAR ANALYSIS -- FISCAL YEAR 2020-21				
APPROPRIATIONS AS OF DECEMBER 31, 2020				
	20-21	20-21	20-21%	
	Adjusted	Actual	Percent	
Department / Fund	Budget	Expended	Expended	Explanation
CAPITAL IMPROVEMENT PROJECTS				
Land, Building, & Improvements	$ 110,793	$ 9	0%	Several of these projects will be begin in Q3
Courthouse Construction	$ 342,714	$ -	0%	There is no construction project currently planned
MCCJF Construction	$ 106,347	$ -	0%	There is no construction project currently planned
PTMISA Projects	$ 394,191	$ 275,353	70%	
Sidewalk Projects	$ 747,838	$ -	0%	Projects are inactive
County Road Projects	$ 1,225,000	$ 825,563	67%	
Bridge Replacement	$ 4,732,649	$ 514,255	11%	Expenditures for all bridges except Darrah will likely approach 40% of appropriations in FY20; Darrah will be increased by $2m but will not begin construction until Q4 and will continue in FY22
Coulterville Drainage	$ 55,360	$ -	0%	Projects in this fund are complete; funds will be transferred out in Q3/Q4 to close
Firestation Improvements	$ 232,569	$ 15,455	7%	These projects are scheduled for completion this fiscal year
Bridge Maintenance	$ 138,742	$ 3,737	3%	Work is done on an as needed basis
February 2017 Storms	$ 702,613	$ 274,801	39%	
March 2018 Storms	$ 1,357,519	$ 934,671	69%	
March 2019 Storms CDAA	$ 455,559	$ 346,779	76%	Working to address list of actions outlined when relief funds were requested
CSA Utility Capital	$ 2,272	$ -	0%	This is savings account for fund for 314
Don Pedro Sewer Utility Capital	$ 1,481	$ -	0%	Transfer out to fund 316 will occur in Q3
Mariposa Pines Utility Capital	$ 120,842	$ -	0%	This is a holding account; A transfer out to fund 320 will occur Q3/Q4
Yosemite West Utility Capital	$ 123,182	$ -	0%	This is savings account for fund 322
Downtown Revitalization	$ 6,293,929	$ 23,777	0%	Currently starting project design. Project in two phases, Phase One - Streets/infrastructure, Phase Two - Parking Lots. Engineering just finished documentation of easements. Once EDA receives and approves, we can start receiving reimbursements.
Don Pedro WWTP	$ 12,220	$ -	0%	Funds are held over from the original project and can be used for any undone or incomplete projects
Catheys Valley Park Expansion	$ 10,221	$ -	0%	Transfer out in Q4 will close this fund
Oracle ERP	$ 1,630,002	$ 496,259	30%	

Attachment: FY21 Appropriations Mid Year Analysis (RES-2021-92 : Approve FY20-21 Mid-Year Budget

MID-YEAR CHANGE REQUESTS - ALL FUNDS							
FISCAL YEAR 2021							
ACCOUNT NUMBER	BUDGET UNIT	ACCOUNT NAME	INCREASE	DECREASE	BUDGET	REVISED	EXPLANATION
001-0000-301.09-02	GENERAL PURPOSE REVENUE	TRANSIENT OCCUPANCY TAX	$ (319,672)		$ (8,048,666)	$ (8,368,338)	Slight increase to balance general fund, reflecting Oct/Nov numbers when County is in Orange Tier translated to spring
001-0101-411.04-17	Board of Supervisors	Office Expense	$ 4,000		$ 5,500	$ 9,500	Unanticipated expenses with retirements and new supervisor needs
001-0101-411.04-90	Board of Supervisors	Trainings & Seminars		$ 1,500	$ 16,550	$ 15,050	Actual expenses less than anticipated due to use of virtual events
001-0101-411.04-96	Board of Supervisors	Private Vehicle Expense		$ 2,500	$ 3,000	$ 500	No travel due to Covid-19
001-0102-412.01-68	ADMINISTRATION	EXECUTIVE ASSISTANT		$ 13,842	$ 63,278	$ 49,436	Staff on loan to PW a few days a week
001-0107-421.02-30	AUDITOR	OVERTIME	$ 6,797		$ -	$ 6,797	150 Overtime hours paid to Payroll Specialist
001-0107-421.02-44	AUDITOR	CONFIDENTIAL STIPEND	$ 204		$ 9,030	$ 9,234	Confidential Stipend pay that calculates on OT hours paid.
001-0107-421.03-10	AUDITOR	SOCIAL SECURITY	$ 478		$ 42,541	$ 43,019	Social Security that calculates on OT hours paid.
001-0107-421.03-11	AUDITOR	MEDICARE	$ 112		$ 10,298	$ 10,410	Medicare that calculates on OT hours paid.
001-0107-421.03-18	AUDITOR	SDI	$ 700		$ 5,491	$ 6,191	SDI that calculates on OT hours paid.
001-0108-422.04-30	TREASUER/TAX COLLECTOR	RENTS & LEASES-EQUIPMENT	$ 6,000		$ -	$ 6,000	POSTAGE MACHINE
001-0108-422.04-36	TREASUER/TAX COLLECTOR	TAX DOC PRINTING	$ 1,500		$ 16,500	$ 18,000	INCREASED COSTS
001-0109-423.03-03	ASSESSOR RECORDER	UNEMPLOYMENT	$ 1,087		$ -	$ 1,087	
001-0113-431.03-03	COUNTY COUNSEL	UNEMPLOYMENT	$ 7,050		$ -	$ 7,050	
001-0113-431.04-18	COUNTY COUNSEL	PROFESSIONAL SERVICES	$ 26,063		$ 28,000	$ 54,063	To cover legal expenses associated with Yosemite
001-0115-441.04-18	HUMAN RESOURCES	PROFESSIONAL SERVICES	$ 35,000		$ 79,000	$ 114,000	Additional services for Interim HR support
001-0120-452.02-45	COUNTY CLERK	OUT OF CLASS	$ 4,400		$ -	$ 4,400	SR. ACCOUNT CLERK POSTION
001-0120-452.03-03	COUNTY CLERK	UNEMPLOYMENT	$ 30		$ -	$ 30	
001-0121-305.62-13	ELECTIONS	ELECTIONS/REIMBURSEMENTS		$ (32,000)	$ (32,600)	$ (600)	Budgeting error
001-0121-453.02-01	ELECTIONS	EXTRA HELP	$ 738		$ -	$ 738	BALLOT PICK UP FOR GENERAL ELECTION
001-0121-453.02-30	ELECTIONS	OVERTIME	$ 232		$ -	$ 232	GENERAL ELECTION OVERTIME
001-0121-453.04-33	ELECTIONS	ELECTION EXPENSE		$ 12,870	$ 60,000	$ 47,130	SAVINGS ON HOST COMPLIANCE
001-0147-493.04-34	COMMUNITY CULTURAL	VISTOR CENTER OPS	$ 17,334		$ 164,000	$ 181,334	
001-0150-308.11-00	Engineeering	Miscellaneous Revenue	$ (8,202)		$ (1,000)	$ (9,202)	Increase revenue and appropriations for reimbursement for having fronted Nature Bridge expense

Attachment: Mid Year Change Requests Budget Action FY21 Searchable (RES-2021-92 : Approve FY20-21

MID-YEAR CHANGE REQUESTS - ALL FUNDS							
FISCAL YEAR 2021							
ACCOUNT NUMBER	BUDGET UNIT	ACCOUNT NAME	INCREASE	DECREASE	BUDGET	REVISED	EXPLANATION
001-0150-508.04-18	Engineeering	Professional Services	$ 8,202		$ 20,000	$ 28,202	
001-0151-506.03-03	TECHNICAL SERVICES	UNEMPLOYMENT	$ 3,597		$ -	$ 3,597	
001-0151-506.04-81	TECHNICAL SERVICES	SOFTWARE	$ 140,000		$ 230,134	$ 370,134	Phone upgrade will be covered through new software
001-0151-506.04-81	TECHNICAL SERVICES	SOFTWARE	$ 70,000		$ 230,134	$ 300,134	Additional cost of ERP software - error in earlier calculation
001-0151-506.04-81	TECHNICAL SERVICES	SOFTWARE	$ 1,488		$ 230,134	$ 231,622	Additional ZorroSign licenses for behavioral health and sheriff
001-0151-506.04-90	TECHNICAL SERVICES	TRAINING & SEMINARS	$ 3,000		$ 2,000	$ 5,000	Additional training required to keep up with rapidly changing technology environment
001-0151-506.06-73	TECHNICAL SERVICES	PHONE SYSTEM UPGRADE VOIP		$ 140,000	$ 300,000	$ 160,000	Phone upgrade will be covered through new software
001-0161-309.16-00	INTERFUND TRANSFERS	TRANSFER IN		$ (146,674)	$ 2,588,058	$ 2,734,732	To reflect CARES Act Reporting
001-0161-427.07-87	INTERFUND TRANSFERS	TRANSFER OUT	$ 25,000		$ 17,460	$ 42,460	LAFCo
001-0212-517.03-03	D.A./PROSECUTION	UNEMPLOYMENT	$ 13,910		$ -	$ 13,910	
001-0212-517.03-04	D.A./PROSECUTION	ACCRUED BENEFITS	$ 3,609		$ -	$ 3,609	
001-0212-517.04-14	D.A./PROSECUTION	Medical and Lab		$ 2,000	$ 6,000	$ 4,000	Lack of normal lab expenses due to cases being continued, COVID
001-0212-517.04-18	D.A./PROSECUTION	Professional Services	$ 2,000		$ 10,000	$ 12,000	High profile case expenditures on experts
001-0212-517.04-29	D.A./PROSECUTION	Publications/Legal Notice	$ 9,000		$ 15,000	$ 24,000	Up front costs of asset foreture notice publication costs
001-0212-517.04-71	D.A./PROSECUTION	Copier Expense	$ 1,500		$ 4,500	$ 6,000	Overage costs and increased monthly billing amount
001-0212-517.04-88	D.A./PROSECUTION	Fuel Expense		$ 1,500	$ 5,000	$ 3,500	Vehicle in and out of shop, not attending trainings in person
001-0212-517.04-90	D.A./PROSECUTION	Training and Seminars		$ 9,000	$ 20,000	$ 11,000	COVID impacts, unable to attend trainings as normal
001-0215-306.72-01	General Fund	VICTIM-WITNESS/OCJP "VW"	$ (35,044)		$ (299,671)	$ (334,715)	Increase in federal funding between funding years see below revisions
001-0215-518.01-02	Victim Witness	D.A. CHIEF INVESTIGATOR		$ 9,254	$ 12,263	$ 3,009	Only funded through 9/30/2020 per Grant Funding
001-0215-518.04-17	Victim Witness	OFFICE EXPENSES	$ 29,071		$ 30,000	$ 59,071	Large office expense purchase in Q1 of the county fiscal year during federal grant close-out period. Increasing budget to allow for ongoing office expense purchases to meet program goals. Expenses incurred to date support Mass Victimization local needs goals (i.e. radio communcations, gear, portable printers, etc.)

Attachment: Mid Year Change Requests Budget Action FY21 Searchable (RES-2021-92 : Approve FY20-21

MID-YEAR CHANGE REQUESTS - ALL FUNDS							
FISCAL YEAR 2021							
ACCOUNT NUMBER	BUDGET UNIT	ACCOUNT NAME	INCREASE	DECREASE	BUDGET	REVISED	EXPLANATION
001-0215-518.06-40	Victim Witness	VEHICLES	$ 15,227		$ 27,500	$ 42,727	To purchase a car radio $7,251 and a vehicle for our Courthouse Facility Dog Program $35,476
001-0216-308.11-00	SHERIFF	MUTUAL AID CAMP FIRE	$ (65,864)		$ -	$ (65,864)	
001-0216-521.01-55	SHERIFF	DEPUTY SHERIFF		$ 110,973	$ 1,252,773	$ 1,141,800	Moving allowable School Resource Officer expense to grant fund & CARES Act
001-0216-521.02-35	SHERIFF	LONGEVITY PAY		$ 1,680	$ 96,220	$ 94,540	
001-0216-521.02-56	SHERIFF	POST CERTIFICATE PAY		$ 2,800	$ 116,553	$ 113,753	
001-0216-521.02-58	SHERIFF	UNIFORM ALLOWANCE		$ 757	$ 30,100	$ 29,343	
001-0216-521.03-03	SHERIFF	UNEMPLOYMENT	$ 28,516		$ -	$ 28,516	
001-0216-521.03-04	SHERIFF	ACCRUED BENEFITS	$ 64,107		$ 43,531	$ 107,638	
001-0216-521.03-10	SHERIFF	SOCIAL SECURITY		$ 4,095	$ 244,460	$ 240,365	
001-0216-521.03-11	SHERIFF	MEDICARE		$ 958	$ 58,856	$ 57,898	
001-0216-521.03-13	SHERIFF	MEDICAL/DENTAL/VISION		$ 6,385	$ 490,052	$ 483,667	
001-0216-521.03-14	SHERIFF	RETIREMENT-EMPLOYER		$ 14,498	$ 658,964	$ 644,466	
001-0216-521.03-17	SHERIFF	LIFE INSURANCE		$ 23	$ 1,766	$ 1,743	
001-0216-521.03-18	SHERIFF	SDI		$ 654	$ 37,942	$ 37,288	
001-0216-521.03-19	SHERIFF	CASH-CAFETERIA PLAN		$ 4,148	$ 113,014	$ 108,866	
001-0216-521.04-43	SHERIFF	SAFETY EQUIPMENT		$ 18,000	$ 110,000	$ 92,000	Due to COVID mandated off-site jury trials requiring additional staffing
001-0216-521.04-80	SHERIFF	EQUIPMENT		$ 17,000	$ 75,000	$ 58,000	Due to COVID mandated off-site jury trials requiring additional staffing
001-0216-521.04-88	SHERIFF	FUEL		$ 18,000	$ 195,000	$ 177,000	Due to COVID mandated off-site jury trials requiring additional staffing
001-0216-521.07-91	SHERIFF	TRANSFER OUT TO FUND 440	$ 53,000		$ -	$ 53,000	
001-0223-532.03-03	JUVENILE DETENTION	UNEMPLOYMENT	$ 1,646		$ -	$ 1,646	
001-0228-542.03-03	FIRE	UNEMPLOYMENT	$ 4,511		$ -	$ 4,511	
001-0249-307.87-02	PLANNING	PERMITTING SYSTEM	$ (24,250)		$ (28,750)	$ (53,000)	
001-0249-575.01-63	PLANNING	OFFICE TECHNICIAN	$ 11,709		$ -	$ 11,709	
001-0249-575.02-01	PLANNING	EXTRA HELP		$ 13,249	$ 56,000	$ 42,751	
001-0249-575.03-03	PLANNING	UNEMPLOYMENT	$ 6,266		$ -	$ 6,266	
001-0249-575.03-10	PLANNING	SOCIAL SECURITY	$ 726		$ 52,964	$ 53,690	
001-0249-575.03-11	PLANNING	MEDICARE	$ 170		$ 12,387	$ 12,557	
001-0249-575.03-13	PLANNING	MEDICAL/DENTAL/VISION	$ 3,881		$ 134,675	$ 138,556	
001-0249-575.03-14	PLANNING	RETIREMENT-EMPLOYER	$ 1,299		$ 98,118	$ 99,417	
001-0249-575.03-18	PLANNING	SDI	$ 125		$ 8,276	$ 8,401	
001-0249-575.04-33	PLANNING	COMMISSION		$ 2,880	$ 7,110	$ 4,230	
001-0249-575.04-35	PLANNING	FISH & GAME/CEQA		$ 2,400	$ 4,814	$ 2,414	
001-0249-575.04-90	PLANNING	TRAINING & SEMINARS		$ 3,000	$ 6,340	$ 3,340	
001-0249-579.04-90	PLANNING	TRAINING & SEMINARS		$ 3,000	$ 4,500	$ 1,500	

Attachment: Mid Year Change Requests Budget Action FY21 Searchable (RES-2021-92 : Approve FY20-21

MID-YEAR CHANGE REQUESTS - ALL FUNDS							
FISCAL YEAR 2021							
ACCOUNT NUMBER	BUDGET UNIT	ACCOUNT NAME	INCREASE	DECREASE	BUDGET	REVISED	EXPLANATION
001-0289-489.02-31	COVID 19	OVERTIME-RESPONSE	$ 3,840			$ 3,840	
001-0289-489.02-32	COVID 19	OVERTIME-EOC	$ 9,679			$ 9,679	
001-0289-489.02-35	COVID 19	OVERTIME-ADMIN	$ 40			$ 40	
001-0289-489.02-44	COVID 19	CONFIDENTIAL STIPEND	$ 19			$ 19	
001-0289-489.02-50	COVID 19	SHIFT DIFFERENTIAL	$ 6			$ 6	
001-0289-489.02-56	COVID 19	POST CERTIFICATE	$ 100			$ 100	
001-0289-489.03-10	COVID 19	SOCIAL SECURITY	$ 2,072			$ 2,072	
001-0289-489.03-11	COVID 19	MEDICARE	$ 491			$ 491	
001-0289-489.03-18	COVID 19	SDI	$ 336			$ 336	
001-0289-489.04-06	COVID 19	COMMUNICATIONS	$ 167			$ 167	
001-0289-489.04-07	COVID 19	FOOD-EOC QUARTERS	$ -			$ -	
001-0289-489.04-15	COVID 19	SUPPLIES-OTHER MEDICAL	$ 829			$ 829	
001-0289-489.04-17	COVID 19	SUPPLIES-OPERATING	$ 17,124			$ 17,124	
001-0289-489.04-18	COVID 19	SUPPLIES-EOC CENTER	$ -			$ -	
001-0289-489.04-33	COVID 19	SPECIAL DEPARTMENT	$ -			$ -	
001-0304-583.01-68	Public Works - Administration	EXECUTIVE ASSISTANT	$ 13,842		$ -	$ 13,842	Staff loan from Administration
001-0304-583.01-98	Public Works - Administration	Account Clerk I		$ 1,000	$ 66,950	$ 65,950	Decrease to allocate 0408 - Food expense (drinking water)
001-0304-583.04-08	Public Works - Administration	Food	$ 1,000		$ -	$ 1,000	Allocate for purchase of drinking water expense due to contamination in PW well
001-0313-630.04-06	Public Works - Executive	Communications	$ 600		$ -	$ 600	Allocate this account
001-0313-630.04-90	Public Works - Executive	Training & Seminars		$ 600	$ 5,000	$ 4,400	Offset to 0406 - Communications
001-0317-307.07-46	Surveyor Services	Encroachment/Special Events		$ (15,000)	$ (15,000)	$ -	Revenue earnings for encroachment fees and special events are now part of Engineering. The Engineering budget is allocated
001-0401-305.47-02	Public Health	AIDS BLOCK GRANT	$ (3,000)		$ -	$ (3,000)	Prior year revenue
001-0401-305.48-00	Public Health	CCS/CALIF CHILDRENS SERVICES	$ (25,181)		$ -	$ (25,181)	Prior year revenue
001-0401-305.50-14	Public Health	Medi-CAL FFP		$ (110,000)	$ (110,000)	$ -	No anticipated Medi-Cal billing for this FY
001-0401-305.52-08	Public Health	CHDP	$ (5,398)		$ -	$ (5,398)	Prior year revenue
001-0401-305.52-10	Public Health	MCAH	$ (8,110)		$ -	$ (8,110)	Prior year revenue
001-0401-305.52-13	Public Health	IAP	$ (2,177)		$ -	$ (2,177)	Prior year revenue
001-0401-305.52-23	Public Health	SNAP-ED/CAL FRESH	$ (37,562)		$ -	$ (37,562)	Prior year revenue
001-0401-305.52-24	Public Health	COHP	$ (58,191)		$ -	$ (58,191)	Prior year revenue
001-0401-305.52-25	Public Health	CLPPP	$ (6,647)		$ -	$ (6,647)	Prior year revenue
001-0401-307.19-20	Public Health	Other Insurance		$ (40,000)	$ (40,000)	$ -	Do not anticipate revenue from insurance billing this FY
001-0401-308.01-15	Public Health	Donations	$ (10,077)			$ (10,077)	Donation Revenue
001-0401-309.15-54	Public Health	Transfer in 428-0433-682-0787	$ (16,759)		$ -	$ (16,759)	Prior year revenue

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MID-YEAR CHANGE REQUESTS - ALL FUNDS							
FISCAL YEAR 2021							
ACCOUNT NUMBER	BUDGET UNIT	ACCOUNT NAME	INCREASE	DECREASE	BUDGET	REVISED	EXPLANATION
001-0401-309.15-66	Public Health	Transfer in 464-0424-567-0787	$ (6,697)		$ 253,723	$ 247,026	Prior year revenue
001-0401-309.16-75	Public Health	Transfer in 402-0414-952-0787	$ (32,227)		$ -	$ (32,227)	Prior year revenue
001-0401-621.01-03	Public Health	Deputy Director Public Health	$ 8,466		$ 21,940	$ 30,406	To be transferred from fund 470
001-0401-621.01-36	Public Health	Nurse Practitioner	$ 3,841		$ -	$ 3,841	FNP salary prior to FNP psych cert
001-0401-621.01-69	Public Health	Program Assistant II	$ 10,740		$ -	$ 10,740	Position moved to health division
001-0401-621.01-93	Public Health	Psych M/H Nurse Practitioner		$ 81,172	$ 104,987	$ 23,815	Moved to 0402
001-0401-621.02-01	Public Health	Extra Help	$ 25,386		$ 5,034	$ 30,420	Increased hours due to Covid and Community Health coverage
001-0401-621.02-03	Public Health	Clinic Extra Help	$ 30,000		$ 32,018	$ 62,018	Increased Clinic Extra Help hours for RN's for COVID vaccinations
001-0401-621.02-30	Public Health	Overtime	$ 386		$ -	$ 386	
001-0401-621.02-34	Public Health	FLSA Adjust	$ 11		$ -	$ 11	
001-0401-621.02-35	Public Health	Longevity	$ 77		$ 196	$ 273	
001-0401-621.02-39	Public Health	Extra Straight Time Hours	$ 165		$ -	$ 165	
001-0401-621.02-40	Public Health	Call Back Pay	$ 1,147		$ -	$ 1,147	
001-0401-621.02-45	Public Health	Out of Class	$ 1,476		$ -	$ 1,476	
001-0401-621.02-46	Public Health	Acting Assignment Pay	$ 19		$ -	$ 19	
001-0401-621.03-02	Public Health	Group Health Retirees	$ 8,909		$ 63,211	$ 72,120	Increased due to new retirees
001-0401-621.03-03	Public Health	Unemployment	$ 9,282		$ -	$ 9,282	Increased due to unexpected UE benefits
001-0401-621.03-04	Public Health	Accrued Benefits	$ 5,402		$ 6,166	$ 11,568	Increased due to vac accural payments
001-0401-621.04-15	Public Health	Membership	$ 344		$ 4,496	$ 4,840	Increased membership dues
001-0401-621.07-88	Public Health	Transfer-Out to fund 473	$ 20,605		$ -	$ 20,605	
001-0402-305.50-14	Behavioral Health	MEDI-CAL FFP	$ (331,882)		$ (2,695,487)	$ (3,027,369)	Transfer out share of ERP costs
001-0402-305.50-38	Behavioral Health	PRIOR YEAR REVENUE	$ (374,999)		$ (507,962)	$ (882,961)	
001-0402-309.16-94	Behavioral Health	TF IN REALIGN FUND 393		$ (568,681)	$ (1,571,017)	$ (1,002,336)	
001-0402-622.04-24	Behavioral Health	CONTACT SERV INPATIENT		$ 72,000	$ 758,008	$ 686,008	
001-0402-622.09-10	Behavioral Health	Transfer out to fund 001-0507	$ 210,200		$ 1,363,600	$ 1,573,800	
001-0501-661.01-33	Social Services	Social Worker IV		$ 80,000	$ 564,667	$ 484,667	To align budget with anticipated expenditures
001-0501-661.02-01	Social Services	Extra Help		$ 10,000	$ 50,000	$ 40,000	To align budget with anticipated expenditures
001-0501-661.02-30	Social Services	Overtime		$ 10,000	$ 50,000	$ 40,000	To align budget with anticipated expenditures
001-0501-661.04-18	Social Services	Professional Services		$ 52,300	$ 150,000	$ 97,700	To align budget with anticipated expenditures
001-0501-661.09-10	Social Services	Transfer out to fund 001-0507	$ 152,300		$ 1,996,887	$ 2,149,187	Transfer out share of ERP costs
001-0506-308.11-04	Aid Programs	GA/GR Repayments	$ (10,000)		$ (10,000)	$ (20,000)	To align budget with actual revenues
001-0506-671.05-55	Aid Programs	County Relief Non GR	$ 10,000		$ 10,000	$ 20,000	To align budget with actual expenses
001-0507-308.11-00	Human Services Administration	Miscellaneous Revenue	$ (90,000)		$ -	$ (90,000)	To align budget with anticipated revenues

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MID-YEAR CHANGE REQUESTS - ALL FUNDS							
FISCAL YEAR 2021							
ACCOUNT NUMBER	BUDGET UNIT	ACCOUNT NAME	INCREASE	DECREASE	BUDGET	REVISED	EXPLANATION
001-0507-309.16-00	Human Services Administration	Transfer In	$ (15,000)		$ (20,500)	$ (35,500)	from CMSP CERG COVID grant 481-0460-963.07-87
001-0507-672.01-09	Human Services Administration	Administrative Analyst II		$ 3,464	$ 92,963	$ 89,499	To align budget with anticipated expenditures
001-0507-672.02-01	Human Services Administration	Extra Help	$ 70,000		$ 29,730	$ 99,730	To align budget with anticipated expenditures
001-0507-672.02-45	Human Services Administration	Out of Class pay	$ 5,000		$ 5,000	$ 10,000	To align budget with anticipated expenditures
001-0507-672.03-10	Human Services Administration	Social Security		$ 215	$ 160,563	$ 160,348	To align budget with anticipated expenditures
001-0507-672.03-11	Human Services Administration	Medicare		$ 50	$ 39,308	$ 39,258	To align budget with anticipated expenditures
001-0507-672.03-13	Human Services Administration	Medical/Dental/Vision		$ 1,249	$ 463,769	$ 462,520	To align budget with anticipated expenditures
001-0507-672.03-14	Human Services Administration	Retirement-Employer		$ 384	$ 273,185	$ 272,801	To align budget with anticipated expenditures
001-0507-672.03-18	Human Services Administration	SDI		$ 35	$ 23,268	$ 23,233	To align budget with anticipated expenditures
001-0507-672.04-13	Human Services Administration	Building maintenance	$ 15,000		$ 40,000	$ 55,000	To align budget with anticipated expenditures
001-0507-672.04-31	Human Services Administration	Building Rent	$ 15,000		$ 1,350,000	$ 1,365,000	from CMSP CERG COVID grant 481-0460-963.07-87
001-0507-672.07-87	Human Services Administration	Transfer out	$ 500,000		$ -	$ 500,000	Transfer out for ERP costs
001-0507-672.09-10	Human Services Administration	Transfer in fund 001-0501	$ (152,300)		$ (1,996,887)	$ (2,149,187)	Transfer in for ERP costs
001-0507-672.09-12	Human Services Administration	Transfer in fund 001-0402	$ (210,200)		$ (1,363,600)	$ (1,573,800)	Transfer in for ERP costs
001-0507-672.09-13	Human Services Administration	Transfer in fund 001-0528	$ (137,500)		$ (1,802,836)	$ (1,940,336)	Transfer in for ERP costs
001-0528-677.03-04	Public Assistance	Accrued Benefits	$ 5,000		$ 5,520	$ 10,520	To align budget with expenditures
001-0528-677.04-06	Public Assistance	Communications		$ 15,000	$ 30,000	$ 15,000	To align budget with expenditures
001-0528-677.04-17	Public Assistance	Office Expense		$ 15,000	$ 27,321	$ 12,321	To align budget with expenditures
001-0528-677.04-20	Public Assistance	Extended Subsidized Employment		$ 30,000	$ 65,000	$ 35,000	To align budget with expenditures
001-0528-677.04-33	Public Assistance	Contracted Training		$ 20,000	$ 57,375	$ 37,375	To align budget with expenditures
001-0528-677.04-35	Public Assistance	CalWORKs Contracts		$ 12,500	$ 30,000	$ 17,500	To align budget with expenditures
001-0528-677.04-52	Public Assistance	C-IV Migration Costs		$ 30,000	$ 50,000	$ 20,000	To align budget with expenditures
001-0528-677.04-90	Public Assistance	Travel/Training		$ 20,000	$ 40,000	$ 20,000	To align budget with expenditures
001-0528-677.09-10	Public Assistance	Transfer out to fund 001-0507	$ 137,500		$ 1,802,836	$ 1,940,336	Transfer out share of ERP costs
001-0606-731.02-01	LIBRARY	EXTRA HELP	$ 20,000		$ 13,800	$ 33,800	
001-0606-731.03-03	LIBRARY	UNEMPLOYMENT	$ 29,759		$ -	$ 29,759	
001-0606-731.04-35	LIBRARY	BOOKS/AUDIOS/VIDEOS/MAGS		$ 20,000	$ 38,000	$ 18,000	
001-0701-307.06-04	Park and Recreation	Water Aquatics	$ (500)		$ (6,000)	$ (6,500)	Recognize a citizens donation as an increase in revenue
001-0701-761.03-03	Park and Recreation	UNEMPLOYMENT	$ 7,074		$ -	$ 7,074	

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MID-YEAR CHANGE REQUESTS - ALL FUNDS							
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ACCOUNT NUMBER	BUDGET UNIT	ACCOUNT NAME	INCREASE	DECREASE	BUDGET	REVISED	EXPLANATION
001-0701-761.04-35	Park and Recreation	Recreation Programs	$ 500		$ 8,000	$ 8,500	Recognize a citizens donation as an increase in expense
		TOTAL	$ (20,420)	$ (20,420)			
033-0251-577.01-48	Transportation Planning	Transportation Planner	$ 16,100		$ -	$ 16,100	Allocate two months expense for Transportation Planner
033-0251-577.03-02	Transportation Planning	Group Health - Retirees	$ 7,200		$ -	$ 7,200	Allocate this account
033-0251-577.04-18	Transportation Planning	Contracts		$ 23,300	$ 297,537	$ 274,237	Decrease as an offset
		TOTAL	$ 23,300	$ 23,300			
300-0301-581.01-61	Roads Maintenance	Maintenance Worker III		$ 100,000	$ 220,840	$ 120,840	Decrease as an offset
300-0301-581.04-05	Roads Maintenance	Clothing		$ 5,000	$ 15,000	$ 10,000	Decrease as an offset
300-0301-581.04-09	Roads Maintenance	Household		$ 2,000	$ 5,000	$ 3,000	Decrease as an offset
300-0301-581.04-13	Roads Maintenance	Maintenance of Buildings		$ 4,000	$ 10,000	$ 6,000	Decrease as an offset
300-0301-581.04-32	Roads Maintenance	Small Tools		$ 5,000	$ 15,000	$ 10,000	Decrease as an offset
300-0301-581.04-33	Roads Maintenance	S/D Materials	$ 100,000		$ 267,112	$ 367,112	Increase to approximate level of original request
300-0301-581.04-34	Roads Maintenance	S/D Materials - Sigh Shop	$ 21,000		$ 25,000	$ 46,000	Increase required for updating Chevronms, theft replacement, new No Parking ordinace
300-0301-581.04-35	Roads Maintenance	Safety Equipment		$ 5,000	$ 20,000	$ 15,000	Decrease as an offset
		TOTAL	$ 121,000	$ 121,000			
314-0903-852.04-12	Coulterville Service Area	Maintenance of Equipment	$ 5,750		$ 1,856	$ 7,606	Increase for unanticipate pump repairs
314-0903-852.04-19	Coulterville Service Area	Labor	$ 4,000		$ 20,000	$ 24,000	Increase for unanticipate pump repairs
314-0903-853.06-77	Coulterville Service Area	Fixed Asset - Sewer Pump		$ 9,750	$ 9,750	$ -	Decrease as an offset
		TOTAL	$ 9,750	$ 9,750			
316-0905-309.16-00	Don Pedro Sewer	Transfer In	$ (20)		$ (12,200)	$ (12,220)	Transfer in the last $20.00 from the DPWWTP project
316-0905-855.04-06	Don Pedro Sewer	Communications	$ 20		$ 550	$ 570	
		TOTAL	$ -	$ -			
341-0519-309.16-00	Senior Services	Transfer in 433-0530-684.07-88	$ (10,000)		$ (23,798)	$ (33,798)	To balance budget
341-0519-716.04-31	Senior Services	Building rents and leases	$ 10,000			$ 10,000	To align budget with expenditures
		TOTAL	$ -	$ -			
342-0517-714.01-69	Senior Nutrition C-1	Program Assistant I-II		$ 7,500	$ 22,880	$ 15,380	Position was vacant and extra help was used
342-0517-714.02-01	Senior Nutrition C-1	Extra Help	$ 7,500		$ 7,725	$ 15,225	To align budget with expenditures
342-0518-715.01-69	Senior Nutrition C-2	Program Assistant I-II		$ 7,500	$ 22,880	$ 15,380	Position was vacant and extra help was used
342-0518-715.02-01	Senior Nutrition C-2	Extra Help	$ 7,500		$ 3,700	$ 11,200	To align budget with expenditures
		TOTAL	$ 15,000	$ 15,000			

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MID-YEAR CHANGE REQUESTS - ALL FUNDS							
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ACCOUNT NUMBER	BUDGET UNIT	ACCOUNT NAME	INCREASE	DECREASE	BUDGET	REVISED	EXPLANATION
370-0245-309.16-00	LAFCO	TRANSFERS IN	$ (25,000)		$ (5,178)	$ (30,178)	
370-0245-574.04-18	LAFCO	PROFESSIONAL SERVICES	$ 25,000		$ -	$ 25,000	
		TOTAL	$ -	$ -			
385-0409-628.01-15	Tobacco Trust Prop 99	PH Educator	$ 2,196		$ 34,936	$ 37,132	Align to match state budget
385-0409-628.01-39	Tobacco Trust Prop 99	PS I/II	$ 4,596		$ 16,226	$ 20,822	Align to match state budget
385-0409-628.01-39	Tobacco Trust Prop 99	PS I/II	$ 4,328		$ 16,226	$ 20,554	Align to match state budget
385-0409-628.01-86	Tobacco Trust Prop 99	Admin Analyst	$ 1,573		$ 2,408	$ 3,981	Align to match state budget
385-0409-628.01-88	Tobacco Trust Prop 99	Acct Tech II	$ 1,094		$ 1,590	$ 2,684	Align to match state budget
385-0409-628.03-14	Tobacco Trust Prop 99	Retirement- benefits	$ 6,177		$ 7,917	$ 14,094	Lump sum adjustment to benefits
385-0409-628.04-06	Tobacco Trust Prop 99	Communication	$ 534		$ 397	$ 931	Align to match state budget
385-0409-628.04-15	Tobacco Trust Prop 99	Memberships		$ 74	$ 404	$ 330	Align to match state budget
385-0409-628.04-16	Tobacco Trust Prop 99	Misc		$ 41,852	$ 47,341	$ 5,489	Align to match state budget
385-0409-628.04-17	Tobacco Trust Prop 99	Office	$ 558		$ 2,121	$ 2,679	Align to match state budget
385-0409-628.04-18	Tobacco Trust Prop 99	Prof Svc	$ 8,401		$ 9,376	$ 17,777	Align to match state budget
385-0409-628.04-23	Tobacco Trust Prop 99	Media	$ 12,868		$ 5,864	$ 18,732	Align to match state budget
385-0409-628.04-24	Tobacco Trust Prop 99	Behavior Mod		$ 99	$ 198	$ 99	Align to match state budget
385-0409-628.04-34	Tobacco Trust Prop 99	Booth Rental		$ 372	$ 496	$ 124	Align to match state budget
385-0409-628.04-71	Tobacco Trust Prop 99	Copier	$ 793		$ 320	$ 1,113	Align to match state budget
385-0409-628.04-80	Tobacco Trust Prop 99	Equipment	$ 734		$ -	$ 734	Align to match state budget
385-0409-628.04-90	Tobacco Trust Prop 99	Travel		$ 1,455	$ 1,830	$ 375	Align to match state budget
		TOTAL	$ 43,852	$ 43,852			
392-0411-305.67-19	Health Realignment	Sales Tax revenue	$ (51,324)		$ (27,774)	$ (79,098)	Actuals
392-0411-620.04-16	Health Realignment	Misc Expense	$ 32,107		$ 178,226	$ 210,333	
392-0411-620.07-87	Health Realignment	Transfer out	$ 19,217		$ 579,020	$ 598,237	Transfer in CCS Cert of Appropriation
		TOTAL	$ -	$ -			
393-0412-950.04-16	BEHAVIORAL HEALTH REALIGNN	MISCELLANEOUS EXPENSE	$ 31,726		$ 87,109	$ 118,835	to correct previous balancing adj's imbalance
393-0412-950.07-87	BEHAVIORAL HEALTH REALIGNN	TRANSFERS OUT		$ 31,726	$ 2,064,385	$ 2,032,659	to correct previous balancing adj's imbalance
		TOTAL	$ 31,726	$ 31,726			
402-0414-305.74-49	PHEP Trust	Public Health Emergency Rev		$ (12,867)	$ (12,867)	$ -	MY adj to revenue
402-0414-306.72-69	PHEP Trust	Federal Revenue	$ (35,885)		$ (119,046)	$ (154,931)	State revenue including prior year revenue $32,227
402-0414-952.01-01	PHEP Trust	Health Officer	$ 434		$ 8,673	$ 9,107	Align to match state budget
402-0414-952.01-16	PHEP Trust	PHEP Coord		$ 23,937	$ 52,298	$ 28,361	Align to match state budget
402-0414-952.02-03	PHEP Trust	Clinic EH	$ 16,632		$ 4,437	$ 21,069	Align to match state budget
402-0414-952.04-16	PHEP Trust	Misc	$ 1,032		$ 586	$ 1,618	Align to match state budget
402-0414-952.04-17	PHEP Trust	Office		$ 918	$ 2,172	$ 1,254	Align to match state budget
402-0414-952.04-71	PHEP Trust	Copier		$ 500	$ 1,110	$ 610	Align to match state budget

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402-0414-952.04-90	PHEP Trust	Travel		$ 1,952	$ 5,732	$ 3,780	Align to match state budget
402-0414-952.07-87	PHEP Trust	Transfer-out	$ 32,227		$ 21,849	$ 54,076	Prior year revenue transfer to 0401
		TOTAL	$ 14,440	$ 14,440			
404-0416-954.01-28	LEA Program	REHS	$ 5,184		$ -	$ 5,184	Align to match state budget
404-0416-954.01-33	LEA Program	EH Senior Specialist	$ 66		$ 1,727	$ 1,793	Align to match state budget
404-0416-954.03-04	LEA Program	Accrued benefits	$ 2,901		$ 1,235	$ 4,136	Align to match state budget
404-0416-954.04-06	LEA Program	Communications		$ 14	$ 300	$ 286	Align to match state budget
404-0416-954.04-16	LEA Program	Misc Exp		$ 8,137	$ 8,137	$ -	Align to match state budget
		TOTAL	$ 8,151	$ 8,151			
410-0436-305.50-25	MHSA-CSS	STATE MHSA		$ (496,681)	$ (3,641,190)	$ (3,144,509)	
410-0436-309.16-00	MHSA-CSS	TRANSFERS IN	$ (496,681)		$ (180,024)	$ (676,705)	
		TOTAL	$ (496,681)	$ (496,681)			
411-0525-304.30-00	Public Authority	Interest		$ (500)	$ 200	$ 700	To align budget with anticipated expense
411-0525-676.04-90	Public Authority	Travel and Training		$ 500	$ 1,000	$ 500	To align budget with anticipated expense
		TOTAL	$ -	$ -			
427-0432-681.01-15	Prop 56 Tobacco Tax	PH Educator	$ 2,794		$ 34,936	$ 37,730	Align to match state budget
427-0432-681.01-39	Prop 56 Tobacco Tax	PS I/II	$ 9,592		$ 32,452	$ 42,044	Align to match state budget
427-0432-681.01-86	Prop 56 Tobacco Tax	Admin Analyst	$ 1,637		$ 2,408	$ 4,045	Align to match state budget
427-0432-681.01-88	Prop 56 Tobacco Tax	Acct Tech II	$ 1,138		$ 1,590	$ 2,728	Align to match state budget
427-0432-681.03-14	Prop 56 Tobacco Tax	Retirement- benefits	$ 6,727		$ 7,917	$ 14,644	Lump sum adjustment for benefits
427-0432-681.04-15	Prop 56 Tobacco Tax	Memberships		$ 76	$ 411	$ 335	Align to match state budget
427-0432-681.04-16	Prop 56 Tobacco Tax	Misc		$ 55,970	$ 61,941	$ 5,971	Align to match state budget
427-0432-681.04-17	Prop 56 Tobacco Tax	Office	$ 272		$ 2,148	$ 2,420	Align to match state budget
427-0432-681.04-18	Prop 56 Tobacco Tax	Prof Svc	$ 7,056		$ 11,007	$ 18,063	Align to match state budget
427-0432-681.04-23	Prop 56 Tobacco Tax	Media	$ 27,235		$ 6,136	$ 33,371	Align to match state budget
427-0432-681.04-24	Prop 56 Tobacco Tax	Behavior Mod		$ 101	$ 202	$ 101	Align to match state budget
427-0432-681.04-34	Prop 56 Tobacco Tax	Booth Rental		$ 378	$ 504	$ 126	Align to match state budget
427-0432-681.04-71	Prop 56 Tobacco Tax	Copier	$ 807		$ 325	$ 1,132	Align to match state budget
427-0432-681.04-80	Prop 56 Tobacco Tax	Equipment	$ 746		$ -	$ 746	Align to match state budget
427-0432-681.04-90	Prop 56 Tobacco Tax	Travel		$ 1,479	$ 1,860	$ 381	Align to match state budget
		TOTAL	$ 58,004	$ 58,004			
428-0433-305.52-20	Pandemic Influenza Trust	State Revenue	$ (12,517)		$ (64,830)	$ (77,347)	Adjust to align with state budget +$16,759 prior year revenue
428-0433-682.01-01	Pandemic Influenza Trust	Health Officer	$ 216		$ 4,337	$ 4,553	Adjust to align with state budget
428-0433-682.01-16	Pandemic Influenza Trust	PHEP Coordinator		$ 4,374	$ 26,149	$ 21,775	Adjust to align with state budget
428-0433-682.02-03	Pandemic Influenza Trust	Clinic Extra Help	$ 2,140		$ 3,242	$ 5,382	Adjust to align with state budget
428-0433-682.03-13	Pandemic Influenza Trust	M/D/V		$ 890	$ 4,710	$ 3,820	Lump sum benefit adjustment
428-0433-682.03-14	Pandemic Influenza Trust	Retirement		$ 965	$ 2,938	$ 1,973	Lump sum benefit adjustment
428-0433-682.04-52	Pandemic Influenza Trust	Mass Vacc. Supply & Rent		$ 369	$ 3,835	$ 3,466	Adjust to align with state budget

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MID-YEAR CHANGE REQUESTS - ALL FUNDS							
FISCAL YEAR 2021							
ACCOUNT NUMBER	BUDGET UNIT	ACCOUNT NAME	INCREASE	DECREASE	BUDGET	REVISED	EXPLANATION
428-0433-682.07-87	Pandemic Influenza Trust	Transfer-out	$ 16,759		$ 10,988	$ 27,747	Adjusted to align with state budget + prior year to 0401 of $16,750 to 0401
		TOTAL	$ 6,598	$ 6,598			
433-0530-684.04-16	Social Service 2011 Realignment	Miscellaneous Expense		$ 10,000	$ 229,983	$ 219,983	To balance budget
433-0530-684.07-88	Social Service 2011 Realignment	Transfer out to fund 341-0519	$ 10,000		$ 1,582,834	$ 1,592,834	Increase transfer to cover anticipated expenses in fund 341-0519
		TOTAL	$ 10,000	$ 10,000			
437-0276-616.04-16	STATE PAROLE DA SEC 30027	Miscellaneous		$ 7,650	$ 32,997	$ 25,347	Prosecutor by Karpel Annual dues balance
437-0276-616.04-81	STATE PAROLE DA SEC 30027	Software	$ 13,175		$ -	$ 13,175	Moved to software expense
437-0276-616.04-81	STATE PAROLE DA SEC 30027	Software	$ 7,650		$ -	$ 7,650	Prosecutor by Karpel Annual dues balance
437-0276-616.06-42	STATE PAROLE DA SEC 30027	DA Software		$ 13,175	$ 13,175	$ -	Incorrectly budgeted in fixed asset line
		TOTAL	$ 20,825	$ 20,825			
440-0277-309.16-00	BAILIFF	TRANSFER IN	$ (53,000)		$ -	$ (53,000)	
440-0277-618.02-02	BAILIFF	EH BAILIFF	$ 35,000		$ 94,186	$ 129,186	Due to COVID mandated off-site jury trials requiring additional staffing
440-0277-618.02-03	BAILIFF	EH SECURITY	$ 18,000		$ 15,262	$ 33,262	Due to COVID mandated off-site jury trials requiring additional staffing
		TOTAL	$ -	$ -			
450-0140-417.04-20	MID SETTLEMENT	MARIPOSA CREEK PARKWAY	$ 20,000		$ 200,400	$ 220,400	To cover parking easements for the SHE housing project
450-0140-417.06-20	MID SETTLEMENT	PFREMMER PROPERTY		$ 20,000	$ 740,000	$ 720,000	To cover parking easements for the SHE housing project
		TOTAL	$ 20,000	$ 20,000			
453-0282-305.56-33	TOBACCO LAW ENFORCEMENT	STATE REVENUE	$ (121,047)		$ -	$ (121,047)	GRANT AWARD
453-0282-504.01-82	TOBACCO LAW ENFORCEMENT	SCHOOL RESOURCE OFFICER	$ 56,002		$ -	$ 56,002	SALARY FOR FY 21
453-0282-504.02-30	TOBACCO LAW ENFORCEMENT	HOURLY & OTHER COMP	$ 28,047		$ -	$ 28,047	OVERTIME AND BENEFITS
453-0282-504.02-35	TOBACCO LAW ENFORCEMENT	LONGEVITY	$ 1,680		$ -	$ 1,680	
453-0282-504.02-56	TOBACCO LAW ENFORCEMENT	POST CERTIFICATE	$ 2,800		$ -	$ 2,800	
453-0282-504.02-58	TOBACCO LAW ENFORCEMENT	UNIFORM ALLOWANCE	$ 757		$ -	$ 757	
453-0282-504.03-10	TOBACCO LAW ENFORCEMENT	SOCIAL SECURITY	$ 4,095		$ -	$ 4,095	
453-0282-504.03-11	TOBACCO LAW ENFORCEMENT	MEDICARE	$ 958		$ -	$ 958	
453-0282-504.03-13	TOBACCO LAW ENFORCEMENT	MEDICAL/DENTAL/VISION	$ 6,385		$ -	$ 6,385	
453-0282-504.03-14	TOBACCO LAW ENFORCEMENT	RETIREMENT-EMPLOYER	$ 14,498		$ -	$ 14,498	
453-0282-504.03-17	TOBACCO LAW ENFORCEMENT	LIFE INSURANCE	$ 23		$ -	$ 23	
453-0282-504.03-18	TOBACCO LAW ENFORCEMENT	SDI	$ 654		$ -	$ 654	
453-0282-504.03-19	TOBACCO LAW ENFORCEMENT	CASH-CAFETERIA PLAN	$ 4,148		$ -	$ 4,148	
453-0282-504.04-88	TOBACCO LAW ENFORCEMENT	FUEL	$ 1,000		$ -	$ 1,000	FUEL
		TOTAL	$ -	$ -			

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MID-YEAR CHANGE REQUESTS - ALL FUNDS							
FISCAL YEAR 2021							
ACCOUNT NUMBER	BUDGET UNIT	ACCOUNT NAME	INCREASE	DECREASE	BUDGET	REVISED	EXPLANATION
458-0539-306.72-86	RUS-DLT GRANT	FEDERAL REVENUE / DLT Grant	$ (770,268)		$ (252,647)	$ (1,022,915)	Increases due to 2nd RUS-DLT grant award received
458-0539-427.04-18	RUS-DLT GRANT	PROFESSIONAL SERVICES	$ 770,268		$ 252,647	$ 1,022,915	Increases due to 2nd RUS-DLT grant award received
		TOTAL	$ -	$ -			
464-0424-305.74-37	California Chidren's Services	State Revenue	$ (5,093)		$ (96,820)	$ (101,913)	Adjust to align with state budget
464-0424-309.16-00	California Chidren's Services	Agency Funds from realignment	$ (19,217)			$ (19,217)	Agency funds for CCS per State Certification of Appropriatioin
464-0424-567.01-01	California Chidren's Services	Health Officer		$ 39	$ 2,168	$ 2,129	Adjust to align with state budget
464-0424-567.01-07	California Chidren's Services	PHN Manager	$ 1,861		$ 2,480	$ 4,341	Adjust to align with state budget
464-0424-567.01-25	California Chidren's Services	Social Worker Supervisor	$ 5,154		$ -	$ 5,154	Adjust to align with state budget
464-0424-567.01-30	California Chidren's Services	Social Worker II	$ 15,106		$ -	$ 15,106	Adjust to align with state budget
464-0424-567.01-63	California Chidren's Services	Office Technician		$ 22,553	$ 25,789	$ 3,236	Adjust to align with state budget
464-0424-567.01-86	California Chidren's Services	Admin Analyst	$ 2,408		$ 4,013	$ 6,421	Adjust to align with state budget
464-0424-567.01-88	California Chidren's Services	Acct Tech	$ 1,679		$ 2,651	$ 4,330	Adjust to align with state budget
464-0424-567.01-99	California Chidren's Services	Office Assistant	$ 9,866		$ -	$ 9,866	Adjust to align with state budget
464-0424-567.03-13	California Chidren's Services	M/D/V	$ 4,131		$ 8,674	$ 12,805	Lump sum adjustment for benefits
464-0424-567.04-17	California Chidren's Services	Office	$ 603		$ 1,395	$ 1,998	Adjust to align with state budget
464-0424-567.04-90	California Chidren's Services	Travel		$ 603	$ 603	$ -	Adjust to align with state budget
464-0424-567.07-87	California Chidren's Services	Transfer-out	$ 6,697		$ 12,347	$ 19,044	Adjust to align with state budget
		TOTAL	$ 23,195	$ 23,195			
465-0425-307.97-14	Air Pollution Subvention	Burn Permits	$ (5,339)		$ (19,569)	$ (24,908)	
465-0425-568.01-32	Air Pollution Subvention	EH Mangr, David Conway	$ 3,405		$ 18,309	$ 21,714	
465-0425-568.03-04	Air Pollution Subvention	Accrued Benefits	$ 1,934		$ -	$ 1,934	
		TOTAL	$ -	$ -			
466-0426-305.74-39	Child Health and Disability Progr	State Revenue		$ (7,772)	$ (74,837)	$ (67,065)	
466-0426-569.01-09	Child Health and Disability Progr	PHN I/II, Vacant		$ 5,734	$ 19,149	$ 13,415	
466-0426-569.01-88	Child Health and Disability Progr	Acct Tech I/II, Dana White	$ 67		$ 3,181	$ 3,248	
466-0426-569.03-13	Child Health and Disability Progr	M/D/V		$ 2,105	$ 6,749	$ 4,644	
		TOTAL	$ 67	$ 67			
467-0427-570.04-16	Maternal, Child and Adolescent	Misc Expense	$ 1,851		$ -	$ 1,851	Adjust to align with state budget
467-0427-570.04-17	Maternal, Child and Adolescent	Office		$ 1,851	$ 6,228	$ 4,377	Adjust to align with state budget
		TOTAL	$ 1,851	$ 1,851			
471-0451-305.74-44	California Oral Health Program	State Revenue	$ (16,648)	$ -	$ (144,088)	$ (160,736)	
471-0451-593.01-03	California Oral Health Program	Dep Director Public Health		$ 24,133	$ 24,133	$ -	To align budget with actual expenditures
471-0451-593.01-07	California Oral Health Program	PHN Manager		$ 3,720	$ 12,402	$ 8,682	To align budget with actual expenditures
471-0451-593.01-09	California Oral Health Program	PHN I/II		$ 7,173	$ 8,692	$ 1,519	To align budget with actual expenditures
471-0451-593.01-39	California Oral Health Program	Program Specialist	$ 2,436		$ -	$ 2,436	To align budget with actual expenditures
471-0451-593.01-88	California Oral Health Program	Acct Tech I/II	$ 87		$ 4,241	$ 4,328	To align budget with actual expenditures

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MID-YEAR CHANGE REQUESTS - ALL FUNDS							
FISCAL YEAR 2021							
ACCOUNT NUMBER	BUDGET UNIT	ACCOUNT NAME	INCREASE	DECREASE	BUDGET	REVISED	EXPLANATION
471-0451-593.01-99	California Oral Health Program	Office Assistant		$ 961	$ 6,248	$ 5,287	To align budget with actual expenditures
471-0451-593.02-01	California Oral Health Program	Extra Help	$ 57,754	$ -	$ -	$ 57,754	To align budget with actual expenditures
471-0451-593.03-13	California Oral Health Program	M/D/V	$ 5,962		$ 6,493	$ 12,455	Lump sum adjustment for benefits
471-0451-593.03-14	California Oral Health Program	Retirement	$ 5,961		$ 6,898	$ 12,859	Lump sum adjustment for benefits
471-0451-593.04-06	California Oral Health Program	Communication		$ 550	$ 600	$ 50	To align budget with actual expenditures
471-0451-593.04-16	California Oral Health Program	Misc	$ 9,590		$ -	$ 9,590	To align budget with actual expenditures
471-0451-593.04-17	California Oral Health Program	Office		$ 2,592	$ 4,096	$ 1,504	To align budget with actual expenditures
471-0451-593.04-18	California Oral Health Program	Prof Svc		$ 14,950	$ 14,950	$ -	To align budget with actual expenditures
471-0451-593.04-22	California Oral Health Program	Educational Materials		$ 4,196	$ 7,828	$ 3,632	To align budget with actual expenditures
471-0451-593.04-24	California Oral Health Program	Behavior Mod		$ 2,037	$ 4,251	$ 2,214	To align budget with actual expenditures
471-0451-593.04-26	California Oral Health Program	Printing		$ 1,000	$ 2,500	$ 1,500	To align budget with actual expenditures
471-0451-593.04-34	California Oral Health Program	Booth Rental		$ 500	$ 800	$ 300	To align budget with actual expenditures
471-0451-593.04-71	California Oral Health Program	Copier		$ 200	$ 400	$ 200	To align budget with actual expenditures
471-0451-593.04-90	California Oral Health Program	Travel		$ 3,130	$ 3,130	$ -	To align budget with actual expenditures
		TOTAL	$ 65,142	$ 65,142			
473-0453-309.16-00	Transfer-In Woodsmoke Reduction		$ (20,605)		$ -	$ (20,605)	Adjust to align with state budget
473-0453-594.04-18	Professional Services		$ 20,605		$ 28,605	$ 49,210	Adjust to align with state budget
		TOTAL	$ -	$ -			
479-0458-305.74-51	COVID-CDSS	State Revenue	$ (32,340)		$ (175,660)	$ (208,000)	To align budget with anticipated revenues
479-0458-955.04-31	COVID-CDSS	Building Rents and Leases	$ 32,340		$ -	$ 32,340	To align budget with actual expenditures
		TOTAL	$ -	$ -			
481-0460-305.74-53	CMSP COVID GRANT	STATE REVENUE / COVID-19 CMSP	$ (100,000)			$ (100,000)	new COVID CMSP CERG grant
481-0460-963.01-01	CMSP COVID GRANT	Health Officer	$ 1,540		$ -	$ 1,540	
481-0460-963.01-02	CMSP COVID GRANT	Deputy Director of Administration	$ 1,205		$ -	$ 1,205	
481-0460-963.01-03	CMSP COVID GRANT	Deputy Director Public Health	$ 3,335		$ -	$ 3,335	
481-0460-963.01-06	CMSP COVID GRANT	Division Director for Administrative Ser	$ 958		$ -	$ 958	
481-0460-963.01-07	CMSP COVID GRANT	PUB HEALTH NURSE SUP/MGR	$ 939		$ -	$ 939	
481-0460-963.01-09	CMSP COVID GRANT	PUBLIC HEALTH NURSE I/II	$ 3,760		$ -	$ 3,760	
481-0460-963.01-11	CMSP COVID GRANT	Division Director of Health	$ 4,809		$ -	$ 4,809	
481-0460-963.01-31	CMSP COVID GRANT	Mental Health Assistant	$ 10,378		$ -	$ 10,378	
481-0460-963.01-37	CMSP COVID GRANT	ADMINISTRATIVE ANALYST	$ 1,577		$ -	$ 1,577	
481-0460-963.01-63	CMSP COVID GRANT	Office Technician	$ 4,125		$ -	$ 4,125	
481-0460-963.01-91	CMSP COVID GRANT	SENIOR ADMIN ANALYST	$ 3,001		$ -	$ 3,001	
481-0460-963.01-93	CMSP COVID GRANT	Psychiatric Nurse Practitioner	$ 5,907		$ -	$ 5,907	
481-0460-963.02-01	CMSP COVID GRANT	EXTRA HELP	$ 1,820		$ -	$ 1,820	
481-0460-963.02-30	CMSP COVID GRANT	OVERTIME	$ 40		$ -	$ 40	
481-0460-963.02-35	CMSP COVID GRANT	Monthly Longevity	$ 10		$ -	$ 10	
481-0460-963.03-10	CMSP COVID GRANT	Social Security	$ 2,207		$ -	$ 2,207	
481-0460-963.03-11	CMSP COVID GRANT	Medicare	$ 555		$ -	$ 555	
481-0460-963.03-13	CMSP COVID GRANT	Medical/Dental/Vision	$ 1,417		$ -	$ 1,417	

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MID-YEAR CHANGE REQUESTS - ALL FUNDS							
FISCAL YEAR 2021							
ACCOUNT NUMBER	BUDGET UNIT	ACCOUNT NAME	INCREASE	DECREASE	BUDGET	REVISED	EXPLANATION
481-0460-963.03-14	CMSP COVID GRANT	Retirement - Employer	$ 3,807		$ -	$ 3,807	
481-0460-963.03-17	CMSP COVID GRANT	Life Insurance	$ 22		$ -	$ 22	
481-0460-963.03-18	CMSP COVID GRANT	SDI	$ 348		$ -	$ 348	
481-0460-963.03-19	CMSP COVID GRANT	Cash - Cafeteria Plan	$ 1,364		$ -	$ 1,364	
481-0460-963.04-23	CMSP COVID GRANT	OPERATIONAL SUPPLIES	$ 31,876		$ -	$ 31,876	
481-0460-963.07-87	CMSP COVID GRANT	TRANSFER OUT - HHSA ADMIN	$ 15,000		$ -	$ 15,000	new COVID CMSP CERG grant
		TOTAL	$ -	$ -			
482-0461-308.11-00	CDPH COVID Grant	Miscellaneous Revenue	$ (9,822)		$ -	$ (9,822)	To align budget with actual expenditures
482-0461-964.02-01	CDPH COVID Grant	Extra Help		$ 10,000	$ 10,000	$ -	To align budget with actual expenditures
482-0461-964.02-30	CDPH COVID Grant	Overtime		$ 4,000	$ 4,000	$ -	To align budget with actual expenditures
482-0461-964.03-11	CDPH COVID Grant	Medicare		$ 281	$ 281	$ -	To align budget with actual expenditures
482-0461-964.04-30	CDPH COVID Grant	Equipment rents and leases	$ 24,103			$ 24,103	To align budget with actual expenditures
		TOTAL	$ 14,281	$ 14,281			
485-0464-305.52-56	Community Air Protection Progr	State Revenue		$ (3,166)	$ (15,924)	$ (12,758)	Adjust to align with state budget
485-0464-969.01-28	Community Air Protection Progr	REHS		$ 455	$ 1,704	$ 1,249	Adjust to align with state budget
485-0464-969.01-32	Community Air Protection Progr	EH Manager		$ 1,295	$ 4,971	$ 3,676	Adjust to align with state budget
485-0464-969.01-86	Community Air Protection Progr	Admin Analyst		$ 452	$ 1,605	$ 1,153	Adjust to align with state budget
485-0464-969.01-88	Community Air Protection Progr	Acct Tech II		$ 398	$ 2,121	$ 1,723	Adjust to align with state budget
485-0464-969.03-13	Community Air Protection Progr	M/D/V		$ 566	$ 1,483	$ 917	Adjust to align with state budget
		TOTAL	$ -	$ -			
487-0466-304.30-00	CARES Act	Interest Revenue	$ (2,397)		$ -	$ (2,397)	To reflect CARES Act Reporting
487-0216-521.01-55	CARES Act	Deputy Sheriff	$ 76,192		$ -	$ 76,192	To reflect CARES Act Reporting
487-0289-489.02-31	CARES Act	Overtime-Response	$ 42,379		$ -	$ 42,379	To reflect CARES Act Reporting
487-0289-489.02-32	CARES Act	Overtime-EOC	$ 23,206		$ -	$ 23,206	To reflect CARES Act Reporting
487-0289-489.02-35	CARES Act	Overtime-Admin	$ 571		$ -	$ 571	To reflect CARES Act Reporting
487-0289-489.02-50	CARES Act	Shift Differential	$ 5		$ -	$ 5	To reflect CARES Act Reporting
487-0289-489.02-56	CARES Act	POST Certificate	$ 812		$ -	$ 812	To reflect CARES Act Reporting
487-0289-489.03-10	CARES Act	Social Security	$ 2,963		$ -	$ 2,963	To reflect CARES Act Reporting
487-0289-489.03-11	CARES Act	Medicare	$ 742		$ -	$ 742	To reflect CARES Act Reporting
487-0289-489.03-18	CARES Act	SDI	$ 480		$ -	$ 480	To reflect CARES Act Reporting
487-0289-489.04-06	CARES Act	Communications	$ 969		$ -	$ 969	To reflect CARES Act Reporting
487-0289-489.04-07	CARES Act	Food-EOC Headquarters	$ 1,479		$ -	$ 1,479	To reflect CARES Act Reporting
487-0289-489.04-15	CARES Act	Supplies-Other Medical	$ 6,655		$ -	$ 6,655	To reflect CARES Act Reporting
487-0289-489.04-17	CARES Act	Supplies-Operating	$ 7,389		$ -	$ 7,389	To reflect CARES Act Reporting
487-0289-489.04-18	CARES Act	Supplies-EOC Center	$ 3,842		$ -	$ 3,842	To reflect CARES Act Reporting
487-0289-489.04-33	CARES Act	Special Department	$ 213		$ -	$ 213	To reflect CARES Act Reporting
487-0466-924.04-46	CARES Act	Small Business Grants		$ 18,826	$ 400,000	$ 381,174	To reflect CARES Act Reporting
487-0466-924.07-87	CARES Act	Transfer Out		$ 146,674	$ 146,674	$ -	To reflect CARES Act Reporting
		TOTAL	$ 165,500	$ 165,500			

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MID-YEAR CHANGE REQUESTS - ALL FUNDS							
FISCAL YEAR 2021							
ACCOUNT NUMBER	BUDGET UNIT	ACCOUNT NAME	INCREASE	DECREASE	BUDGET	REVISED	EXPLANATION
520-1321-791.06-23	Fire House Projects	Fish Camp Fire Station		$ 53,000	$ 58,316	$ 5,316	Decrease as an offset for higher priorty fire house projects
520-1321-791.06-24	Fire House Projects	Midpines Fire Station		$ 25,000	$ 25,263	$ 263	Decrease as an offset for higher priorty fire house projects
520-1321-791.06-25	Fire House Projects	Mt. Bullion Fire Station	$ 18,000		$ -	$ 18,000	Increase per higher priorty designation by Fire Chief
520-1321-791.06-27	Fire House Projects	Cathey's Valley Fire Station		$ 11,000	$ 13,000	$ 2,000	Decrease as an offset for higher priorty fire house projects
520-1321-791.06-29	Fire House Projects	Coulterville Fire Station	$ 25,000		$ 8,000	$ 33,000	Increase per higher priorty designation by Fire Chief
520-1321-791.06-30	Fire House Projects	Lush Meadows Fire Station	$ 46,000		$ 15,000	$ 61,000	Increase per higher priorty designation by Fire Chief
		TOTAL	$ 89,000	$ 89,000			
540-1340-800.06-01	Don Pedro WWTP	Fixed Asset - Don Pedro WWTP		$ 20	$ 20	$ -	Transfer out the last $20.00 from this project to Don Pedro Sewer
540-1340-800.07-87	Don Pedro WWTP	Transfer Out	$ 20		$ 12,200	$ 12,220	
		TOTAL	$ 20	$ 20			
575-1375-308.11-00	ORACLE ERP	MISCELLANEOUS REVENUE		$ (500,000)	$ (1,630,002)	$ (1,130,002)	To balance fund
575-1375-309.16-00	ORACLE ERP	TRANSFERS IN	$ (500,000)		$ -	$ (500,000)	Transfer in from HHSA to cover their portion of
		TOTAL	$ (500,000)	$ (500,000)			
601-0404-651.04-30	SOLID WASTE	RENTS & LEASES-EQUIPMENT		$ 6,650	$ 184,662	$ 178,012	To balance the fund
601-0404-651.06-47	SOLID WASTE	BAILER	$ 6,650		$ -	$ 6,650	Allocate for small bailer
		TOTAL	$ 6,650	$ 6,650			
606-0306-601.01-81	Transit	Bus Driver		$ 20,000	$ 117,279	$ 97,279	To align budget with anticipated expenditures
606-0306-601.02-01	Transit	Extra Help		$ 10,000	$ 35,129	$ 25,129	To align budget with anticipated expenditures
606-0306-601.02-02	Transit	Relief Bus Driver		$ 5,600	$ 28,277	$ 22,677	To align budget with anticipated expenditures
606-0306-601.02-05	Transit	Extra Help-Office		$ 1,500	$ 2,500	$ 1,000	To align budget with anticipated expenditures
606-0306-601.06-43	Transit	Fixed Assets-Vans	$ 37,100		$ 111,471	$ 148,571	To align budget with anticipated expenditures
		TOTAL	$ 37,100	$ 37,100			
610-0303-591.04-81	Airport Operations	Software	$ 1,000		$ -	$ 1,000	Funding for the MQ4000 was incorrectly requested in 0491
610-0303-591.04-91	Airport Operations	Private Vehicle Use		$ 1,000	$ 1,000	$ -	Allocate for MQ4000
		TOTAL	$ 1,000	$ 1,000			

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MID-YEAR CHANGE REQUESTS - ALL FUNDS							
FISCAL YEAR 2021							
ACCOUNT NUMBER	**BUDGET UNIT**	**ACCOUNT NAME**	**INCREASE**	**DECREASE**	**BUDGET**	**REVISED**	**EXPLANATION**
616-0308-580.03-03	PLANT OPERATIONS	UNEMPLOYMENT	$ 3,597		$ -	$ 3,597	
616-0308-580.04-18	PLANT OPERATIONS	PROFESSIONAL SERVICES		$ 3,597	$ 20,741	$ 17,144	
		TOTAL	$ 3,597	$ 3,597			
706-0146-307.17-01	WORKERS COMPENSATION INS.	WORKER COMP REIMBURSEMENT		$ (700,000)	$ (1,698,035)	$ (998,035)	Workers Comp is super funded ~$1.4M - Liability is under funded ~$660K - so adjusting contributions to re-distribute funds accordingly
706-0146-502.04-33	WORKERS COMPENSATION INS.	WORKERS COMPENSATION		$ 700,000	$ 900,000	$ 200,000	To balance fund
		TOTAL	$ -	$ -			
707-0149-307.17-02	LIABILITY INSURANCE	LIABILITY REIMBURSEMENT	$ (700,000)		$ (748,800)	$ (1,448,800)	Workers Comp is super funded ~$1.4M - Liability is under funded ~$660K - so adjusting contributions to re-distribute funds accordingly
707-0149-505.04-33	LIABILITY INSURANCE	LIABILITY	$ 700,000		$ 548,500	$ 1,248,500	To balance fund
		TOTAL	$ -	$ -		$ -	
						$ -	
750-1500-309.16-00	HEALTH BUILDING	TF IN REALIGN FUND 393	$ (72,000)		$ -	$ (72,000)	
750-1500-970.11-20	HEALTH BUILDING	Loan Principle Expense	$ 61,011		$ -	$ 61,011	
750-1500-970.11-30	HEALTH BUILDING	Loan Interest Expense	$ 10,989		$ -	$ 10,989	
		TOTAL	$ -	$ -		$ -	
ACTION REQUESTED: (Check all that apply)							
( ) Budget appropriation is less than $50,000 and involves shifting funds between categories in the same account and fund. Board of Supervisors reviews all budget actions of this nature on a monthly basis.							
(X) Budget appropriation by Board of Supervisors (4/5ths Vote Required): Amending revenues and expenses or transferring funds between funds or accounts within the General Fund or transferring appropriation from contingency.							
DEPARTMENT HEAD SIGNATURE						DATE	
AUDITOR SIGNATURE						DATE	
COUNTY ADMINISTRATIVE OFFICER SIGNATURE						DATE	
APPROVED BY RES NO.		CLERK				DATE	
					AUDITOR'S USE ONLY		
DEPARTMENT					BA #		
NOTE							
* All revenue entries should be entered in parentheses and entered in the appropriate column to either increase or decrease revenue.							
* All expense entries should be positive and entered in the appropriate colum to either increase or decrease the expense.							

Attachment: Mid Year Change Requests Budget Action FY21 Searchable (RES-2021-92 : Approve FY20-21

MID-YEAR CHANGE REQUESTS - ALL FUNDS							
FISCAL YEAR 2021							
ACCOUNT NUMBER	BUDGET UNIT	ACCOUNT NAME	INCREASE	DECREASE	BUDGET	REVISED	EXPLANATION
001-0000-301.09-02	GENERAL PURPOSE REVENUE	TRANSIENT OCCUPANCY TAX	$ (319,672)		$ (8,048,666)	$ (8,368,338)	Slight increase to balance general fund, reflecting Oct/Nov numbers when County is in Orange Tier translated to spring
001-0101-411.04-17	Board of Supervisors	Office Expense	$ 4,000		$ 5,500	$ 9,500	Unanticipated expenses with retirements and new supervisor needs
001-0101-411.04-90	Board of Supervisors	Trainings & Seminars		$ 1,500	$ 16,550	$ 15,050	Actual expenses less than anticipated due to use of virtual events
001-0101-411.04-96	Board of Supervisors	Private Vehicle Expense		$ 2,500	$ 3,000	$ 500	No travel due to Covid-19
001-0102-412.01-68	ADMINISTRATION	EXECUTIVE ASSISTANT		$ 13,842	$ 63,278	$ 49,436	Staff on loan to PW a few days a week
001-0107-421.02-30	AUDITOR	OVERTIME	$ 6,797		$ -	$ 6,797	150 Overtime hours paid to Payroll Specialist
001-0107-421.02-44	AUDITOR	CONFIDENTIAL STIPEND	$ 204		$ 9,030	$ 9,234	Confidential Stipend pay that calculates on OT hours paid.
001-0107-421.03-10	AUDITOR	SOCIAL SECURITY	$ 478		$ 42,541	$ 43,019	Social Security that calculates on OT hours paid.
001-0107-421.03-11	AUDITOR	MEDICARE	$ 112		$ 10,298	$ 10,410	Medicare that calculates on OT hours paid.
001-0107-421.03-18	AUDITOR	SDI	$ 700		$ 5,491	$ 6,191	SDI that calculates on OT hours paid.
001-0108-422.04-30	TREASUER/TAX COLLECTOR	RENTS & LEASES-EQUIPMENT	$ 6,000		$ -	$ 6,000	POSTAGE MACHINE
001-0108-422.04-36	TREASUER/TAX COLLECTOR	TAX DOC PRINTING	$ 1,500		$ 16,500	$ 18,000	INCREASED COSTS
001-0109-423.03-03	ASSESSOR RECORDER	UNEMPLOYMENT	$ 1,087		$ -	$ 1,087	
001-0113-431.03-03	COUNTY COUNSEL	UNEMPLOYMENT	$ 7,050		$ -	$ 7,050	
001-0113-431.04-18	COUNTY COUNSEL	PROFESSIONAL SERVICES	$ 26,063		$ 28,000	$ 54,063	To cover legal expenses associated with Yosemite
001-0115-441.04-18	HUMAN RESOURCES	PROFESSIONAL SERVICES	$ 35,000		$ 79,000	$ 114,000	Additional services for Interim HR support
001-0120-452.02-45	COUNTY CLERK	OUT OF CLASS	$ 4,400		$ -	$ 4,400	SR. ACCOUNT CLERK POSTION
001-0120-452.03-03	COUNTY CLERK	UNEMPLOYMENT	$ 30		$ -	$ 30	
001-0121-305.62-13	ELECTIONS	ELECTIONS/REIMBURSEMENTS		$ (32,000)	$ (32,600)	$ (600)	Budgeting error
001-0121-453.02-01	ELECTIONS	EXTRA HELP	$ 738		$ -	$ 738	BALLOT PICK UP FOR GENERAL ELECTION
001-0121-453.02-30	ELECTIONS	OVERTIME	$ 232		$ -	$ 232	GENERAL ELECTION OVERTIME
001-0121-453.04-33	ELECTIONS	ELECTION EXPENSE		$ 12,870	$ 60,000	$ 47,130	SAVINGS ON HOST COMPLIANCE
001-0147-493.04-34	COMMUNITY CULTURAL	VISTOR CENTER OPS	$ 17,334		$ 164,000	$ 181,334	
001-0150-308.11-00	Engineeering	Miscellaneous Revenue	$ (8,202)		$ (1,000)	$ (9,202)	Increase revenue and appropriations for reimbursement for having fronted Nature Bridge expense

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MID-YEAR CHANGE REQUESTS - ALL FUNDS							
FISCAL YEAR 2021							
ACCOUNT NUMBER	BUDGET UNIT	ACCOUNT NAME	INCREASE	DECREASE	BUDGET	REVISED	EXPLANATION
001-0150-508.04-18	Engineeering	Professional Services	$ 8,202		$ 20,000	$ 28,202	
001-0151-506.03-03	TECHNICAL SERVICES	UNEMPLOYMENT	$ 3,597		$ -	$ 3,597	
001-0151-506.04-81	TECHNICAL SERVICES	SOFTWARE	$ 140,000		$ 230,134	$ 370,134	Phone upgrade will be covered through new software
001-0151-506.04-81	TECHNICAL SERVICES	SOFTWARE	$ 70,000		$ 230,134	$ 300,134	Additional cost of ERP software - error in earlier calculation
001-0151-506.04-81	TECHNICAL SERVICES	SOFTWARE	$ 1,488		$ 230,134	$ 231,622	Additional ZorroSign licenses for behavioral health and sheriff
001-0151-506.04-90	TECHNICAL SERVICES	TRAINING & SEMINARS	$ 3,000		$ 2,000	$ 5,000	Additional training required to keep up with rapidly changing technology environment
001-0151-506.06-73	TECHNICAL SERVICES	PHONE SYSTEM UPGRADE VOIP		$ 140,000	$ 300,000	$ 160,000	Phone upgrade will be covered through new software
001-0161-309.16-00	INTERFUND TRANSFERS	TRANSFER IN		$ (146,674)	$ 2,588,058	$ 2,734,732	To reflect CARES Act Reporting
001-0161-427.07-87	INTERFUND TRANSFERS	TRANSFER OUT	$ 25,000		$ 17,460	$ 42,460	LAFCo
001-0212-517.03-03	D.A./PROSECUTION	UNEMPLOYMENT	$ 13,910		$ -	$ 13,910	
001-0212-517.03-04	D.A./PROSECUTION	ACCRUED BENEFITS	$ 3,609		$ -	$ 3,609	
001-0212-517.04-14	D.A./PROSECUTION	Medical and Lab		$ 2,000	$ 6,000	$ 4,000	Lack of normal lab expenses due to cases being continued, COVID
001-0212-517.04-18	D.A./PROSECUTION	Professional Services	$ 2,000		$ 10,000	$ 12,000	High profile case expenditures on experts
001-0212-517.04-29	D.A./PROSECUTION	Publications/Legal Notice	$ 9,000		$ 15,000	$ 24,000	Up front costs of asset foreture notice publication costs
001-0212-517.04-71	D.A./PROSECUTION	Copier Expense	$ 1,500		$ 4,500	$ 6,000	Overage costs and increased monthly billing amount
001-0212-517.04-88	D.A./PROSECUTION	Fuel Expense		$ 1,500	$ 5,000	$ 3,500	Vehicle in and out of shop, not attending trainings in person
001-0212-517.04-90	D.A./PROSECUTION	Training and Seminars		$ 9,000	$ 20,000	$ 11,000	COVID impacts, unable to attend trainings as normal
001-0215-306.72-01	General Fund	VICTIM-WITNESS/OCJP "VW"	$ (35,044)		$ (299,671)	$ (334,715)	Increase in federal funding between funding years see below revisions
001-0215-518.01-02	Victim Witness	D.A. CHIEF INVESTIGATOR		$ 9,254	$ 12,263	$ 3,009	Only funded through 9/30/2020 per Grant Funding
001-0215-518.04-17	Victim Witness	OFFICE EXPENSES	$ 29,071		$ 30,000	$ 59,071	Large office expense purchase in Q1 of the county fiscal year during federal grant close-out period. Increasing budget to allow for ongoing office expense purchases to meet program goals. Expenses incurred to date support Mass Victimization local needs goals (i.e. radio communcations, gear, portable printers, etc.)

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MID-YEAR CHANGE REQUESTS - ALL FUNDS							
FISCAL YEAR 2021							
ACCOUNT NUMBER	BUDGET UNIT	ACCOUNT NAME	INCREASE	DECREASE	BUDGET	REVISED	EXPLANATION
001-0215-518.06-40	Victim Witness	VEHICLES	$ 15,227		$ 27,500	$ 42,727	To purchase a car radio $7,251 and a vehicle for our Courthouse Facility Dog Program $35,476
001-0216-308.11-00	SHERIFF	MUTUAL AID CAMP FIRE	$ (65,864)		$ -	$ (65,864)	
001-0216-521.01-55	SHERIFF	DEPUTY SHERIFF		$ 110,973	$ 1,252,773	$ 1,141,800	Moving allowable School Resource Officer expense to grant fund & CARES Act
001-0216-521.02-35	SHERIFF	LONGEVITY PAY		$ 1,680	$ 96,220	$ 94,540	
001-0216-521.02-56	SHERIFF	POST CERTIFICATE PAY		$ 2,800	$ 116,553	$ 113,753	
001-0216-521.02-58	SHERIFF	UNIFORM ALLOWANCE		$ 757	$ 30,100	$ 29,343	
001-0216-521.03-03	SHERIFF	UNEMPLOYMENT	$ 28,516		$ -	$ 28,516	
001-0216-521.03-04	SHERIFF	ACCRUED BENEFITS	$ 64,107		$ 43,531	$ 107,638	
001-0216-521.03-10	SHERIFF	SOCIAL SECURITY		$ 4,095	$ 244,460	$ 240,365	
001-0216-521.03-11	SHERIFF	MEDICARE		$ 958	$ 58,856	$ 57,898	
001-0216-521.03-13	SHERIFF	MEDICAL/DENTAL/VISION		$ 6,385	$ 490,052	$ 483,667	
001-0216-521.03-14	SHERIFF	RETIREMENT-EMPLOYER		$ 14,498	$ 658,964	$ 644,466	
001-0216-521.03-17	SHERIFF	LIFE INSURANCE		$ 23	$ 1,766	$ 1,743	
001-0216-521.03-18	SHERIFF	SDI		$ 654	$ 37,942	$ 37,288	
001-0216-521.03-19	SHERIFF	CASH-CAFETERIA PLAN		$ 4,148	$ 113,014	$ 108,866	
001-0216-521.04-43	SHERIFF	SAFETY EQUIPMENT		$ 18,000	$ 110,000	$ 92,000	Due to COVID mandated off-site jury trials requiring additional staffing
001-0216-521.04-80	SHERIFF	EQUIPMENT		$ 17,000	$ 75,000	$ 58,000	Due to COVID mandated off-site jury trials requiring additional staffing
001-0216-521.04-88	SHERIFF	FUEL		$ 18,000	$ 195,000	$ 177,000	Due to COVID mandated off-site jury trials requiring additional staffing
001-0216-521.07-91	SHERIFF	TRANSFER OUT TO FUND 440	$ 53,000		$ -	$ 53,000	
001-0223-532.03-03	JUVENILE DETENTION	UNEMPLOYMENT	$ 1,646		$ -	$ 1,646	
001-0228-542.03-03	FIRE	UNEMPLOYMENT	$ 4,511		$ -	$ 4,511	
001-0249-307.87-02	PLANNING	PERMITTING SYSTEM	$ (24,250)		$ (28,750)	$ (53,000)	
001-0249-575.01-63	PLANNING	OFFICE TECHNICIAN	$ 11,709		$ -	$ 11,709	
001-0249-575.02-01	PLANNING	EXTRA HELP		$ 13,249	$ 56,000	$ 42,751	
001-0249-575.03-03	PLANNING	UNEMPLOYMENT	$ 6,266		$ -	$ 6,266	
001-0249-575.03-10	PLANNING	SOCIAL SECURITY	$ 726		$ 52,964	$ 53,690	
001-0249-575.03-11	PLANNING	MEDICARE	$ 170		$ 12,387	$ 12,557	
001-0249-575.03-13	PLANNING	MEDICAL/DENTAL/VISION	$ 3,881		$ 134,675	$ 138,556	
001-0249-575.03-14	PLANNING	RETIREMENT-EMPLOYER	$ 1,299		$ 98,118	$ 99,417	
001-0249-575.03-18	PLANNING	SDI	$ 125		$ 8,276	$ 8,401	
001-0249-575.04-33	PLANNING	COMMISSION		$ 2,880	$ 7,110	$ 4,230	
001-0249-575.04-35	PLANNING	FISH & GAME/CEQA		$ 2,400	$ 4,814	$ 2,414	
001-0249-575.04-90	PLANNING	TRAINING & SEMINARS		$ 3,000	$ 6,340	$ 3,340	
001-0249-579.04-90	PLANNING	TRAINING & SEMINARS		$ 3,000	$ 4,500	$ 1,500	

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MID-YEAR CHANGE REQUESTS - ALL FUNDS							
FISCAL YEAR 2021							
ACCOUNT NUMBER	BUDGET UNIT	ACCOUNT NAME	INCREASE	DECREASE	BUDGET	REVISED	EXPLANATION
001-0289-489.02-31	COVID 19	OVERTIME-RESPONSE	$ 3,840			$ 3,840	
001-0289-489.02-32	COVID 19	OVERTIME-EOC	$ 9,679			$ 9,679	
001-0289-489.02-35	COVID 19	OVERTIME-ADMIN	$ 40			$ 40	
001-0289-489.02-44	COVID 19	CONFIDENTIAL STIPEND	$ 19			$ 19	
001-0289-489.02-50	COVID 19	SHIFT DIFFERENTIAL	$ 6			$ 6	
001-0289-489.02-56	COVID 19	POST CERTIFICATE	$ 100			$ 100	
001-0289-489.03-10	COVID 19	SOCIAL SECURITY	$ 2,072			$ 2,072	
001-0289-489.03-11	COVID 19	MEDICARE	$ 491			$ 491	
001-0289-489.03-18	COVID 19	SDI	$ 336			$ 336	
001-0289-489.04-06	COVID 19	COMMUNICATIONS	$ 167			$ 167	
001-0289-489.04-07	COVID 19	FOOD-EOC QUARTERS	$ -			$ -	
001-0289-489.04-15	COVID 19	SUPPLIES-OTHER MEDICAL	$ 829			$ 829	
001-0289-489.04-17	COVID 19	SUPPLIES-OPERATING	$ 17,124			$ 17,124	
001-0289-489.04-18	COVID 19	SUPPLIES-EOC CENTER	$ -			$ -	
001-0289-489.04-33	COVID 19	SPECIAL DEPARTMENT	$ -			$ -	
001-0304-583.01-68	Public Works - Administration	EXECUTIVE ASSISTANT	$ 13,842		$ -	$ 13,842	Staff loan from Administration
001-0304-583.01-98	Public Works - Administration	Account Clerk I		$ 1,000	$ 66,950	$ 65,950	Decrease to allocate 0408 - Food expense (drinking water)
001-0304-583.04-08	Public Works - Administration	Food	$ 1,000		$ -	$ 1,000	Allocate for purchase of drinking water expense due to contamination in PW well
001-0313-630.04-06	Public Works - Executive	Communications	$ 600		$ -	$ 600	Allocate this account
001-0313-630.04-90	Public Works - Executive	Training & Seminars		$ 600	$ 5,000	$ 4,400	Offset to 0406 - Communications
001-0317-307.07-46	Surveyor Services	Encroachment/Special Events		$ (15,000)	$ (15,000)	$ -	Revenue earnings for encroachment fees and special events are now part of Engineering. The Engineering budget is allocated
001-0401-305.47-02	Public Health	AIDS BLOCK GRANT	$ (3,000)		$ -	$ (3,000)	Prior year revenue
001-0401-305.48-00	Public Health	CCS/CALIF CHILDRENS SERVICES	$ (25,181)		$ -	$ (25,181)	Prior year revenue
001-0401-305.50-14	Public Health	Medi-CAL FFP		$ (110,000)	$ (110,000)	$ -	No anticipated Medi-Cal billing for this FY
001-0401-305.52-08	Public Health	CHDP	$ (5,398)		$ -	$ (5,398)	Prior year revenue
001-0401-305.52-10	Public Health	MCAH	$ (8,110)		$ -	$ (8,110)	Prior year revenue
001-0401-305.52-13	Public Health	IAP	$ (2,177)		$ -	$ (2,177)	Prior year revenue
001-0401-305.52-23	Public Health	SNAP-ED/CAL FRESH	$ (37,562)		$ -	$ (37,562)	Prior year revenue
001-0401-305.52-24	Public Health	COHP	$ (58,191)		$ -	$ (58,191)	Prior year revenue
001-0401-305.52-25	Public Health	CLPPP	$ (6,647)		$ -	$ (6,647)	Prior year revenue
001-0401-307.19-20	Public Health	Other Insurance		$ (40,000)	$ (40,000)	$ -	Do not anticipate revenue from insurance billing this FY
001-0401-308.01-15	Public Health	Donations	$ (10,077)			$ (10,077)	Donation Revenue
001-0401-309.15-54	Public Health	Transfer in 428-0433-682-0787	$ (16,759)		$ -	$ (16,759)	Prior year revenue

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MID-YEAR CHANGE REQUESTS - ALL FUNDS							
FISCAL YEAR 2021							
ACCOUNT NUMBER	BUDGET UNIT	ACCOUNT NAME	INCREASE	DECREASE	BUDGET	REVISED	EXPLANATION
001-0401-309.15-66	Public Health	Transfer in 464-0424-567-0787	$ (6,697)		$ 253,723	$ 247,026	Prior year revenue
001-0401-309.16-75	Public Health	Transfer in 402-0414-952-0787	$ (32,227)		$ -	$ (32,227)	Prior year revenue
001-0401-621.01-03	Public Health	Deputy Director Public Health	$ 8,466		$ 21,940	$ 30,406	To be transferred from fund 470
001-0401-621.01-36	Public Health	Nurse Practitioner	$ 3,841		$ -	$ 3,841	FNP salary prior to FNP psych cert
001-0401-621.01-69	Public Health	Program Assistant II	$ 10,740		$ -	$ 10,740	Position moved to health division
001-0401-621.01-93	Public Health	Psych M/H Nurse Practitioner		$ 81,172	$ 104,987	$ 23,815	Moved to 0402
001-0401-621.02-01	Public Health	Extra Help	$ 25,386		$ 5,034	$ 30,420	Increased hours due to Covid and Community Health coverage
001-0401-621.02-03	Public Health	Clinic Extra Help	$ 30,000		$ 32,018	$ 62,018	Increased Clinic Extra Help hours for RN's for COVID vaccinations
001-0401-621.02-30	Public Health	Overtime	$ 386		$ -	$ 386	
001-0401-621.02-34	Public Health	FLSA Adjust	$ 11		$ -	$ 11	
001-0401-621.02-35	Public Health	Longevity	$ 77		$ 196	$ 273	
001-0401-621.02-39	Public Health	Extra Straight Time Hours	$ 165		$ -	$ 165	
001-0401-621.02-40	Public Health	Call Back Pay	$ 1,147		$ -	$ 1,147	
001-0401-621.02-45	Public Health	Out of Class	$ 1,476		$ -	$ 1,476	
001-0401-621.02-46	Public Health	Acting Assignment Pay	$ 19		$ -	$ 19	
001-0401-621.03-02	Public Health	Group Health Retirees	$ 8,909		$ 63,211	$ 72,120	Increased due to new retirees
001-0401-621.03-03	Public Health	Unemployment	$ 9,282		$ -	$ 9,282	Increased due to unexpected UE benefits
001-0401-621.03-04	Public Health	Accrued Benefits	$ 5,402		$ 6,166	$ 11,568	Increased due to vac accural payments
001-0401-621.04-15	Public Health	Membership	$ 344		$ 4,496	$ 4,840	Increased membership dues
001-0401-621.07-88	Public Health	Transfer-Out to fund 473	$ 20,605		$ -	$ 20,605	
001-0402-305.50-14	Behavioral Health	MEDI-CAL FFP	$ (331,882)		$ (2,695,487)	$ (3,027,369)	Transfer out share of ERP costs
001-0402-305.50-38	Behavioral Health	PRIOR YEAR REVENUE	$ (374,999)		$ (507,962)	$ (882,961)	
001-0402-309.16-94	Behavioral Health	TF IN REALIGN FUND 393		$ (568,681)	$ (1,571,017)	$ (1,002,336)	
001-0402-622.04-24	Behavioral Health	CONTACT SERV INPATIENT		$ 72,000	$ 758,008	$ 686,008	
001-0402-622.09-10	Behavioral Health	Transfer out to fund 001-0507	$ 210,200		$ 1,363,600	$ 1,573,800	
001-0501-661.01-33	Social Services	Social Worker IV		$ 80,000	$ 564,667	$ 484,667	To align budget with anticipated expenditures
001-0501-661.02-01	Social Services	Extra Help		$ 10,000	$ 50,000	$ 40,000	To align budget with anticipated expenditures
001-0501-661.02-30	Social Services	Overtime		$ 10,000	$ 50,000	$ 40,000	To align budget with anticipated expenditures
001-0501-661.04-18	Social Services	Professional Services		$ 52,300	$ 150,000	$ 97,700	To align budget with anticipated expenditures
001-0501-661.09-10	Social Services	Transfer out to fund 001-0507	$ 152,300		$ 1,996,887	$ 2,149,187	Transfer out share of ERP costs
001-0506-308.11-04	Aid Programs	GA/GR Repayments	$ (10,000)		$ (10,000)	$ (20,000)	To align budget with actual revenues
001-0506-671.05-55	Aid Programs	County Relief Non GR	$ 10,000		$ 10,000	$ 20,000	To align budget with actual expenses
001-0507-308.11-00	Human Services Administration	Miscellaneous Revenue	$ (90,000)		$ -	$ (90,000)	To align budget with anticipated revenues

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MID-YEAR CHANGE REQUESTS - ALL FUNDS							
FISCAL YEAR 2021							
ACCOUNT NUMBER	BUDGET UNIT	ACCOUNT NAME	INCREASE	DECREASE	BUDGET	REVISED	EXPLANATION
001-0507-309.16-00	Human Services Administration	Transfer In	$ (15,000)		$ (20,500)	$ (35,500)	from CMSP CERG COVID grant 481-0460-963.07-87
001-0507-672.01-09	Human Services Administration	Administrative Analyst II		$ 3,464	$ 92,963	$ 89,499	To align budget with anticipated expenditures
001-0507-672.02-01	Human Services Administration	Extra Help	$ 70,000		$ 29,730	$ 99,730	To align budget with anticipated expenditures
001-0507-672.02-45	Human Services Administration	Out of Class pay	$ 5,000		$ 5,000	$ 10,000	To align budget with anticipated expenditures
001-0507-672.03-10	Human Services Administration	Social Security		$ 215	$ 160,563	$ 160,348	To align budget with anticipated expenditures
001-0507-672.03-11	Human Services Administration	Medicare		$ 50	$ 39,308	$ 39,258	To align budget with anticipated expenditures
001-0507-672.03-13	Human Services Administration	Medical/Dental/Vision		$ 1,249	$ 463,769	$ 462,520	To align budget with anticipated expenditures
001-0507-672.03-14	Human Services Administration	Retirement-Employer		$ 384	$ 273,185	$ 272,801	To align budget with anticipated expenditures
001-0507-672.03-18	Human Services Administration	SDI		$ 35	$ 23,268	$ 23,233	To align budget with anticipated expenditures
001-0507-672.04-13	Human Services Administration	Building maintenance	$ 15,000		$ 40,000	$ 55,000	To align budget with anticipated expenditures
001-0507-672.04-31	Human Services Administration	Building Rent	$ 15,000		$ 1,350,000	$ 1,365,000	from CMSP CERG COVID grant 481-0460-963.07-87
001-0507-672.07-87	Human Services Administration	Transfer out	$ 500,000		$ -	$ 500,000	Transfer out for ERP costs
001-0507-672.09-10	Human Services Administration	Transfer in fund 001-0501	$ (152,300)		$ (1,996,887)	$ (2,149,187)	Transfer in for ERP costs
001-0507-672.09-12	Human Services Administration	Transfer in fund 001-0402	$ (210,200)		$ (1,363,600)	$ (1,573,800)	Transfer in for ERP costs
001-0507-672.09-13	Human Services Administration	Transfer in fund 001-0528	$ (137,500)		$ (1,802,836)	$ (1,940,336)	Transfer in for ERP costs
001-0528-677.03-04	Public Assistance	Accrued Benefits	$ 5,000		$ 5,520	$ 10,520	To align budget with expenditures
001-0528-677.04-06	Public Assistance	Communications		$ 15,000	$ 30,000	$ 15,000	To align budget with expenditures
001-0528-677.04-17	Public Assistance	Office Expense		$ 15,000	$ 27,321	$ 12,321	To align budget with expenditures
001-0528-677.04-20	Public Assistance	Extended Subsidized Employment		$ 30,000	$ 65,000	$ 35,000	To align budget with expenditures
001-0528-677.04-33	Public Assistance	Contracted Training		$ 20,000	$ 57,375	$ 37,375	To align budget with expenditures
001-0528-677.04-35	Public Assistance	CalWORKs Contracts		$ 12,500	$ 30,000	$ 17,500	To align budget with expenditures
001-0528-677.04-52	Public Assistance	C-IV Migration Costs		$ 30,000	$ 50,000	$ 20,000	To align budget with expenditures
001-0528-677.04-90	Public Assistance	Travel/Training		$ 20,000	$ 40,000	$ 20,000	To align budget with expenditures
001-0528-677.09-10	Public Assistance	Transfer out to fund 001-0507	$ 137,500		$ 1,802,836	$ 1,940,336	Transfer out share of ERP costs
001-0606-731.02-01	LIBRARY	EXTRA HELP	$ 20,000		$ 13,800	$ 33,800	
001-0606-731.03-03	LIBRARY	UNEMPLOYMENT	$ 29,759		$ -	$ 29,759	
001-0606-731.04-35	LIBRARY	BOOKS/AUDIOS/VIDEOS/MAGS		$ 20,000	$ 38,000	$ 18,000	
001-0701-307.06-04	Park and Recreation	Water Aquatics	$ (500)		$ (6,000)	$ (6,500)	Recognize a citizens donation as an increase in revenue
001-0701-761.03-03	Park and Recreation	UNEMPLOYMENT	$ 7,074		$ -	$ 7,074	

Attachment: Mid Year Change Requests Budget Action FY21 Signed Copy (RES-2021-92 : Approve FY20-

MID-YEAR CHANGE REQUESTS - ALL FUNDS							
FISCAL YEAR 2021							
ACCOUNT NUMBER	BUDGET UNIT	ACCOUNT NAME	INCREASE	DECREASE	BUDGET	REVISED	EXPLANATION
001-0701-761.04-35	Park and Recreation	Recreation Programs	$ 500		$ 8,000	$ 8,500	Recognize a citizens donation as an increase in expense
		TOTAL	$ (20,420)	$ (20,420)			
033-0251-577.01-48	Transportation Planning	Transportation Planner	$ 16,100		$ -	$ 16,100	Allocate two months expense for Transportation Planner
033-0251-577.03-02	Transportation Planning	Group Health - Retirees	$ 7,200		$ -	$ 7,200	Allocate this account
033-0251-577.04-18	Transportation Planning	Contracts		$ 23,300	$ 297,537	$ 274,237	Decrease as an offset
		TOTAL	$ 23,300	$ 23,300			
300-0301-581.01-61	Roads Maintenance	Maintenance Worker III		$ 100,000	$ 220,840	$ 120,840	Decrease as an offset
300-0301-581.04-05	Roads Maintenance	Clothing		$ 5,000	$ 15,000	$ 10,000	Decrease as an offset
300-0301-581.04-09	Roads Maintenance	Household		$ 2,000	$ 5,000	$ 3,000	Decrease as an offset
300-0301-581.04-13	Roads Maintenance	Maintenance of Buildings		$ 4,000	$ 10,000	$ 6,000	Decrease as an offset
300-0301-581.04-32	Roads Maintenance	Small Tools		$ 5,000	$ 15,000	$ 10,000	Decrease as an offset
300-0301-581.04-33	Roads Maintenance	S/D Materials	$ 100,000		$ 267,112	$ 367,112	Increase to approximate level of original request
300-0301-581.04-34	Roads Maintenance	S/D Materials - Sigh Shop	$ 21,000		$ 25,000	$ 46,000	Increase required for updating Chevronms, theft replacement, new No Parking ordinace
300-0301-581.04-35	Roads Maintenance	Safety Equipment		$ 5,000	$ 20,000	$ 15,000	Decrease as an offset
		TOTAL	$ 121,000	$ 121,000			
314-0903-852.04-12	Coulterville Service Area	Maintenance of Equipment	$ 5,750		$ 1,856	$ 7,606	Increase for unanticipate pump repairs
314-0903-852.04-19	Coulterville Service Area	Labor	$ 4,000		$ 20,000	$ 24,000	Increase for unanticipate pump repairs
314-0903-853.06-77	Coulterville Service Area	Fixed Asset - Sewer Pump		$ 9,750	$ 9,750	$ -	Decrease as an offset
		TOTAL	$ 9,750	$ 9,750			
316-0905-309.16-00	Don Pedro Sewer	Transfer In	$ (20)		$ (12,200)	$ (12,220)	Transfer in the last $20.00 from the DPWWTP project
316-0905-855.04-06	Don Pedro Sewer	Communications	$ 20		$ 550	$ 570	
		TOTAL	$ -	$ -			
341-0519-309.16-00	Senior Services	Transfer in 433-0530-684.07-88	$ (10,000)		$ (23,798)	$ (33,798)	To balance budget
341-0519-716.04-31	Senior Services	Building rents and leases	$ 10,000			$ 10,000	To align budget with expenditures
		TOTAL	$ -	$ -			
342-0517-714.01-69	Senior Nutrition C-1	Program Assistant I-II		$ 7,500	$ 22,880	$ 15,380	Position was vacant and extra help was used
342-0517-714.02-01	Senior Nutrition C-1	Extra Help	$ 7,500		$ 7,725	$ 15,225	To align budget with expenditures
342-0518-715.01-69	Senior Nutrition C-2	Program Assistant I-II		$ 7,500	$ 22,880	$ 15,380	Position was vacant and extra help was used
342-0518-715.02-01	Senior Nutrition C-2	Extra Help	$ 7,500		$ 3,700	$ 11,200	To align budget with expenditures
		TOTAL	$ 15,000	$ 15,000			

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MID-YEAR CHANGE REQUESTS - ALL FUNDS							
FISCAL YEAR 2021							
ACCOUNT NUMBER	BUDGET UNIT	ACCOUNT NAME	INCREASE	DECREASE	BUDGET	REVISED	EXPLANATION
370-0245-309.16-00	LAFCO	TRANSFERS IN	$ (25,000)		$ (5,178)	$ (30,178)	
370-0245-574.04-18	LAFCO	PROFESSIONAL SERVICES	$ 25,000		$ -	$ 25,000	
		TOTAL	$ -	$ -			
385-0409-628.01-15	Tobacco Trust Prop 99	PH Educator	$ 2,196		$ 34,936	$ 37,132	Align to match state budget
385-0409-628.01-39	Tobacco Trust Prop 99	PS I/II	$ 4,596		$ 16,226	$ 20,822	Align to match state budget
385-0409-628.01-39	Tobacco Trust Prop 99	PS I/II	$ 4,328		$ 16,226	$ 20,554	Align to match state budget
385-0409-628.01-86	Tobacco Trust Prop 99	Admin Analyst	$ 1,573		$ 2,408	$ 3,981	Align to match state budget
385-0409-628.01-88	Tobacco Trust Prop 99	Acct Tech II	$ 1,094		$ 1,590	$ 2,684	Align to match state budget
385-0409-628.03-14	Tobacco Trust Prop 99	Retirement- benefits	$ 6,177		$ 7,917	$ 14,094	Lump sum adjustment to benefits
385-0409-628.04-06	Tobacco Trust Prop 99	Communication	$ 534		$ 397	$ 931	Align to match state budget
385-0409-628.04-15	Tobacco Trust Prop 99	Memberships		$ 74	$ 404	$ 330	Align to match state budget
385-0409-628.04-16	Tobacco Trust Prop 99	Misc		$ 41,852	$ 47,341	$ 5,489	Align to match state budget
385-0409-628.04-17	Tobacco Trust Prop 99	Office	$ 558		$ 2,121	$ 2,679	Align to match state budget
385-0409-628.04-18	Tobacco Trust Prop 99	Prof Svc	$ 8,401		$ 9,376	$ 17,777	Align to match state budget
385-0409-628.04-23	Tobacco Trust Prop 99	Media	$ 12,868		$ 5,864	$ 18,732	Align to match state budget
385-0409-628.04-24	Tobacco Trust Prop 99	Behavior Mod		$ 99	$ 198	$ 99	Align to match state budget
385-0409-628.04-34	Tobacco Trust Prop 99	Booth Rental		$ 372	$ 496	$ 124	Align to match state budget
385-0409-628.04-71	Tobacco Trust Prop 99	Copier	$ 793		$ 320	$ 1,113	Align to match state budget
385-0409-628.04-80	Tobacco Trust Prop 99	Equipment	$ 734		$ -	$ 734	Align to match state budget
385-0409-628.04-90	Tobacco Trust Prop 99	Travel		$ 1,455	$ 1,830	$ 375	Align to match state budget
		TOTAL	$ 43,852	$ 43,852			
392-0411-305.67-19	Health Realignment	Sales Tax revenue	$ (51,324)		$ (27,774)	$ (79,098)	Actuals
392-0411-620.04-16	Health Realignment	Misc Expense	$ 32,107		$ 178,226	$ 210,333	
392-0411-620.07-87	Health Realignment	Transfer out	$ 19,217		$ 579,020	$ 598,237	Transfer in CCS Cert of Appropriation
		TOTAL	$ -	$ -			
393-0412-950.04-16	BEHAVIORAL HEALTH REALIGNN	MISCELLANEOUS EXPENSE	$ 31,726		$ 87,109	$ 118,835	to correct previous balancing adj's imbalance
393-0412-950.07-87	BEHAVIORAL HEALTH REALIGNN	TRANSFERS OUT		$ 31,726	$ 2,064,385	$ 2,032,659	to correct previous balancing adj's imbalance
		TOTAL	$ 31,726	$ 31,726			
402-0414-305.74-49	PHEP Trust	Public Health Emergency Rev		$ (12,867)	$ (12,867)	$ -	MY adj to revenue
402-0414-306.72-69	PHEP Trust	Federal Revenue	$ (35,885)		$ (119,046)	$ (154,931)	State revenue including prior year revenue $32,227
402-0414-952.01-01	PHEP Trust	Health Officer	$ 434		$ 8,673	$ 9,107	Align to match state budget
402-0414-952.01-16	PHEP Trust	PHEP Coord		$ 23,937	$ 52,298	$ 28,361	Align to match state budget
402-0414-952.02-03	PHEP Trust	Clinic EH	$ 16,632		$ 4,437	$ 21,069	Align to match state budget
402-0414-952.04-16	PHEP Trust	Misc	$ 1,032		$ 586	$ 1,618	Align to match state budget
402-0414-952.04-17	PHEP Trust	Office		$ 918	$ 2,172	$ 1,254	Align to match state budget
402-0414-952.04-71	PHEP Trust	Copier		$ 500	$ 1,110	$ 610	Align to match state budget

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MID-YEAR CHANGE REQUESTS - ALL FUNDS							
FISCAL YEAR 2021							
ACCOUNT NUMBER	BUDGET UNIT	ACCOUNT NAME	INCREASE	DECREASE	BUDGET	REVISED	EXPLANATION
402-0414-952.04-90	PHEP Trust	Travel		$ 1,952	$ 5,732	$ 3,780	Align to match state budget
402-0414-952.07-87	PHEP Trust	Transfer-out	$ 32,227		$ 21,849	$ 54,076	Prior year revenue transfer to 0401
		TOTAL	$ 14,440	$ 14,440			
404-0416-954.01-28	LEA Program	REHS	$ 5,184		$ -	$ 5,184	Align to match state budget
404-0416-954.01-33	LEA Program	EH Senior Specialist	$ 66		$ 1,727	$ 1,793	Align to match state budget
404-0416-954.03-04	LEA Program	Accrued benefits	$ 2,901		$ 1,235	$ 4,136	Align to match state budget
404-0416-954.04-06	LEA Program	Communications		$ 14	$ 300	$ 286	Align to match state budget
404-0416-954.04-16	LEA Program	Misc Exp		$ 8,137	$ 8,137	$ -	Align to match state budget
		TOTAL	$ 8,151	$ 8,151			
410-0436-305.50-25	MHSA-CSS	STATE MHSA		$ (496,681)	$ (3,641,190)	$ (3,144,509)	
410-0436-309.16-00	MHSA-CSS	TRANSFERS IN	$ (496,681)		$ (180,024)	$ (676,705)	
		TOTAL	$ (496,681)	$ (496,681)			
411-0525-304.30-00	Public Authority	Interest		$ (500)	$ 200	$ 700	To align budget with anticipated expense
411-0525-676.04-90	Public Authority	Travel and Training		$ 500	$ 1,000	$ 500	To align budget with anticipated expense
		TOTAL	$ -	$ -			
427-0432-681.01-15	Prop 56 Tobacco Tax	PH Educator	$ 2,794		$ 34,936	$ 37,730	Align to match state budget
427-0432-681.01-39	Prop 56 Tobacco Tax	PS I/II	$ 9,592		$ 32,452	$ 42,044	Align to match state budget
427-0432-681.01-86	Prop 56 Tobacco Tax	Admin Analyst	$ 1,637		$ 2,408	$ 4,045	Align to match state budget
427-0432-681.01-88	Prop 56 Tobacco Tax	Acct Tech II	$ 1,138		$ 1,590	$ 2,728	Align to match state budget
427-0432-681.03-14	Prop 56 Tobacco Tax	Retirement- benefits	$ 6,727		$ 7,917	$ 14,644	Lump sum adjustment for benefits
427-0432-681.04-15	Prop 56 Tobacco Tax	Memberships		$ 76	$ 411	$ 335	Align to match state budget
427-0432-681.04-16	Prop 56 Tobacco Tax	Misc		$ 55,970	$ 61,941	$ 5,971	Align to match state budget
427-0432-681.04-17	Prop 56 Tobacco Tax	Office	$ 272		$ 2,148	$ 2,420	Align to match state budget
427-0432-681.04-18	Prop 56 Tobacco Tax	Prof Svc	$ 7,056		$ 11,007	$ 18,063	Align to match state budget
427-0432-681.04-23	Prop 56 Tobacco Tax	Media	$ 27,235		$ 6,136	$ 33,371	Align to match state budget
427-0432-681.04-24	Prop 56 Tobacco Tax	Behavior Mod		$ 101	$ 202	$ 101	Align to match state budget
427-0432-681.04-34	Prop 56 Tobacco Tax	Booth Rental		$ 378	$ 504	$ 126	Align to match state budget
427-0432-681.04-71	Prop 56 Tobacco Tax	Copier	$ 807		$ 325	$ 1,132	Align to match state budget
427-0432-681.04-80	Prop 56 Tobacco Tax	Equipment	$ 746		$ -	$ 746	Align to match state budget
427-0432-681.04-90	Prop 56 Tobacco Tax	Travel		$ 1,479	$ 1,860	$ 381	Align to match state budget
		TOTAL	$ 58,004	$ 58,004			
428-0433-305.52-20	Pandemic Influenza Trust	State Revenue	$ (12,517)		$ (64,830)	$ (77,347)	Adjust to align with state budget +$16,759 prior year revenue
428-0433-682.01-01	Pandemic Influenza Trust	Health Officer	$ 216		$ 4,337	$ 4,553	Adjust to align with state budget
428-0433-682.01-16	Pandemic Influenza Trust	PHEP Coordinator		$ 4,374	$ 26,149	$ 21,775	Adjust to align with state budget
428-0433-682.02-03	Pandemic Influenza Trust	Clinic Extra Help	$ 2,140		$ 3,242	$ 5,382	Adjust to align with state budget
428-0433-682.03-13	Pandemic Influenza Trust	M/D/V		$ 890	$ 4,710	$ 3,820	Lump sum benefit adjustment
428-0433-682.03-14	Pandemic Influenza Trust	Retirement		$ 965	$ 2,938	$ 1,973	Lump sum benefit adjustment
428-0433-682.04-52	Pandemic Influenza Trust	Mass Vacc. Supply & Rent		$ 369	$ 3,835	$ 3,466	Adjust to align with state budget

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MID-YEAR CHANGE REQUESTS - ALL FUNDS							
FISCAL YEAR 2021							
ACCOUNT NUMBER	BUDGET UNIT	ACCOUNT NAME	INCREASE	DECREASE	BUDGET	REVISED	EXPLANATION
428-0433-682.07-87	Pandemic Influenza Trust	Transfer-out	$ 16,759		$ 10,988	$ 27,747	Adjusted to align with state budget + prior year to 0401 of $16,750 to 0401
		TOTAL	$ 6,598	$ 6,598			
433-0530-684.04-16	Social Service 2011 Realignment	Miscellaneous Expense		$ 10,000	$ 229,983	$ 219,983	To balance budget
433-0530-684.07-88	Social Service 2011 Realignment	Transfer out to fund 341-0519	$ 10,000		$ 1,582,834	$ 1,592,834	Increase transfer to cover anticipated expenses in fund 341-0519
		TOTAL	$ 10,000	$ 10,000			
437-0276-616.04-16	STATE PAROLE DA SEC 30027	Miscellaneous		$ 7,650	$ 32,997	$ 25,347	Prosecutor by Karpel Annual dues balance
437-0276-616.04-81	STATE PAROLE DA SEC 30027	Software	$ 13,175		$ -	$ 13,175	Moved to software expense
437-0276-616.04-81	STATE PAROLE DA SEC 30027	Software	$ 7,650		$ -	$ 7,650	Prosecutor by Karpel Annual dues balance
437-0276-616.06-42	STATE PAROLE DA SEC 30027	DA Software		$ 13,175	$ 13,175	$ -	Incorrectly budgeted in fixed asset line
		TOTAL	$ 20,825	$ 20,825			
440-0277-309.16-00	BAILIFF	TRANSFER IN	$ (53,000)		$ -	$ (53,000)	
440-0277-618.02-02	BAILIFF	EH BAILIFF	$ 35,000		$ 94,186	$ 129,186	Due to COVID mandated off-site jury trials requiring additional staffing
440-0277-618.02-03	BAILIFF	EH SECURITY	$ 18,000		$ 15,262	$ 33,262	Due to COVID mandated off-site jury trials requiring additional staffing
		TOTAL	$ -	$ -			
450-0140-417.04-20	MID SETTLEMENT	MARIPOSA CREEK PARKWAY	$ 20,000		$ 200,400	$ 220,400	To cover parking easements for the SHE housing project
450-0140-417.06-20	MID SETTLEMENT	PFREMMER PROPERTY		$ 20,000	$ 740,000	$ 720,000	To cover parking easements for the SHE housing project
		TOTAL	$ 20,000	$ 20,000			
453-0282-305.56-33	TOBACCO LAW ENFORCEMENT	STATE REVENUE	$ (121,047)		$ -	$ (121,047)	GRANT AWARD
453-0282-504.01-82	TOBACCO LAW ENFORCEMENT	SCHOOL RESOURCE OFFICER	$ 56,002		$ -	$ 56,002	SALARY FOR FY 21
453-0282-504.02-30	TOBACCO LAW ENFORCEMENT	HOURLY & OTHER COMP	$ 28,047		$ -	$ 28,047	OVERTIME AND BENEFITS
453-0282-504.02-35	TOBACCO LAW ENFORCEMENT	LONGEVITY	$ 1,680		$ -	$ 1,680	
453-0282-504.02-56	TOBACCO LAW ENFORCEMENT	POST CERTIFICATE	$ 2,800		$ -	$ 2,800	
453-0282-504.02-58	TOBACCO LAW ENFORCEMENT	UNIFORM ALLOWANCE	$ 757		$ -	$ 757	
453-0282-504.03-10	TOBACCO LAW ENFORCEMENT	SOCIAL SECURITY	$ 4,095		$ -	$ 4,095	
453-0282-504.03-11	TOBACCO LAW ENFORCEMENT	MEDICARE	$ 958		$ -	$ 958	
453-0282-504.03-13	TOBACCO LAW ENFORCEMENT	MEDICAL/DENTAL/VISION	$ 6,385		$ -	$ 6,385	
453-0282-504.03-14	TOBACCO LAW ENFORCEMENT	RETIREMENT-EMPLOYER	$ 14,498		$ -	$ 14,498	
453-0282-504.03-17	TOBACCO LAW ENFORCEMENT	LIFE INSURANCE	$ 23		$ -	$ 23	
453-0282-504.03-18	TOBACCO LAW ENFORCEMENT	SDI	$ 654		$ -	$ 654	
453-0282-504.03-19	TOBACCO LAW ENFORCEMENT	CASH-CAFETERIA PLAN	$ 4,148		$ -	$ 4,148	
453-0282-504.04-88	TOBACCO LAW ENFORCEMENT	FUEL	$ 1,000		$ -	$ 1,000	FUEL
		TOTAL	$ -	$ -			

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MID-YEAR CHANGE REQUESTS - ALL FUNDS							
FISCAL YEAR 2021							
ACCOUNT NUMBER	BUDGET UNIT	ACCOUNT NAME	INCREASE	DECREASE	BUDGET	REVISED	EXPLANATION
458-0539-306.72-86	RUS-DLT GRANT	FEDERAL REVENUE / DLT Grant	$ (770,268)		$ (252,647)	$ (1,022,915)	Increases due to 2nd RUS-DLT grant award received
458-0539-427.04-18	RUS-DLT GRANT	PROFESSIONAL SERVICES	$ 770,268		$ 252,647	$ 1,022,915	Increases due to 2nd RUS-DLT grant award received
		TOTAL	$ -	$ -			
464-0424-305.74-37	California Chidren's Services	State Revenue	$ (5,093)		$ (96,820)	$ (101,913)	Adjust to align with state budget
464-0424-309.16-00	California Chidren's Services	Agency Funds from realignment	$ (19,217)			$ (19,217)	Agency funds for CCS per State Certification of Appropriatioin
464-0424-567.01-01	California Chidren's Services	Health Officer		$ 39	$ 2,168	$ 2,129	Adjust to align with state budget
464-0424-567.01-07	California Chidren's Services	PHN Manager	$ 1,861		$ 2,480	$ 4,341	Adjust to align with state budget
464-0424-567.01-25	California Chidren's Services	Social Worker Supervisor	$ 5,154		$ -	$ 5,154	Adjust to align with state budget
464-0424-567.01-30	California Chidren's Services	Social Worker II	$ 15,106		$ -	$ 15,106	Adjust to align with state budget
464-0424-567.01-63	California Chidren's Services	Office Technician		$ 22,553	$ 25,789	$ 3,236	Adjust to align with state budget
464-0424-567.01-86	California Chidren's Services	Admin Analyst	$ 2,408		$ 4,013	$ 6,421	Adjust to align with state budget
464-0424-567.01-88	California Chidren's Services	Acct Tech	$ 1,679		$ 2,651	$ 4,330	Adjust to align with state budget
464-0424-567.01-99	California Chidren's Services	Office Assistant	$ 9,866		$ -	$ 9,866	Adjust to align with state budget
464-0424-567.03-13	California Chidren's Services	M/D/V	$ 4,131		$ 8,674	$ 12,805	Lump sum adjustment for benefits
464-0424-567.04-17	California Chidren's Services	Office	$ 603		$ 1,395	$ 1,998	Adjust to align with state budget
464-0424-567.04-90	California Chidren's Services	Travel		$ 603	$ 603	$ -	Adjust to align with state budget
464-0424-567.07-87	California Chidren's Services	Transfer-out	$ 6,697		$ 12,347	$ 19,044	Adjust to align with state budget
		TOTAL	$ 23,195	$ 23,195			
465-0425-307.97-14	Air Pollution Subvention	Burn Permits	$ (5,339)		$ (19,569)	$ (24,908)	
465-0425-568.01-32	Air Pollution Subvention	EH Mangr, David Conway	$ 3,405		$ 18,309	$ 21,714	
465-0425-568.03-04	Air Pollution Subvention	Accrued Benefits	$ 1,934		$ -	$ 1,934	
		TOTAL	$ -	$ -			
466-0426-305.74-39	Child Health and Disability Progr	State Revenue		$ (7,772)	$ (74,837)	$ (67,065)	
466-0426-569.01-09	Child Health and Disability Progr	PHN I/II, Vacant		$ 5,734	$ 19,149	$ 13,415	
466-0426-569.01-88	Child Health and Disability Progr	Acct Tech I/II, Dana White	$ 67		$ 3,181	$ 3,248	
466-0426-569.03-13	Child Health and Disability Progr	M/D/V		$ 2,105	$ 6,749	$ 4,644	
		TOTAL	$ 67	$ 67			
467-0427-570.04-16	Maternal, Child and Adolescent	Misc Expense	$ 1,851		$ -	$ 1,851	Adjust to align with state budget
467-0427-570.04-17	Maternal, Child and Adolescent	Office		$ 1,851	$ 6,228	$ 4,377	Adjust to align with state budget
		TOTAL	$ 1,851	$ 1,851			
471-0451-305.74-44	California Oral Health Program	State Revenue	$ (16,648)	$ -	$ (144,088)	$ (160,736)	
471-0451-593.01-03	California Oral Health Program	Dep Director Public Health		$ 24,133	$ 24,133	$ -	To align budget with actual expenditures
471-0451-593.01-07	California Oral Health Program	PHN Manager		$ 3,720	$ 12,402	$ 8,682	To align budget with actual expenditures
471-0451-593.01-09	California Oral Health Program	PHN I/II		$ 7,173	$ 8,692	$ 1,519	To align budget with actual expenditures
471-0451-593.01-39	California Oral Health Program	Program Specialist	$ 2,436		$ -	$ 2,436	To align budget with actual expenditures
471-0451-593.01-88	California Oral Health Program	Acct Tech I/II	$ 87		$ 4,241	$ 4,328	To align budget with actual expenditures

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MID-YEAR CHANGE REQUESTS - ALL FUNDS							
FISCAL YEAR 2021							
ACCOUNT NUMBER	BUDGET UNIT	ACCOUNT NAME	INCREASE	DECREASE	BUDGET	REVISED	EXPLANATION
471-0451-593.01-99	California Oral Health Program	Office Assistant		$ 961	$ 6,248	$ 5,287	To align budget with actual expenditures
471-0451-593.02-01	California Oral Health Program	Extra Help	$ 57,754	$ -	$ -	$ 57,754	To align budget with actual expenditures
471-0451-593.03-13	California Oral Health Program	M/D/V	$ 5,962		$ 6,493	$ 12,455	Lump sum adjustment for benefits
471-0451-593.03-14	California Oral Health Program	Retirement	$ 5,961		$ 6,898	$ 12,859	Lump sum adjustment for benefits
471-0451-593.04-06	California Oral Health Program	Communication		$ 550	$ 600	$ 50	To align budget with actual expenditures
471-0451-593.04-16	California Oral Health Program	Misc	$ 9,590		$ -	$ 9,590	To align budget with actual expenditures
471-0451-593.04-17	California Oral Health Program	Office		$ 2,592	$ 4,096	$ 1,504	To align budget with actual expenditures
471-0451-593.04-18	California Oral Health Program	Prof Svc		$ 14,950	$ 14,950	$ -	To align budget with actual expenditures
471-0451-593.04-22	California Oral Health Program	Educational Materials		$ 4,196	$ 7,828	$ 3,632	To align budget with actual expenditures
471-0451-593.04-24	California Oral Health Program	Behavior Mod		$ 2,037	$ 4,251	$ 2,214	To align budget with actual expenditures
471-0451-593.04-26	California Oral Health Program	Printing		$ 1,000	$ 2,500	$ 1,500	To align budget with actual expenditures
471-0451-593.04-34	California Oral Health Program	Booth Rental		$ 500	$ 800	$ 300	To align budget with actual expenditures
471-0451-593.04-71	California Oral Health Program	Copier		$ 200	$ 400	$ 200	To align budget with actual expenditures
471-0451-593.04-90	California Oral Health Program	Travel		$ 3,130	$ 3,130	$ -	To align budget with actual expenditures
		TOTAL	$ 65,142	$ 65,142			
473-0453-309.16-00	Transfer-In Woodsmoke Reduction		$ (20,605)		$ -	$ (20,605)	Adjust to align with state budget
473-0453-594.04-18	Professional Services		$ 20,605		$ 28,605	$ 49,210	Adjust to align with state budget
		TOTAL	$ -	$ -			
479-0458-305.74-51	COVID-CDSS	State Revenue	$ (32,340)		$ (175,660)	$ (208,000)	To align budget with anticipated revenues
479-0458-955.04-31	COVID-CDSS	Building Rents and Leases	$ 32,340		$ -	$ 32,340	To align budget with actual expenditures
		TOTAL	$ -	$ -			
481-0460-305.74-53	CMSP COVID GRANT	STATE REVENUE / COVID-19 CMSP	$ (100,000)			$ (100,000)	new COVID CMSP CERG grant
481-0460-963.01-01	CMSP COVID GRANT	Health Officer	$ 1,540		$ -	$ 1,540	
481-0460-963.01-02	CMSP COVID GRANT	Deputy Director of Administration	$ 1,205		$ -	$ 1,205	
481-0460-963.01-03	CMSP COVID GRANT	Deputy Director Public Health	$ 3,335		$ -	$ 3,335	
481-0460-963.01-06	CMSP COVID GRANT	Division Director for Administrative Ser	$ 958		$ -	$ 958	
481-0460-963.01-07	CMSP COVID GRANT	PUB HEALTH NURSE SUP/MGR	$ 939		$ -	$ 939	
481-0460-963.01-09	CMSP COVID GRANT	PUBLIC HEALTH NURSE I/II	$ 3,760		$ -	$ 3,760	
481-0460-963.01-11	CMSP COVID GRANT	Division Director of Health	$ 4,809		$ -	$ 4,809	
481-0460-963.01-31	CMSP COVID GRANT	Mental Health Assistant	$ 10,378		$ -	$ 10,378	
481-0460-963.01-37	CMSP COVID GRANT	ADMINISTRATIVE ANALYST	$ 1,577		$ -	$ 1,577	
481-0460-963.01-63	CMSP COVID GRANT	Office Technician	$ 4,125		$ -	$ 4,125	
481-0460-963.01-91	CMSP COVID GRANT	SENIOR ADMIN ANALYST	$ 3,001		$ -	$ 3,001	
481-0460-963.01-93	CMSP COVID GRANT	Psychiatric Nurse Practitioner	$ 5,907		$ -	$ 5,907	
481-0460-963.02-01	CMSP COVID GRANT	EXTRA HELP	$ 1,820		$ -	$ 1,820	
481-0460-963.02-30	CMSP COVID GRANT	OVERTIME	$ 40		$ -	$ 40	
481-0460-963.02-35	CMSP COVID GRANT	Monthly Longevity	$ 10		$ -	$ 10	
481-0460-963.03-10	CMSP COVID GRANT	Social Security	$ 2,207		$ -	$ 2,207	
481-0460-963.03-11	CMSP COVID GRANT	Medicare	$ 555		$ -	$ 555	
481-0460-963.03-13	CMSP COVID GRANT	Medical/Dental/Vision	$ 1,417		$ -	$ 1,417	

Attachment: Mid Year Change Requests Budget Action FY21 Signed Copy (RES-2021-92 : Approve FY20-

MID-YEAR CHANGE REQUESTS - ALL FUNDS							
FISCAL YEAR 2021							
ACCOUNT NUMBER	BUDGET UNIT	ACCOUNT NAME	INCREASE	DECREASE	BUDGET	REVISED	EXPLANATION
481-0460-963.03-14	CMSP COVID GRANT	Retirement - Employer	$ 3,807		$ -	$ 3,807	
481-0460-963.03-17	CMSP COVID GRANT	Life Insurance	$ 22		$ -	$ 22	
481-0460-963.03-18	CMSP COVID GRANT	SDI	$ 348		$ -	$ 348	
481-0460-963.03-19	CMSP COVID GRANT	Cash - Cafeteria Plan	$ 1,364		$ -	$ 1,364	
481-0460-963.04-23	CMSP COVID GRANT	OPERATIONAL SUPPLIES	$ 31,876		$ -	$ 31,876	
481-0460-963.07-87	CMSP COVID GRANT	TRANSFER OUT - HHSA ADMIN	$ 15,000		$ -	$ 15,000	new COVID CMSP CERG grant
		TOTAL	$ -	$ -			
482-0461-308.11-00	CDPH COVID Grant	Miscellaneous Revenue	$ (9,822)		$ -	$ (9,822)	To align budget with actual expenditures
482-0461-964.02-01	CDPH COVID Grant	Extra Help		$ 10,000	$ 10,000	$ -	To align budget with actual expenditures
482-0461-964.02-30	CDPH COVID Grant	Overtime		$ 4,000	$ 4,000	$ -	To align budget with actual expenditures
482-0461-964.03-11	CDPH COVID Grant	Medicare		$ 281	$ 281	$ -	To align budget with actual expenditures
482-0461-964.04-30	CDPH COVID Grant	Equipment rents and leases	$ 24,103			$ 24,103	To align budget with actual expenditures
		TOTAL	$ 14,281	$ 14,281			
485-0464-305.52-56	Community Air Protection Progr	State Revenue		$ (3,166)	$ (15,924)	$ (12,758)	Adjust to align with state budget
485-0464-969.01-28	Community Air Protection Progr	REHS		$ 455	$ 1,704	$ 1,249	Adjust to align with state budget
485-0464-969.01-32	Community Air Protection Progr	EH Manager		$ 1,295	$ 4,971	$ 3,676	Adjust to align with state budget
485-0464-969.01-86	Community Air Protection Progr	Admin Analyst		$ 452	$ 1,605	$ 1,153	Adjust to align with state budget
485-0464-969.01-88	Community Air Protection Progr	Acct Tech II		$ 398	$ 2,121	$ 1,723	Adjust to align with state budget
485-0464-969.03-13	Community Air Protection Progr	M/D/V		$ 566	$ 1,483	$ 917	Adjust to align with state budget
		TOTAL	$ -	$ -			
487-0466-304.30-00	CARES Act	Interest Revenue	$ (2,397)		$ -	$ (2,397)	To reflect CARES Act Reporting
487-0216-521.01-55	CARES Act	Deputy Sheriff	$ 76,192		$ -	$ 76,192	To reflect CARES Act Reporting
487-0289-489.02-31	CARES Act	Overtime-Response	$ 42,379		$ -	$ 42,379	To reflect CARES Act Reporting
487-0289-489.02-32	CARES Act	Overtime-EOC	$ 23,206		$ -	$ 23,206	To reflect CARES Act Reporting
487-0289-489.02-35	CARES Act	Overtime-Admin	$ 571		$ -	$ 571	To reflect CARES Act Reporting
487-0289-489.02-50	CARES Act	Shift Differential	$ 5		$ -	$ 5	To reflect CARES Act Reporting
487-0289-489.02-56	CARES Act	POST Certificate	$ 812		$ -	$ 812	To reflect CARES Act Reporting
487-0289-489.03-10	CARES Act	Social Security	$ 2,963		$ -	$ 2,963	To reflect CARES Act Reporting
487-0289-489.03-11	CARES Act	Medicare	$ 742		$ -	$ 742	To reflect CARES Act Reporting
487-0289-489.03-18	CARES Act	SDI	$ 480		$ -	$ 480	To reflect CARES Act Reporting
487-0289-489.04-06	CARES Act	Communications	$ 969		$ -	$ 969	To reflect CARES Act Reporting
487-0289-489.04-07	CARES Act	Food-EOC Headquarters	$ 1,479		$ -	$ 1,479	To reflect CARES Act Reporting
487-0289-489.04-15	CARES Act	Supplies-Other Medical	$ 6,655		$ -	$ 6,655	To reflect CARES Act Reporting
487-0289-489.04-17	CARES Act	Supplies-Operating	$ 7,389		$ -	$ 7,389	To reflect CARES Act Reporting
487-0289-489.04-18	CARES Act	Supplies-EOC Center	$ 3,842		$ -	$ 3,842	To reflect CARES Act Reporting
487-0289-489.04-33	CARES Act	Special Department	$ 213		$ -	$ 213	To reflect CARES Act Reporting
487-0466-924.04-46	CARES Act	Small Business Grants		$ 18,826	$ 400,000	$ 381,174	To reflect CARES Act Reporting
487-0466-924.07-87	CARES Act	Transfer Out		$ 146,674	$ 146,674	$ -	To reflect CARES Act Reporting
		TOTAL	$ 165,500	$ 165,500			

Attachment: Mid Year Change Requests Budget Action FY21 Signed Copy (RES-2021-92 : Approve FY20-

MID-YEAR CHANGE REQUESTS - ALL FUNDS							
FISCAL YEAR 2021							
ACCOUNT NUMBER	BUDGET UNIT	ACCOUNT NAME	INCREASE	DECREASE	BUDGET	REVISED	EXPLANATION
520-1321-791.06-23	Fire House Projects	Fish Camp Fire Station		$ 53,000	$ 58,316	$ 5,316	Decrease as an offset for higher priorty fire house projects
520-1321-791.06-24	Fire House Projects	Midpines Fire Station		$ 25,000	$ 25,263	$ 263	Decrease as an offset for higher priorty fire house projects
520-1321-791.06-25	Fire House Projects	Mt. Bullion Fire Station	$ 18,000		$ -	$ 18,000	Increase per higher priorty designation by Fire Chief
520-1321-791.06-27	Fire House Projects	Cathey's Valley Fire Station		$ 11,000	$ 13,000	$ 2,000	Decrease as an offset for higher priorty fire house projects
520-1321-791.06-29	Fire House Projects	Coulterville Fire Station	$ 25,000		$ 8,000	$ 33,000	Increase per higher priorty designation by Fire Chief
520-1321-791.06-30	Fire House Projects	Lush Meadows Fire Station	$ 46,000		$ 15,000	$ 61,000	Increase per higher priorty designation by Fire Chief
		TOTAL	$ 89,000	$ 89,000			
540-1340-800.06-01	Don Pedro WWTP	Fixed Asset - Don Pedro WWTP		$ 20	$ 20	$ -	Transfer out the last $20.00 from this project to Don Pedro Sewer
540-1340-800.07-87	Don Pedro WWTP	Transfer Out	$ 20		$ 12,200	$ 12,220	
		TOTAL	$ 20	$ 20			
575-1375-308.11-00	ORACLE ERP	MISCELLANEOUS REVENUE		$ (500,000)	$ (1,630,002)	$ (1,130,002)	To balance fund
575-1375-309.16-00	ORACLE ERP	TRANSFERS IN	$ (500,000)		$ -	$ (500,000)	Transfer in from HHSA to cover their portion of
		TOTAL	$ (500,000)	$ (500,000)			
601-0404-651.04-30	SOLID WASTE	RENTS & LEASES-EQUIPMENT		$ 6,650	$ 184,662	$ 178,012	To balance the fund
601-0404-651.06-47	SOLID WASTE	BAILER	$ 6,650		$ -	$ 6,650	Allocate for small bailer
		TOTAL	$ 6,650	$ 6,650			
606-0306-601.01-81	Transit	Bus Driver		$ 20,000	$ 117,279	$ 97,279	To align budget with anticipated expenditures
606-0306-601.02-01	Transit	Extra Help		$ 10,000	$ 35,129	$ 25,129	To align budget with anticipated expenditures
606-0306-601.02-02	Transit	Relief Bus Driver		$ 5,600	$ 28,277	$ 22,677	To align budget with anticipated expenditures
606-0306-601.02-05	Transit	Extra Help-Office		$ 1,500	$ 2,500	$ 1,000	To align budget with anticipated expenditures
606-0306-601.06-43	Transit	Fixed Assets-Vans	$ 37,100		$ 111,471	$ 148,571	To align budget with anticipated expenditures
		TOTAL	$ 37,100	$ 37,100			
610-0303-591.04-81	Airport Operations	Software	$ 1,000		$ -	$ 1,000	Funding for the MQ4000 was incorrectly requested in 0491
610-0303-591.04-91	Airport Operations	Private Vehicle Use		$ 1,000	$ 1,000	$ -	Allocate for MQ4000
		TOTAL	$ 1,000	$ 1,000			

Attachment: Mid Year Change Requests Budget Action FY21 Signed Copy (RES-2021-92 : Approve FY20-

MID-YEAR CHANGE REQUESTS - ALL FUNDS							
FISCAL YEAR 2021							
ACCOUNT NUMBER	**BUDGET UNIT**	**ACCOUNT NAME**	**INCREASE**	**DECREASE**	**BUDGET**	**REVISED**	**EXPLANATION**
616-0308-580.03-03	PLANT OPERATIONS	UNEMPLOYMENT	$ 3,597		$ -	$ 3,597	
616-0308-580.04-18	PLANT OPERATIONS	PROFESSIONAL SERVICES		$ 3,597	$ 20,741	$ 17,144	
		TOTAL	$ 3,597	$ 3,597			
706-0146-307.17-01	WORKERS COMPENSATION INS.	WORKER COMP REIMBURSEMENT		$ (700,000)	$ (1,698,035)	$ (998,035)	Workers Comp is super funded ~$1.4M - Liability is under funded ~$660K - so adjusting contributions to re-distribute funds accordingly
706-0146-502.04-33	WORKERS COMPENSATION INS.	WORKERS COMPENSATION		$ 700,000	$ 900,000	$ 200,000	To balance fund
		TOTAL	$ -	$ -			
707-0149-307.17-02	LIABILITY INSURANCE	LIABILITY REIMBURSEMENT	$ (700,000)		$ (748,800)	$ (1,448,800)	Workers Comp is super funded ~$1.4M - Liability is under funded ~$660K - so adjusting contributions to re-distribute funds accordingly
707-0149-505.04-33	LIABILITY INSURANCE	LIABILITY	$ 700,000		$ 548,500	$ 1,248,500	To balance fund
		TOTAL	$ -	$ -		$ -	
						$ -	
750-1500-309.16-00	HEALTH BUILDING	TF IN REALIGN FUND 393	$ (72,000)		$ -	$ (72,000)	
750-1500-970.11-20	HEALTH BUILDING	Loan Principle Expense	$ 61,011		$ -	$ 61,011	
750-1500-970.11-30	HEALTH BUILDING	Loan Interest Expense	$ 10,989		$ -	$ 10,989	
		TOTAL	$ -	$ -		$ -	
ACTION REQUESTED: (Check all that apply)							
( ) Budget appropriation is less than $50,000 and involves shifting funds between categories in the same account and fund. Board of Supervisors reviews all budget actions of this nature on a monthly basis.							
(X) Budget appropriation by Board of Supervisors (4/5ths Vote Required): Amending revenues and expenses or transferring funds between funds or accounts within the General Fund or transferring appropriation from contingency.							
DEPARTMENT HEAD SIGNATURE	Jay D Kimble ZOTTOsign 6B5775D007					DATE	02/17/2021
AUDITOR SIGNATURE	Luis Mercado ZOTTOsign 6B5773D01B					DATE	02/17/2021
COUNTY ADMINISTRATIVE OFFICER SIGNATURE						DATE	
APPROVED BY RES NO.		CLERK				DATE	
					AUDITOR'S USE ONLY		
DEPARTMENT					BA #		
NOTE							
* All revenue entries should be entered in parentheses and entered in the appropriate column to either increase or decrease revenue.							
* All expense entries should be positive and entered in the appropriate colum to either increase or decrease the expense.							

Attachment: Mid Year Change Requests Budget Action FY21 Signed Copy (RES-2021-92 : Approve FY20-

MARIPOSA COUNTY

P.O. Box 784 Mariposa, CA 95338 (209) 966-3222
5100 Bullion Street
http://www.mariposacounty.org/

MARSHALL LONG, CHAIR	**DISTRICT III**
ROSEMARIE SMALLCOMBE, VICE-CHAIR	**DISTRICT I**
TOM SWEENEY	**DISTRICT II**
WAYNE FORSYTHE	**DISTRICT IV**
MILES MENETREY	**DISTRICT V**

ACTION SUMMARY MINUTES

January 26, 2021

A. 9:00 AM Called to Order and Roll Call

Attendee Name	Title	Status	Arrived
Rosemarie Smallcombe	District I Supervisor	Present	9:00 AM
Tom Sweeney	District II Supervisors	Present	9:00 AM
Marshall Long	District III Supervisor	Present	9:00 AM
Wayne Forsythe	District IV Supervisor	Present	9:00 AM
Miles Menetrey	District V Supervisor	Present	9:00 AM

B. Pledge of Allegiance

Chair Long led the Pledge and requested a moment of silence for people affected by COVID- 19 and the Mono Wind Event.

C. Introductions

None.

D. Approval of Consent Agenda (Items designated by "CA")

No public comment. Direction was given for CA5. Supervisor Forsythe extended thanks to staff for CA5. Supervisors Menetrey and Smallcombe extended thanks to volunteers in CA9, CA10 and CA23. Supervisor Forsythe extended thanks for CA16. Walter Wall/District Attorney offered a correction on CA17. Joe Lynch/Health and Human Services Agency Assistant Director advised of an error in the staff reports of CA18 and CA19. Supervisor Smallcombe highlighted CA21.

CORRECTIONS:

CA17: Amount of agreement is $2,025 not $1,575.

CA18 and CA19: Financial impact should note the year 2021, not year 2012.

DIRECTION:

Minutes Acceptance: Minutes of Jan 26, 2021 9:00 AM (Items removed from Consent Agenda)

CA5: Add language to oppose SB55.

RESULT: **ADOPTED [UNANIMOUS]**

MOVER: Miles Menetrey, District V Supervisor

SECONDER: Tom Sweeney, District II Supervisors

AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

CA1. **Health and Human Services** **RES-2021-32**

Resolution Continuing a Shelter Crisis Local Emergency in Mariposa County

CA2. **Health and Human Services** **RES-2021-33**

Resolution Continuing the Public Health Local Emergency Due to the COVID-19 Pandemic

CA3. **Sheriff's Office** **RES-2021-34**

Resolution Continuing the Local Emergency Due to the COVID-19 Global Pandemic

CA4. **Administration** **RES-2021-35**

Approve an Amendment to the Agreement with W. Brown Creative Partners for Interim HR Director Services; and Authorize the Board of Supervisors Chair to Sign the Amendment

CA5. **Administration** **RES-2021-36**

Approve the County's 2021 Legislative Platform

CA6. **Administration** **RES-2021-37**

Approve an Application for Regional Early Action Planning (REAP) Grant Program Funds; Authorize the Board of Supervisors Chair to Sign the Application; and Authorize the Board of Supervisors Chair to Sign the Agreement/Acceptance Documents, If Awarded (Subject to Approval as to Form by County Counsel)

CA7. **Administration** **RES-2021-38**

Approve an Application for Local Early Action Planning (LEAP) Grant Program Funds; Authorize the Board of Supervisors Chair to Sign the Application; and Authorize the Board of Supervisors Chair to Sign the Grant Agreement/Acceptance Documents, If Awarded (Subject to Approval as to Form by County Counsel)

CA8. **Auditor** **(ID # 11355)**

Receive Quarterly Audit Reports for Treasury Funds for the Second Quarter of Fiscal Year 2020-21 (November 2020)

CA9. **Building** **2021-7**

Appoint Daniel Weiland to the Building Department Advisory and Appeals Board Representing District V with a Term Expiring on January 6, 2025

Minutes Acceptance: Minutes of Jan 26, 2021 9:00 AM (Items removed from Consent Agenda)

CA10. **Building 2021-8**

Appoint Mark Becker to the Building Department Advisory and Appeals Board Representing District II with a Term Expiring on January 6, 2025

CA11. **Clerk of the Board of Supervisors 2021-9**

Receive the List of Agreements Entered into by the County Administrative Officer (CAO) (Purchasing Agent) Pursuant to County Code Chapter 3.08, Entered Into, Received and Processed in December of 2020

CA12. **Clerk of the Board of Supervisors 2021-10**

Receive the List of Agreements Entered into by the Mariposa County Department Heads (Assistant Purchasing Agents) Pursuant to County Code Chapter 3.08 Entered Into, Received and Processed in December of 2020

CA13. **Board of Supervisors**

Approve the Minutes of Tuesday, January 5, 2021

CA14. **Board of Supervisors**

Approve the Minutes of Tuesday, January 12, 2021

15. Item Pulled for further discussion to end of Regular Agenda

CA16. **Clerk of the Board of Supervisors 2021-11**

Amend the Board Member Contact Area List to Include Mariposa County Unified School District; and Appoint Rosemarie Smallcombe and Wayne Forsythe as Its Board Representatives

CA17. **District Attorney/Victim Witness RES-2021-39**

Approve an Agreement with Karpel Computer Systems, Inc. DBA: Karpel Solutions to Provide a Full Featured Case Management System, Defender by Karpel, for the Local Indigent Defense; and Authorize the Board of Supervisors Chair to Sign the Agreement

CA18. **HHS/Behavioral Health & Recovery Services RES-2021-40**

Ratify Health and Human Services Agency (HHSA) Director and Health Officer's Action to Implement Dispensing of COVID-19 Vaccine and Approve Memorandum of Agreement (MOA) with Yosemite National Park Services

CA19. **HHS/Behavioral Health & Recovery Services RES-2021-41**

Ratify Health and Human Services Agency (HHSA) Director and Health Officer's Action to Implement Dispensing of COVID-19 Vaccine and Approve Memorandum of Agreement (MOA) with Pioneer Market

CA20. **HHS/Behavioral Health & Recovery Services RES-2021-42**

Approve an Agreement with Mariposa Safe Families to Carry Out Substance Abuse Prevention Activities in an Amount Not to Exceed $104,065; and Authorize the Board of Supervisors Chair to Sign the Agreement

CA21. **HHS/Behavioral Health & Recovery Services RES-2021-43**

Minutes Acceptance: Minutes of Jan 26, 2021 9:00 AM (Items removed from Consent Agenda)

Approve a Memorandum of Understanding Between the County of Mariposa and Native Solutions for Driving Under the Influence (DUI) Educational Services; and Authorize the Board of Supervisors to Sign the Memorandum of Understanding

CA22. **HHS/Community Services 2021-12**

Accept the Resignation of Terri Peresan, Deputy Director Adult & Aging Services; and Appoint Lydia Arre, Program Manager, to the Area 12 Agency on Aging (A12AA) Advisory Council, with a Term Expiring on January 26, 2025

CA23. **Public Works 2021-13**

Re-Appoint Michael Martin, PhD to the Water Agency Advisory Board with a Term Expiring January 26, 2024

CA24. **Public Works RES-2021-44**

Approve a Third Amendment with Myriad Engineering for Indian Gulch Bridge Interim Design to Extend the Term of the Agreement to June 30, 2021; and Authorize the Board of Supervisors Chair to Sign the Amendment

E. Departmental Presentation

Dr. Eric Sergienko/Health Officer advised that Mariposa County came out of the regional stay at home order yesterday based on the decreasing cases and provided an overview. Dr. Sergienko expressed concern relative to active COVID variances in the United Kingdom, South Africa, and Brazil that are likely to be more transmissible; and noted that the numbers in Mariposa County are lower than the State and we should be in the orange tier in approximately 3 weeks if we continue to wear masks, watch our distance, and wash our hands. Dr. Sergienko reported on the number of active cases, with the 5th death of a community member last night. He provided an update on vaccines noting they have provided over 900 doses and that Mariposa County is ahead of the State; suggested folks that have not received an email confirmation regarding vaccine registrations check the spam in their email. Dr. Sergienko provided statistics for Pioneer Market and Yosemite National Park's vaccinations; noted he will be working with Madera County for a joint vaccine clinic in Oakhurst, and that the State is looking to a centralized distribution center and allocation process in which he will inform the Board of new updates. Dr. Sergienko responded to questions of the Board noting the time frame between doses; Sierratel Internet (STI) requirements relative to white listing; explained the process of the vaccinations and possible side effects; and addressed how some private Dr.'s offices are handling vaccinations. Supervisor Forsythe extended thanks to Dr. Sergienko.

Mike Healey/Public Works and Transportation Director extended thanks to the Board for their Special Meeting to approve the Mono Winds disaster proclamation. Mr. Healey noted that the Indian Gulch Bridge may be open around March 1st and provided an update on the Darrah Bridge project noting that bids came in around 5.5 million with initial funding of about 3.2/3.3 million and a couple years out for the remainder of the funding, but after numerous meetings with Caltrans, and the time frame for the remainder of the funding being reduced he is now able to award that bridge project and extended thanks to Caltrans and staff. Mr. Healy provided an update on the Mono Wind event, extended thanks to PG&E for their hard work during the night and expressed caution due to debris alongside the roads. Mr. Healey

Minutes Acceptance: Minutes of Jan 26, 2021 9:00 AM (Items removed from Consent Agenda)

announced Russ Marks/County Surveyor received "Surveyor of the Year" recognition from CEAC (California Society of Civil Engineers). Mr. Healey noted increasing vandalism at the rest stop, YARTs and the Arts Park. The Board extended thanks to Public Works staff for their hard work during and after the Mono Wind event and congratulated Russ Marks for receiving "Surveyor of the Year" from CEAC.

Mathew Matthiessen/CEO John C. Fremont Healthcare District extended thanks to Dr. Eric Sergienko for his leadership; provided an update on the North side clinic noting the project continues on schedule and that they should be utilizing the building the first or second week of March. Mr. Matthiessen provided a report on Measure M and noted Mariposans for a Healthier Future will be doing a presentation at the District Board meeting tomorrow afternoon. Supervisor Smallcombe extended thanks to John C. Fremont Healthcare District for the partnership and Dr. Eric Sergienko and Dr. Christina Alan and their team for their hard work.

Shannon Gadd/Health and Human Services Agency Director reported on immediate services being provided for the community due to the Mono Wind Event and noted that they have received over 100 incoming calls; housed 15 families in hotels and provided $1,500 in gift cards. Ms. Gadd extended thanks to her staff.

Mr. Healey noted the landfill will be offering free dumping of spoiled food through the end of January.

Steve Ward/Fire Chief provided an update on the Mono Wind Event including taking 32 calls for emergency response on the 18th and 19th; extended thanks to the volunteers and Cal fire for the coordinated effort. Mr. Ward recounted stories of incidents that were brought forward to him and noted that 17 fires were started from smoldering burn piles and thanked the many community volunteers that took action to control these fires along with cutting logs and clearing road ways. Mr. Ward noted that with the aggressive attack of the volunteer fire fighters on a structure fire on Pinecrest, they were able to salvage parts of the house and animals. Supervisor's Sweeney and Forsythe extended thanks to Mr. Ward for his good leadership and his training efforts.

Dallin Kimble/County Administrative Officer (CAO) extended thanks to staff at all levels for their hard work during the Mono Wind Event. Mr. Kimble noted that as we move into the next tier, he will continue to stay up to date and advised that the Government Center will continue to have closed doors as this time. Mr. Kimble addressed the inclement weather day due to the Mono Wind Event and staffing; the Agriculture Commissioner/Sealer position noting that the State is willing to assist the County; preparing for next year's budget; and encouraged businesses that can operate in the red tier to reopen and extended Tara Schiff's assistance. Mr. Kimble responded to questions of Supervisor Smallcombe noting that he could look into whether or not Tourism receives Ms. Schiff's information; and that the County website is in need of an update in regard to the budget.

F. Public Comment on Non-Agenda Items

None.

Recess Board of Supervisors

10:21 AM Chair Long recessed the Board meeting followed by Tracy Gauthier, Deputy Clerk of the Board reading the Government Code announcement.

Minutes Acceptance: Minutes of Jan 26, 2021 9:00 AM (Items removed from Consent Agenda)

G. LOCAL TRANSPORTATION COMMISSION

10:22 AM Chair Long convened the Local Transportation Commission (LTC) meeting with all commissioners present.

Public Comment Period

None.

LTC Regular Agenda

1. **Planning LTC-2021-4**

Adopt a Resolution Authorizing the Planning Department to Submit an Application for Caltrans FY 2021-22 Sustainable Communities Transportation Planning Grant to Develop a Special Plan for the Phase IV Segment of the Mariposa Creek Parkway; Approve a Letter of Support and Authorize the LTC Chair to Sign the Letter; and Authorize the Local Transportation Commission Chair to Sign the Grant Agreement, If Awarded (Subject to Approval as to Form by County Counsel)

Sarah Williams/Planning Director provided a brief overview of this item and introduced Mikey Goralink/Community Design and Development Planner, who then provided the staff report. Supervisor Menetrey extended thanks for pursuing this project. No public input.

CORRECTION:

Change signature line on letter of support to reflect the LTC Chair.

RESULT: **ADOPTED [UNANIMOUS]**

MOVER: Miles Menetrey, District V Supervisor

SECONDER: Rosemarie Smallcombe, District I Supervisor

AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

Adjourn LTC

10:30 AM Chair Long adjourned the LTC meeting.

Reconvene as Board of Supervisors

10:37 AM Chair Long reconvened the Board of Supervisors meeting.

H. Regular Agenda Items

1. **Auditor RES-2021-45**

Adopt a Resolution Establishing Health Insurance Contributions for Current Retirees to be Effective March 1, 2021

Luis Mercado/Auditor gave the staff report. No public input.

Minutes Acceptance: Minutes of Jan 26, 2021 9:00 AM (Items removed from Consent Agenda)

RESULT: **ADOPTED [UNANIMOUS]**

MOVER: Rosemarie Smallcombe, District I Supervisor

SECONDER: Wayne Forsythe, District IV Supervisor

AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

2. **Administration (ID # 11341)**

Discussion and Direction Regarding Library Services and Funding

Janet Chase-Williams/Librarian provided background information and introduced Rebecca Adams/Library Assistant I, who provided a PowerPoint presentation. Board discussion ensued. No public input.

RESULT: **INFORMATION RECEIVED**

3. **HHS/Behavioral Health & Recovery Services** **RES-2021-46**

Approve a Memorandum of Understanding (MOU) with Anthem to Facilitate Implementation of Mariposa County's Behavioral Health Integration Project (BHI); and Authorize the Health and Human Services Agency (HHSA) Director to Sign the Memorandum of Understanding

Shannon Gadd/Health and Human Services Agency Director gave the staff report. Board discussion ensued. No public input.

RESULT: **ADOPTED [UNANIMOUS]**

MOVER: Rosemarie Smallcombe, District I Supervisor

SECONDER: Wayne Forsythe, District IV Supervisor

AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

4. **Public Works** **2021-ORD-1160**

Waive the Second Reading and Adopt "An Ordinance Amending Section 10.08.031 of the Mariposa County Code Titled 'Camping and Overnight Parking'"

Mike Healy gave the staff report. Board discussion ensued. No public input.

RESULT: **ADOPTED [UNANIMOUS]**

MOVER: Rosemarie Smallcombe, District I Supervisor

SECONDER: Wayne Forsythe, District IV Supervisor

AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

5. **Public Works** **RES-2021-47**

Adopt a Mitigated Negative Declaration for the Dogtown Road Over Maxwell Creek Bridges 40C0038 & 40C0039 Replacement Projects; and Approve the Mitigation Monitoring Report Program

Mike Healy gave staff report. No public input.

Minutes Acceptance: Minutes of Jan 26, 2021 9:00 AM (Items removed from Consent Agenda)

RESULT: **ADOPTED [UNANIMOUS]**

MOVER: Tom Sweeney, District II Supervisors

SECONDER: Miles Menetrey, District V Supervisor

AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

6. **Administration** **RES-2021-48**

Approve the Second Amendment to a Lease Agreement with Carlos and Richard Ortiz for an Additional Six Months for Grazing Purposes in the Hornitos Area; and Authorize the Board of Supervisors Chair to Sign the Amendment

Dallin Kimble presented staff report. No public input.

RESULT: **ADOPTED [UNANIMOUS]**

MOVER: Rosemarie Smallcombe, District I Supervisor

SECONDER: Wayne Forsythe, District IV Supervisor

AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

7. **Administration** **(ID # 11256)**

Receive a Presentation Providing an Update on the Implementation of the New Enterprise Resource Planning (ERP) Software

Dallin Kimble extended kudos to departments who assisted with this project and introduced Leigh Westerlund/Assistant County Administrative Officer who gave a PowerPoint presentation. No public input.

RESULT: **PRESENTATION MADE**

8. **Administration** **(ID # 11379)**

Discussion and Direction Regarding Possible Sale of California Public Utilities Commission (CPUC) Rule 20A PG&E Credits

Dallin Kimble provided background and explained the credit program, noting the County had 3.5 million credits which doesn't go very far. He noted that some counties are selling while others are buying; it is unknown if the program will be discontinued; recommended soliciting for proposals if the Board decides to sell; and advised that he is looking for direction from the Board. Board discussion ensued. No public input.

DIRECTION:

Sell the credits for the highest amount possible. Mr. Kimble advised he will pursue as directed and bring an item back to the Board with the best.

RESULT: **DIRECTION GIVEN**

9. **Administration** **(ID # 11399)**

Discussion and Possible Direction on the Fiscal Year 2020 - 2021 (FY21) Budget

Dallin Kimble presented update. Board discussion ensued. No public input.

Minutes Acceptance: Minutes of Jan 26, 2021 9:00 AM (Items removed from Consent Agenda)

RESULT: INFORMATION RECEIVED

I. Items removed from Consent Agenda

1. **Clerk of the Board of Supervisors (ID # 11371)**

Receive Tracking List of Open Minute Orders

Board discussion ensued regarding the benefit and use of Minute Order Tracking and setting deadlines. Mr. Kimble provided an update on "Discussion and Direction on Pension and OPEB" investment process noting that they are on track and expecting an update from the Treasurer-Tax Collector-County Clerk. Mr. Kimble also provided an update on "Discussion and Direction on Real Estate Status and Opportunities" noting that the inventory is complete and there is a need to get back to space needs to evaluate where we will be in the next 30 to 50 years.

DIRECTION: Remove the February 25, 2020 item from the list

RESULT: INFORMATION RECEIVED

J. Closed Session

1. **Administration (ID # 11343)**

CLOSED SESSION: Conference with Real Property Negotiator; Description of Real Property: APN 012-140-0230; Agency Negotiator: Dallin Kimble, County Administrative Officer; Closed Session Will Concern Price and Terms of Sale

RESULT: CLOSED SESSION HELD

2:32 PM Chair Long moved the meeting into Closed Session.

Reconvened

2:46 PM Chair Long reconvened the meeting and reported that Information was Received, and Direction was Given during the Closed Session.

K. Board Information

Information was received.

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Minutes Acceptance: Minutes of Jan 26, 2021 9:00 AM (Items removed from Consent Agenda)

L. Adjournment

2:47 PM Chair Long adjourned the meeting in memory of William Edward Davis, Clara Ashworth, Janice Maddux and Allan Donald King.

Respectfully submitted,

Tracy Gauthier
Deputy Clerk of the Board

Marshall Long
Chair, Board of Supervisors

Minutes Acceptance: Minutes of Jan 26, 2021 9:00 AM (Items removed from Consent Agenda)

MARIPOSA COUNTY

Public Works · 209 966 5356

MEETING: February 23, 2021

TO: The Board of Supervisors

FROM: Mike Healy, Public Works Director

RE: Receive a Presentation of Progress by Caltrans District 10 - Ferguson Slide Project

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RECOMMENDATION AND JUSTIFICATION:
Receive an Update on the Ferguson Slide Project from Dennis Agar, Caltrans District 10 Director and the Caltrans Ferguson Slide Project Team

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The Board from time to time receives a progress presentation from the Ferguson Slide Project Team.

The County wishes to extend our thanks and appreciation to the Caltrans Project Team for their Partnership and Efforts to provide long term transportation solutions caused by the Ferguson Slide as well as for their efforts to provide safe and reliable transportation infrastructure throughout the County and region.

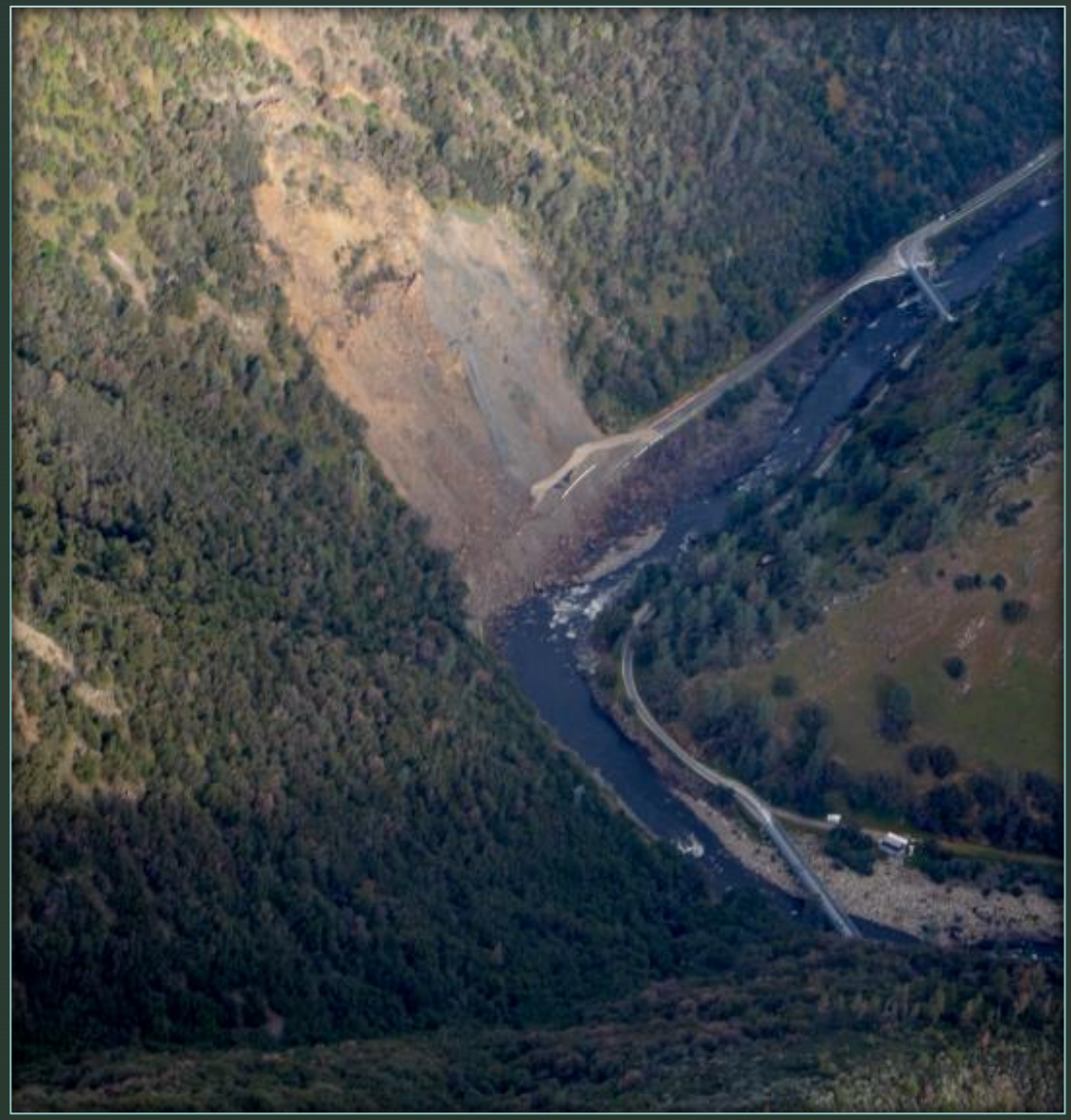
ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
None

ATTACHMENTS:
Ferguson Rock Shed PowerPoint Presentation (PDF)

RESULT: INFORMATION RECEIVED

February 2021

FERGUSON ROCK SHED UPDATE



Attachment: Ferguson Rock Shed PowerPoint Presentation (11339 : Receive a

10-0P923 Talus Removal Timeline

- Ready to List (RTL) = Achieved November 2020
- Construction Allocation = Achieved January 2021
- Contract Approval = February 2021
- Begin Construction = March 2021
- Construction duration = 180 Working Days
- Contract awarded for $22.7M to Meyers & Sons/RL Wadsworth

Attachment: Ferguson Rock Shed PowerPoint Presentation (11339 : Receive a



10-0P923 Talus Removal

Key Differences with this contract:

1) Use of real time slide monitoring equipment.
2) Use of remote control equipment.
3) Comprehensive Safety Plan on determining how to work within the slide zone relative to current slide conditions.
4) Removing 147,000 tons of material.

Attachment: Ferguson Rock Shed PowerPoint Presentation (11339 : Receive a

10-0P921 Rock Shed Timeline

- 60% Plans = Achieved January 2021
- 60% Opinion of Probable Cost = April 2021
- Construction Funds Programmed = Fall 2021
- Begin Construction = Summer 2022
- Construction Duration = 3 – 4 years
- Estimated construction cost is $175M (December 2019)

Attachment: Ferguson Rock Shed PowerPoint Presentation (11339 : Receive a

Rock Shed Construction Animation

Ferguson Rock Shed Project Animation - YouTube

Attachment: Ferguson Rock Shed PowerPoint Presentation (11339 : Receive a



Rock Shed Details

- First rock shed to be constructed by jacking pre-cast concrete segments around a curve.
- Consists of 11 pre-cast concrete segments.
- Length is approximately 673 feet.
- Interior width is 40 feet.
- Restraining base is anchored by 200 rock anchors and 400 concrete micropiles.

Attachment: Ferguson Rock Shed PowerPoint Presentation (11339 : Receive a

Questions & Answers

Contacts:

Bob Highfill, Public Information Officer

(209) 986-9428

Warren Alford, Chief Public & Legislative Affairs

(209) 948 -3849

Attachment: Ferguson Rock Shed PowerPoint Presentation (11339 : Receive a

MARIPOSA COUNTY

Planning · 209-966-5151

ORDINANCE 2021-1161

MEETING: February 23, 2021

TO: The Board of Supervisors

FROM: Sarah Williams, Planning Director

RE: County Project (Zoning Amendment) No. 2021-010; Prohibition of Hemp Cultivation

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RECOMMENDATION AND JUSTIFICATION:
Waive the Second Reading and Adopt an Ordinance amending Title 17, the Zoning Ordinance to prohibit industrial hemp cultivation and hemp cultivation by established agricultural research institutions in Mariposa County. The recommended action includes an environmental determination.

The proposed amendments would list hemp cultivation as a prohibited use in all zones.

The Board of Supervisors previously tabled amendments to the Zoning Ordinance (County Project No. 2019-071) which included development standards for hemp cultivation until such time as Federal and State regulations are finalized to ensure that the amendments are not in conflict. As of January 11, 2021, the USDA website shows that California's plan is still under review. Based on the current status of the state regulations, the Planning Commission and Board of Supervisors' previous direction, and the pending expiration of the urgency ordinance prohibiting industrial hemp cultivation, the proposed amendments to list hemp cultivation as a prohibited use in all zones has been developed. The amendments are intended to provide additional time for the state regulations to be finalized to ensure any ordinance to allow limited industrial hemp cultivation is not in conflict with state and federal regulations.

These amendments continue the Planning Commission and Board of Supervisor's prior direction to table the amendments in County Project No. 2019-071 until such time as the federal and state regulations are finalized.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

March 26, 2019 - Adoption of urgency ordinance prohibiting cultivation of hemp.

April 9, 2019 - Adoption of Resolution No. 2019-188, initiating amendments to Title 17 to regulate the cultivation of hemp in Mariposa County.

May 7, 2019 - Extension of urgency ordinance prohibiting the cultivation of hemp for

an additional 10 months and 15 days.

November 26, 2019 - Consideration of Planning Commission recommendation to table ordinance. The Board of Supervisors directed staff to table the amendment until such time as several unknowns could be answered and state and federal regulations are finalized.

March 24, 2020 - Final extension of urgency ordinance prohibiting the cultivation of hemp for an additional 12 months (expires on March 26, 2021).

February 9, 2021 - This ordinance was introduced.

Additional background information can be found in the Staff Report attached to this item.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Second Reading (Adoption): No changes can be made to the ordinance at the Second Reading. Consequently, the Board's only potential actions at this time are to approve the ordinance or not.

First Reading (Introduction): The Board can direct staff to continue processing the previous ordinance establishing regulations to allow limited hemp cultivation in Mariposa County. Staff recommends proceeding with this ordinance banning hemp cultivation in the meantime to prevent a situation where hemp cultivation would be unregulated in the county. The proposed ordinance could be rescinded as part of the processing of an ordinance regulating hemp cultivation.
Negative Action: Not processing the ordinance would be inconsistent with Board direction on November 26, 2019. Upon expiration of the urgency ordinance moratorium on March 26, 2021, hemp cultivation would be allowed in Mariposa County with no regulations to address impacts of the use.

FINANCIAL IMPACT:
There will be no financial impact on the General Fund resulting from the initiated amendments.

ATTACHMENTS:
Staff Report (PDF)
Draft Ordinance (PDF)
Summary Ordinance for Publication (PDF)
Draft Notice of Exemption (PDF)
Final Rule-Federal Hemp Production Program (PDF)
California Industrial Hemp Law and Regulations (PDF)
PowerPoint Presentation (PDF)

RESULT: **ADOPTED [UNANIMOUS]**
MOVER: Miles Menetrey, District V Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Smallcombe, Sweeney, Long, Forsythe, Menetrey

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MARIPOSA PLANNING STAFF REPORT

From: Sarah Williams, Planning Director

Prepared By: Alvaro Arias, Deputy Director

Board of Supervisors Meeting Date: February 9, 2021

Project:	**ZONING AMENDMENT NO. 2021-010**
Proposal:	**The proposed amendments would list hemp cultivation as a prohibited use in all zones.**
Summary Background:	The Board of Supervisors previously tabled amendments to the Zoning Ordinance (County Project No. 2019-071) which included development standards for hemp cultivation, until such time as Federal and State regulations are finalized to ensure that the amendments are not in conflict. As of February 2, 2021, the USDA website shows that California's plan is still under review. Based on the current status of the state regulations, the Planning Commission and Board of Supervisors' previous direction, and the pending expiration of the urgency ordinance prohibiting industrial hemp cultivation, the proposed amendments to list hemp cultivation as a prohibited use in all zones has been developed. The amendments will provide additional time for the state regulations to be finalized to ensure any ordinance to allow limited industrial hemp cultivation is not in conflict with state and federal regulations. These amendments continue the Planning Commission and Board of Supervisor's direction to table the amendments in County Project No. 2019-071 until such time as the federal and state regulations are finalized. For purposes of this staff report and ordinance, the term "industrial hemp" is contained within the meaning of the more general term "hemp."
Location:	This amendment would apply throughout all of Mariposa County.
Proponent:	County of Mariposa
Recommendation:	Based on previous direction provided by the Planning Commission and Board of Supervisors, staff recommends that the Board of Supervisors approve Zoning Amendment No. 2021-010, an amendment to Title 17, Zoning to prohibit hemp cultivation and the prohibit hemp cultivation by "established agricultural research institutions".
Formal Action:	Waive the first reading and introduce an ordinance amending the Zoning Ordinance pursuant to Zoning Amendment No. 2021-010 prohibiting the cultivation of hemp and the cultivation of hemp by established agricultural research institutions in the County of Mariposa.

Attachment: Staff Report (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-010; Prohibition of Hemp Cultivation)

BACKGROUND

California Industrial Hemp Farming Act

In 2013, California enacted the California Industrial Hemp Farming Act (the Act), which authorized the commercial production of hemp and provided for the registration of growers along with general registration requirements. It also set maximum tetrahydrocannabinol (THC) levels for hemp at 0.3% and required testing and sampling of hemp prior to being harvested. The Act remained inoperative until it was authorized by Federal law. Proposition 64, passed in 2016, removed the requirement that hemp be legal at the federal level, and thus the Act became operative. Prior to implementation of the Act however, the California Department of Food and Agriculture (CDFA) needed to develop the various regulations needed to govern hemp cultivation.

The regulations allowing the *registration process* to commence were expected to become effective on April 3, 2019. This would have allowed hemp cultivation to commence once a grower registered with the County Agricultural Commissioner, even though there were no other regulations yet adopted by CDFA. There was a delay in the adoption of the anticipated *registration* regulations at the State level, but they became effective on April 25, 2019.

The state recognizes two types of hemp cultivation—regular commercial industrial hemp cultivation, which requires registration with the Mariposa County Agricultural Commissioner and random testing of hemp to ensure that the THC level does not exceed the 0.3% limit; and hemp cultivation by "established agricultural research institutions", which does not require registration and which allows for plants with THC levels exceeding 0.3% THC.

On June 10, 2019, the CDFA regulations for the *testing* of hemp became effective, at which time, staff commenced working on a permanent ordinance for Mariposa County. At that time, there were still several other regulations for hemp that had yet to be adopted at the State and Federal level.

The California Hemp Program is overseen by the California Department of Agriculture which has to submit their "pilot program" to the United States Department of Agriculture for review and approval. **The current program is in effect within the state prior to that review and is subject to change to conform with federal law.**

County Regulations for Hemp

As a result of the anticipated action related to the *registration* regulations at the State level, a temporary moratorium on the cultivation of hemp was adopted by the County Board of Supervisors on March 26, 2019. This was to provide time for staff to fully evaluate the local issues and impacts associated with hemp cultivation. This was also to provide time for staff to develop and process a permanent ordinance. Mariposa County's cannabis ordinance did not contemplate hemp; there were no applicable local regulations for hemp.

In Mariposa County, agriculture is allowed in rural zones. Without regulation of hemp cultivation, the problems that have already been experienced with illegal cannabis grows would be compounded with the registration and cultivation of hemp because there is no acreage limit for hemp in federal, state or county law. Hemp cultivation creates a pungent seasonal odor that is similar in type and intensity to the pungent seasonal odor created by cannabis cultivation. Failure to regulate the location of hemp cultivation sites had (and has) the potential to result in nuisance odors impacting neighbors and neighborhoods. Neighborhood concerns about significant grading needed to prepare ground for a cultivation, as well as potential significant ground water use to cultivate plans, were also likely.

Attachment: Staff Report (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-010; Prohibition of Hemp Cultivation)

At their meeting of April 9, **2019**, the Board of Supervisors discussed and directed staff to commence preparation of a permanent ordinance that would establish regulations and development standards for the cultivation of hemp in Mariposa County. The Board was interested in allowing limited hemp cultivation on larger parcels in the county.

Hemp vs. Cannabis

The physical appearance of cannabis and hemp are virtually the same and the only way to distinguish them is to test for the THC content. Hemp may not contain more than 0.3% THC. Absent a laboratory-performed chemical analysis for THC content, the two plants cannot be distinguished under their legal definitions. Furthermore, cultivation of individual hemp plants, similar to the way cannabis is grown, is now permitted since the passage of Senate Bill 1409 which authorized hemp to be produced by clonal propagation, and deleted the prohibitions on ornamental cultivation, pruning and tending of individual hemp plants. The difficulty of distinguishing between a hemp farm and a cannabis farm, and between a hemp plant and a cannabis plant, will make it difficult for law enforcement to determine if a cultivation site is legal or illegal. Laboratory testing of a plant sample is the only way to determine whether the plant is legal cannabis, illegal cannabis, legal commercial hemp, or illegal personal hemp (personal hemp is not permitted at any level).

County Project (Zoning Amendment) No. 2019-071

Based on the above information and the direction provided by the Board of Supervisors, staff prepared a draft ordinance in **2019** that would:

1. Permit the cultivation of hemp in the Agriculture Exclusive Zone (160 acre minimum parcel size for subdivisions), the General Forest Zone (40 acre minimum parcel size), the Mountain Preserve Zone (160 acre minimum parcel size) and the Industrial Mining Zone (20 acre minimum parcel size) through an Administrative Use Permit.
2. Prohibit the cultivation of hemp in all other zones.
3. Prohibit the cultivation of hemp by established agricultural research institutions.
4. Establish hemp cultivation standards that would apply through an Administrative Use Permit:
    a. Minimum parcel size on which cultivation could occur shall be 160 acres.
    b. Growing can only occur within a permitted structure, under an occupancy that allows cultivation.
    c. Air scrubbers are required to be installed to contain all odors.
    d. Minimum setbacks from property lines for cultivation of 100 feet if adjacent to parcel 160 acres in size or greater, or 500 feet if adjacent property is less than 160 acres.
    e. Testing requirements for THC content to ensure levels are below 0.3%.
    f. All costs for destroying a non-compliant cultivation are the responsibility of the cultivator.
    g. All registration and site signage required by state law shall be maintained for the life of the cultivation.
    h. Testing may be required for arsenic and other heavy metals by the Health and Human Services Agency, as hemp extracts heavy metals from soils.
    i. A bond or similar financial assurance will be required to ensure site reclamation should the operation be abandoned or found not in compliance with any State or local requirements.

The proposed ordinance was prepared based on the direction provided by the Board of Supervisors in Resolution No. 2019-188. The Board of Supervisors adopted this resolution to initiate the amendments to Title 17 to regulate the cultivation of hemp in Mariposa County.

Attachment: Staff Report (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-010; Prohibition of Hemp Cultivation)

The Planning Commission held a public hearing on County Project (Zoning Amendment) No. 2019-071 on August 9, 2019 to consider a recommendation to the Board of Supervisors on the proposed draft ordinance. At the hearing the Commission requested that the item be continued to a time when a representative from the Agricultural Commissioner's office and the Sheriff's Department could be in attendance. The meeting to consider the hemp cultivation ordinance was re-noticed for September 20, 2019 based on the Agricultural Commissioner and Sheriff's availability. The item was continued to October 11, 2019.

At their October 11, 2019 meeting, the Planning Commission voted (3 - 2 vote) to recommend that the Board of Supervisors table County Project (Zoning Amendment) No. 2019-071 until such time as the federal regulations are released. They also recommended that the Board of Supervisors extend the moratorium for an additional year.

On November 26, 2019, the Board of Supervisors reviewed the draft ordinance and the Planning Commission's recommendation to table the zoning amendment. At the time, the Federal regulations had just been released on October 31, 2019. At their meeting the Board of Supervisors provided direction to staff to table County Project (Zoning Amendment) No. 2019-071 until such time as the state and federal regulations are finalized to ensure that the County's proposed ordinance is consistent with them.

Current Status of State and Federal Regulations for Hemp

Based on the Board of Supervisor's direction, staff has been monitoring the status of California's hemp cultivation regulations. It was anticipated that the state was going to submit a hemp cultivation program for United States Department of Agriculture (USDA) review and approval pursuant to the Federal regulations created as a result of the 2018 Farm Bill by May 2020. Per the USDA's **Status of State and Tribal Hemp Production Plans for USDA Approval** webpage, updated February 2, 2021, California's plan is still under review.

While California's has adopted regulations that are currently in effect, it is unknown if any will have to be revised to comply with the Federal regulations.

Additionally, on January 15, 2021 the USDA published the Final Rule which provides the regulations for hemp production in the United States. The Final Rule, which becomes effective on March 22, 2021, changed several items from the Interim Final Rule, which was published on October 31, 2019.

Changes include:

- **"Negligent violation** – Producers must dispose of plants that exceed the acceptable hemp THC level. However, if the plant tests at or below the negligent threshold stated in the rule, producer will not have committed a negligent violation. The final rule raises the negligence threshold from .5 percent to 1 percent and limits the maximum number of negligent violations that a producer can receive in a growing season (calendar year) to one.

- **Disposal and remediation of non-compliant plants** – The final rule allows for alternative disposal methods for non-compliant plants that do not require using a DEA [Drug Enforcement Administration] reverse distributor or law enforcement and expands the disposal and remediation measures available to producers. AMS [Agricultural Marketing Service] will provide acceptable remediation techniques in a separate guidance document.

- **Testing using DEA-registered laboratories** – There are an insufficient number of DEA-registered laboratories to test all the anticipated hemp that will be produced in 2020 and possibly 2021. DEA has agreed to extend the enforcement flexibility allowing non-DEA

Attachment: Staff Report (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-010; Prohibition of Hemp Cultivation)

registered labs to test hemp until January 1, 2022 and is processing lab registration applications quickly to get more labs testing hemp DEA-registered.

- **Timing of sample collection** – The IFR [Interim Final Rule] stated a 15-day window to collect samples before harvest. The FR extends this requirement to 30 days before harvest.

- **Sampling method** – Stakeholders requested that samples may be taken from a greater part of the plant or the entire plant. They also requested sampling from a smaller number of plants. The FR [Final Rule] allow states and tribes to adopt a performance-based approach to sampling in their plans. The plan must be submitted to USDA for approval. It may take into consideration state seed certification programs, history of producer compliance and other factors determined by the State or Tribe."

2021 PROPOSED ORDINANCE

As a result of the information described above and the direction provided by the Board of Supervisors at their November 26, 2019 meeting, **staff has prepared an ordinance that would extend the current moratorium (prohibition of hemp cultivation) through the normal ordinance process**. The reason for this is that the Urgency Ordinance that was adopted to place a temporary moratorium can no longer be extended, as it has been in place for two years. The proposed ordinance would allow additional time for the state and federal regulations to be in place. The ordinance would prevent the issues associated with unregulated hemp cultivation described in the Background / County Regulations for Hemp section of this staff report from occurring in the county. **The current moratorium expires on March 26, 2021 and without this proposed ordinance in place there would be no local regulations for cultivating hemp in Mariposa County.**

Staff recommends the proposed ordinance be adopted, even if the Board is interested in establishing regulations for allowing limited hemp cultivation in Mariposa County. Staff will continue to monitor state regulations and Federal law. Once those are finalized, staff can begin re-processing the previous ordinance that was tabled together with an action to rescind the prohibition ordinance considered today.

AGRICULTURAL COMMISSIONER OFFICE INVOLVEMENT

If regulations allowing limited hemp cultivation in Mariposa County are eventually adopted, the Planning Department would be responsible for processing the Administrative Use Permit conditionally allowing a hemp cultivation operation to be established. Once the operation was established, the Agricultural Commissioner's Office will be involved in the following including but not limited to:

1. Registration
2. Providing registration information to the California Department of Food and Agriculture
3. Review of criminal history reports for registration applicants
4. Annual inspections of a random sample of registrants
5. Review of planting reports
6. Review of pre-harvest reports
7. Collection of samples
8. Collection and review of laboratory analysis results
9. Collection and review of harvest reports
10. Several aspects of the destruction of non-compliant crops including notification of need to destroy, verifying destruction

Attachment: Staff Report (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-010; Prohibition of Hemp Cultivation)

Attachment: Staff Report (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-010; Prohibition of Hemp Cultivation)

FISH AND WILDLIFE FEES

Because the project is exempt from Environmental Review, the Department of Fish and Wildlife Fees for the filing of a Negative Declaration do not apply to the project.

RECOMMENDED FINDINGS FOR CATEGORICAL EXEMPTION

Staff recommends that the Board of Supervisors find the proposed amendments are exempt from environmental review pursuant to Sections 15060(c)(2) and 15061(b)(3). The amendments will not result in a direct or reasonably foreseeable indirect physical change in the environment and there is no possibility that the amendments may have a significant effect on the environment.

This project will not result in any new construction on the ground that would not already be allowed. The project will continue an existing moratorium on hemp cultivation.

RECOMMENDED FINDINGS FOR ZONING AMENDMENT No. 2019-071

Section 17.128.050 of the Mariposa County Zoning Ordinance establishes four (4) mandatory findings that must be made prior to approval of a Zoning Amendment. There are two (2) additional findings established by the zoning ordinance, which apply only to proposed amendments to the county zoning map and land use map. The two additional findings do not apply to Zoning Amendment No. 2019-071.

1. **Finding:** The Zoning amendments are in the general public interest and will not have a significant adverse effect on the general public health, safety, peace, and welfare.

Evidence: The amendment is in the general public interest because it establishes restrictions for the cultivation of hemp in Mariposa County. Regulations are needed to protect the public health, safety, and welfare of residents, children, and businesses from harmful secondary effect of the unregulated cultivation of hemp. The amendment will not have any adverse effect on the general public health, safety, peace and welfare, but will protect them.

2. **Finding:** The amendment is desirable for the purpose of improving the Mariposa County General Plan with respect to providing a long-term guide for county development and a short-term basis for day-to-day decision making.

Evidence: One of the stated goals of the Mariposa County General Plan is to ensure that the rural character of Mariposa County is maintained (Goal 5-1). This amendment restricts a use that could result in increased traffic, noise, lights, and degradation of the natural environment associated with unregulated cultivation of hemp. This amendment will enable Mariposa County to properly protect its residents from the risk of criminal activity, degradation of the natural environment, cultivation related odors, and the potential for increased marijuana distribution under the guise of hemp. The amendment will enable better day-to-day decision making, as it will provide clear regulations for hemp cultivation. The amendment will minimize negative impacts on residential properties. This amendment will provide additional time for the County to study the impacts associated with hemp cultivation and to ensure that any regulations and standards for hemp cultivation are consistent with State and Federal regulations which are not yet finalized.

3. **Finding:** That such an amendment conforms to the requirements of state law and county policy.

Evidence: The application has been processed in accordance with all applicable requirements of state law and county policy.

4. **Finding:** The amendment is consistent with other guiding policies, goals, policies, and standards of the Mariposa County general plan.

Evidence: The amendment will ensure that the rural character of Mariposa County is maintained (Goal 5-1, Mariposa County General Plan). The amendment implements Implementation Measure 5-1a(3) as the project establishes land use regulations to ensure future uses are complementary to the concept of rural character. The amendment has the effect of preventing the increased traffic, noise, lights, and degradation of the natural environment that is associated with large unregulated hemp cultivation. The amendment implements Policy 10-1c and Implementation Measure 10-1c(1) as it ensures that future uses in the Agriculture/Working Landscape are compatible with agriculture. The amendment establishes clearly defined regulations to uses associated with hemp.

5. **Finding:** The proposed amendments are exempt from environmental review pursuant to Sections 15060(c)(2) and 15061(b)(3). The amendments will not result in a direct or reasonably foreseeable indirect physical change in the environment and there is no possibility that the amendments may have a significant effect on the environment.

This project will not result in any new construction on the ground that would not already be allowed. The project will continue an existing moratorium on hemp cultivation.

Attachment: Staff Report (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-010; Prohibition of Hemp Cultivation)

STATE OF CALIFORNIA
COUNTY OF MARIPOSA
BOARD OF SUPERVISORS

MARIPOSA COUNTY ORDINANCE NO. _____

AN ORDINANCE AMENDING COUNTY CODE TITLE 17 TO ADD SECTION 17.108.200.E., SECTION 17.334.055.E., and DEFINITIONS TO SECTION 17.148.010

WHEREAS, on the 26th day of March 2019, the Board of Supervisors adopted Interim Urgency Ordinance 1141 prohibiting all industrial hemp cultivation for 45 days; thereafter on the 7th day of May 2019 adopted Ordinance 1142 extending Ordinance 1141 for an additional 10 months and 15 days; and thereafter on the 23rd day of March 2020 adopted Ordinance 1155 extending Ordinance 1141 for an additional 12 months; and

WHEREAS, Ordinance 1141 directed the preparation of necessary documents, including a resolution, ordinance and CEQA determination, to amend the Mariposa County Zoning Ordinance to regulate, within Mariposa County, industrial hemp cultivation; and

WHEREAS, on the 9th day of April 2019, the Board of Supervisors, in accordance with Mariposa County Code Section 17.128.020.B, adopted Resolution 2019-188 initiating Zoning Ordinance Amendment No. 2019-071 to establish regulations and development standards for the cultivation of industrial hemp and to prohibit the cultivation of hemp by "established agricultural research institutions"; and

WHEREAS, on the 11th day of October 2019 the Planning Commission recommended that the Board of Supervisors table the amendments until such time as staff could answer unknowns related to state and federal regulations and how they will affect the proposed ordinance; and

WHEREAS, on the 26th day of November 2019 the Board of Supervisors considered the Planning Commission's recommendation and directed staff to table the amendments until such time as staff could answer unknowns related to state and federal regulations and how they will affect the proposed ordinance; and

WHEREAS, as of 11th day of January 2021 the State of California had not received approval from the United States Department of Agriculture for their hemp production plan; and

WHEREAS, based on Board of Supervisors' direction to staff to table the amendments until such time as staff could answer unknowns related to state and federal regulations, staff prepared this ordinance for adoption prior to the expiration of the Interim Urgency Ordinance on the 26th day of March 2021; and

WHEREAS, the amendments are intended to continue the prohibition of the cultivation of industrial hemp and the cultivation of hemp by established agricultural research institutions; and

WHEREAS, if directed by the Board of Supervisors, staff will bring back an action to rescind these amendments and complete processing an ordinance to establish regulations for industrial hemp cultivation once all state and federal regulations are in place and consistent; and

WHEREAS, it has been found that the project is exempt from the California Environmental Quality Act, and a Notice of Exemption has been filed for the project.

Attachment: Draft Ordinance (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-010; Prohibition of Hemp Cultivation)

NOW, THEREFORE, THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, a political subdivision of the State of California, does ordain as follows:

Section I:

Zoning Ordinance Section 17.108.200 shall be amended to add subsection E. as follows (new text shown in *underlined and italicized font*):

17.108.200 Uses prohibited in all zones.

The following land uses are prohibited in all zoning districts:

A. Medical marijuana dispensaries;

B. The collective or cooperative cultivation of marijuana;

C. The cultivation of marijuana for medical purposes by person(s) not residing on the property on a permanent basis;

D. Any activity and use within Mariposa County for which a license is required pursuant to California Business and Professions Code, Division 10, as it may be amended, including activities requiring a license pursuant to the Adult Use Of Marijuana Act, including commercial, or not for profit, cultivation, processing, manufacture, wholesale or retail sale or public consumption;

E. *The cultivation of hemp, including the cultivation of hemp by established agricultural research institutions.*

Section II:

Zoning Ordinance Section 17.334.055 shall be amended to add subsection E. as follows (new text shown in *underlined and italicized font*):

17.334.055 Uses prohibited in all zones.

The following land uses are prohibited in all zoning districts:

A. Medical marijuana dispensaries;

B. The collective or cooperative cultivation of marijuana;

C. The cultivation of marijuana for medical purposes by person(s) not residing on the property on a permanent basis;

D. Any activity and use within the Town of Mariposa, Mariposa County for which a license is required pursuant to California Business and Professions Code, Division 10, as it may be amended, including activities requiring a license pursuant the Adult Use Of Marijuana Act, including commercial, or not for profit, cultivation, processing, manufacture, wholesale or retail sale or public consumption; and

E. *The cultivation of hemp, including the cultivation of hemp by established agricultural research institutions.*

Attachment: Draft Ordinance (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-010; Prohibition of Hemp Cultivation)

Section III:

Zoning Ordinance Section 17.148.010 of Title 17 of the Mariposa County is amended to add the following terms (new text shown in *underlined and italicized font*; all other existing terms and phrases remain unchanged):

Chapter 17.148 Definitions

17.148.010 Definitions of terms and phrases
The following terms and phrases shall be used in this title and are listed alphabetically:

Hemp cultivation:
Any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of hemp, including activities carried out by seed breeders.

Hemp:
Same meaning as in Section 11018.5 of the California Health and Safety Code.

Seed breeder:
Same meaning as in Section 81000 of the California Food and Agricultural Code.

Established agricultural research institution:
Same meaning as in Section 81000 of the California Food and Agricultural Code.

Section IV: If any provision of this ordinance is held to be unconstitutional, preempted by federal law, or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the ordinance shall not be invalidated.

Section V: This ordinance shall become effective thirty (30) days after final passage pursuant to Government Code Section 25123.

BE IT FINALLY ORDAINED, this action is based on the findings mandated by Section 17.128.050 of the Mariposa County Zoning Ordinance as follows**:**

1. **Finding:** The Zoning amendments are in the general public interest and will not have a significant adverse effect on the general public health, safety, peace, and welfare.

Evidence: The amendment is in the general public interest because it establishes restrictions for the cultivation of hemp in Mariposa County. Regulations are needed to protect the public health, safety, and welfare of residents, children, and businesses from harmful secondary effect of the unregulated cultivation of hemp. The amendment will not have any adverse effect on the general public health, safety, peace and welfare, but will protect them.

2. **Finding:** The amendment is desirable for the purpose of improving the Mariposa County General Plan with respect to providing a long-term guide for county development and a short-term basis for day-to-day decision making.

Evidence: One of the stated goals of the Mariposa County General Plan is to ensure that the rural character of Mariposa County is maintained (Goal 5-1). This amendment restricts a use that could result in increased traffic, noise, lights, and degradation of the natural environment associated with

Attachment: Draft Ordinance (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-010; Prohibition of Hemp Cultivation)

unregulated cultivation of hemp. This amendment will enable Mariposa County to properly protect its residents from the risk of criminal activity, degradation of the natural environment, cultivation related odors, and the potential for increased marijuana distribution under the guise of hemp. The amendment will enable better day-to-day decision making, as it will provide clear regulations for hemp cultivation. The amendment will minimize negative impacts on residential properties. This amendment will provide additional time for the County to study the impacts associated with hemp cultivation and to ensure that any regulations and standards for hemp cultivation are consistent with State and Federal regulations which are not yet finalized.

3. **Finding:** That such an amendment conforms to the requirements of state law and county policy.

Evidence: The application has been processed in accordance with all applicable requirements of state law and county policy.

4. **Finding:** The amendment is consistent with other guiding policies, goals, policies, and standards of the Mariposa County general plan.

Evidence: The amendment will ensure that the rural character of Mariposa County is maintained (Goal 5-1, Mariposa County General Plan). The amendment implements Implementation Measure 5-1a(3) as the project establishes land use regulations to ensure future uses are complementary to the concept of rural character. The amendment has the effect of preventing the increased traffic, noise, lights, and degradation of the natural environment that is associated with large unregulated hemp cultivation. The amendment implements Policy 10-1c and Implementation Measure 10-1c(1) as it ensures that future uses in the Agriculture/Working Landscape are compatible with agriculture. The amendment establishes clearly defined regulations to uses associated with hemp.

5. **Finding:** The proposed amendments are exempt from environmental review pursuant to Sections 15060(c)(2) and 15061(b)(3). The amendments will not result in a direct or reasonably foreseeable indirect physical change in the environment and there is no possibility that the amendments may have a significant effect on the environment.

This project will not result in any new construction on the ground that would not already be allowed. The project will continue an existing moratorium on hemp cultivation.

PASSED AND ADOPTED on this _____ day of February 2021, by the following vote:

AYES:
NOES:
ABSTAINED:
EXCUSED:

_____
Marshall Long, Chairman
Mariposa County Board of Supervisors

ATTEST:

_____
René LaRoche, Clerk of the Board

APPROVED AS TO FORM:

_____
Steven W. Dahlem, County Counsel

Attachment: Draft Ordinance (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-010; Prohibition of Hemp Cultivation)

MARIPOSA COUNTY BOARD OF SUPERVISORS
SUMMARY OF PROPOSED ORDINANCE AMENDING COUNTY CODE TITLE 17 TO ADD SECTION 17.108.200.E., SECTION 17.334.055.E., and DEFINITIONS TO SECTION 17.148.010

Notice is hereby given that on Tuesday, February 23, 2021, at 9 a.m., or as soon thereafter as the matter may be heard, at its regularly scheduled meeting, the Mariposa County Board of Supervisors will consider adoption of an ordinance to amend Mariposa County Code Title 17 to add Section 17.108.200.E., Section 17.334.055.E., and definitions to Section 17.148.010:

Section I: Zoning Ordinance Section 17.108.200 shall be amended to add subsection E. listing the cultivation of hemp, including the cultivation of hemp by established agricultural research institutions as prohibited in all zones.

Section II: Zoning Ordinance Section 17.334.055 shall be amended to add subsection E. listing the cultivation of hemp, including the cultivation of hemp by established agricultural research institutions as prohibited in all zones.

Section III: Zoning Ordinance Section 17.148.010 shall be amended to add definitions for “hemp cultivation”, “hemp”, “seed breeder”, and “established agricultural research institution”.

Section IV: If any provision of this ordinance is held to be unconstitutional, preempted by federal law, or otherwise invalid by any court or competent jurisdiction, the remaining provisions of the ordinance shall not be invalidated.

Section V: This ordinance shall become effective thirty (30) days after final passage pursuant to Government Code Section 25123.

A certified copy of the full text of this ordinance is posted for public review in the Office of the Clerk of the Board of Supervisors at 5100 Bullion Street, Mariposa, California.

René LaRoche, Clerk of the Board

Attachment: Summary Ordinance for Publication (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-010; Prohibition of Hemp

MARIPOSA COUNTY
NOTICE OF EXEMPTION

TO: **County Clerk, County of Mariposa**
P.O. Box 247
Mariposa, CA 95338

FROM: **Mariposa County**
Board of Supervisors
P.O. Box 784
Mariposa, CA 95338

Project Title: County Project (Zoning Amendment) No. 2021-010

Project Location: Amendment affects all parcels throughout Mariposa County.

Description of Project: The amendments add definitions to Chapter 17.148 for hemp cultivation, hemp, seed breeder and established agricultural research institution. Section 17.108.200 and Section 17.334.055 are amended to prohibit the cultivation of hemp and the cultivation of hemp by established agricultural institutions and the cultivation of hemp.

Name of Public Agency Approving Project: Mariposa County Board of Supervisors

Name of Person/Agency Carrying Out Project: County of Mariposa

Exempt Status: General Rule Exemption; Section 15061 and 15060(c)(2), CEQA Guidelines.

Reason Why Project Is Exempt: County Project (Zoning Amendment) No. 2021-010 is exempt from environmental review pursuant to Sections 15060(c)(2) and 15061(b)(3). The amendments will not result in a direct or reasonably foreseeable indirect physical change in the environment and there is no possibility that the amendments may have a significant effect on the environment. The amendments will prohibit the cultivation of hemp. Without the proposed regulations, hemp cultivation would be permitted Countywide without any regulation.

This project will not result in any new construction on the ground that would not already be allowed. The project will restrict a use that without the existing moratorium would have no regulations or limits.

Lead Agency Contact Person: Alvaro Arias, Deputy Director

Phone Number: (209) 966-5151

_____ _____
Sarah Williams Date
Planning Director

Attachment: Draft Notice of Exemption (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-010; Prohibition of Hemp Cultivation)

Attachment: Final Rule-Federal Hemp Production Program (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-010; Prohibition of

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 990

[Doc. No. AMS–SC–19–0042; SC19–990–2 FR]

Establishment of a Domestic Hemp Production Program

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This final rule supersedes the interim final rule that established the Domestic Hemp Production Program, as mandated by the Agriculture Improvement Act of 2018 (2018 Farm Bill). This rule includes regulations used by the Department of Agriculture (USDA) to approve plans submitted by States and Indian Tribes for the domestic production of hemp. This rule also includes regulations on the Federal hemp production plan for producers in States or territories of Indian Tribes that do not have their own USDA-approved plans. The program provides requirements for maintaining records about the land where hemp is produced, testing the levels of total delta-9 tetrahydrocannabinol, disposing of non-compliant plants, licensing hemp producers, and ensuring compliance under the new program.

DATES: This rule is effective March 22, 2021.

FOR FURTHER INFORMATION CONTACT: Bill Richmond, Branch Chief, U.S. Domestic Hemp Production Program, Specialty Crops Program, AMS, USDA; 1400 Independence Ave. SW, Stop 0237, Washington, DC, 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *William.Richmond@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under the authority of section 10113 of the 2018 Farm Bill (Pub. L. 115–334; December 20, 2018), which amended the Agricultural Marketing Act of 1946, as previously amended (7 U.S.C. 1621 *et seq.*) (AMA), by adding Subtitle G (sections 297A through 297E). Section 297B of the AMA requires the Secretary of Agriculture (Secretary) to evaluate and approve or disapprove State or Tribal plans regulating the production of hemp. Section 297C of the AMA requires the Secretary to establish a Federal plan for producers in States and territories of Indian Tribes not covered by plans approved under section 297B. Section 297D of the AMA requires the Secretary to promulgate regulations and guidelines relating to the production of hemp under sections 297B and 297C in consultation with the U.S. Attorney General.

AMS issued an interim final rule (IFR) on October 31, 2019 (84 FR 58522), and began its initial implementation of the program. To date, USDA has approved approximately 45 State and Tribal hemp plans. However, not all of the States and Tribes have implemented their plans for various reasons, including the need to take additional steps to complete State legislative or rulemaking processes or to establish the regulatory scheme as well as the extension of the 2014 Farm Bill Program. Thus, as of November 2020, twenty States and nine Tribes have submitted reports on their respective programs. Based on the reports submitted by States and Tribes in 2020, producers have planted 6,166 acres under the 2018 Farm Bill hemp plans, of which approximately 730 acres were subject to disposal.

As of the effective date of this final rule, the interim final rule is superseded. This final rule replaces the IFR at 7 CFR part 990, effective March 22, 2021. The Agricultural Marketing Service (AMS), which has been delegated authority to administer the U.S. Domestic Hemp Production Program, provided multiple opportunities for public comment. AMS accepted comments during an initial comment period from October 31, 2019, through December 31, 2019. This initial comment period was extended for an additional 30 days on December 18, 2019 (84 FR 69295), ending January 29, 2020. AMS reopened the comment period for 30 additional days on September 8, 2020 (85 FR 55363), ending October 8, 2020. A total of approximately 5,900 comments were received during all comment periods from States; Indian Tribes; industry and agricultural organizations; private citizens; members of Congress, the scientific community; agencies; and individuals involved in the growing, processing, transporting and marketing of hemp. A summary of the public comments received and AMS's responses appear under ''Comment Analysis'' in section IX of this document.

I. Introduction

Hemp is a commodity with numerous industrial and horticultural uses including fabric, paper, construction materials, food products, cosmetics, production of cannabinoids (such as cannabidiol or CBD), and other products.[1] While hemp was produced previously in the United States (U.S.) for hundreds of years, its use diminished in favor of alternatives. Hemp fiber, for instance, which had been used to make rope and clothing, was replaced by less expensive jute and abaca imported from Asia. Rope made from these materials was lighter, more buoyant, and more resistant to saltwater than hemp rope, which required tarring. Improvements in technology further contributed to the decline in hemp use. The cotton gin, for example, simplified the processing of cotton, which replaced hemp in the manufacture of textiles.

The hemp industry continued in the U.S. until the Marihuana Tax Act of 1938. This Act ended the legal production of hemp in the United States, and hemp was added to Schedule I of the Controlled Substances Act (CSA), 21 U.S.C. 801 *et seq.* Prior to the 2018 Farm Bill, all *Cannabis sativa* L., regardless of delta-9 tetrahydrocannabinol (THC) concentration level, fell within the CSA definition of ''marihuana'' unless the product fell under a narrow range of exceptions (*e.g.,* the ''mature stalks'' of the plant).[2] As a result, many aspects of domestic production of what is now defined as hemp was limited to persons registered under the CSA to do so.

Under the Agricultural Act of 2014 (2014 Farm Bill), Public Law 113–79, State departments of agriculture and institutions of higher education were permitted to produce hemp as part of a pilot program for research purposes. The authority for hemp production provided in the 2014 Farm Bill was extended until January 1, 2022, by the Continuing Appropriations Act, 2021, and Other Extensions Act (Pub. L. 116–260) (2021 Continuing Appropriations Act).

Hemp production in the U.S. has seen a resurgence in the last several years.

Since importation of seed is covered under USDA's Animal and Plant Health Inspection Service (APHIS) regulations, this final rule does not regulate hemp

[1] Section 297D(c) of the AMA explicitly preserved the authority of the U.S. Food and Drug Administration (FDA) to promulgate regulations and guidance related to the production of hemp under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*) (FD&C Act) and section 351 of the Public Health Service Act (42 U.S.C. 262) (PHS Act). *See* section 297D(c)(1) (''Nothing in this subchapter shall affect or modify . . . the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*); section 351 of the Public Health Service Act (42 U.S.C. 262); or the authority of the Commissioner of Food and Drugs and the Secretary of Health and Human Services . . . '' under those Acts).

[2] Although the statutory spelling is ''marihuana'' in the Controlled Substances Act, this rule uses the more commonly used spelling of marijuana.

seed imports. APHIS regulates the importation of all seeds for planting to ensure safe agricultural trade. Hemp seeds can be imported into the U.S. from Canada if accompanied by either: (1) A phytosanitary certification from Canada's national plant protection organization to verify the origin of the seed and confirm that no plant pests are detected; or (2) a Federal Seed Analysis Certificate (SAC, PPQ Form 925) for hemp seeds grown in Canada. Hemp seeds imported into the U.S. from countries other than Canada may be accompanied by a phytosanitary certificate from the exporting country's national plant protection organization to verify the origin of the seed and confirm that no plant pests are detected.

This final rule does not address the exportation of hemp. Should there be sufficient public interest in exporting hemp in the future, USDA will work with industry and other Federal agencies to help facilitate this process.

The 2018 Farm Bill requires USDA to promulgate regulations and guidelines to establish and administer a program for the production of hemp in the United States. Under this new authority, a State or Indian Tribe that wants to have primary regulatory authority over the production of hemp in that State or territory of that Indian Tribe may submit, for the approval of the Secretary, a plan concerning the monitoring and regulation of such hemp production. For States or Indian Tribes without an approved plan, the Secretary is directed to establish a Departmental plan to monitor and regulate hemp production in those areas.

The 2018 Farm Bill specifies requirements that all hemp producers must meet. These include licensing requirements; recordkeeping requirements for maintaining information about the land where hemp is produced; procedures for testing the THC concentration levels for hemp; procedures for disposing of non-compliant plants; compliance provisions; and procedures for handling violations.

For the purposes of 7 CFR part 990, and as defined in the 2018 Farm Bill, the term ''hemp'' means the plant species *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. Delta-9 tetrahydrocannabinol, or THC, is the primary intoxicating component of cannabis. Cannabis with a THC level exceeding 0.3 percent is considered marijuana, which remains classified as a Schedule I controlled substance regulated by the Drug Enforcement Administration (DEA) under the CSA.

The term ''State'' means any of one of the fifty States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States. The term ''Indian Tribe'' or ''Tribe'' has the same definition as in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304). This final rule also includes the definition of ''territory of an Indian Tribe'' to provide clarity to the term because the AMA does not define it. The final rule defines ''territory of the Indian Tribe'' as (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, including rights-of-way running through the reservation; (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same; and (d) any lands title to which is either held in trust by the United States for the benefit of any Indian Tribe or individual or held by any Indian Tribe or individual subject to restriction by the United States against alienation and over which an Indian Tribe exercises jurisdiction. Under an approved Tribal plan, the Indian Tribe will have regulatory authority over hemp production within its Territory.[3] A full list of terms and definitions relating to part 990 can be found under ''Definitions'' in section IV.

This rule is divided into several sections. The first section provides a general introduction to the rule. This section does not go into a detailed description of all parts of the rule or about the provisions of the rule that are discussed later on in other sections. Sections for State and Tribal plans as well as the USDA plan contain general information on land use, tribal jurisdiction authority, sampling, testing, disposal and remediation, compliance provisions, information sharing, certification of resources, and State and Tribal plan approvals. The USDA section also includes USDA hemp license provisions and suspension. These two sections provide general provisions that are discussed in more detail in the comment analysis section. Sections containing definitions, severability and the regulatory analysis are included before the regulatory language. The reader may be best served by reading the comment section to determine the changes made to this rule.

[3] We note that if an Alaskan Native Corporation wants to produce hemp on land it owns in fee simple, it would need to have a State or USDA license, whichever is applicable, because that land does not qualify as Indian Country and the Corporation does not have jurisdiction over that land.

II. State and Tribal Plans

Section 297B (7 U.S.C. 1639p) of the AMA requires that States or Indian Tribes seeking primary regulatory authority over the production of hemp in that State or territory of that Indian Tribe, submit, for the approval of the Secretary, a plan concerning the monitoring and regulation of such hemp production. State or Tribal plans must be submitted to USDA and approved prior to their implementation. Nothing preempts or limits any law of a State or Tribe that regulates the production of hemp and is more stringent than the provisions in Subtitle G of the AMA.

AMS received extensive public input on the regulatory requirements for State and Tribal hemp plans. Incorporating the input received, the following sections explain the changes to the regulatory requirements for State and Tribal hemp plans.

A. Land Used for Production

The 2018 Farm Bill and the IFR required that plans include a process by which relevant information regarding the land used for hemp production in their jurisdiction is collected and maintained. Certain information on mailing addresses and hemp production sites must be collected for each licensee covered by the State or Tribal plan.

The information required to be collected includes a legal description of the land and geospatial location for each field, greenhouse, or other site where hemp is produced. Geospatial location is necessary because many rural locations do not have specific addresses, and these coordinates will assist with the proper identification of hemp production locations.

In addition to the land information required to be collected by the appropriate State or Indian Tribe, AMS chose to require licensed producers, including those under the USDA plan, to report their hemp crop acreage to the Farm Service Agency (FSA). Although many commenters opposed this requirement based on costs around the time and travel expense necessary to physically visit the appropriate FSA County Office, AMS has determined that maintaining the FSA reporting

Attachment: Final Rule-Federal Hemp Production Program (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-010; Prohibition of

requirement is essential for several reasons. AMS recognizes that in some cases producers may travel to FSA offices miles away incurring additional time and cost. These costs are incorporated in the expected burden of this program.

First, USDA is statutorily required to provide law enforcement with certain ''real-time'' information about who is growing hemp, whether their license is in good standing with the regulatory body issuing the license, and the location(s) where hemp is being grown. Having FSA collect the necessary information enables USDA to provide the most accurate and ''real-time'' information to law enforcement, as required by Subtitle G of the AMA. Second, FSA offices serve as useful resources to all farmers and, in collaboration with other USDA agencies, can provide a wide range of insurance, risk management, and conservation program guidance and information. These offices currently serve the agricultural industry within their communities, where producers can establish farm and producer records, record their licensing information, and report crop acreage. The producer may also, with supporting documentation, update their FSA farm records for leases, sub-leases, or land ownership. Requiring farmers to visit the FSA office ensures that they receive information on the availability of these helpful tools and programs. This is particularly important for new farmers, who may not be aware of the wide range of programs and services offered by USDA.

Further, FSA maintains the technology necessary for data collection and geographical land identification. These tools will provide easy access to information needed for law enforcement and for other agricultural programs. AMS has determined, for these reasons, to continue to require the reporting of hemp crop acreage to FSA.

Based on input from commenters, USDA is also clarifying the distinction between the term ''lot'' as defined in the IFR, and the term ''subfield'' as it relates to FSA reporting. Although this final rule uses the term ''lot'' to discuss the land where hemp is grown, when a producer visits the FSA office to report hemp crop acreage, FSA staff will help producers determine the applicable FSA-specific term for designating the location(s) where hemp is being grown. The terminology used by FSA to denote land areas include terms like ''farm,'' ''tract,'' ''field,'' and ''subfield,'' which are equivalent to AMS's term ''lot.'' FSA staff will not provide a ''lot number'' to producers as described in the IFR. FSA will use designations that they currently use such as track, field, or subfield, depending on the specific area. This designation does not change the requirements or the information submitted for law enforcement. AMS will amend the form to reflect these terms. When reporting to FSA, producers must provide their State or Tribe-issued license or authorization number. A link to FSA information on how to report hemp crop acreage to FSA is available at *https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/2019/crop-acreage-reporting-19.pdf* and is available on the USDA hemp production program website.

As described in the IFR, certain State hemp pilot programs operating under the 2014 Farm Bill authority developed ''seed certification'' programs to help producers identify hemp strains with potentially lower THC concentrations. The term ''certification'' in this context means tested or verified, but it does not necessarily mean certified for varietal purity. USDA acknowledges that this remains a significant hurdle to the hemp industry and is committed to assisting with the research and development of compliant hemp varietals. Although AMS encourages States and Tribes to develop seed-certification programs if sufficient data is available, AMS has determined, at this time, that requiring the use of certain ''compliant'' varietals or establishing National rules for State-level certification programs is inappropriate. AMS will look at best practices from States and Tribes to evaluate if a program would be applicable to a USDA plan. If applicable, USDA may develop a performance-based sampling program. Such a program will require USDA to conduct rulemaking and comment procedures.

The term ''seed certification,'' as found in the Federal Seed Act and its Regulations, refers to a third-party verification process that assures seed customers that they are receiving pure varieties and high-quality seed for planting purposes. The Federal Seed Act grants authority to seed certifying agencies in each State to administer varietal seed certification standards for all major agricultural crops, including hemp. Recognized seed certifying agencies are members of the Association of Official Seed Certifying Agencies (AOSCA), and they administer uniform AOSCA standards and inspect crops being grown for seed throughout the production process to maintain varietal purity. These activities protect seed customers in both domestic and export markets. Seed produced under these types of certification programs ensure a distinct, recognized variety that is properly tested and legally labeled. Seed certification under the Federal Seed Act is concerned with many varietal characteristics, not solely THC concentration. This enables farmers to confidently purchase seed of a suitable variety, by purchasing seed certified as to variety. Using certified seed, as described in the Federal Seed Act regulations and AOSCA standards, is an option for states and tribes if they have the data to support that the seed would work in their environment. While varietal certification does not absolutely ensure a specific THC content, the fact is that THC content (or at least a range) is a reliable varietal characteristic. Therefore, if the farmer is able to confidently purchase seed of a suitable variety by purchasing seed certified to variety, they at least know what to expect from the variety in their area.

For this reason, AMS recommends the use of hemp seed from varieties that have undergone varietal certification, following the process outlined in the Federal Seed Act Regulations, and produced following AOSCA standards. This recommendation will assist hemp farmers to purchase recognized hemp varieties that have been tested for purity and are properly labeled.

Additionally, AMS administers the Plant Variety Protection Office (PVPO) that is actively accepting applications of seed-propagated hemp for plant variety protection. The PVPO provides intellectual property protection to breeders of new varieties of seeds, tubers, and asexually reproduced plants. Under the U.S. Plant Variety Protection Act, PVPO examines new applications and grants certificates that protect varieties for 20 years (25 years for vines and trees). Certificate owners have rights to exclude others from marketing and selling their varieties, manage the use of their varieties by other breeders, and enjoy legal protection of their work. This work, however, does not certify seeds for THC content.

B. Tribal Jurisdictional Authority

The final rule clarifies the extent of a Tribe's regulatory authority over hemp production within its Territory. Several commenters stated that language in the IFR raised uncertainty as to whether Indian Tribes could regulate hemp production by non-Indians operating on fee lands within a Tribe's Territory. To address this uncertainty, § 990.4(b)(4) of the final rule now provides that ''[u]pon USDA approval of a Tribal plan, a Tribe may exercise jurisdiction and therefore primary regulatory authority over all production of hemp in its Territory regardless of the extent of its inherent

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regulatory authority.'' Thus, as long as the land at issue qualifies as land within the territory of an Indian Tribe under § 990.1 of the final rule, an Indian Tribe with a USDA-approved plan may regulate all hemp production on that land. USDA determined that this additional language is consistent with Congressional intent in the 2018 Farm Bill and best ensures that hemp production is managed consistently throughout the Territory of an Indian Tribe.

If an Indian Tribe desires to have primary regulatory authority over the production of hemp in its Territory, under the 2018 Farm Bill, the Tribe may submit a plan to USDA. Section 297C of the AMA provides that ''In the case of a State or Indian Tribe for which a State or Tribal plan is not approved under section 297B, the production of hemp in that State or the territory of that Indian Tribe shall be subject to a plan established by the Secretary to monitor and regulate that production.'' Hence if a Tribe does not regulate hemp production within its Tribal Territory, USDA, not a State with an approved plan, will regulate hemp production program within that Territory.

Sections 297B and C plainly show that Congress chose to take a territorial approach to the Tribal regulation of hemp production under the AMA. If Congress only wanted Indian Tribes to assume primary regulatory authority over hemp production in areas within their inherent jurisdictional authority it could have stated this. Instead, Congress opted for a land-based approach and delegated to Tribes the authority to assume hemp production regulatory authority throughout their territories. In consideration of the statutory language and the overall statutory scheme of the 2018 Farm Bill, USDA has determined that an Indian Tribe with an approved plan may regulate hemp production throughout its territory without regard to the Indian Tribe's ability to demonstrate inherent regulatory authority under the factors set forth in *Montana* v. *United States,* 450 U.S. 544 (1981). Because Congress did not define Territory of the Indian Tribe in the AMA and did not include discussion in the legislative history of the meaning of this term, USDA is exercising its authority to issue regulations to implement the provisions in the 2018 Farm Bill to define this term in this manner.

USDA's decision is in-line with agency determinations where the agency determined that Congress delegated a Tribe with authority to exercise regulatory authority over non-Tribal fee land within reservations. EPA Interpretive Rule: Revised Interpretation of Clean Water Act Tribal Provision, 81 FR 30183 (May 16, 2016); EPA Final Rule: Indian Tribes—Air Quality Planning and Management, 63 FR 7254 (Feb. 12, 1998); *Arizona Public Serv. Co.* v. *EPA,* 211 F.3d 1280 (D.C. Cir. 2000).

Moreover, USDA's decision is practicable and prevents piecemeal licensing by Tribes and USDA within a single Tribal Territory. If a Tribe was only able to exercise primary regulatory authority over hemp production within its Territory when it could demonstrate the inherent authority to do so, USDA could be required to regulate some hemp production within the Territory—for example, it could foreseeably be required to regulate hemp production by non-Indians operating on fee lands in certain cases. Such a system would be confusing for producers and regulators alike.

For the foregoing reasons, the final rule now clearly explains that upon USDA approval of a Tribal plan, a Tribe may exercise primary regulatory authority over all production of hemp in its Territory regardless of the extent of its inherent regulatory authority, as reflected in §§ 990.2 and 990.4 of the final rule.

C. Sampling for Total THC

AMS is changing certain aspects of the sampling requirements. This section addresses performance-based sampling, how to sample hemp plants, sampling agents, and the harvest window after sampling takes place.

Sampling Requirements

AMS received significant input from commenters on how hemp sampling procedures and requirements should be changed. When referring to ''sampling,'' we mean the process of collecting cuttings from hemp plants for purposes of compliance testing.

Performance Based Sampling

The IFR required State and Tribal hemp programs to collect samples from the flower material of the cannabis plant. The IFR also required State and Tribal hemp programs to collect enough samples to ensure at a confidence level of 95 percent that no more than one percent (1%) of the plants in the lot would exceed the acceptable hemp THC level. Guidance issued concurrently with the IFR explained these requirements in greater detail. The sampling requirements in the IFR did not consider geography, environmental factors, State or Tribal level seed certification programs, or other factors faced by States and Tribes when developing sampling requirements for their hemp programs. AMS is modifying the sampling provisions as presented in the IFR to allow States and Tribes to develop performance-based sampling requirements. Performance-based sampling achieves defined objectives and focuses on results. It differs significantly from a prescriptive action in which licensees are provided detailed direction on how those results are to be obtained. A performance-based approach would simply set a performance objective (*e.g.,* reliability of 95 percent) and allow the States and Tribes considerable freedom in how to achieve that reliability objective with their sampling methodology.

Some State hemp regulators have successfully developed sampling requirements that ensure adherence to State and Federal regulations, while allowing for flexibilities due to limited State resources and State and Tribal differences. States expressed extensive concerns about the requirements in the IFR that all lots must be sampled and tested, due to significant logistical and fiscal impacts. They explained that, since most hemp in a given region is harvested at the same time, sampling must be completed within a very short time frame by only a few individuals. Several States also explained how sampling occurs under established State programs and described the different ways that perceived risk determines State requirements. Some States utilize different sampling requirements for broad end-use categories like ''fiber/grain'' hemp versus ''cannabinoid'' hemp, while others base their requirements on historical THC concentrations of certain varietals or on the characteristics and growing history of a certain farm or producer. While these States' plans have not been approved under the 2018 Farm Bill regulations, we believe that providing States and Tribes the flexibility to develop sampling plans based on data they gather during an extended period of time may be an effective method at ensuring the overall acceptable hemp THC level of hemp grown in the State or Tribe. AMS agrees that sampling requirements should allow States and Indian Tribes more flexibility in the management of their hemp regulatory programs.

AMS agrees that requiring sampling from every lot may be burdensome and expensive for State and Tribal regulatory entities and producers. AMS also finds compelling the arguments presented by States' regulatory agencies and other commenters that there are different risk factors for hemp used for fiber and grain versus hemp used for cannabinoids. Data submitted with

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comments show that the THC levels of hemp used for cannabinoids are frequently higher than those of hemp for fiber and grain. The FDA authorizes the marketing of few types of cannabinoid products. This final rule does not cover cannabinoid products.

AMS also acknowledges that research institutions face special circumstances when conducting hemp research. Accordingly, this rule provides sampling and testing flexibility to these institutions and producers working with them to conduct hemp research. Producers that produce hemp for research, along with the research institution itself, must obtain a license from a State, Tribal Government, or USDA. However, the hemp that is produced for research is not subject to the same sampling requirements provided that the producer adopts and carries out an alternative sampling method that has the potential to ensure, at a confidence level of 95 percent, that the cannabis plant species *Cannabis sativa* L. that will be subject to this alternative method will not test above the acceptable hemp THC level. Research institutions and producers growing hemp for research purposes shall ensure the disposal of all non-compliant plants. Research institutions and producers growing hemp for research purposes shall also comply with the reporting requirements including reporting disposal of non-compliant plants. Research institutions that handle ''hot'' hemp must follow CSA requirements for handling marijuana.

States and Indian Tribes are allowed to develop performance-based requirements for these institutions. However, the alternative method must have the potential to ensure, at a confidence level of 95 percent, that the cannabis plant species *Cannabis sativa* L. that will be subject to the alternative method will not test above the acceptable hemp THC level.

AMS views this flexibility as necessary to help support research and development as it relates to hemp production. This decision allows these types of research facilities and institutions to confidently oversee the study of hemp through trialing and genetics research, which AMS believes to be critical to the growth of industry, particularly in its infancy. Over time, the flexibility provided by this final rule will help to stabilize industry by providing greater understanding of hemp genetics and how certain varietals respond differently to growing conditions in various geographic locations. All producers are expected to benefit from such knowledge as they will be made aware of the more stable and consistently reliable hemp varietals. Any non-compliant plants produced by research institutions as a result of research and development will still need to be disposed and verified through documentation. Research and development facilities are still required to be licensed by States and Tribes. Research institutions must follow licensing and reporting requirements.

In performance-based approaches, measurable or calculable parameters are available to determine whether the performance standard is met. These performance parameters are identified to provide measures of performance and the opportunity to take corrective action if performance is lacking. In the case of hemp, the performance parameter is the 0.3 percent THC level and other measures are included in this final rule if the parameter is not achieved such as disposal and remediation.

USDA finds that in order to increase regulatory effectiveness, it makes sense to allow States and Indian Tribes to consider performance-based alternatives when developing sampling plans. If the objective or intended result can be achieved by setting a readily measurable standard that is enforceable, the proposed requirement should merely specify the objective or result to be obtained rather than prescribe to the licensee how the objective or result is to be attained. In other words, requirements should be performance-based, and highly prescriptive rules and requirements should be avoided absent good cause to the contrary.

The sampling requirements for State and Tribal plans allow for States and Indian Tribes to develop unique sampling protocols for hemp growing facilities under their jurisdiction. Sampling protocols must be sufficient at a confidence level of 95 percent that no more than one percent of the plants in each lot would exceed the acceptable hemp THC level and ensure that a representative sample is collected that represents a homogeneous composition of the lot. Alternatively, the final rule allows States and Indian Tribes to adopt a performance-based sampling protocol. A performance-based protocol must have the potential to ensure, at a confidence level of 95 percent, that the cannabis plants will not test above the acceptable hemp THC level. USDA encourages the alternative protocol to consider seed certification processes or process that identifies varieties that have consistently demonstrated to result in compliant hemp plants in that State or territory of the Indian Tribe, whether the producer is conducting research on hemp at an institution of higher learning, whether a producer has consistently produced compliant hemp plants over an extended period of time, and other similar factors. AMS believes this will provide needed flexibility to States and Indian Tribes to develop logical and enforceable sampling requirements that take into consideration their unique circumstances. AMS will still require States and Indian Tribes to submit their individual sampling requirements for review as a component of the plan approval process. Sampling protocols submitted by States and Indian Tribes must comply with the thresholds established by the 2018 Farm Bill and this final rule. If performance-based sampling requirements are not included in a State or Tribal plan, the method used for sampling must be sufficient at a confidence level of 95 percent that no more than one percent of the plants in each lot would exceed the acceptable hemp THC level and ensure that a representative sample is collected from every lot, and thereby every producer must be sampled and tested. When evaluating sampling protocols submitted by States and Indian Tribes, USDA will evaluate the risk of producing non-compliant material to determine approval or disapproval. In evaluating the risk, USDA will take into consideration whether the performance-based factors the State or Indian Tribe used have the potential to assure compliance at a 95 percent confidence level.

Since USDA cannot develop performance metrics that would be applicable independently from where the producer is located, producers licensed under the USDA plan are subject to the sampling requirements in the rule. USDA guidelines provided on the USDA website at *https://www.ams.usda.gov/rules-regulations/hemp/information-sampling* describe best practices for complying with those requirements.

USDA recognizes that several States and Tribes may include performance-based sampling in their plans and that their experience could demonstrate that their sampling procedures may be adaptable to the USDA plan. If USDA finds this to be the case, USDA will explore a performance-based sampling scheme for producers under the USDA plan in the future through notice and comment rulemaking.

Where To Take Samples on the Hemp Plant

AMS will retain the requirement that pre-harvest samples be taken from the flower material of hemp plants. However, this rule clarifies the number

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of inches of plant material needed for the sample and provides greater detail as to where exactly on the plant to make a cutting. The IFR required that samples be taken from the ''flower material'' of hemp plants. Further, in guidance material issued concurrently with the IFR, AMS explained in greater detail where exactly on the plant to make a cutting by recommending samples be taken from the top third of the plant, ''just underneath a flowering material.'' Many commenters argued that samples should be taken from the ''whole plant'' or that a ''homogenized'' sample should be taken to include the stem, stalk, leaves, and seeds along with flower material. Alternatively, some commenters proposed that samples be taken post-harvest from shredded whole plant material, otherwise known as ''biomass.'' Advocates of these positions asserted that THC levels of the whole hemp plant are better represented by samples collected from the entire plant, and not just from floral material. Other commenters advocated for sampling of a certain size or length of cutting. Such commenters advocated adoption of the sampling methods they or others had used under pilot programs. Many State agriculture departments suggested AMS continue to require samples taken from flower material.

Even though many commenters felt that whole plant sampling should be allowed, AMS is of the opinion that since THC is concentrated in the flower material of the plant, the flower material is more appropriate to test than the entire plant. AMS will modify the sampling requirement to state that the sample shall be approximately five to eight inches from the ''main stem'' (that includes the leaves and flowers), ''terminal bud'' (that occurs at the end of a stem), or ''central cola'' (cut stem that could develop into a bud) of the flowering top of the plant. This change is consistent with the sampling practices in several States that established hemp programs pursuant to the 2014 Farm Bill authority. AMS determined that this standard strikes an appropriate balance between the need to collect a sufficiently large portion of the plant's flower (where THC and other cannabinoids are at their most concentrated), and the need to avoid cutting a portion that is so large that it would be logistically difficult to transport, dry, and prepare for lab testing. Based on the information discussed above and the experience and expertise of States and other commenters already engaged in hemp production pursuant to the 2014 Farm Bill authority, AMS is including new requirements herein.

AMS is publishing updated sampling guidance concurrently with this final rule. This guidance describes how to comply with this requirement regarding where to take the sample from the plant as well as other sampling requirements in the final rule. While the sampling guidance provides best practices for meeting the requirements, States, Indian Tribes, and USDA licensees may adopt sampling procedures that differ from the guidance so long as those procedures meet the standards in this final rule.

Sampling Agents

The IFR required a Federal, State, local, or Tribal law enforcement agency or other Federal, State, or Tribal designated person to collect hemp samples for the purposes of testing THC levels in hemp. Comments in response to the IFR presented several concepts concerning how sampling agents should be designated and/or trained. Comments mostly suggested the need for enhanced training requirements for sampling agents to promote consistency in the ways that samples are collected nationwide. Based on comments received regarding sampling agents, AMS will provide additional training resources for sampling agents. These training documents will explain how sampling agents can meet the sampling requirements of this regulation. States and Indian Tribes with an approved plan may require the sampling agents used in their jurisdiction to take the USDA training, or they may develop their own custom training incorporating USDA requirements with additional State or Tribal requirements. States and Tribes must maintain information, available to producers, about trained sampling agents.

Other comments on the topic of sampling agents spoke to the strain on State and Tribal resources of requiring agents to take samples instead of producers. Commenters presented two proposals to alleviate this strain—allowing producers to collect their own samples and reducing the volume of farms and plants from which samples are collected. AMS is retaining the requirement that only designated agents can collect samples. This ensures that there is consistency in sampling throughout the industry. The flexibilities provided to States and Indian Tribes with primary regulatory authority over hemp in their jurisdiction will likely reduce the number of samples required to be collected and thus reduce the burden on designated sampling agents.

Harvest Window

The IFR required harvest within 15 days of sampling. AMS received comments regarding the challenges presented by the 15-day harvest requirement, including the logistical challenges to State and Tribal agencies charged with overseeing the collection of samples in this short timeframe, the logistical challenges to producers in harvesting hemp crops in this short timeframe, and testing challenges faced by laboratories in having to conduct compliance analyses in this short timeframe. Commenters suggested lengthening the 15-day harvest requirement to a longer period of time—with some asking for up to 60 days.

AMS agrees with the arguments presented by commenters and recognizes the challenges imposed on the industry by the 15-day harvest requirement. AMS must also balance the logistical challenges of a harvest window requirement with the fact that THC concentration in hemp generally increases the longer the plant is in the ground. AMS now understands from data provided in comments that THC concentration does not increase linearly and is impacted by a myriad of environmental factors including moisture, wind, temperature, disease, sunlight, and soil, as discussed in the Comment Analysis section of this rule. The regulatory objective is to ensure, as best as possible, harmonization of the THC levels in the pre-harvest sample and that of the harvested material. Requiring that samples be taken prior to harvest is the best way to judge the THC concentration of the plant and the lot the sample represents. AMS recognizes that the most accurate measurement would be at time of harvest, but also understands the logistical practicalities discussed above and therefore has determined the most balanced approach is 30 days. For these reasons, AMS is expanding the window within hemp must be harvested after sampling to 30 days.

Under this final rule, no more than 30 days prior to the anticipated harvest of cannabis plants, a ''sampling agent'' must collect samples for compliance testing. If producers do not harvest within 30 days of sampling, the plant will likely have a higher THC level at harvest than the sample that is being tested. This requirement balances the need for accuracy with the logistical realities faced in the sampling and testing processes and will yield the most accurate measurement of the THC level at the point of harvest. Increasing the window within hemp must be harvested after sampling from 15 to 30 days will

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better allow for variables such as testing, weather, agricultural practices, and equipment delays.

D. Testing Laboratories

The IFR introduced regulatory requirements for laboratories testing hemp for compliance purposes. AMS also issued guidance with the IFR to explain best practices for hemp testing laboratories (*www.ams.usda.gov/rules-regulations/hemp*). Based on comments to the IFR, AMS is changing certain parts of these regulations and updating the accompanying testing guideline. While the testing guidance provides best practices for meeting the regulatory requirements, States, Indian Tribes, and USDA licensees may use test procedures that differ from the guidance so long as those procedures meet the standards in the final rule.

Registration With DEA

The IFR required all hemp testing laboratories to be registered with the DEA in accordance with the CSA (21 U.S.C. 823(f)). On February 27, 2020, AMS announced a delay in enforcement of this requirement until October 31, 2020, or the publication of a final rule, whichever came first (USDA, DEA Provide Options for Labs, Disposal of Non-Compliant Hemp Plants. Thursday, Feb. 27, 2020) [4] AMS announced this enforcement delay to allow additional time to increase DEA registered analytical lab capacity and avoid potential delays to producers in receiving test results. Although AMS received comments in opposition to this requirement, AMS is retaining the requirement in this final rule that any laboratory testing hemp for purposes of regulatory compliance must be registered with DEA to conduct chemical analysis of controlled substances in accordance with 21 CFR 1301.13. This requirement also applies to any laboratory testing hemp throughout the growing season to informally monitor THC concentration. Registration is necessary because laboratories could potentially handle cannabis that tests above 0.3 percent THC on a dry weight basis, which is, by definition, marijuana and a Schedule 1 controlled substance. Instructions for laboratories to obtain DEA registration, along with a list of approved laboratories, are available on the USDA Domestic Hemp Production Program website. AMS is aware that there are still not enough DEA-registered hemp testing facilities in some States or territories of Indian Tribes. However, since the IFR was published, numerous laboratories have applied for registration and DEA is working diligently to process these requests. Given the limited number of DEA-registered labs available to hemp producers, delay in enforcement of this requirement is continued until December 31, 2022. AMS anticipates this delay will provide adequate time for testing facilities to obtain DEA registration.

Laboratory Testing Requirements

Section 297B(a)(2)(A)(ii) of the AMA requires that State and Tribal plans for primary regulatory jurisdiction include a ''procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of hemp produced in the State or territory of the Indian Tribe.'' Since not all testing methods include decarboxylation, AMS is requiring that the total THC, which includes the potential conversion of tetrahydrocannabinolic acid (THCA) into THC, be reported and used for purposes of determining the THC content of a hemp sample.

The IFR included requirements on how laboratories conduct hemp testing for the purposes of regulatory compliance to assure that total THC levels were measured. Commenters provided extensive input on testing requirements, particularly the requirement to test for ''total'' THC instead of only ''delta-9'' THC. AMS is retaining this requirement.

AMS looked at current testing methodologies that would meet the decarboxylation requirement set in the 2018 Farm Bill. In gas chromatography (GC) testing, heat is applied to the sample, which decarboxylates THCA, producing delta-9 THC, so that the final delta-9 THC result is actually a total THC result. GC is the more traditional technique used for THC testing and was the technique used by Dr. Small [5] in his research that derived the 0.3 percent threshold that was used as a basis for the 2018 Farm Bill requirement and is used by law enforcement as the threshold to differentiate hemp from marijuana. In his research papers, the 0.3 percent threshold is based on *total available* delta-9 THC, which is the sum of THCA and delta-9 THC in the plant material.

Liquid chromatography (LC) testing does not involve the use of significant heat, so that the THCA in a sample does not generally decarboxylate. Results can be reported for THCA and delta-9 THC separately. When LC is used, the total THC needs to be calculated post-testing in order to report results as a ''post-decarboxylation'' delta-9 THC value. The requirement to report the total THC value as the THC content regardless of testing methodology used ensures testing consistency across the program.

Samples must be tested using post-decarboxylation or other similarly reliable analytical methods by which the total THC concentration level reported accounts for the conversion of THCA into THC. Acceptable testing methodologies currently include gas or liquid chromatography with detection.

The total THC, derived from the sum of the THC and THCA content, shall be determined and reported on a dry weight basis. In order to provide flexibility to States and Tribes in administering their own hemp production programs, alternative testing protocols will be considered if they are comparable to and similarly reliable as the baseline mandated by section 297B(a)(2)(A)(ii) of the AMA and established under USDA regulations and procedures. Updated USDA procedures for sampling and testing will be issued concurrently with this rule and will be provided on the USDA website.

Reporting requirements for laboratories are discussed later in Section X (Regulatory Analysis) of this final rule. To clarify these requirements, laboratories conducting testing for purposes of monitoring THC concentration throughout the growing season are not subject to these reporting requirements. These tests are for the producer to monitor his or her production as it grows and not to comply with pre-harvest testing requirements in this rule. Only laboratories conducting the ''final'' test that will be used to determine whether a sample is compliant are subject to reporting requirements.

Measurement of Uncertainty

This final rule requires that laboratories calculate and include the Measurement of Uncertainty (MU) when they report THC test results. ''Measurement of uncertainty'' is defined as ''the parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.'' This definition is based on the definition of ''uncertainty (of measurement)'' in section 2.2.3 of the Joint Committee for

[4] *www.ams.usda.gov/press-release/usda-dea-provide-options-labs-disposal-non-compliant-hemp-plants.*

[5] Small, E.; Beckstead, H.D.; Chan, A. The Evolution of Cannabinoid Phenotypes in Cannabis. *Economic Botany, 29,* 219–232, 1975.

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Guides in Metrology [6] 100:800, Evaluation of measurement data—''Guide to the Expression of Uncertainty in Measurement'' (JCGM Guide). The National Institute of Standards and Technology (NIST) Technical Note 1297, ''Guidelines for Evaluating and Expressing the Uncertainty of NIST Measurement Results'' (TN 1297), is based on the JCGM Guide. AMS also relied on the Eurachem/Co-Operation on International Traceability in Analytical Chemistry's ''Guide on Use of Uncertainty Information in Compliance Assessment, First Edition 2007''. Colloquially, the measurement of uncertainty is similar to a margin of error. When the measurement of uncertainty, normally expressed as a +/− with a number (*e.g.* +/- 0.05), is combined with the reported measurement, it produces a range, and the actual measurement has a known probability of falling within that range (typically 95%). Laboratories should meet the AOAC International [7] standard method performance requirements for selecting an appropriate method to determine the MU.

This final rule requires that laboratories report the MU as part of any hemp test results. The rule also includes a definition of ''acceptable hemp THC level'' to account for the uncertainty in the test results. The reported THC concentration of a sample may not be the actual concentration level in the sample. However, the actual THC concentration is expected to be within the distribution or range calculated when the reported THC concentration is combined with the measurement of uncertainty.

The use of MU for purposes of determining the acceptable hemp THC level does not alter Federal law with regard to the definition of hemp or marijuana. As stated above, the 2018 Farm Bill defines hemp as the plant species *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 THC of not more than 0.3 percent on a dry weight basis. Likewise, the Federal (CSA) definition of marijuana continues to include those parts of the cannabis plant as specified in 21 U.S.C. 802(16) (and derivatives thereof) that contain more than 0.3 percent THC on a dry weight basis. The foregoing provisions of Federal law remain in effect for purposes of Federal criminal prosecutions, as well as Federal, civil, and administrative proceedings arising under the CSA.

The definition of ''acceptable hemp THC level'' is also retained in this final rule. States and Indian Tribes shall adopt this concept in their plans. This definition explains how to interpret test results that include the MU with an example. The application of the MU to the reported delta-9 tetrahydrocannabinol concentration on a dry weight basis produces a distribution, or range. If 0.3 percent or less is within the distribution or range, then the sample will be considered to be hemp for the purpose of compliance with the requirements of State, Tribal, or USDA hemp plans. For example, if a laboratory reports a result as 0.35 percent with a measurement of uncertainty of +/−0.06, the distribution or range is 0.29 percent to 0.41percent. Because 0.3 percent is within that distribution or range, the sample, and the lot it represents, is considered hemp for the purpose of compliance with the requirements of State, Tribal, or USDA hemp plans. However, if the MU for that sample was 0.02 percent, the distribution or range is 0.33 percent to 0.37 percent. Because 0.3 percent or less is not within that distribution or range, the sample is not considered hemp for the purpose of plan compliance, and the lot it represents will be subject to disposal. Thus the ''acceptable hemp THC level'' is the application of the MU to the reported delta-9 tetrahydrocannabinol content on a dry weight basis producing a distribution or range that includes 0.3 percent or less. As such, the regulatory definition of ''acceptable hemp THC level'' describes how State, Tribal, and USDA plans must account for uncertainty in test results in their treatment of cannabis. This definition affects neither the statutory definition of hemp, 7 U.S.C. 1639o(1), in the 2018 Farm Bill nor the definition of ''marihuana,'' 21 U.S.C. 802(16), in the CSA.

Sections 297B(a)(2)(A)(iii) and 297C(a)(2)(C) of the AMA require that cannabis plants that have a THC concentration level of greater than 0.3 percent on a dry weight basis be disposed of in accordance with the applicable State, Tribal, or USDA plan. Because of this requirement, producers whose cannabis crop is not hemp will likely lose most of the economic value of their investment. Thus, AMS believes that there must be a high degree of certainty that the THC concentration level is accurately measured and is in fact above 0.3 percent on a dry weight basis before requiring disposal of the crop.

The NIST Reference on Constants, Units, and Uncertainty states that ''measurement result is complete only when accompanied by a quantitative statement of its uncertainty. The uncertainty is required in order to decide if the result is adequate for its intended purpose and to ascertain if it is consistent with other similar results.'' [8] Simply stated, knowing the measurement of uncertainty is necessary to evaluate the accuracy of test results.

Comments to the IFR generally expressed support for requiring that the measurement of uncertainty (MU) be accounted for when testing the THC concentration of hemp, due to the variability in laboratory testing equipment and complex mathematical principles involved. Comments also provided several suggestions on ways to improve the calculation of MU. Many comments advocated specifying an MU to create uniformity in testing across the nation.

USDA does not recommend establishing an MU upper limit (maximum) because (1) MU is typically not standardized, but is controlled using standard test methods, and (2) USDA does not have the data to set an upper limit so setting it would be arbitrary, not scientific. The hemp and scientific industries are just beginning to discuss standard test methods and the final rule does not establish an explicit test method. Setting an upper limit or maximum MU does not resolve the core issue and would not encourage or drive labs to improve accuracy and precision.

Setting an upper limit would in effect be setting a maximum or absolute MU. This may encourage labs to adopt the maximum MU as their MU, rather than drive for a smaller uncertainty. USDA may allow for establishing limits in the future, if needed, once methods are established and USDA has access to Proficiency Testing results and the reported MUs. We encourage States and Tribes to monitor, review and evaluate MU to evaluate trends and outliers, which may indicate ''lab shopping'' for higher MUs. The requirement for hemp

[6] The Joint Committee for Guides in Metrology is composed of international organizations working in the field of metrology. Its membership includes the Bureau International des Poids et Mesures, the Organisation Internationale de Métrologie Légale, the International Organization for Standardization, the International Electrotechnical Commission, the International Union of Pure and Applied Chemistry, the International Union of Pure and Applied Physics, the International Federation of Clinical Chemistry and Laboratory Medicine, and the International Laboratory Accreditation Cooperation.

[7] USDA established the Association of Official Agricultural Chemists in 1884. In 1965, it changed its name to the Association of Official Analytical Chemists and became an independent organization in 1979. In 1991, it adopted its current, legal name as AOAC International.

[8] *https://physics.nist.gov/cuu/Uncertainty/international1.html.*

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testing laboratories to incorporate a MU is being retained in this regulation.

Laboratory Accreditation

In the IFR, AMS requested input on establishing a fee-for-service hemp laboratory approval process or a requirement for laboratories to obtain ISO 17025 accreditation for labs that wish to offer THC testing services. Comments reflected a range of views across the industry, both in support of and in opposition to additional laboratory certification requirements. In general, commenters preferred more regulatory flexibility to address the widespread concern of insufficient laboratory capacity as a result of laboratory certification/registration/accreditation requirements. Other commenters were opposed to accreditation requirements due to the cost. While AMS strongly encourages laboratories to be accredited to ISO/IEC 17025 (by an International Laboratory Accreditation Cooperation Mutual Recognition Agreement (ILAC MRA) signatory accreditation body), we also acknowledge that ISO 17025 accreditation requires significant time and financial commitment to pursue and maintain. The time and cost involved is most challenging for smaller and start-up labs. The initial accreditation can cost $5,000–$10,000 (and in some case more) and yearly ongoing costs are $3,000–$8,000. Smaller labs may not have the resources to pursue accreditation in a timely manner or they may have to spend additional time and money for consultants to assist them in setting up a quality management system and to navigate the application and audit processes.

Based on insufficient laboratory capacity at this time and the cost involved in adding this requirement, AMS will not provide an AMS administered lab approval program or require ISO 17025 accreditation. However, AMS remains committed to assisting the hemp laboratory testing community and is available to assist in the development of a laboratory approval program in the future. As explained in the IFR, if such hemp laboratory approval program is developed by AMS, such process will be conducted by USDA, AMS Laboratory Approval Service, which administers the Laboratory Approval Program (LAP). State and Tribal plans are free to include certain additional requirements for hemp testing laboratories, including ISO accreditation or other proficiency schemes.

E. Disposal and Remediation of Non-Compliant Plants

State and Tribal plans are currently required to include procedures for ensuring effective disposal or remediation of plants produced in violation of part 990. Plants that are removed as a result of poor plant health, pests, disease, or weather events, along with removal of male or hermaphrodite plants as part of a cross-pollination prevention plan, are not subject to the disposal requirements herein. This final rule retains the disposal requirements explained in the IFR but clarifies what ''disposal'' means and explains how the process must be conducted. This final rule also includes remediation as an option to remove non-compliant plants.

As explained in the IFR, if a producer grows cannabis exceeding the legal 0.3 percent THC level, the material must be disposed of in accordance with the CSA and DEA regulations because such material constitutes marijuana, a Schedule I controlled substance under the CSA. The material must be collected for disposal by a person authorized under the CSA to handle marijuana, such as a DEA-registered reverse distributor, or a duly authorized Federal, State, Tribal, or local law enforcement officer. In the final rule, AMS is incorporating flexibilities for disposal that were announced on February 27, 2020 (*https://www.ams.usda.gov/rules-regulations/hemp/enforcement*). Some of these new options include, but are not limited to, plowing under non-compliant plants, composting into ''green manure'' for use on the same land, tilling, disking, burial, or burning. These methods are intended to allow producers to apply common on-farm practices for the disposal of non-compliant plants. One of the top considerations in making this change was to minimize, to the extent possible, the resource impact to State, Tribal, and local law enforcement in handling hemp that is out of compliance. In addition, we are confident that any disposal options make the product unusable and therefore is not at risk for entering any streams of commerce. Based on comments received, AMS is permanently retaining these on-farm disposal flexibilities.

AMS received comments on this requirement describing the expense associated with destroying cannabis in accordance with the CSA, primarily the requirement that disposal be conducted offsite by a reverse distributor or other law enforcement officer. Based on this input, AMS, in coordination with DEA partners, delayed enforcement of the disposal requirements in the IFR. In the final rule, producers have several options on how to handle non-compliant plants. Producers do not need to use a DEA-registered reverse distributor or law enforcement to dispose of non-compliant plants. Producers may dispose of the plants using one or more of the means described by AMS at *https://www.ams.usda.gov/rules-regulations/hemp/disposal-activities.* It is the Agency's intent that these methods allow producers to apply common on-farm practices as a means of disposal while rendering the controlled substance non-retrievable or non-ingestible. Under this final rule, State and Tribal plans must still include procedures to verify disposal. This may come in the form of in-person verification by State or Tribal representatives, or alternative requirements the direct growers to provide pictures, videos, or other proof that disposal occurred successfully. Producers under the USDA plan must document the disposal of all non-compliant plants. States and Indian Tribes operating under approved hemp production plans and producers under the USDA plan must notify USDA of any occurrence of non-conforming plants or plant material and provide the disposal record of those plants and materials monthly.

State and Tribal plans must include procedures to verify disposal, whether through the use of in-person verification by State or Tribal representatives, or requirements for producers to provide pictures, videos, or other proof that disposal did in fact occur. State and Tribal plans must also include requirements to submit to AMS the monthly disposal and remediation report documenting any on-farm disposals or remediations that occurred during the prior month. As of November 2020, twenty States and nine Tribes operating under the 2018 Farm Bill reported 4,192 licensed producers representing 6,166 acres planted. Of these acres planted, there were 231 disposals representing 730 acres disposed due to not meeting the 0.3 percent acceptable hemp THC level.

AMS did not provide additional remediation options in the IFR. The only remediation alternative was to completely dispose of the non-compliant material. AMS is adding remediation to this final rule based on comment. AMS received many comments suggesting the inclusion of procedures to allow for non-compliant cannabis to be ''remediated.'' AMS agrees with this suggestion and is publishing remediation techniques concurrently with this rule that can be

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followed to remediate non-compliant plant material into compliant form. As described in the IFR, hemp exceeding the acceptable THC level may not be further handled, processed, or enter the stream of commerce. AMS believes that hemp producers should have the opportunity to remediate non-compliant crops in order to minimize financial risk associated with the loss of investment in their hemp crop. For this reason, this final rule allows remediation activities, either disposing of flower materials and salvaging the remainder of the plant or blending the entire plant into biomass plant material. Through both forms of remediation, producers may be able to minimize losses, and in some cases produce a return on investment while ensuring that non-compliant material does not enter commerce.

If a producer elects to perform remediation activities as allowable under this final rule's provisions (referenced above), an additional sampling and testing of the post-remediated crop must occur to determine THC concentration levels. Only those successfully remediated crops will be allowed to enter the stream of commerce, and all other remaining non-compliant crops must then be disposed.

AMS believes the inclusion of remediation and post-harvest sampling into the final rule provides the additional flexibility requested by commenters that expressed the need for producers to have greater opportunity for success as established and beginning farmers entering hemp production.

F. Compliance With Enforcement Procedures, Including Determination of Negligence and Annual Inspection of Hemp Producers

The IFR required State and Tribal plans to include compliance procedures to ensure hemp was being produced in accordance with the requirements of this part. Comments to the IFR were generally opposed to the compliance requirements, particularly as they relate to the definition of negligence. Producers, along with State and Tribal regulatory agencies, found the negligence requirements in the IFR overly harsh and strict. This final rule changes these compliance procedures, particularly how ''negligence'' is determined. In the context of this regulation, negligence is defined as a failure to exercise the level of care that a reasonably prudent person would exercise in complying with the regulation. The definition employed in this rule is derived from the definition of negligence in Black's Law Dictionary. *See* BLACK'S LAW DICTIONARY (10th ed. 2014) (defining *negligence* as ''[t]he failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation'').

This final rule increases the negligence threshold from 0.5 to 1.0 percent THC and clarifies how States and Indian Tribes determine when to suspend or revoke a producer's license. AMS believes that raising the negligence threshold from 0.5 percent to 1.0 percent THC will increase flexibility to farmers as they learn more about how to grow compliant hemp and as the availability of stable hemp genetics improves. In developing the compliance requirements for State and Tribal plans, AMS recognizes that there may be significant differences across States and Indian Tribes in how they will administer their respective hemp programs. This final rule provides that a producer shall not be subject to more than one negligent violation per calendar year.

State and Tribal hemp plans must still include requirements to conduct annual inspections of, at a minimum, a random sample of hemp producers to verify hemp is not being produced in violation of this rule, along with a procedure for handling violations.

In accordance with the 2018 Farm Bill, States and Indian Tribes with their own hemp production plans have certain flexibilities in determining whether hemp producers have violated their approved plans. However, there are certain compliance requirements that all State and Tribal plans must contain. This includes procedures to identify and attempt to correct certain negligent acts, such as failing to provide a legal description of the land on which the hemp is produced, not obtaining a license or other required authorizations from the State or Tribal government, or producing plants exceeding 0.3 percent total THC. States and Indian Tribes may include additional requirements in their plans.

This final rule specifies that hemp producers do not commit a negligent violation if they produce plants that exceed the acceptable hemp THC level and use reasonable efforts to grow hemp and the plant does not have a THC concentration of more than 1.0 percent on a dry weight basis. AMS recognizes that hemp producers may take the necessary steps and precautions to produce hemp, such as using certified seed, using other seed that has reliably grown compliant plants in other parts of the country, or engaging in other best practices, yet still produce plants that exceed the acceptable hemp THC level. AMS believes that a hemp producer in that scenario has exercised a level of care that a reasonably prudent person would exercise if the plant does not have a THC concentration of more than 1.0 percent on a dry weight basis. AMS arrived at this increased tolerance based on input from commenters, particularly State agriculture departments that operated hemp research programs under the 2014 Farm Bill, along with data provided by laboratories testing hemp subject to 2018 Farm Bill requirements. The 0.5 percent was based on data from three states participating in the 2014 Farm Bill pilot program. AMS believes raising the negligent violation threshold from 0.5 percent to 1.0 percent in the final rule provides a greater buffer and reduces farmers' exposure to risk of violation accrual and license suspension.

AMS recognizes the violation threshold may incentivize (or disincentivize) innovation by research institutions and producers. AMS acknowledges more innovation and research across industry will bring more stability to stakeholders. AMS believes the 1.0 percent threshold incentivizes innovation across industry more so than a 0.5 percent violation threshold. Further, comments addressed the negative impact of the accrual of negligent violations on the financial stability of the individual business. They described how a hemp grower's access to credit and insurance is jeopardized when negligent violations accumulate and lead to a determination of culpable negligence. Comments explained that lending institutions and insurance providers look for risk factors. They also raised questions about how the accrual of negligent violations may be interpreted by lender or providers. Comments said that many insurers will not cover crop losses if losses are due to the growers' negligence.

AMS acknowledges institutional lenders view violations as risk factors in decision making. AMS also notes that not all culpable violations are derived from the accrual of negligent violations. Culpable violations may be the result of producers violating other parts of the 2018 Farm Bill. However, the 2018 Farm Bill explicitly considers certain actions as constituting negligent violations. AMS's intention is to provide a threshold between 0.3 percent THC level and what would be considered a negligent violation so not all hemp that tests over the 0.3 percent be considered a negligent violation. Because a producer will not have committed a negligent violation every time he or she grows hemp with a concentration of hemp above the 0.3 percent level, this will assist producers when requesting loans or other financial assistance.

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Several comments suggested that a 0.5 percent negligence threshold threatens the survival of farmers in an emerging industry. Comments suggested that the low threshold is a barrier to entry for new farmers or farmers with no experience growing hemp, who risk high initial capital investments to establish operations. Comments argued that the low threshold favors larger farms using industrialized hemp varieties and production practices, and that the low negligence threshold in the IFR would unnecessarily criminalize farmers working with a legal agricultural commodity. Increasing this threshold to 1.0 percent benefits producers, including small and new farmers, that intended to grow hemp but whose crops tested ''hot'' even though they made reasonable efforts to grow hemp.

In cases where a State or Indian Tribe determines a negligent violation has occurred, a corrective action plan shall be established. The corrective action plan must include a reasonable date by which the producer will correct the negligent violation. Producers operating under a corrective action plan must also periodically report to the State or Tribal government, as applicable, on their compliance with the plan for a period of not less than two calendar years following the violation. A producer who negligently violates a State or Tribal plan three times in a five-year period will be ineligible to produce hemp for a period of five years from the date of the third violation.

Several comments explained how these requirements as written in the IFR were confusing and difficult to administer. Particularly, commenters explained how a producer could easily receive three negligent violations during one growing season, which would lead to an automatic licensing revocation for the following five years. For example, a producer may grow hemp in three different locations. If the hemp becomes non-compliant cannabis, all in one season, the producer would lose the license in one season. Commenters described this as too strict and too severe a penalty for honest mistakes that many first-year hemp producers will certainly make. AMS agrees and wishes to clarify that this is not the intent of the regulation. AMS acknowledges that producers may have more than one production area and that they may harvest at different times. Tests results may be over the allowable limit on those production areas but the planting was performed at the same time using the same seeds. Allowing for only one violation per season would help minimize duplication of enforcement. This final rule provides that a producer shall not be subject to more than one negligent violation per calendar year. As it is customary in agriculture, practices vary due to many factors such as weather, availability of labor, transportation and storage capacity and more. Due to many factors, producers make determinations about planting and harvest cycles. In certain circumstances, producers may plant before the first cycle has been harvested specially when they plant in multiple locations. Calendar year is easier to administer and will allow for various growing seasons.

Each geographical area has a growing season based on specific temperature, weather, soil or other factors in that region, therefore this rule is defining growing season as a calendar year. This will allow flexibility, including a year-round season if States and Indian Tribes have a warmer climate or greenhouse growing.

Negligent violations are still not subject to criminal enforcement action by local, Tribal, State, or Federal government authorities under this regulation.

State and Tribal plans also must contain provisions relating to producer violations made with a culpable mental state greater than negligence, meaning acts made intentionally, knowingly, or with recklessness. This definition is derived from the definition of negligence in Black's Law Dictionary. See BLACK'S LAW DICTIONARY (10th ed. 2014) (giving as a definition of *negligence* ''[t]he failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation''). If it is determined a violation was committed with a culpable mental state greater than negligence, the State agriculture department or Tribal government, as applicable, shall immediately report the producer to the Attorney General, USDA, and the chief law enforcement officer of the State or Indian Tribe.

State and Tribal plans also must prohibit any person convicted of a felony related to a controlled substance under State or Federal law from participating in the State or Tribal plan and from producing hemp for 10-years following the date of conviction. An exception applies to a person who was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before that date. This exemption language must be included in all State and Tribal hemp plans, whether they administered a 2014 Farm Bill research pilot program or not.

The 2018 Farm Bill does not define what it means to ''participate in the [State or Tribal] program.'' AMS is not requiring States and Indian Tribes to adopt a specific definition. Instead, they must define who those persons are in their plan. The definition must include one individual for whom a criminal history records check can be conducted for each license or authorization that the State or Indian Tribe issues. The final rule identifies and defines ''key participants'' as those participating in the USDA plan. State and Tribes may, but are not required, to adopt this definition for their plans.

The State or Indian Tribe will need to review criminal history reports for each individual identified as participating in its program. The final rules defines ''criminal history report'' as the Federal Bureau of Investigation's Identity History Summary. The State or Indian Tribe may review additional reports or checks to determine whether an individual may participate in its plan. Finally, any person found by the USDA, State, or Tribal government to have materially falsified any information submitted to the program will be ineligible to participate.

G. Information Sharing

The IFR included requirements for State and Tribal plans to contain procedures for reporting specific information to USDA. Limited comments were received on these requirements. This information has been transmitted already by many States and Tribes to USDA. This information meets the requirements set in the 2018 Farm Bill. Therefore, the following requirements are the same as required under the IFR and are in subpart F of this final rule. This is separate from the requirement to report hemp crop acreage with FSA as discussed above.

The information required includes contact information for each hemp producer covered under the plan, including name, address, telephone number, and email address (if available). If the producer is a business entity, the information must include the full name of the business, address of the principal business location, full name and title of each employee for whom the entity is required to submit a criminal history report, and an email address if available, and Employee Identification Number (''EIN'') of the business entity. Producers must report the legal description and geospatial location for each hemp production area, including each field, greenhouse, or other site used by them, as stated in section A of this preamble. The report also shall include the status of the license or other

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required authorization from the State or Tribal government, as applicable, for each producer under a hemp production plan. States and Indian Tribes will submit this information to USDA not later than 30 days after the date it is received using the appropriate reporting requirements as determined by USDA.

These reporting requirements are found at § 990.70 in this final rule. Further explanation of the specific information to be submitted, the appropriate format, and the specific due dates for the information is discussed in Section X (Regulatory Analysis) of this final rule. This information submitted from each State and Tribal plan, along with the equivalent information collected from individuals participating under the USDA plan, will be assembled and maintained by USDA and made available in real time to Federal, State, Tribal, and local law enforcement, as required by the 2018 Farm Bill. All information supporting, verifying, or documenting the information submitted to USDA must be maintained by the States and Indian Tribes for at least three years.

Under § 990.70(c), States and Indian Tribes must also submit annual reports regarding the total planted, harvested, and disposed acreage. Additionally, because the final rule provides for remediation of plants, the final rule requires all remediated acreage to be reported as well. Similarly, under § 990.71(c), all USDA hemp plan producers must submit annual reports to USDA detailing total planted acreage, total acreage disposed and remediated, and total harvested acreage.

H. Certification of Resources

All State and Tribal plans submitted for USDA approval must also have a certification stating the State or Indian Tribe has the resources and personnel necessary to carry out the practices and procedures described in their plan. Section 297B of the AMA requires this certification, and the information is important to USDA's approval of State and Tribal plans, in that all such plans must be supported by adequate resources to effectively administer them. This section has not changed from the IFR.

I. State and Tribal Plan Approval, Technical Assistance and USDA Oversight

Since the publication of the IFR, AMS has worked extensively with States and Indian Tribes in developing hemp production plans. As States and Indian Tribes begin the work of modifying their plans to incorporate the changes herein, we encourage States and Indian Tribes to continue working with and sharing information with AMS. States and Tribes may need to change plans based on changes in this final rule because their State or Tribal laws may no longer match the requirements in this final rule. Even though some of the changes in this final rule are less burdensome, State and Tribal plans must follow their own legislations. Accordingly. They must amend their plans. During the plan development and/or revision process, States and Indian Tribes are encouraged to contact USDA so we may provide technical assistance in developing plan specifics. Since the publication of the IFR, USDA approved over 60 State and Tribal plans within the 60-day requirement. USDA approved plans that comply with the 2018 Farm Bill and with the provisions of the IFR. For the 2021 planting season, the 2018 Farm Bill, amended by the Continuing Resolution (CR) (Agriculture Improvement Act of 2018 (7 U.S.C. 5940 note; Pub. L. 116–260)), provided that States and institutions of higher education can continue operating under the authorities of the 2014 Farm Bill until January 1, 2022. AMS clarified the avenues for Tribal participation under authorities in the 2014 Farm Bill to grow industrial hemp for research purposes. This clarification is available on the AMS website: *https://www.ams.usda.gov/content/usda-clarifies-industrial-hemp-production-indian-Tribes.*

Due to this extension, many States decided to remain under the 2014 Farm Bill provisions and rescinded their previously approved plans. All States are eligible to remain or start programs under the 2014 Farm Bill provisions. As a result, USDA will oversee 20 State and 20 Tribal plans under the 2018 Farm Bill until new States and Tribes submit more plans under the 2018 Farm Bill provisions.

As of November 2020, States and Tribes operating under the 2018 Farm Bill reported 4,192 licensed producers representing 6,166 acres planted. Of these acres planted, there were 231 disposals representing 730 acres disposed due to not meeting the 0.3 percent acceptable hemp THC level. This data is limited because even though many States and Tribes have approved plans, they have not all been fully implemented. USDA expects more data will be available as the 2021 season begins and States and Tribes implement their programs.

USDA will use the procedures in this rule, which are substantively similar to those in the IFR, to review and approve State and Tribal plans. If a plan does not comply with the requirements of the Act and this regulation, it will not be approved. However, USDA has worked with many States and Tribes submitting plans to assist them in meeting the requirements and obtaining approval for their plans.

If a plan is not approved, USDA provides a letter of notification outlining the deficiencies identified. The State or Tribal government may then submit an amended plan for review. If the State or Tribe disagrees with the determination made by USDA regarding the plan, a request for reconsideration can be submitted to USDA using the appeal process as outlined in section V of this document. Plans submitted by States and Indian Tribes must be approved by USDA before they can be implemented.

States and Indian Tribes can submit their plans to USDA through electronic mail at *farmbill.hemp@usda.gov* or by postal carrier to USDA. The specific mailing address is provided on the USDA Domestic Hemp Production Program website.

If the State or Tribal plan application is complete and meets the criteria of this part, USDA issues an approval letter. Approved State and Tribal plans, including their respective rules, regulations, and procedures, are posted on USDA's hemp program website.

A USDA-approved State or Tribal plan will remain in effect, unless approval is revoked by USDA pursuant to the revocation procedures discussed in this section or unless the State or Tribe makes substantive revisions to their plan or their laws that alter the way the plan meets the requirements of this regulation. Additionally, changes to the provisions or procedures under this rule or to the language in the 2018 Farm Bill may require plan revision and resubmission to USDA for approval. Changes to applicable Federal and State or Tribal statutes may also require plan revision and resubmission to USDA for approval and may lead to plan revocation if the plan is not amended. Should States or Indian Tribes have questions regarding the need to resubmit their plans, they should contact USDA for guidance.

A State or Tribal government may submit an amended plan to USDA for approval if: (1) The Secretary disapproves a State or Tribal plan; or (2) the State or Tribe makes substantive revisions to their plan or to their laws that alter the way the plan meets the requirements of this regulation, or as necessary to bring the plan into compliance with changes in other applicable law or regulations.

If the plan previously approved by USDA needs to be amended because of

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changes to the State's or Tribe's laws or regulations, such resubmissions should be provided to USDA within 60 days from when the new State or Tribal law or regulations are effective. Producers will be held to the requirements of the previous plan until such modifications are approved by USDA. If State or Tribal government regulations in effect under the USDA-approved plan change, but the State or Tribal government does not resubmit a modified plan within 60 days of the effective date of the change, USDA will issue a notification to the State or Tribal government that approval of its plan will be revoked. The revocation will be effective no earlier than the beginning of the next calendar year. If a plan is revoked, producers previously subject to an approved plan would be eligible to apply to USDA for a license. This is a change from the IFR that allowed for resubmission because of a change in State or Tribal law or regulations within a calendar year. This modification is due to USDA's need to know in a timelier manner, since such laws and regulations are the foundations of the hemp plans. The words of the plans do not have meaning if they are not aligned with current authorities.

USDA has the authority to audit States and Tribes to determine if they are in compliance with the terms and conditions of their approved plans. If a State or Indian Tribe is noncompliant with their plan, USDA will work with that State or Indian Tribe to develop a corrective action plan. However, if additional instances of noncompliance occur, USDA has the authority to revoke the approval of the State or Tribal plan for one year or until the State or Tribe become compliant. AMS still believes that one year is sufficient time for a noncompliant State or Indian Tribe to evaluate problems with their plan and make the necessary adjustments. Should USDA determine the approval of a State or Tribal plan should be revoked, such a revocation would begin after the end of the current calendar year, so producers will have the opportunity to adjust their operations as necessary. This will allow producers to apply for a license under the USDA plan so that their operations do not become disrupted due to the revocation of the State or Tribal plan.

III. Department of Agriculture Plan

The 2018 Farm Bill requires USDA to administer a hemp production plan for producers in jurisdictions where hemp production is legal but is not covered by an approved State or Tribal plan. The USDA licensing remains available to producers in States and Tribal territories without a USDA-approved hemp plan. All hemp produced in a jurisdiction without an approved State or Tribal plan must meet the requirements of the USDA plan. The requirements for producers operating under the USDA plan are similar to those operating under approved State and Tribal plans.

Regulatory requirements for producers licensed under the USDA plan in this final rule differ in some cases from corresponding requirements in the IFR and are explained in the following section. Comments submitted to the IFR generally did not address these requirements specifically; rather they focused on the broader requirements around sampling, testing, and disposal, to which all hemp producers are subject, whether licensed by a State, a Tribe, or USDA.

A. USDA Hemp Producer License and Criminal History Report

To produce hemp under the USDA plan, producers must apply for and be issued a license from USDA. USDA has been accepting applications from producers since October 2019. Any license issued by USDA prior to publication of this final rule will remain in effect and subject to the original expiration date. As of the issuance of this final rule, USDA has issued 380 licenses under the USDA plan.

While a State or Tribal government has a draft hemp production plan pending for USDA approval, USDA will not issue USDA hemp production licenses to individual producers located within that State or Tribal territory. Once USDA approves a hemp production plan from a State or Tribe, it will deny any license applications from individuals located in the applicable State or Tribal territory. If USDA disapproves a State or Tribal hemp production plan, individual producers located in the State or Tribal territory may apply for a USDA hemp production license, unless hemp production is illegal in the State or Tribal territory where they intend to produce hemp.

Comments to the IFR described confusion around the application window for when USDA would receive and process applications as described in the IFR. The IFR said that for the first year after USDA began to accept applications, applications could be submitted any time. For all subsequent years, license applications and license renewal applications would have to be submitted between August 1 and October 31. AMS requested input on this application window, and commenters were generally opposed. Under this final rule, USDA will accept applications for USDA hemp production licenses on a rolling basis to better accommodate the needs of producers. AMS continues to encourage the submission of applications well before the planting season so AMS has adequate time to process the applications. All applications must comply with the requirements as described below. The license application is available online at the USDA Domestic Hemp Production Program website at *https://www.ams.usda.gov/rules-regulations/hemp/information-producers.* Applications may be submitted electronically or by mail.

The producer license application requires contact information such as name, address, telephone number, and email address (if available). If the applicant represents a business entity, and that entity will be the producer, the application will require the full name of the business, address of the principal business location, full name and title of the key participants on behalf of the entity, an email address if available, and EIN of the business entity. All applications must be accompanied by a completed criminal history report. Several comments to the IFR expressed opposition to this requirement. AMS is retaining this requirement since verification of compliance with the felony restriction is a statutory requirement. If the application is for a business entity, a completed criminal history report must be provided for each key participant.

Some commenters expressed concern with the requirements pertaining to ''key participants,'' particularly with the requirement that all key participants undergo a background check. To the extent the commenters equated a criminal history check with a background check, AMS is retaining this requirement, since key participants are those individuals responsible for ensuring compliance with the regulatory requirements contained herein. If key participants are not subject to criminal history checks, AMS cannot ensure statutory restrictions on individuals with felony convictions related to controlled substances are met per Section 297B(e)(3)(B)(i) of the AMA. AMS notes that it will not conduct any other checks into the background of key participants.

Key participants are a person or persons who have a direct or indirect financial interest in the entity producing hemp, such as an owner or partner in a partnership. A key participant also includes a person in a corporate entity at executive levels including the chief executive officer, chief operating officer, and chief financial officer. This does not

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include other management positions like farm, field, or shift managers. The final rule also specifies that the definition of key participant does not include a member of the leadership of a Tribal government who is acting in their capacity as a Tribal leader, except when that member exercises executive managerial control over hemp production. AMS added this specification to address concerns raised by Indian Tribes regarding issues that can arise when a Tribal leader is also involved in the production of hemp in their capacity as a Tribal leader. While AMS understands the issues that can arise when a Tribal leader is subject to the felony conviction restriction, AMS must also ensure that all required entities operating under a USDA plan comply with Section 297B(e)(3)(B) of the AMA. Therefore, the definition of key participants still encompasses Tribal leaders who exercise executive managerial control over hemp production.

USDA will not accept criminal history reports completed more than 60 days before the submission of an application, because the 60-day window provides USDA with an expectation that the findings of the report are reasonably current and accurate.

The criminal history report must indicate the applicant has not been convicted of a State or Federal felony related to a controlled substance for the 10 years prior to the date of when the report was completed. An exception applies to a person who was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before that date.

In addition to providing the information specified, the application will also require license applicants to certify they will adhere to the provisions of the plan.

Once all the necessary information has been provided, applications will be reviewed by USDA for completeness and to determine an applicant's eligibility. USDA will approve or deny license applications unless the applicant is intending to produce hemp in a jurisdiction that has submitted a plan to USDA or has a plan approved by USDA, in which case the application for a USDA license will be denied. Applicants will be notified if they have been granted or denied a license either by mail or email.

If an application is denied, the applicant will receive a notification letter or email specifying why the application was denied. If an application is denied because it is incomplete, the applicant will have the option of resubmitting a revised application. If the application was denied for other reasons, the applicant will have the opportunity to appeal USDA's decision in accordance with the appeals process outlined in the regulation in subpart D.

Once a license application has been approved, USDA will issue the producer license. Licenses are not transferrable in any manner. An applicant whose application has been approved will not be considered a licensed producer under the USDA plan until the applicant receives their producer license. Licenses do not renew automatically and must be renewed every three years.

Applications for renewal will be subject to the same terms and approved under the same criteria as initial applications unless there has been an intervening change in the applicable law or regulations since approval of the initial or last application. In such a case, the subsequently enacted law or regulation shall govern renewal of the license. Licenses will be valid until December 31 of the year that is at least three years after the license is issued. This date is not tied to the harvest and planting season. For example, if a producer applies for a license on August 1, 2021, and is granted a license on September 15, 2021, the license would expire December 31, 2024. A December 31 expiration date will allow licensed producers time to apply for a license renewal prior to their prior license's expiration and prevent a gap in licensing.

A producer licensed by USDA must report their hemp crop acreage to FSA. Producers must provide specific information to FSA, including, but not limited to, USDA license number, the specific location where hemp is produced and the acreage, greenhouse, building, or site where hemp is produced. The specific location where hemp is produced must be identified, to the extent practicable, by the geospatial location. FSA will provide assistance in identifying the hemp growing location. Please refer to the Section II of this document on State and Tribal hemp production program requirements for further discussion on FSA reporting requirements.

If at any time there is a change to the information submitted in the license application, a license modification is required. A license modification is required if, for example, the licensed business is sold to a new owner or hemp will be produced in a new location not described on the original application. Producers must notify USDA immediately should there be any change in the information provided on the license application.

B. Sampling for THC

The IFR stated that all hemp production must be sampled and tested for THC concentration levels. It is the responsibility of the licensed producer to pay any fees associated with sampling. AMS issued guidance on sampling procedures that meet the sampling requirements to coincide with publication of the IFR and will update the guidance with this final rule. AMS is requiring that all samples tested for THC concentration levels be conducted in DEA-registered laboratories. However, this requirement will not be applicable until December 31, 2022.

Significant input was received on the IFR sampling requirements. Please refer to section B under State and Tribal plans above and the discussion of comments below for a summary of findings. Producers under the USDA plan are subject to the sampling and testing requirements as outlined in the USDA guidelines for sampling and testing. Since USDA cannot develop a one size fits all performance-based sampling program, all producers licensed under the USDA plan must comply with the USDA sampling guidelines. USDA licensed producers are responsible for obtaining the services of sampling agents and hemp testing laboratories themselves. USDA is updating guidance on sampling procedures and training for sampling agents with this rule. USDA does not provide sampling or testing services and will not pay for those services.

State and Tribal hemp regulators have successfully developed sampling requirements that ensure adherence to State and Federal regulations, while allowing for flexibilities due to limited State resources and State and Tribal differences. They explained that, since most hemp in a given region is harvested at the same time, sampling must be completed within a very short time frame by only a few individuals. Several States also explained that perceived risk determines State requirements. Some States utilize different sampling requirements for broad end-use categories like ''fiber/grain'' hemp versus ''cannabinoid'' hemp, while others base their requirements on historical THC concentrations of certain varietals or on the characteristics and growing history of a certain farm or producer. AMS agrees that sampling requirements should allow States and Indian Tribes more flexibility in the management of their hemp regulatory programs.

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AMS agrees that requiring sampling from every lot may be burdensome and expensive for State and Tribal regulatory entities and producers.

AMS finds that it makes sense to allow States and Indian Tribes to consider performance-based alternatives when developing sampling plans that take into account unique sampling protocols for hemp growing facilities under their jurisdiction. The sampling requirements for State and Tribal plans allow for States and Indian Tribes to develop unique sampling protocols for hemp growing facilities under their jurisdiction. Sampling protocols must be sufficient at a confidence level of 95 percent that no more than one percent of the plants in each lot would exceed the acceptable hemp THC level and ensure that a representative sample is collected that represents a homogeneous composition of the lot. Alternatively, States and Indian Tribes may adopt a performance-based sampling protocol. A performance-based protocol must have the potential to ensure, at a confidence level of 95 percent, that the cannabis plants will not test above the acceptable hemp THC level. USDA encourages that the alternative protocol consider seed certification processes or process that identifies varieties that have consistently demonstrated to result in compliant hemp plants in that State or territory of the Indian Tribe, whether the producer is conducting research on hemp at an institution of higher learning or that is funded by a Federal, State, or Tribal government, whether a producer has consistently produced compliant hemp plants over an extended period of time, and other similar factors. AMS believes this will provide needed flexibility to States and Indian Tribes to develop logical and enforceable sampling requirements that take into consideration their unique circumstances. AMS will still require States and Indian Tribes to submit their individual sampling requirements for review as a component of the plan approval process. If a State or Tribal plan lacks a sampling protocol, every lot, and thereby every producer must be sampled and tested.

When evaluating sampling protocols submitted by States and Indian Tribes, USDA will evaluate the risk of producing non-compliant material to determine approval or disapproval. In evaluating the risk, USDA will take into consideration whether the performance-based factors the State or Tribe used have the potential to ensure compliance at a 95 percent confidence level.

Since USDA cannot develop performance metrics that would be applicable independently from where the producer is located, producers licensed under the USDA plan are subject to the sampling requirements in the rule. USDA guidelines provided on the USDA website at *https://www.ams.usda.gov/rules-regulations/hemp/information-sampling* describe best practices for complying with those requirements. However, USDA would consider a performance-based sampling scheme for producers under the USDA plan, and amend the sampling requirements accordingly, if information collected by USDA in the future is sufficient to make this determination. Data must be reliable and able to be applicable across the production areas in the U.S.

Samples must be collected by a USDA-approved sampling agent, or a Federal, State, Tribal, or local law enforcement agent authorized by USDA to collect samples. As explained above, USDA is expanding the training requirements for sampling agents and will provide a list of authorized sampling agents on the USDA website. It is the responsibility of the licensed producer to pay any fees associated with sampling and testing. Sampling and testing guideline documents are being updated as part of this proceeding and are available on the USDA website.

The sampling procedures are designed to produce a representative sample for testing. They describe procedures for entering a growing area and collecting the minimum number of plant specimens necessary to accurately represent the THC content, through laboratory testing, of the sample to be tested.

C. Testing Laboratories

The THC level in representative samples must be at or below the acceptable hemp THC level. Testing must be conducted using post-decarboxylation or other similarly reliable methods where the total THC concentration level measured includes the potential to convert THCA into THC. Further, test results should be determined and reported on a dry weight basis, meaning the percentage of THC, by weight, in a cannabis sample, after excluding moisture from the sample. The moisture content is expressed as the ratio of the amount of moisture in the sample to the amount of dry solid in the sample.

Based on AMS's review of scientific studies, internal research and information gathered from the *United Nations Office on Drugs and Crime:* ''*Recommended Methods for the Identification and Analysis of Cannabis and Cannabis Products*'' (ISBN 978–92–1–148242–3), AMS has determined that testing methodologies meeting these requirements include gas or liquid chromatography with detection. As discussed earlier and stated in § 990.25(g), if a testing laboratory utilizes alternative testing methods, they must be reviewed and approved by USDA to assess their reliability, accuracy, and compliance with the requirements.

As explained earlier in this document, AMS is requiring that all testing of samples for THC concentration levels be conducted in DEA-registered laboratories. Enforcement of this requirement has been delayed until December 31, 2022. Non-DEA-registered labs can continue testing hemp for THC concentration until that time. Labs testing hemp for THC must meet standards of performance described in this regulation. Standards of performance ensure the validity and reliability of test results; that analytical method selection, validation, and verification are appropriate (fit for purpose); and that the laboratory can successfully perform the testing. Furthermore, the standards ensure consistent, accurate, analytical performance and that the analytical tests performed are sufficiently sensitive for the purposes of the detectability requirements under this final rule.

Laboratories conducting THC testing must also be registered with DEA to handle controlled substances under the CSA (21 U.S.C. 822 and 21 U.S.C. 844) and DEA regulations (21 CFR part 1301). USDA is adopting this requirement because of the potential for these laboratories to handle cannabis products testing above 0.3 percent THC. Such products are, by definition, marijuana, and a controlled substance. DEA registration requirements verify a laboratory's ability to properly handle controlled substances.

As previously explained in the requirements for State and Tribal plans, AMS is not adopting requirements that hemp testing laboratories be approved under a USDA Laboratory Approval Program or undergo ISO accreditation.

It is the responsibility of the licensed producer to select the DEA-registered laboratory that will conduct the testing and to pay any fees associated with testing. Laboratories performing THC testing for hemp produced under this program are required to share test results with the licensed producer and USDA. USDA will provide instructions to all approved labs on how to electronically submit test results to USDA. Laboratories may provide test results to licensed producers in whatever manner best aligns with their business practices, but producers must

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be able to produce a copy of test results. For this reason, providing test results to producers through a web portal or through electronic mail, so the producer will have ready access to print the results when needed, is preferred.

Samples exceeding the acceptable hemp THC level are marijuana and will be handled in accordance with the procedures discussed in section C below.

Any licensee may request that the laboratory retest pre-harvest samples, if it is believed the original THC concentration level test results were in error. The licensee requesting the retest of the second sample would pay the cost of the test. The retest results would be issued to the licensee requesting the retest, and a copy would be provided to USDA or its agent.

Research Institutions Sampling and Testing

AMS also acknowledges that research institutions face special circumstances when conducting hemp research. Under the IFR, researchers and research institutions were required to comply with the same production requirements as commercial producers. Under this final rule, and as described in detail below, research institutions and the producers working with them are afforded greater sampling and testing flexibility to facilitate continued hemp research. Producers that produce hemp for research must obtain a USDA license. However, the hemp that is produced for research is not subject to the same sampling requirements provided that the producer adopts and carries out an alternative sampling method that has the potential to ensure, at a confidence level of 95 percent, that the cannabis plant species *Cannabis sativa* L. that will be subject to this alternative method will not test above the acceptable hemp THC level. The rule includes a performance-based standard for sampling for all licensed producers in section 990.24: ''at a confidence level of 95 percent that no more than one percent (1%) of the plants in the lot would exceed the acceptable hemp THC level.'' The performance-based standard for research is a modification of that standard: ''the potential to ensure, at a confidence level of 95 percent, that the cannabis plant species *Cannabis sativa* L. that will be subject to this alternative method will not test above the acceptable hemp THC level.'' We are comfortable with this modification to recognize that researchers may need flexibility to conduct their research and because the research hemp cannot enter the stream of commerce. USDA will monitor researchers' compliance with this standard as part of its normal oversight and compliance program.

USDA licensees shall ensure the disposal of all non-compliant plants. USDA licensees shall also comply with the reporting requirements including reporting disposal of non-compliant plants. Research institutions that handle ''hot'' hemp must follow CSA requirements for handling marijuana.

Performance based plans from research institutions where a State or Tribal plan is not in place will be reviewed by USDA. Notice and comment requirements under the PRA process will be followed before a final determination is made by USDA to move forward with approving performance-based plans for those producers under the USDA plan.

States and Indian Tribes are allowed to develop performance-based requirements for these institutions. However, the alternative method must have the potential to ensure, at a confidence level of 95 percent, that the cannabis plant species *Cannabis sativa* L. that will be subject to the alternative method will not test above the acceptable hemp THC level.

The research institutions must follow reporting requirements. AMS believes this exception is necessary to help support research and development as it relates to hemp production. This decision allows these types of research facilities and institutions to confidently oversee the study of hemp plants through trialing and genetics research. AMS believes this exception to be critical to the growth of industry, particularly in its infancy. Over time, the exception provided by this final rule will help to stabilize the industry by providing greater understanding of hemp genetics and how certain varietals respond differently to growing conditions in various geographic locations. All producers are expected to benefit from such knowledge as they will be made aware of the more stable and consistently reliable hemp varietals. Any non-compliant plants produced by research institutions as a result of research and development will still need to be disposed and verified through documentation. Research institutions must follow licensing and reporting requirements.

D. Disposal of Non-Compliant Product

Under the IFR, non-compliant product was required to be disposed of by persons authorized to do so under the CSA and had to be destroyed. As explained below, under this final rule, producers may handle non-compliant product disposal on the farm, and they have greater flexibility in remediating that product. USDA producers are required to follow procedures for ensuring effective disposal of cannabis plants produced in violation of this rule. Plants that are removed as a result of poor plant health, pests, disease, weather events, along with removal of male or hermaphrodite plants as part of a cross-pollination prevention plans, are not subject to the disposal requirements herein. This final rule retains the disposal requirements explained in the IFR, but clarifies what ''disposal'' means and explains how the process must be conducted. If a producer grew cannabis exceeding the acceptable hemp THC level, the IFR required that the material be disposed of in accordance with the CSA and DEA regulations because such material is marijuana, a Schedule I controlled substance under the CSA. The IFR required that material be collected for disposal by a person authorized under the CSA to handle marijuana, such as a DEA-registered reverse distributor, or a duly authorized Federal, State, Tribal, or local law enforcement officer.

As explained earlier, AMS is now allowing the flexibility to conduct on-farm disposals and also allowing for remediation options.

If the results of a test conclude that the THC levels exceed the acceptable hemp THC level, the laboratory will promptly notify the producer and USDA or its authorized agent. If a licensed producer is notified that they have produced cannabis exceeding the acceptable hemp THC level, the cannabis must be disposed of in accordance with the on-farm disposal options described herein.

Licensed producers notified they have produced cannabis plants exceeding the acceptable hemp THC level must arrange for disposal or remediation of the lot represented by the sample in accordance with the procedures as specified above and described on the USDA website at *https://www.ams.usda.gov/rules-regulations/hemp/disposal-activities.*

Producers must document the disposal or remediation of all non-compliant cannabis. This can be accomplished by providing USDA with a copy of the documentation of disposal or remediation using the reporting requirements established by USDA. These reports must be submitted to USDA following the completion of the disposal or remediation process.

E. Compliance

As described below, this final rule changes the THC threshold for a negligent violation from 0.5 percent

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under the IFR to 1.0 percent. Further, rather than being liable for multiple negligent violations in each growing season as under the IFR, this final rule provides that producers can only incur one negligent violation in each growing season, which prevents producers from accumulating multiple negligent violations and losing program eligibility after a single growing season.

USDA will maintain oversight of USDA-licensed hemp producers by conducting audits of USDA licensees and working with licensees with negligent violations to establish corrective action plans. Negligent violations by a producer may lead to suspension or revocation of a producer's license.

While USDA has not yet conducted any random audits, the department may conduct random audits of licensees to verify hemp is being produced in accordance with Subtitle G of the AMA no more frequently than every three years, based on available resources. The format of the audit will vary and may include a ''desk-audit'' where USDA requests records from a licensee, or the audit may be a physical visit to a licensee's facility. When USDA visits a licensee's facility, the licensee must provide access to any fields, greenhouses, storage facilities, or other locations where the licensee produces hemp. USDA may also request records from the licensee, to include production and planting data, testing results, and other information as determined by USDA.

USDA will issue a summary of the audit to the licensee after the completed audit. Licensees who are found to have a negligent violation will be subject to a corrective action plan. Negligent violations include: (1) Failure to provide a legal description of the land on which the hemp is produced; (2) not obtaining a license before engaging in production; or (3) producing plants exceeding the acceptable hemp THC level. Similar to the requirements for State and Tribal plans, USDA will not consider hemp producers as committing a negligent violation if they produce plants exceeding the acceptable hemp THC level if they use reasonable efforts to grow hemp and the cannabis plant does not have a THC concentration of more than 1.0 percent on a dry weight basis. AMS believes that increasing the negligence threshold from 0.5 percent to 1.0 percent will increase flexibility to farmers as they learn more about how to grow compliant hemp and as the availability of stable hemp genetics improves. Further, producers may only receive one negligent violation per growing season, as determined by USDA based on a review of producer records. USDA will use a calendar year as a growing season.

When USDA determines that a negligent violation has occurred, USDA will issue a Notice of Violation. This Notice of Violation will include a corrective action plan. The corrective action plan will include a reasonable date by which the producer will correct the negligent violation or violations and will require the producer to periodically report to USDA on its compliance with the plan for a period of not less than the next two calendar years. A producer who has negligently violated the provisions of this rule three times in a five-year period is ineligible to produce hemp for a period of five years from the date of the third violation. Negligent violations are not subject to criminal enforcement.

Hemp found to be produced in violation of this regulation, such as hemp produced on a property not disclosed by the licensed producer or without a license, would be subject to the same disposal provisions as for cannabis testing above the acceptable hemp THC level. Further, if it is determined a violation was committed with a culpable mental state greater than negligence, USDA will report the violation to law enforcement.

The 2018 Farm Bill limited the participation of certain convicted felons in hemp production. A person with a State or Federal felony conviction relating to a controlled substance is subject to a 10-year ineligibility restriction on producing hemp under the Act. An exception applies to a person who was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before that date.

F. Suspension of a USDA License

There are no changes to the IFR provisions related to suspension of USDA licenses in this final rule.

A USDA license may be suspended if USDA receives credible information that a USDA licensee has either: (1) Engaged in conduct violating a provision of this regulation; or (2) failed to comply with a written order from the AMS Administrator related to a negligent violation of this regulation. Examples of credible information are information from local authorities of harvested plants without testing or planting of hemp in non-licensed locations.

Any person whose license has been suspended shall not produce hemp during the period of suspension. A suspended license may be restored after a waiting period of one year. A producer whose license has been suspended may be required to comply with a corrective action plan to fully restore their license.

A USDA license shall be immediately revoked if the USDA licensee: (1) Pleads guilty to, or is convicted of, any felony related to a controlled substance; [9] (2) made any materially false statement with regard to this regulation to USDA or its representatives with a culpable mental state greater than negligence; or (3) was found to be growing cannabis exceeding the acceptable hemp THC level with a culpable mental state greater than negligence or negligently violated the provisions of this regulation three times in five years.

If the licensed producer wants to appeal any suspension or revocation decision made by USDA as described in this section, they can do so using the appeal process explained in section V of this document.

G. Reporting and Recordkeeping

The 2018 Farm Bill requires USDA to develop a process to maintain relevant information regarding the land where hemp is produced. Reporting requirements under this final rule, particularly the requirement to report hemp crop acreage to FSA, are discussed extensively in Section B of the State and Tribal plan requirements and the same requirements are applicable to USDA licensed producers.

In general, changes from the IFR allow producers more flexibility in defining for FSA the areas (instead of ''lots'') they use for hemp production. USDA hemp production licensees can apply for licenses on a rolling basis under this final rule, in contrast to the limited period provided under the IFR. Reporting requirements under this final rule are revised slightly to allow producers to account for on-farm disposal of non-compliant product.

USDA's FSA is well suited to collect this information for the domestic hemp production program. FSA has staff throughout the United States who are trained to work with farmers to verify land uses. Many hemp producers are likely to be familiar with the FSA since they already operate traditional farms, and therefore already provide data to FSA on acres and crops planted. Producers may benefit from information to participate in other USDA programs through FSA offices. Licensed producers will be required to report their hemp crop acreage with FSA, and to provide FSA with specific

[9] For a corporation, if a key participant has a disqualifying felony conviction, the corporation may remove that person from a key participant position. Failure to remove that person will result in a license revocation.

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information regarding field acreage, greenhouse, or indoor square footage of hemp planted. This information must include street address, geospatial location or other comparable identification method specifying where the hemp will be produced, and the legal description of the land. Geospatial location or other methods of identifying the production locations are necessary, as not all rural locations have specific addresses. This information is required for each field, greenhouse, building, or site where hemp will be grown. USDA will use this information to assemble and maintain the data USDA must make available in real time to Federal, State, Tribal and local law enforcement as required by the 2018 Farm Bill and as described in section G below.

Specific procedures for reporting hemp acreage to FSA will be posted on the USDA Domestic Hemp Production Program website. All information will be maintained by USDA for at least three calendar years. FSA will assist producers in identifying the hemp growing locations since they have maps that allow for better identification. This is a procedure that FSA employees are very familiar with since it is used for other USDA programs. This rule also revises the definition of ''lot'' to include other terms used by FSA with the same meaning. FSA uses terms like ''farm,'' ''tract,'' ''field,'' and ''subfield.'' FSA staff will not provide a ''lot number'' to producers as described in the IFR. Instead, FSA will assist producers to identify the area where hemp is grown. More details are provided under the States and Tribal plan Section B earlier in this final rule.

Licensed producers are required to maintain copies of all records and reports necessary to demonstrate compliance with the program. These records include those that support, document, or verify the information provided in the forms submitted to USDA. Records and reports must be kept for a minimum of three years. Because the final rule allows producers to remediate plants, the final rule also requires producers to maintain records on all remediated cannabis plants.

Under the USDA plan, there will be additional reporting requirements for licensed producers. These include information requested in the application for a license and the record and reporting requirements needed to document disposal or remediation of cannabis produced in violation of the provisions of this rule. Specific reporting requirements are detailed in § 990.71.

H. Information Sharing With Law Enforcement

USDA is working to develop and maintain a database of all relevant and required information regarding hemp as specified by the 2018 Farm Bill. This database will be accessible in real time to Federal, State, local, and Tribal law enforcement officers through a Federal government law enforcement system. USDA AMS will administer and populate this database, which will include information submitted by States, Tribes, laboratories, and USDA licensed producers and information submitted to FSA. States and Tribes must provide information to USDA in a format that is compatible with USDA's information sharing system. USDA will work with States and Indian Tribes on system format and other information necessary to share information.

USDA will use this information to create a comprehensive list of all domestic hemp producers. USDA will also gather the information related to the land used to produce domestic hemp. This information will be comprehensive and include data from both State and Tribal plans and will include a legal description of the land on which hemp is grown by each hemp producer and the corresponding geospatial location or other identifiable location. Finally, USDA will also gather information regarding the status of all licenses issued under State and Tribal government plans and under the USDA plan.

This information will be made available in real time to Federal, State, local and Tribal law enforcement as required by the 2018 Farm Bill.

IV. Definitions

The following terms are integral to implementing Subtitle G of the AMA and establish the scope and applicability of the regulations of this final rule.

The term ''Act'' refers to the Agricultural Marketing Act of 1946. The 2018 Farm Bill amended the Agricultural Marketing Act of 1946 by adding Subtitle G, which is a new authority for the Secretary of Agriculture to administer a national hemp production program. Section 297D of Subtitle G authorizes and directs USDA to promulgate regulations to implement this program.

The ''Agricultural Marketing Service'' or ''AMS'' is the Agricultural Marketing Service of the U.S. Department of Agriculture is the agency the Secretary of Agriculture has been charged with the responsibility to oversee the administration of this new program.

The term ''applicant'' means any State or Indian Tribe that has applied for USDA approval of a State or Tribal hemp production plan for the State or Indian Tribe they represent. This term also applies to any person or business in a State or territory of an Indian Tribe not subject to a State or Tribal plan, who applies for a hemp production license under the USDA plan established under this part.

The term ''cannabis'' is the Latin name of the plant that, depending on its THC concentration level, is further defined as either ''hemp'' or ''marijuana.'' *Cannabis* is a genus of flowering plants in the family Cannabaceae, of which *Cannabis sativa* is a species, and *Cannabis indica* and *Cannabis ruderalis* are subspecies thereof. For the purposes of this part, cannabis refers to any form of the plant where the delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined. This term is important in describing regulations that apply to plant production, sampling, or handling prior to determining its THC content.

The ''Controlled Substances Act'' is the statute, codified in 21 U.S.C. 801–971, establishing Federal U.S. drug policy under which the manufacture, importation, exportation, possession, use, and distribution of certain substances are regulated. Because cannabis with THC content concentration levels of higher than 0.3 percent is deemed to be marijuana, a Schedule I controlled substance, its regulation falls under the CSA. Therefore, for compliance purposes, the requirements of the CSA are relied upon for the disposal of cannabis that contains THC concentrations above the stated limit of this final rule.

The rule includes a definition of ''conviction'' to explain what is considered a conviction and what is not. Specifically, a plea of guilty or nolo contendere or any finding of guilt is a conviction. However, if the finding of guilt is subsequently overturned on appeal, pardoned, or expunged, then it is not considered a conviction for purposes of part 990. This definition of ''conviction'' is consistent with how some other agencies conducting criminal history record searches determine disqualifying crimes.

A ''corrective action plan'' is a plan agreed to by a State, Tribal government, or USDA for a licensed hemp producer, to correct a negligent violation or non-compliance with a hemp production plan, its terms, the applicable law(s) or this regulation. Corrective action plans may also be a plan set forth by a State or Tribal government with an approved

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hemp production plan to correct a non-compliance of their program with their USDA-approved plan. This term is defined in accordance with the 2018 Farm Bill, which mandates certain non-compliant actions to be addressed through corrective action plans.

''Culpable mental state greater than negligence'' is a term used in the 2018 Farm Bill to determine when certain actions would be subject to specific consequences. This term means to act intentionally, knowingly, willfully, recklessly, or with criminal negligence.

The term ''decarboxylated'' refers to the completion of the chemical reaction that converts THCA into delta-9 THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a molecular mass conversion ratio that sums delta-9 THC and eighty-seven and seven tenths (87.7) percent of THC-acid ((delta-9 THC) + (0.877*THCA)).

''Delta-9 tetrahydrocannabinol,'' also referred to as ''Delta-9 THC'' or ''THC'' is the primary psychoactive component of cannabis, and its regulation forms the basis for the regulatory action of this part. As mandated by the Act, legal hemp production must be verified as having THC concentration levels of 0.3 percent on a dry weight basis or below. For the purposes of this part, delta-9 THC and THC are interchangeable.

The term ''disposal'' means the action or process of getting rid of cannabis that is non-compliant.

''DEA'' is an acronym for the ''Drug Enforcement Administration,'' a United States Federal law enforcement agency under the United States Department of Justice. The DEA is the lead agency for domestic enforcement of the Controlled Substances Act. The DEA plays an important role in the oversight of the disposal of marijuana, a Schedule I controlled substance, under the regulations of this part. The DEA is also instrumental in registering laboratories to legally handle controlled substances, including cannabis samples that test above the 0.3 THC concentration level.

''Dry weight basis'' refers to a method of determining the percentage of a chemical in a substance after removing the moisture from the substance. Percentage of THC on a dry weight basis means the percentage of THC, by weight, in a cannabis item (plant, extract, or other derivative), after excluding moisture from the item.

The ''Farm Service Agency (FSA)'' is an agency of the U.S. Department of Agriculture that provides services to farm operations including loans, commodity price supports, conservation payments, and disaster assistance. For the purposes of this program, FSA will assist in information collection of land being used for hemp production.

''Gas chromatography'' or GC, is a scientific method (specifically, a type of chromatography technique) used in analytical chemistry to separate, detect, and quantify each component in a mixture. It relies on the use of heat for separating and analyzing compounds that can be vaporized without decomposition. Under the terms of this part, GC is one of the valid methods by which laboratories may test for THC concentration levels.

For the purposes of this part, the term ''geospatial location'' means a location designated through a global system of navigational satellites used to determine the precise ground position of a place or object.

The term ''handle'' is commonly understood by AMS and used across many of its administered programs. For the purposes of this part, ''handle'' refers to the actions of cultivating or storing hemp plants or hemp plant parts prior to the delivery of such plant or plant part for further processing. In cases where cannabis plants exceed the acceptable hemp THC level, handle may also refer to the disposal of those plants.

''Hemp'' is defined by the 2018 Farm Bill as ''the plant species *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.'' The statutory definition is self-explanatory, and USDA is adopting the same definition without change for part 990.

''Liquid chromatography (LC)'' is a scientific method (specifically, a type of chromatography) used in analytical chemistry used to separate, identify, and quantify each component in a mixture. It relies on pumps to pass a pressurized liquid solvent containing the sample mixture through a column filled with a solid adsorbent material to separate and analyze compounds. Under the terms of this part, LC is one of the valid methods by which laboratories may test for THC concentration levels. Ultra-Performance Liquid Chromatography (UPLC) is an additional method that may also be used as well as other liquid or gas chromatography with detection.

''Indian Tribe or Tribe'' is defined in the 2018 Farm Bill by reference to section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304). The statutory definition is self-explanatory, and USDA is adopting the same definition without change for part 990.

A ''key participant'' is a person or persons who have a direct or indirect financial interest in the entity producing hemp, such as an owner or partner in a partnership. A key participant also includes persons in a corporate entity, including tribally-owned corporation individuals, at executive levels, including chief executive officer, chief operating officer, and chief financial officer. This does not include such management personnel as farm, field, or shift managers. This definition also does not include a member of the leadership of a Tribal government who is acting in their capacity as a Tribal leader except when that member exercises executive managerial control over hemp production.

''Law enforcement agency'' refers to all Federal, State, Tribal, or local law enforcement agencies. Under the 2018 Farm Bill, State and Tribal submissions of proposed hemp production plans to USDA must be made in consultation with their respective Governors and chief law enforcement officers. Moreover, the 2018 Farm Bill contemplates the involvement of law enforcement in compliance actions related to offenses identified as being made under a ''culpable mental state greater than negligence.'' To assist law enforcement in the fulfillment of these duties, the 2018 Farm Bill also mandates information sharing that provides law enforcement with real-time data.

The term ''lot'' refers to a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout. In addition, ''lot'' is a common term in agriculture that refers to the batch or contiguous, homogeneous whole of a product being sold to a single buyer at a single time. Under the terms of this part, ''lot'' is to be defined by the producer in terms of farm location, field acreage, and variety (*i.e.,* cultivar) and to be reported as such to FSA. For FSA reporting purposes, FSA staff will determine the appropriate designation for the specific location(s) where hemp is being grown using FSA terminology such as ''farm,'' ''tract,'' ''field,'' and ''subfield'' to mean ''lot'' for the purpose of this rule.

''Marijuana,'' or, as defined in the CSA, ''marihuana,'' means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin. The term ''marihuana'' does not include hemp, as defined in section 297A of the Agricultural Marketing Act

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of 1946, and does not include the mature stalks of such plant; fiber produced from such stalks; oil or cake made from the seeds of such plant; any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake; or the sterilized seed of such plant which is incapable of germination (7 U.S.C. 1639o(1)). ''Marihuana'' also means all cannabis that tests as having a THC concentration level on a dry weight basis of higher than 0.3 percent.

''Negligence'' is a term used in the 2018 Farm Bill to describe when certain actions are subject to specific compliance actions. For the purposes of this rule, the term means failure to exercise the level of care that a reasonably prudent person would exercise in complying with the regulations set forth under this final rule.

Used in relation to the other terms and regulations in this part, ''phytocannabinoids'' are cannabinoid chemical compounds found in the cannabis plant, two of which are Delta-9 tetrahydrocannabinol (delta-9 THC) and cannabidiol (CBD). Testing methodologies under this part will refer to the presence of ''phytocannabinoids'' as either THC or CBD.

Under the terms of this program, ''plan'' refers to a set of criteria or regulations under which a State or Tribal government, or USDA, monitors and regulates the production of hemp. ''Plan'' may refer to a State or Tribal plan, whether approved by USDA or not, or the USDA hemp production plan.

The 2018 Farm Bill mandates that all cannabis be tested for THC concentration levels using ''post-decarboxylation'' or similar methods. In the context of this part, ''post-decarboxylation'' means testing methodologies for THC concentration levels in hemp, where the total potential delta-9-tetrahydrocannabinol content, derived from the sum of the THC and THCA content, is determined and reported on a dry weight basis. The post-decarboxylation value of THC can be calculated by using a chromatograph technique using heat, known as gas chromatography, through which THCA is converted from its acid form to its neutral form, THC. The result of this test calculates total potential THC. The post-decarboxylation value of THC, or total THC, can also be calculated by using a liquid chromatograph technique, which keeps the THCA intact, and requires a conversion calculation of that THCA to calculate total potential THC. See also the definitions for decarboxylation and total THC.

The term ''produce,'' when used as a verb, is a common agricultural term that is often used synonymously with ''grow,'' and means to propagate plants for market, or for cultivation for market, in the United States. In the context of this part, ''produce'' refers to the propagation of cannabis to produce hemp.

''Producer'' means a producer as defined in 7 CFR 718.2 specifically of hemp. The 2018 Farm Bill mandates that USDA maintain a real-time informational database that identifies registered hemp production sites, whether under a State, Tribal, or USDA plan, for the purposes of compliance and tracking with law enforcement. AMS will maintain this system with the information collection assistance of FSA. In order to maintain consistency and uniformity of hemp production locations, USDA is using FSA to collect this information through their crop acreage reporting system. In this context, a common use of the term ''producer'' is essential to maintaining a substantive database. For this reason, the definition of ''producer'' incorporates the FSA definition of ''producer'' with the additional qualifier that they are a producer specifically of hemp. All producers are required to be licensed or authorized to produce hemp under the USDA Domestic Hemp Production Program.

''Remediation'' refers to techniques utilized to transform non-compliant cannabis into something useful and compliant while disposing of non-compliant parts. Remediation can occur by removing and destroying flower material, while retaining stalk, stems, leaf material, and seeds. Remediation can also occur by shredding the entire plant into a bio-mass like material, then re-testing the shredded biomass material for compliance.

''Secretary'' means the Secretary of Agriculture of the United States Department of Agriculture.

Section 297A of the Act defines ''State'' as any of one of the fifty States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States. The statutory definition is self-explanatory, and USDA is adopting the same definition without change for part 990.

The term ''State department of agriculture'' is defined by the 2018 Farm Bill as the agency, commission, or department of a State government responsible for agriculture in the State. The statutory definition is self-explanatory, and USDA is adopting the same definition without change for part 990.

The term ''store'' is related to the term ''handle'' under this part and means to deposit hemp plants or hemp plant product in a storehouse, warehouse, or other identified location by a producer for safekeeping prior to delivery to a recipient for further processing.

The term ''Territory of the Indian Tribe'' means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same; and (d) any lands title to which is either held in trust by the United States for the benefit of any Indian Tribe or individual or held by any Indian Tribe or individual subject to restriction by the United States against alienation and over which an Indian Tribe exercises jurisdiction.

The IFR defined the Territory of the Indian Tribe as ''Indian Country'' in 18 U.S.C. 1151 because section 1151 is a commonly acceptable approach to determine a Tribal government's jurisdiction. The final rule retains the language of section 1151, but adds item (d) to the definition of ''Territory of the Indian Tribe.'' This addition does not significantly expand the definition because many of the lands encompassed by item (d) were already considered as ''Territory of the Indian Tribe'' under the IFR. For example, off-reservation trust land, if not considered part of a reservation under section 1151(a), is generally considered within a dependent Indian community under section 1151(b). *See Club One Casino, Inc.* v. *Bernhardt,* 959 F.3d 1142, 1149–50 (9th Cir. 2020); Felix Cohen, Cohen's Handbook of Federal Indian Law, section 3.04 (Nell Jessup Newton ed. 2012). Also, restricted fee lands outside of a reservation are often considered part of a dependent Indian community, provided the lands satisfy the two requirements of a dependent Indian community—lands that are (1) set aside by the Federal Government for the use of the Indians and (2) under federal superintendence. *Citizens Against Casino Gambling in Erie Cty.* v. *Chaudhuri,* 802 F.3d 267, 281 (2d Cir. 2015).

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However, because ''dependent Indian communities'' is an oft-litigated term that is interpreted varyingly amongst the courts, USDA decided to add item (d) to the definition of ''Territory of the Indian Tribe'' to add clarity and ensure nationwide consistency regarding the jurisdictional boundaries of regulatory authority over the production of hemp.

''Total THC'' is the post-decarboxylation value of THC, either after testing with gas chromatography or LC after using a conversion factor. LC does not use decarboxylation as part of the process and this addition is to account for the conversion of THCA into THC if decarboxylation was part of the process. The addition of 87.7 percent of THCA is applicable if the testing laboratory uses LC with detection to measure the THC. Total THC is the measured THC plus 87.7 percent of THCA.

As defined by the 2018 Farm Bill, the term ''Tribal government'' means the governing body of an Indian Tribe. The statutory definition is self-explanatory, and USDA is adopting the same definition without change for part 990.

The ''U.S. Attorney General'' is the Attorney General of the United States.

''USDA'' is an acronym that stands for the ''United States Department of Agriculture.''

V. Appeals

The following paragraphs explain when and how to appeal a USDA decision. State or Tribal plans may include similar appeal procedures. No changes were made to this section based on comments.

An applicant for a USDA hemp production program license may appeal a license denial to the AMS Administrator. USDA licensees can appeal denials of license renewals, license suspensions, or license revocations to the AMS Administrator. All appeals must be submitted in writing and received within 30 days of the denial. Appeals may be submitted by mail or electronic form. This submission deadline should provide adequate time to prepare the necessary information required for the appeal. The Administrator will take into account the applicant or USDA licensee's justification for why the license should not be denied, suspended, or revoked, and then issue a final determination. Determinations made by the Administrator under the appeals process will be final unless the applicant or USDA licensee requests a formal adjudicatory proceeding to review the decision, which will be conducted pursuant to the U.S. Department of Agriculture's Rules of Practice Governing Formal Adjudicatory Proceedings, 7 CFR part 1, subpart H, which USDA will amend to add the Domestic Hemp Production Program. If the applicant or USDA licensee does not request that the Administrator initiate a formal adjudicatory proceeding within 30 days of the Administrator's adverse ruling, such ruling becomes final.

Appeals Under a State or Tribal Hemp Production Plan

A State or Tribe can appeal the denial of a proposed hemp production plan, or the proposed suspension or revocation of a plan by USDA. USDA will consult with States and Tribes to help ensure their draft plans meet statutory requirements, and that existing plan requirements are monitored and enforced by States and Indian Tribes. If, however, a proposed State or Tribal plan is not approved, or an existing plan is suspended or revoked the decision may be appealed.

If the AMS Administrator grants a State or Indian Tribe's appeal of a disapproval of its hemp plan, the proposed State or Tribal hemp production plan shall be approved as proposed. If the AMS Administrator denies an appeal, prospective producers located in the State or Tribal Territory can apply directly to USDA for a hemp license. Similarly, if an appeal of a denied proposed State or Tribal plan is denied, producers located in the impacted State or Tribal territory may apply for licenses under the USDA plan.

A State or Tribe appealing the suspension or revocation of their hemp production plan must explain the reasoning for the appeal and the appeal must be filed within the time-period provided in the letter of notification or within 30 business days from receipt of the notification, whichever occurs later. This timeframe should be adequate for the assembly of the information required to be submitted as part of the appeal.

VI. Interstate Commerce

Nothing in this rule prohibits the interstate commerce of hemp. No State or Indian Tribe may prohibit the transportation or shipment of hemp produced in accordance with this part and with section 7606 of the 2014 Farm Bill (expires January 1, 2022) through the State or the territory of the Indian Tribe, as applicable.[10]

[10] *See* section 10114 of the 2018 Farm Bill and the USDA General Counsel's Legal Opinion on the Authorities for Hemp Production at *https://www.ams.usda.gov/content/legal-opinion-authorities-hemp-production.*

VII. Outreach

As part of this rulemaking process, AMS held numerous meetings with State and Tribal governments and their representatives, industry organizations, groups and individuals with experience in the hemp industry, and representatives of law enforcement, as well as other Federal agencies.

In addition, USDA also conducted a listening session on March 13, 2019, that had more than 2,100 participants, and included comments from 46 separate speakers representing States, Tribes, producers, end-users, hemp organizations, and others. The recording of the listening session is available on the USDA website at *https://www.ams.usda.gov/rules-regulations/hemp.* On May 1 and 2, 2019, USDA also participated in Tribal consultation meetings for a total of 52 and 38 participants, respectively. On September 24, 2020, AMS conducted another Tribal Consultation with approximately 90 participants.

AMS published an interim final rule on October 31, 2019 (84 FR 58522), that established a temporary hemp production program and invited public comments on the program's provisions. The initial 60-day comment period was extended by 30 days on December 18, 2019 (84 FR 69295). The comment period was reopened for another 30 days on September 8, 2020 (85 FR 55363). A total of approximately 5,900 comments were submitted by States, Tribes, farmers, industry associations, and other interested groups and individuals during the combined comment periods expressing their views on the provisions of the IFR and suggesting modifications, many of which have been incorporated into this final rule.

Finally, in November 2019, AMS posted an informational webinar about the domestic hemp production program on its website (in English and Spanish) at *https://www.ams.usda.gov/rules-regulations/hemp.* AMS has also posted additional useful information for regulated entities and other interested persons on its website at *https://www.ams.usda.gov/rules-regulations/hemp.*

As required by the Farm Bill, the Secretary developed this final rule and related guidelines in consultation with the U.S. Attorney General. In addition, USDA has submitted information to, and consulted with, the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate regarding updates on the

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implementation of the hemp requirements in the Farm Bill.

VIII. Severability

This final rule includes a severability provision. This provision helps address the status of the regulations should a court vacate a particular provision. This section provides that if any provision of part 990 is found to be invalid, the remainder of the part shall not be affected.

IX. Comment Analysis

AMS accepted comments during an initial comment period from October 31, 2019 through December 31, 2019. On December 18, 2019 (84 FR 69295), this initial comment period was extended for an additional 30 days, ending January 29, 2020. AMS reopened the comment period for 30 additional days on September 8, 2020 (85 FR 55363), ending October 8, 2020. Comments may be accessed through *Regulations.gov*.[11] Reopening the comment period gave interested persons an additional opportunity to comment on the IFR. Comments were solicited from all stakeholders, notably those who were subject to the regulatory requirements of the IFR during the 2020 production cycle.

AMS specifically requested comments on the 15-day sampling and harvest timeline; the possibility of establishing a fee-for-service hemp laboratory approval process for labs that wish to offer THC testing services; the possibility of requiring all laboratories testing hemp to have ISO 17025 accreditation; the number of labs already ISO 17025 accredited; additional examples of reasonable efforts to illustrate actions hemp producers can take in order to avoid committing a negligent violation under the program; the sufficiency of the hemp license application period; whether the information collection for the program is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; the ways to enhance the quality, utility, and clarity of the information to be collected; the ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; whether there is information or data that may inform whether or not the market will experience a significant shift, either positive or negative, in the developing hemp market and on consumers; any data or information on what impacts the regulation may have on current and future innovation in the areas of industrial hemp usages and how much such impacts on innovation may affect rural communities; the potential for innovation and the uncertainty and its impact on the hemp market vis a vis steady State; and additional reliable data sources on the annual receipts of industrial hemp producers.

AMS received approximately 5,900 comments. Comments represented the views of States, Indian Tribes, hemp farmers and processors, universities, laboratories, trade associations, carriers, non-profit associations, other Federal government agencies, consumers, and other interested individuals. A summary of the comments and AMS's analysis and response follows.

Extention of Comment Period

Several commenters urged AMS to extend the public comment period to allow for small businesses to meaningfully participate in this rulemaking process. One reason given was that the comment period fell in the middle of the harvest season for much of the mid-Atlantic and southern hemp growers, excluding those who grow indoors, and therefore were too busy to comment. Other reasons given were the ongoing global pandemic as well as many other ongoing natural disasters nation-wide that have presented additional strains and unique challenges to agricultural operations.

AMS Response: AMS provided an initial 60-day comment period and a 30-day extension and then reopened the comment period for 30 additional days in order to receive feedback from stakeholders thus giving ample time to interested parties to submit comments. In order to finalize the Domestic Hemp Promotion Program before the 2021 production cycle begins, AMS decided not to extend the comment period and to finalize this rule.

Extension of 2014 Pilot Program

Under the 2014 Farm Bill, State departments of agriculture and institutions of higher education were permitted to produce hemp as part of a pilot program for research purposes. Congress extended this authority under the 2021 Continuing Appropriations Act until January 1, 2022. After January 1, 2022, domestic hemp production must comply with Subtitle G of the AMA and this final rule.

Comments: Numerous comments praised the hemp production regulatory schemes established by States and Universities under the 2014 Farm Bill authority. Many comments reflected on the perceived increase in regulatory burden under the IFR, as opposed to the regulatory scheme that has been applied to domestic hemp production until now. Many comments, while making recommendations with regards to specific aspects of the IFR provisions, also encouraged USDA to continue to regulate domestic hemp production under the 2014 Farm Bill until satisfactory resolution of industry concerns can be achieved. Further, several comments stated that the extension of the pilot programs under the 2014 Farm Bill for another two to three years would give the industry time to adjust to the new requirements and to develop hemp genetics to more easily comply with the regulations.

A few comments opposed extension of the 2014 Farm Bill pilot program, asserting that States now operating under the more restrictive 2018 Farm Bill provisions are placed at a disadvantage.

AMS response: The extension of the 2014 Farm Bill authority is not within the authority of USDA. Congress only extended this authority under the 2021 Continuing Appropriations Act (Pub. L. 116–260), until January 1, 2022.

THC Limit

The IFR adopts the 2018 Farm Bill definition of hemp as the plant species *Cannabis sativa* L. and any part of that plant with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. Further, the IFR requires that THC levels in representative samples test at or below the acceptable hemp THC level. Testing must be conducted using post-decarboxylation or other similarly reliable methods, where the total THC concentration level measured includes the potential to convert THCA into THC. Finally, the IFR provides that hemp testing higher than the acceptable hemp THC level is considered a controlled substance and requires disposal.

Comments: Some comments supported the 2018 Farm Bill's hemp THC level of 0.3 percent, and some explained that States had successfully incorporated that limit into programs authorized under the 2014 Farm Bill. Some comments thanked USDA for clearly defining the delta-9 THC standard in the IFR, which commenters

[11] *https://www.regulations.gov/searchResults?rpp=25&po=0&s=AMS-SC-19-0042&fp=true&ns=true..*

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said would foster uniformity across hemp production in all States.

However, a greater number of comments from various stakeholder groups, including producers, States, Indian Tribes, and hemp organizations, asserted that the 0.3 percent threshold is too low and impractical in a program intended for multiple end uses of hemp. Comments argued that individuals interested in obtaining cannabis for intoxication purposes are unlikely to be interested in material containing 1.0 percent THC—or perhaps higher, and that setting the threshold at even 1.0 percent THC would give farmers, breeders, and researchers a lot more flexibility and confidence in producing compliant crops. One commenter reported that their State recognizes hemp with THC concentrations of up to 0.39 percent, with most crops testing between 0.31 and 0.39 percent THC, and no end products testing higher than 0.3 percent THC. The comment suggested USDA should raise the THC limit to at least 0.39, if not up to 0.5 percent. Other comments recommended revising the threshold to a higher level, asserting that there is no scientific evidence that supports use of the 0.3 percent level. Some comments recommended increasing the threshold to 0.8 or 1.0 percent, while some suggested 2.0 percent and others as much as 5.0 percent. Comments explained that a THC concentration of 5 percent is not viable for recreational marijuana markets and that USDA should consider the end-use potential when determining a threshold. One comment recommending a THC threshold of at least 2.0 percent included a news story reporting that marijuana plants confiscated by law enforcement routinely have THC concentrations of 12 percent or higher.[12]

Several comments suggested that the IFR's level of 0.3 percent delta-9 THC on a dry-weight basis is ''more aspirational than practical.'' Comments explained that THC levels vary with plant maturity and other factors. Comments urged USDA to build greater flexibility into the rule so producers don't unwittingly become illegal marijuana farmers as a result of factors beyond their control. One comment suggested USDA establish a wider gap between the THC levels that define controlled substances and agricultural commodities such as hemp to create an environment where hemp producers are presumed innocent until proven guilty of intentionally producing a controlled substance. Several comments recommended that university and other research programs be given more leeway as they work toward developing more compliant, regionally appropriate varieties through breeding.

Some comments noted that hemp containing more than 0.3 percent THC is not eligible for crop loss or replant payments under USDA Risk Management Agency regulations. Comments said further that if USDA is not certifying seed because of the regional effects of growing conditions on genetics, farmers are at risk and should be able to obtain comprehensive insurance coverage for crops with negligible overage above the acceptable THC level.

Comments explained that while the genetics of most U.S. crops have been developed over many years, hemp has not enjoyed that history, and it will take time to develop compliant but commercially viable crops with marketable CBD content for different regions. Comments asserted farmers will have fewer planting options because of the lack of a national hemp seed certification protocol and limited agronomic research on hemp varietals and production practices. Comments inferred that the 0.3 percent THC threshold would effectively demand that farmers plant a nationwide monoculture with little genetic diversity, which they said would leave U.S. hemp crops vulnerable to pests and diseases.

Many comments questioned the selection by Congress of the 0.3 percent THC threshold to legally distinguish hemp from marijuana.[13] Comments frequently referenced a 1976 publication, *A Practical and Natural Taxonomy for Cannabis,* in which horticulturalists Dr. Ernest Small and Arthur Cronquist used 0.3 percent THC as a threshold to distinguish hemp from marijuana in their scientific study on cannabis.[14] Comments highlighted statements made by Small and Cronquist, saying the researchers openly acknowledged that they ''arbitrarily adopt a concentration of 0.3 percent delta-9 THC (dry weight basis) in young, vigorous leaves of relatively mature plants as a guide to discriminating two classes of plants,'' and that the number was never intended to define hemp from a legal perspective. According to the comment, Small and Cronquist made no conclusionary statement on the use of the 0.3 percent THC threshold.

Several comments reported that countries determined to compete in the global marketplace, including Switzerland, Australia, Thailand, Uruguay, and Ecuador, recognize an acceptable hemp THC limit of 1.0 percent. According to comments, the international market settled on the 1.0 percent THC limit after numerous countries tested hemp over many years. Comments recommended the IFR incorporate the same standard.

Comments asserted that the rights of Indian Tribes and small Tribal farmers should be protected by allowing greater flexibility in the hemp production regulations overall, consistent with Tribal self-government. For example, comments said that Indian nations should be recognized to have authority to grow hemp with up to 1.5 percent THC and should not be restricted to 0.3 percent.

One comment explained that their company has focused on breeding efforts to develop genetics that produce CBD-rich hemp with the lowest possible THC concentrations. The commenter claimed their company has harvested millions of pounds of hemp compliant with the 0.3 percent total THC standard since 2017. The comment said they produced 25 million rooted cuttings this spring—enough, according to the comment, to produce biomass for the entire country, and the commenter assumed they were not the only ones who had done so. The comment asserted further that the global standard for THC concentration is 0.2 percent and that to be competitive, U.S. production must adhere to a similarly strict standard.

Although asserting that the IFR hemp THC level of 0.3 percent is not commercially reasonable, some comments acknowledged that only Congress could change the statute to allow a higher limit, and some commenters offered to serve as resources in that effort. Other comments urged USDA to work with Congress to raise the THC threshold.

AMS response: Congress defined hemp in the 2018 Farm Bill as *Cannabis sativa* L. with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. Any change to the statutorily established threshold of THC concentration requires an amendment to the statute. The CSA defines marijuana as cannabis that is over the 0.3 percent THC level. AMS has no discretion to change the THC level or to treat States and Tribes differently as the 2018 Farm Bill applies to all production of hemp in

[12] McCullough, Jolie. ''Marijuana Prosecutions in Texas Have Dropped by More than Half Since Lawmakers Legalized Hemp.'' *The Texas Tribune,* 3 January 2020; *www.texastribune.org/2020/01/03/texas-marijuana-prosecution-drop-testinghemp/.*

[13] Johnson, Renee. ''Hemp as an agricultural commodity.'' Congressional Research Service (2014).

[14] Small, Ernest, and Arthur Cronquist. ''A practical and natural taxonomy for Cannabis.'' *Taxon* (1976): 405–435.

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the U.S. Tribes do not have the authority to grow hemp with up to 1.5 percent THC as this would violate the 2018 Farm Bill and the CSA. Tribes' powers of self-government may be constrained by acts of Congress in accordance with Congress' constitutional authority to regulate commerce with Indian Tribes.

AMS notes that there seems to be confusion amongst some commenters on the THC level stated in the 2018 Farm Bill and the IFR's definition of acceptable hemp THC level. The acceptable hemp THC level in this final rule includes the 0.3 percent established in the Farm Bill plus any measure of uncertainty due to laboratory testing.

Regarding the comment citing the news story, AMS believes the commenter misconstrued the article's meaning. The article cited by the commenter explained that following passage of Texas's law that legalized hemp in early 2019, the number of marijuana prosecutions in the State plummeted, due in part to the lack of adequate and affordable criminal laboratory resources. According to the article, prosecutors were less likely to expend resources on low-level marijuana charges where the likelihood of conviction is low. The article described anticipated release of a new lab testing method that only determines whether THC concentration is above or below 2 percent for criminal testing purposes. According to the article, even though 2 percent is higher than the State's legal hemp limit of 0.3 percent, such testing would nevertheless be adequate for Texas law enforcement purposes, since nearly all marijuana plant prosecutions in the State involve THC concentrations of 12 percent or more. AMS believes neither the article nor the State are advocating legalization of hemp THC concentrations of up to 2 percent, but that Texas law enforcement is merely using that limit as a convenient way to determine whether to pursue criminal prosecution.

In response to concerns that producers could unwittingly become illegal marijuana farmers without greater flexibility in the rule, AMS has modified the negligent violation threshold as explained in the section responding to comments on the negligent violation threshold. AMS also notes, however, that it does not have any authority over how the DEA chooses to enforce compliance with the CSA.

In the final rule, AMS is implementing a nation-wide domestic hemp production program as contemplated by the 2018 Farm Bill. It is not amending Risk Management Agency's regulations regarding crop loss or repayment payments. Thus, comments regarding those regulations are outside the scope of this rule.

Testing for Total THC

The IFR requires that when hemp THC levels are measured using post-decarboxylation or other similarly reliable methods, the total THC concentration level measured must include the potential to convert THCA into THC.

Comments: Some comments agreed that the measurement of delta-9 THCA should be added to the measurement of delta-9 THC and reported as total THC used for determining compliance with the hemp program requirements, as this is what many hemp producing States are already doing under State programs. A comment from an association of Departments of Agriculture reported that many States responding to their survey supported testing for total THC in this manner.

Other commenters disagreed. According to one comment, only 22 of 47 States with State-level hemp programs test for total THC. The comment said that 18 States do not currently test for total THC, and that 7 States' rules are ambiguous on this point. Other comments reported that State programs currently testing for only delta-9 THC are confident that producers are not selling ''hot'' crops.

One comment said it is irrational to subject hemp biomass to decarboxylation when most biomass harvested for processing into increasingly popular consumer goods or industrial products will never even be decarboxylated.

Another comment explained how USDA cannot alter the definition of hemp as set forth in the 2018 Farm Bill. The comment said that there should not be a ''total'' THC mandate and, rather, the plain reading of the 2018 Farm Bill establishes that delta-9 THC is actually the determinative factor. The comment went on to explain how other State and Federal agencies also rely only on delta-9 THC when making critical distinctions with respect to hemp, such as the DEA and the FDA, to determine whether a substance is controlled and subject to criminal penalties. The comment presented an alternative testing methodology where testing methods must be able to determine the potential for THCA to convert into delta-9 THC, and the test result must reflect that ability as well as the aggregate computation, but the controlling factor whether a crop meets the definition of hemp and is within the ''acceptable hemp THC level'' relies only upon the delta-9 THC element. Thus, for compliance purposes, delta-9 THC is the standard, and the lab report must at least reflect THCA, delta-9 THC, and the Total THC results, but Total THC should not be determinative in whether a farmer has to destroy his crop.

Industry impacts. Commenters asserted that testing for THCA concentration, a component they argued which is not psychoactive, would vastly undermine the efficient production of hemp and the growth of the industry. Some comments supported the 0.3 percent THC standard, but said requiring testing for total THC goes beyond what is statutorily required, to the detriment of producers. Commenters argued that the difference between levels of delta-9 THC and total THC in hemp is significant, and that crops that would otherwise be compliant measuring only for delta-9 THC would not be compliant when measuring for Total THC. Comments asserted that testing for total THC with a threshold of 0.3 percent effectively lowers the allowable hemp THC level to an even lower limit.

Comments also described the correlation between total CBD and total THC production and explained that producers trying to maximize CBD production will not be able to do so successfully if total THC levels are restricted to 0.3 percent. One comment claimed that a farmer can produce hemp plants with up to 25 percent cannabinoid content while staying under 0.3 percent delta-9 THC limit, but that the farmer would have to plant twice as many acres of a less potent hemp variety to produce the same amount of CBD end product and stay compliant under the IFR's Total THC limit.

Several comments reported that some CBD hemp processors reject product with CBD amounts of less than 8 percent. According to comments, breeders have worked years to develop cultivars that meet the 0.3 percent delta-9 THC threshold, but many cultivars would not be compliant under the total THC limit. Comments predicted that with a standard of 0.3 percent total THC, growers will stop growing hemp for CBD because the risk is too high that their hemp crops will exceed the limit and be destroyed, defeating the purpose for growing crops for the potential high returns related to CBD production. Comments further lamented that the industry would lose investments they've already made.

According to comments, many States that have only been measuring delta-9 THC under 2014 Farm Bill pilot programs have developed companion

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marketing programs that have been tailored to complement State hemp production programs. Comments asserted the total THC limit in the IFR would significantly impact these new and emerging markets and cripple the industry in those States, preventing them from selling their product.

Some comments claimed that common industry practice is to measure THC and THCA independently. Comments recommended USDA treat THC and THCA as two separate molecules and only be concerned with the amount of THC in a sample, rather than total available THC.

One comment recommended that if USDA wants to test for total THC, the limit should be raised to 0.694 percent, with negligence set at 1.094 percent, and that growers whose samples measure between the two limits should be allowed to retest samples with up to two certified labs of their choice at a cost of $500 each. Another comment recommended that samples be tested for THC and THCA separately, with limits of 0.3 and 1.0 percent, respectively.

AMS response: The 2018 Farm Bill requires that State and Tribal plans provide a procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of hemp. In order to use post-decarboxylation, the sample must be heated or a conversion made to account for the lack of heating process. This means that the total THC must account for THCA and delta-9 THC.

Currently, some States and Indian Tribes use gas chromatography (GC) to test hemp. In GC testing, heat is applied to the sample which THCA, producing delta-9 THC (a psychoactive compound), so that the final delta-9 THC result is actually a total THC result. GC is the more traditional technique used for THC testing and GC results are typically reported as ''delta-9 THC'' without distinguishing that the reported delta-9 THC is actually total THC.

Liquid chromatography (LC) testing typically does not involve the use of heat, so the THCA in a sample does not decarboxylate. In LC, results for THCA and delta-9 THC are obtained separately and can be reported separately. Cannabis naturally contains more THCA than delta-9 THC; if the THCA concentration is ignored while testing by LC, it is improbable to correctly distinguish hemp varietals from drug varietals. A total THC needs to be calculated post-testing in order to determine the ''post-decarboxylation'' delta-9 THC value as required by the 2018 Farm Bill. In this way, all testing methodologies report the same information.

AMS acknowledges that some States do not currently test for total THC and that switching to testing for total THC may have a negative impact on those State programs. Most laboratories that use LC obtain THCA results and delta-9 THC results in the same analysis, so the information should be readily available to incorporate a calculation for Total THC. The opposite is also true. If USDA was to ignore the statutory requirement of using post-decarboxylation or other similarly reliable methods and allow for THC levels that do not account for decarboxylation, States and Tribes that currently require testing for total THC could experience a negative impact. When States or Tribes use different methods to measure THC, it impacts commerce because producers are not all on the same playing field. Also, since total THC at 0.3 percent is harder to obtain, those States and Tribes currently using total THC have been potentially selling less or destroying more hemp. Further, many in the industry have already made the switch to total THC since the IFR was published, diminishing the impact.

AMS consulted with the Departments of Justice and Health and Human Services to develop the IFR. The Drug Enforcement Administration's Analysis of Drugs Manual cites GC methodology, initially labeling results as delta-9 THC and then defining total THC and instructing how to determine compliance using total THC.

In order to provide flexibility to States and Indian Tribes administering their own hemp production programs, alternative testing protocols will be considered by AMS if they are comparable and similarly reliable to the baseline mandated by section 297B(a)(2)(ii) of the AMA and established under the USDA plan and procedures. Updated USDA procedures for sampling and testing will be issued concurrently with this rule and will be provided on the USDA website.

This final rule covers hemp production. Hemp products are regulated under the Food and Drug Administration and its various statutes.[15]

Statutory Compliance and Congressional Intent: Several comments expressed concern about regulatory inconsistency between the 2018 Farm Bill language testing methods and the IFR requirements. Commenters urged USDA to reconsider the legislative record and Congress's intent in passing the 2014 and 2018 Farm Bills. According to numerous comments, the plain language of the 2018 Farm Bill statute does not support the IFR's requirement to test for total THC. Commenters asserted that if Congress had intended samples to be tested for total THC, they would have so specified, rather than making the specific reference to delta-9 THC in the statute. Comments concluded that concentrations of THCA in hemp should be irrelevant to its legal status under the regulations. One comment characterized ''decarboxylated value'' as a new legal term and questioned USDA's authority under the 2018 Farm Bill to create such a term. One comment went on to say that the term ''potential conversion'' as appearing in the IFR is offensive because Federal criminal law does not convert a legal substance into an illegal one simply because the substance has the ''potential'' to be converted.

Several comments cited a letter from Senators Merkley and Wyden,[16] authors of the Hemp Farming Act of 2018 that was included in the 2018 Farm Bill, as evidence that the IFR wrongly requires testing of Total THC. In that letter, Senators Merkley and Wyden asserted that requiring hemp samples to be tested using methods by which the reported THC concentration accounts for the conversion of THCA to THC ''is a complete reversal of the Congressional intent expressed in that law and requires testing that Congress specifically did not include.'' Comments also asserted that the Farm Bill definition of hemp is clear in that ''all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not'' of the hemp plant are expressly lawful so long as the pant does not contain a delta-9 THC concentration of above 0.3 percent. Thus, according to these comments, the IFR required measurement of a lawful plant-based acid when distinguishing between hemp and marijuana under the Controlled Substances Act, and such a requirement contradicts the plain language of the Farm Bill and the spirit of the law.

[15] The 2018 Farm Bill explicitly preserved the authority of the U.S. Food and Drug Administration (FDA) to regulate hemp products under the Federal Food, Drug, and Cosmetic Act (FD&C Act) and section 351 of the Public Health Service Act (PHS Act).

[16] *https://www.merkley.senate.gov/news/press-releases/wyden-merkley-to-dea-interim-rule-on-hemp-contradicts-congressional-intent-by-criminalizing-intermediate-steps-in-hemp-processing-2020#:~:text=Authors%20of%20the%20provision%20in,by%20seriously%20misunderstanding%20hemp%20processing.* See *https://beta.regulations.gov/comment/AMS-SC-19-0042-0884.*

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One comment asserted that requiring test reports of THC concentration to account for conversion of THCA into THC effectively mandates that only test methods relying on post-decarboxylation be used, nullifying Congressional intent that other similarly reliable methods that don't require conversion of THCA to THC should be authorized. The comment recommended revising the rule to comply with the Congressional mandate to allow testing through other similarly reliable methods.

AMS response: AMS is not making a determination of Congressional intent when passing the 2018 Farm Bill provision for hemp. Instead, AMS is following the plain statutory language that states that a State or Tribal plan shall be required to include ''a procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of hemp produced in the State or territory of the Indian Tribe''.

International Impact: Some comments asserted that the average global delta-9 THC limit is 1.0 percent. Others claimed that Europe has adopted a 0.3 percent THC limit, but that it applies only to delta-9 THC and not total THC. Comments contend that American hemp production required to comply with at 0.3 percent total THC limit will be disadvantaged in the international marketplace. Comments proposed that matching a global standard by establishing a higher delta-9 THC threshold or total THC limit would strengthen U.S. producers' market competitiveness. Other comments warned that reducing the domestic hemp supply by imposing the IFR's 0.3 percent total THC limit will incentivize importation of hemp biomass and hemp derivatives produced in countries with lower labor costs and less restrictive regulatory regimes, and that domestic hemp and hemp derivatives will be priced out of the market.

AMS response: The 2018 Farm Bill authorizes USDA to issue regulations to regulate the production of hemp and defines hemp in terms of the concentration of THC in a Cannabis sativa L. plant. A Cannabis sativa L. plant is considered hemp, and therefore not a controlled substance, if the THC concentration is not more than 0.3 percent on a dry weight basis. AMS does not have the discretion to change this threshold in the definition of hemp even if this threshold could impact the global competitiveness of U.S.-produced hemp.

Calculating Total THC

The 2018 Farm Bill and IFR identified and described the procedure for testing THC concentration using post-decarboxylation or other similarly reliable methods. The term decarboxylated was defined in the IFR as the completion of the chemical reaction that converts THC-acid (THCA) into delta-9 THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9 THC and eighty-seven and seven tenths (87.7) percent of THC-acid. The term decarboxylated is also commonly used in science and is the precursor to the term ''post-decarboxylation,'' which appears in the 2018 Farm Bill's mandate on the acceptable cannabis testing methodologies for identifying THC concentration levels. AMS adopted this definition in this final rule.

Conversion Efficiency: Many stakeholders opposed USDA's conversion formula described in the IFR. Comments claimed the IFR was based on 100 percent conversion efficiency, which is only achievable under controlled laboratory testing conditions and is not possible outside of a laboratory environment. One comment stated the IFR failed to account for the inefficiency of the decarboxylation process. Numerous other comments characterized the USDA formula as theoretical and explained that the realistic conversion efficiency is between 30 and 75 percent. For example, several commenters cited a peer reviewed study which found 72 percent to be a viable efficiency factor and provided the calculation formula: Total Potential THC = (0.72) × [(0.877 × THCA) × delta-9THC)]. Additionally, a commenter suggested USDA utilize three different conversion factor tiers (0, 30, or 70 percent) depending on the end-use varietal because the THC concentration varies by varietal. The commenter argued that the conversion factors should reflect the different end-uses.

One comment said the calculation for ''Total Potential THC'' should be defined and incorporated into the final rule because the decarboxylation percentage definition is critical for standardization and uniformity in the industry. Otherwise, according to the comment, States could adopt different decarboxylation percentages in their equations, causing confusion for growers. The comment gave the following formulas as examples: (Total potential THC = 0.877 × percent THCA + percent delta-9 THC) as compared to (Total Potential THC = 0.877 × 0.70 × percent THCA + percent delta-9 THC), assuming a 70 percent THCA decarboxylation to delta-9 THC rate.

Another comment explained the need to include delta-8 THC into any calculation for the future state delta-9 THC.

AMS response: Delta-8 THC only exists in a trace amount in marijuana which has a high Delta-9 THC concentration. The Delta-9 THC amount is already low in hemp, so the concentration of Delta-8 THC would be basically undetectable in hemp. A quote from the ''WHO Expert Committee on Drug Dependence Critical Review—Isomers of THC'' regarding the relative amount of Delta-8 THC to Delta-9 THC that can be found at *https://www.who.int/medicines/access/controlled-substances/IsomersTHC.pdf?ua=1.*

The above range means that Delta-8 THC occurs at a level that is roughly 1000 times less than Delta-9 THC. So, if Delta-9 THC was observed at 0.3 percent in hemp, then the Delta-8 THC concentration would be roughly around 0.0003 percent. This contribution is completely negligible and contributes nothing significant to the total THC content. The trace amount of Delta-8 THC is about 100 times less than the uncertainty (MU) of the test method, further demonstrating that it is insignificant and not worthy of consideration in the final assessment of THC for hemp compliance.

AMS is adopting the calculation provided in the IFR for determining total THC. However, the calculation has been clarified to explain the use of the molar conversion ratio to mathematically convert THCA to delta-9 THC. As written in the IFR, the calculation may have been misunderstood as containing a conversion efficiency factor, which is not the case. THCA cannot be added to delta-9 THC without accounting for the difference in molecular mass. Using stoichiometry, a molar conversion ratio (0.877) is used to mathematically convert THCA in terms of delta-9 THC. The molar mass of THCA is 358.47 g/mol and the molar mass of delta-9 THC is 314.45 g/mol. In other words, the mass of THCA has to be adjusted or multiplied by 0.877 to be comparable to the mass of delta-9 THC.

The 2018 Farm Bill requires that the THC content be expressed post-decarboxylation, which means that the conversion of THCA into delta-9 THC to account for the potential total THC in a sample must be taken into account. The term ''potential'' is used because it is not possible to readily, consistently, and reliably calculate the precise extent of

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the conversion of THCA to THC under *any and all* circumstances. Therefore, the calculation for total THC assumes 100 percent conversion efficiency and is hereby retained in this regulation. The calculation for total THC [total THC = (0.877 × THCA) + (delta-9 THC)] assumes that 100 percent of the THCA is decarboxylated, producing to delta-9 THC, meaning that it gives the maximum (or potential, or theoretical) total THC. The final rule includes a definition for total THC to provide more specificity on this issue. This is standard procedure for how theoretical yield is calculated in chemistry. The issue is that theoretical yield does not always equal actual yield. Just because a maximum total THC can be calculated does not mean that the maximum is always obtained; however, there is potential for this maximum to be obtained. The amount of THCA that actually decarboxylates, producing delta-9 THC, is dependent on multiple variables; primarily, the amount of heat it is exposed to and the amount of time it is exposed to that heat. These variables, in turn, depend on what is being done to a cannabis sample (tested via LC, tested via GC, used for smoking, used for extraction, etc.).

Incorporating the use of a conversion efficiency factor into the calculation is problematic due to these variables. Designating different conversion efficiency factors based on intended end use is not practical as the factors can still vary. For example, if an end-use of extraction is intended, there are many different types of extraction processes and even within one specific process there are still many different variables that will affect the conversion efficiency. Ultimately, there is no way to standardize a conversion efficiency factor based on end-use, methodology, or processing. The infrastructure does not currently exist to measure and monitor conversion efficiency.

In terms of conversion during instrumental analysis, many commenters referenced a study conducted by Dussy [17] that determined a conversion efficiency factor for a specific GC setup. The author of the study recommends determining THCA and delta-9 THC separately and calculating total THC (using the equation the IFR stated to use). The author says that ''every total Δ9 THC value determined after decarboxylation [by using GC] gives a minimal content rather than an exact value''. Therefore, the author proposes that labs using GC should calculate their own method's conversion efficiency and then apply their efficiency to their result to increase their total THC value to make it comparable to LC. This is the opposite of what many commenters are proposing in that they wanted LC methods to incorporate conversion efficiency into their LC results to make total THC lower. The further complication of this ''opposite'' approach is that it is impossible without having a single conversion efficiency which, as stated previously, cannot be agreed upon and can vary widely. Furthermore, no matter how the conversion efficiency was to be applied, requiring each lab to determine their own method's efficiency would require significant effort.

Delta-8 THC is a cannabinoid that can be formed from delta-9 THC. It is typically only found in very small quantities in plants, if it is found at all, and is more often obtained by growing a plant with high delta-9 THC and then converting the delta-9 THC into delta-8 THC through an extraction and conversion process in a lab to make a distillate product. It is rarely included in total THC calculations and many labs do not test for it. Delta-8 THC is unrelated to the 0.3 percent delta-9 THC limit or the ''post-decarboxylation delta-9 THC'' that are defined and required in this final rule.

Similarly Reliable Testing Methods

The 2018 Farm Bill states that State, Tribal, or USDA plans shall include ''a procedure for testing, using post-decarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of hemp.''

The IFR included two examples of standard industry post-decarboxylation testing methods that meet 2018 Farm Bill requirements: Gas and liquid chromatography with detection. AMS selected these standard methods of chromatography as the best options for testing but also provided flexibility for alternative sampling and testing protocols if they are comparable and similarly reliable to the baseline mandated by the 2018 Farm Bill and established under the USDA plan and procedures.

Comments: Some comments expressed support for the use of post-decarboxylation. One comment described liquid chromatography as a preferable testing method over gas chromatography because there are no published methods for gas chromatography that show 100 percent conversion of THCA to THC. Comments suggested liquid chromatography is more accurate and representative than gas chromatography. USDA received a comment that because Tribes often do not have ready access to gas chromatography and may only be able to access liquid chromatography, the rules need to allow for a more lenient formula.

Many more comments opposed the IFR requirement to use post-decarboxylation testing methods on the grounds that the IFR too strictly interpreted or unnecessarily developed regulatory requirements that are not consistent with the statutory language of the 2018 Farm Bill. Comments stated that USDA should be flexible and allow for measuring THC levels with ''similarly reliable methods,'' as provided in the statute. Comments claimed that the IFR's exclusive endorsement of gas or liquid chromatography methods ignores this statutory flexibility. Comments further asserted that these two methods may overstate THC levels in hemp samples and that USDA should approve alternative reliable methods that may produce more accurate results.

According to some comments, reliable testing methods have emerged that do not necessitate decarboxylation to accurately measure THC concentrations. For example, comments claimed that some States recognize genetic testing that measures the ratio of cannabidiol to THC in a sample or that confirms a stable cultivar's taxonomic determination in lieu of post-decarboxylation testing to verify compliance with THC limits. Comments explained that genetic testing could include testing seed or testing during early plant growth stages, instead of depending on chemical analyses to measure THC levels in mature plants, which may be inconsistent under unpredictable growing conditions or dependent upon the time of sampling or the specific part of the plant that is sampled.

Comments advocated removing the Total THC testing requirement and recommended USDA work with scientific and agricultural communities to ensure testing standards are established and similarly reliable methods are developed that will accurately identify and measure THC without the forced conversion of other cannabinoids, isomers, and/or acids.

States Operating under 2014 Farm Bill Authority: Comments said that USDA should recognize that States have been effectively regulating hemp production using approved testing methods under 2014 Farm Bill pilot

[17] Dussy F.E.; Hamberg, C.; Luginbühl, M.; Schwerzmann, T.; Briellmann, T.A. Isolation of Δ9 THCA–A from hemp and analytical aspects concerning the determination of Δ9 THC in cannabis products. *Forensic Science International, 149,* 3–10, 2005.

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programs. Comments argued that by applying the IFR's new testing standard, certain hemp plants that are legally grown under one or more of the existing pilot programs are converted into plants that violate the 2018 Farm Bill. Comments contended that while USDA will argue that States and Tribes can propose a testing method other than post decarboxylation, the alternative method still has to measure potential conversion of THCA into THC.

Comments said further that the IFR must consider that hemp testing is an evolving science and that THC testing methods are likely to change over time. They stated that imposing new testing requirements is adding costs for growers, marketers, and regulators, and is limiting the number of labs that can perform these tests, for unnecessary and possibly impermissible reasons. Finally, comments questioned whether USDA has the authority to impose new testing requirements when the statute spells out the testing standards to be applied in granting approval to State and Tribal plans.

A comment cited case law that held that under the Administrative Procedure Act (APA), agency decisions must be reasonable and based on factors and evidence that support the decision, divergent views notwithstanding. It suggested the IFR is arbitrary and capricious under the APA because USDA (1) ''has relied on factors which Congress has not intended it to consider, '' (2) ''entirely failed to consider an important aspect of the problem,'' (3) ''offered an explanation for its decision that runs counter to the evidence before the agency,'' and (4) has made a decision that ''is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.'' It further claimed that a court must sustain an agency's action unless it determines that the agency committed a ''clear error in judgment.'' The commenter asked that their comment be considered within the context of these legal standards, and argued that THCA is not psychoactive; but can be converted into delta-9 THC through a chemical reaction, and that such a reaction may cause otherwise lawful hemp plants to test ''hot.'' The comment projected further that such ''hot'' plants will require disposal, causing a significant and unnecessary loss of hemp production, which will in turn reduce economic development and job growth in many rural communities.

The comment said post-decarboxylation testing was not required under the 2014 Farm Bill pilot program and the same plants that are legal under 2014 Farm Bill could be illegal under the IFR. The comment recognized that the pilot program will not be authorized after 2021 but said current disparate treatment under the two laws is problematic.

AMS response: The 2014 Farm Bill included a 0.3 percent THC level but did not include the requirement for this measurement to account for decarboxylation. Thus States have the flexibility to determine testing methodologies. The 2018 Farm Bill states that procedures for testing use post-decarboxylation or other similarly reliable methods to determine delta-9 tetrahydrocannabinol concentration levels in hemp. AMS stated in the IFR and further adopts the language in this final rule that at this time two methods meet this requirement for decarboxylation. The current acceptable testing methods include gas and liquid chromatography, including LC with UV detection. As other testing methods and alternatives are developed by industry, AMS will review and evaluate their compliance with the 2018 Farm Bill. At this time, genetic testing has not been determined to be a similarly reliable testing methodology.

This final rule provides States and Indian Tribes the option to develop different sampling methodologies based on end use, including grain and fiber, to better account for differences in these plants. Biomass only needs to be tested after remediation to ensure that the sample that represented the plant that once tested above the acceptable THC level did not result in the plant being a controlled substance. This final rule does not set requirements for testing final products—but hemp plants, regardless of their end use, must still use the same testing procedures.

Although the USDA plan does not allow for sampling based on end use, AMS will study the experience of States and Tribes that adopt methodologies based on end use. If it appears that the data and experience of those States and Tribe suggest that their methodologies may be adaptable to the USDA plan, AMS may explore a sampling scheme based on end use for producers under the USDA plan in the future through notice and comment rulemaking.

License Application Period

AMS received comments on the timeframe established in the IFR for submitting applications for a USDA license. The application period extends between August 1 and October 31.

Comments: Several comments opposed the August-through-October window for USDA license applications and renewals. They explained that many outdoor hemp crops are harvested in September and October and that farmers are busy with harvest activities related to other crops as well during that time of year. Comments noted that farmers typically finalize decisions about the coming crop year during the winter, after having time to attend industry and trade conferences, enter into production contracts, and obtain crop loans and insurance. Thus, according to comments, a longer application window or a later application window would give farmers time to plan for the coming year and submit hemp production license applications as appropriate. Comments also noted that a longer application period would give producers time to complete the mandatory background check. Some comments recommended the application period be extended to December 31. Others recommended a winter application period of January 1 to March 15.

Other comments recommended even greater flexibility in application periods. Comments explained that harvest cycles for hemp growers may vary regionally and by operation type. They said a significant number of hemp operations involve year-round cultivation, maintenance of mother clones, clone propagation, indoor cultivation, and/or tissue culture. Time and resources to gather and submit paperwork would not coincide with the down-cycles in productivity and would strain these types of operations. Some recommended USDA adopt a year-round, rolling application period with different deadlines for different operation types or sizes. One comment said it was unclear in the IFR whether State and Tribal plans were required to adhere to the same window provided for under USDA's plan. Several comments urged USDA to provide greater regulatory flexibility at the State and Tribal levels to determine the appropriate application and renewal timeframes for their jurisdictions. An example was given of a State's agriculture department transitioned enrollment from a restricted to an unrestricted timeframe to better manage the logistical challenges related to the enrollment period.

AMS response: AMS agrees with the commenters opposed to a limited USDA license application window and will allow for applications to be submitted for a USDA license year-round. This will provide greater flexibility to hemp producers to determine when to apply for a license or renew their license. This decision recognizes the different regional harvest timetables and production types used by hemp producers, and how flexible timetables

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may allow producers to prepare applications during lower level periods of production activity thereby reducing some of producers' burden on time and resources when the producer is planning the next planting cycle(s). States and Tribes can determine their license application window as it best meets their programs.

FSA Reporting and Information Sharing

AMS received comments on the IFR requirement that hemp producers report acreage and provide licensing information to USDA's Farm Service Agency (FSA). Hemp producers must provide FSA information about their hemp crop acreage, such as its location and size, and must provide the producer license or authorization number issued under the hemp production plan under which they operate. States, Indian Tribes, and USDA must collect the same information, as well as other producer information, under their respective plans. USDA then assembles and maintains FSA and plan information and makes it available to law enforcement agencies, as required under the 2018 Farm Bill.

Comments: Several comments expressed strong support for FSA programs generally, acknowledging that FSA programs provide farmers valuable access to Federal programs and funding, and that registering crop acreage with FSA would help mainstream hemp production within agricultural communities. Comments noted that requiring hemp growers to register with FSA is similar to registration requirements for growers of other commodities and that FSA already compiles reports about other crops. However, many commenters opposed the requirement to register with FSA when they are already required to provide the same information to their licensing authority. Comments argued that the duplicative reporting requirement is unnecessarily burdensome to farmers, could be confusing, and could discourage farmers from seeking hemp production licenses or from growing hemp. One comment speculated that confusion about the duplicative requirement could lead to unintended violations by growers who don't comply. Other comments speculated that lower program participation would inhibit industry growth and deprive States and Indian Tribes of licensing fees that enable them to fund their respective production plans.

Comments noted that the statute does not specify dual reporting of crop acreage to both FSA and the plan authorities under which they operate.

Several comments took exception with the IFR's assumption that most hemp farmers are already registered and familiar with FSA and its programs. Comments from some State agriculture departments asserted that within their jurisdictions most farmers in general do not already work with FSA.

One comment asserted that participation in FSA programs is voluntary and that hemp growers should not be precluded from participating in the commenter's State program because they forego FSA registration. Other comments suggested that farmers growing hemp for personal use and hemp farmers also growing medical marijuana may be hesitant to register crop acreage with Federal agencies.

One comment expressed concern about FSA staffing in rural areas and asked USDA to increase funding to support additional reporting obligations. Another comment suggested USDA develop and fund one standardized reporting program for all plans and growers that would decrease program reporting burdens for all entities. Some comments encouraged streamlining collection of crop acreage information by allowing the use of open-source GIS mapping instead of FSA data and reporting tools. Comments also suggested USDA could rely on States and Tribes to provide grower crop acreage and registration information since they already collect it. Several comments recommended eliminating the FSA registration requirement altogether.

AMS response: AMS acknowledges the FSA reporting requirement may present a hurdle for certain hemp producers, particularly new and beginning farmers, farmers in rural locations, and farmers located in Tribal territories. However, AMS determined that the FSA reporting requirement is essential for two key reasons: Real-time data collection and field-based resources.

First, USDA is required under the 2018 Farm Bill to provide law enforcement with certain ''real-time'' information about who is growing hemp, whether their license is in good standing with the regulatory body issuing the license, and the location(s) of where hemp is being grown. The daily collection of this information through FSA county offices enables USDA to easily transmit the required information to law enforcement. FSA maintains the technology necessary for data collection and geographical land identification. These tools will provide easy access to information needed for law enforcement and for other agricultural programs. This information is compiled in one system, using an information sharing mechanisms currently used by law enforcement and which they are familiar with, and transmitted to law enforcement in a safe manner, which otherwise would not be as readily available through State and Tribal reporting. States and Tribes must provide information to USDA in a format that is compatible with USDA's information sharing system. USDA will work with States and Tribes on system format and other information necessary to share information.

Secondly, FSA's county network is expansive with over 2,000 field office locations. FSA offices provide services both in person and virtually to accommodate the needs of producers.

Its mission runs parallel to other USDA agencies including Risk Management Agency, Natural Resources and Conservation Service, and Rural Development, each of which provide a wide range of benefits and services to local communities. AMS noted that in many cases, FSA is co-located with other Federal, State and county-level government offices which means a variety of services are provided through one central location. These services frequently include information on insurance and risk management programs, conservation and irrigation technical expertise, agricultural credit for operating or marketing, and rural housing loans. As such, the requirement is considered by AMS to be particularly important to new and beginning farmers who traditionally are not familiar with the wide range of programs and services offered by Farm Service Agency and the other USDA agencies.

Definition of ''Lot''

AMS received comments on the definition of ''lot'' for providing geographical determination of hemp production and for sampling purposes. One comment explained that nursery operators and their field operating counterparts may need to file hundreds of permits for a single greenhouse under the IFR. The comment described as an example one greenhouse at a nursery, which may have upwards of 36 benches, in which each bench could have 20 different hemp varieties growing at any one time. The comment said that the IFR would require that single greenhouse to have 720 ''lots,'' and based on most States' current rules, 720 containment plans, destruction plans, and transportation notices when any plants are moved—all possibly requiring agency approval prior to any action

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being taken. It further explained that the growing cycle for nursery stock could be as short as five to six weeks, and different varieties could take their place. The comment said a nursery with five or six greenhouses on a relatively small acreage may have to register thousands of lots and submit thousands of associated plans. It recommended that such a nursery should only be required to designate the actual greenhouse or indoor growing structure itself as used for the cultivation of hemp generally, and the term ''lot'' should not be defined to include any restriction or limitation to the same hemp varietal. The comment proposed revising the definition of ''lot'' to mean a contiguous area in a field, greenhouse, or indoor growing structure used for the cultivation of hemp.

AMS response: In this final rule, AMS is clarifying that the term ''lot'' has the same meaning as other terms used by FSA, as found in 7 CFR 718.2, to mean the same production area, such as ''farm,'' ''tract,'' ''field,'' and ''subfield.'' AMS uses the term ''lot'' to help growers and oversight officials identify farm locations, field acreage, and variety (*i.e.,* cultivar). Although a hemp producer must report their ''lot'' information to FSA, when a producer visits the FSA office to report hemp crop acreage, FSA staff will determine the appropriate designation for the specific location(s) where hemp is being grown. FSA staff will not provide a ''lot number'' to producers as described in the IFR, but instead designate either a ''field'' or ''subfield'' as the unique identifying number. This number is considered equivalent to a ''lot number.''

A lot must always contain the same variety or strain of cannabis throughout the area because the final rule requires lot-based testing.

Certified Seed

The IFR explains that under the 2014 Farm Bill, various States developed seed certification programs to help producers identify hemp seed that would work well in their specific geographic areas.

Comments: Some comments concurred with USDA's decision not to introduce a hemp seed certification program with the IFR. Numerous commenters said that such a program would not be appropriate, that it would be too difficult to regulate, or that it would be premature now. Other comments said a federal hemp seed certification program is not necessary because some States and Indian Tribes had already developed such programs for their jurisdictions or are capable of doing so. Numerous comments said they recognized the difficulty of developing a hemp seed certification program but nonetheless urged USDA to pursue what they characterized as an important effort to allow for consistency among hemp producers when resources permit.

One comment asserted that seed certification is key to a regulated hemp industry and explained that certification is a common practice in the international seed industry. Several comments contended that USDA must develop a seed certification program to prevent hemp growers from purchasing and planting seed of unproven quality—or of the wrong varieties for their purposes—and risking unnecessary financial loss and regulatory violations. Comments claimed that hemp farmers already have difficulty verifying the origin, genetics, and reliability of hemp varieties currently on the market, and that a seed certification program would help farmers know whether seed they purchase is appropriate for their growing conditions or intended hemp product end-use. Numerous comments inferred that a seed certification program would identify hemp varieties that had been tested and proven to reliably produce compliant hemp plants in specific geographic areas.

Some comments argued USDA should not engage in hemp seed certification because plant genetic expression is influenced by environmental conditions and seed certifiers cannot guarantee plants will have THC concentrations within the acceptable range. Other comments countered that assertion and referenced a comment that reported on the analysis of cannabis genome trials and concluded that cannabinoid concentration is 80 percent or more controlled by genetics rather than environmental conditions.

Comments claimed that hemp varieties developed under proper breeding programs and certified in the European Union and Canada had been proven to have stable cannabinoid profiles across multiple regions. They suggest that comparable results could be achieved under a USDA seed certification program.

A comment claimed that the lists of acceptable/approved varieties provided by the processor and/or the governing authority in the State in which the hemp is grown needs to be updated soon and regularly. The policy language may be acceptable, but these lists need attention quickly so that ill-suited varieties are not planted and insured when planted outside of the area and not likely to perform as well.

Some comments asserted it is not necessary for USDA to develop a seed certification program now because the Association of Official Seed Certifying Agencies (AOSCA) has already established national standards for hemp field crop cultivars and is reviewing issues related to the development of certification standards for feminized seed and clones of CBD hemp. Other comments recommended USDA adopt AOSCA standards in the development of a Federal seed certification system, and several comments said that some States have already adopted AOSCA protocols for production of certified seed for commercial sale to farmers. For example, a comment stated that a state currently recognizes 17 hemp seed varieties that have been certified for use in that state in accordance with AOSCA standards. The comment said the state encourages farmers to use certified seed when possible and the state intends to rely on certified seed to streamline the hemp testing program in the future.

A comment clarified that there is a difference between seed that has been certified according to AOSCA standards (or an international equivalent standard) for varietal purity, and seed that has been tested for THC or other compounds. It asserted that some State programs have confused the terminology and urged USDA to clarify the difference and promote use of certified seed for varietal purity. The comment said the hemp industry has access to numerous proven varieties and that plant breeders are making strides to develop more varieties with specific characteristics.

Numerous other comments reinforced the need for seed certification programs that ensure hemp seed meets high standards for proper labeling, reliable germination rates, purity, and the ability to produce healthy plants. Some comments supported seed certification under State or Tribal programs, claiming such localized programs have proven successful in areas where they've been developed and used, and saying that such programs promote crop predictability and reduce uncertainty for farmers. One comment asserted that not only seed, but clone certification is a must, to ensure that growers are getting what they think they are when they purchase clones from nurseries. Some comments asserted confidence in certified seed could be extended to crop insurers, who could provide coverage at prices that reflect reduced risk. Some comments suggested growers using seed certified under a Federal certification program should be indemnified against legal liability or financial losses related to production of hemp that tests higher than the acceptable THC level. Some comments suggested States and Tribes that adopt seed certification programs

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for cultivars reliably producing compliant plants should be authorized to exempt such cultivars from hemp sampling and testing requirements or to employ random, risk-based sampling schemes supported by data about those cultivars.

AMS Responses: AMS is not establishing a seed certification program for hemp. The IFR explained USDA's decision to not establish a seed certification program was due to a lack of accurate data and the advanced technology necessary to develop such a program. The term ''certification,'' as used here, means tested or verified and does not necessarily mean certified for seed varietal purity or genetics. AMS understands that some seed certification-related studies are already under way in different locations and that results of these studies are helpful in production risk mitigation. AMS recommends the use of hemp seed from varieties that have undergone a variety review, following the process outlined in the Federal Seed Act and associated regulations, (7 U.S.C. 1551–1611 and 7 CFR part 201), and produced according to AOSCA standards. These types of seed have been screened and tested for purity and are properly labeled. This final rule maintains flexibility for stakeholders to continue with trials of seed varietals and does not prohibit the use of any hemp varietals by industry. Updating the varieties list is a State and Tribal issue, as they developed them. This final rule does not address seed certification. However, USDA will consider such a program in the future if enough information is available. If there is sufficient data to support a program, USDA will explore adopting one through rulemaking under the APA.

Separately from this hemp production regulation, AMS administers the Plant Variety Protection Office (PVPO). This office actively accepts applications of seed-propagated hemp for plant variety protection. Under the U.S. Plant Variety Protection Act, PVPO examines new applications and grants certificates that protect varieties for 20 years (25 years for vines and trees). PVPO provides intellectual property protection to breeders of new varieties of seeds and tubers. Certificate owners have rights to exclude others from marketing and selling their varieties, manage the use of their varieties by other breeders, and enjoy legal protection of their work.

Regulations for Different Operations

The 2018 Farm Bill requires any producer growing hemp to be licensed either by their applicable State or Tribal authority or USDA. The IFR further required that an authorized sampling agent collect samples from floral material for THC concentration testing in order to determine compliance with the Federally established THC threshold. Some operations growing hemp do not grow to the stage where flower material is present and as such cannot test the floral material.

Clones and Cloning: Comments noted there are a significant number of grower operations that cultivate and produce hemp plants year-round. Some of these operations grow hemp varietals and maintain mother clones and/or grow plants for clonal propagation or tissue culture propagation purposes. Comments explained that hemp varietals grown in these types of production systems do not usually reach full maturity. According to comments, before achieving the floral stage of development, many of these hemp varietals are sold and enter the stream of commerce as starter plants that other licensed hemp growers may transplant to a field or greenhouse to be raised to full maturity and harvest. Comments questioned how immature or juvenile hemp plants with no floral material to test can demonstrate regulatory compliance under the IFR.

Microgreens: Comments raised similar concerns about hemp raised and marketed as microgreens or other types of immature plants intended for human consumption, noting that these plants cannot be tested for regulatory compliance because they have no floral material to test. Comments encouraged USDA to develop a regulatory process in which THC concentration testing may occur for immature, non-flowering hemp varietals so that operations like those producing clones or microgreens can support the development of the hemp industry.

One comment representing a hemp cultivation and distribution corporation in several states provided a pre harvest test on a microgreen variety grown in two different States. One State test reported 0.17 percent total cannabinoids and the other test reported 0.0193 percent total cannabinoids. Based on these tests, commenter indicated that hemp leaf greens/microgreens and related crops are not in danger of excess THC.

Hemp Research: Numerous comments stated the need for a separate regulatory scheme to support hemp research. Comments explained that the plant breeding process by its nature requires breeders to bring multiple varieties of plants to maturity in order to evaluate their characteristics and potential use in ongoing hybridization projects. They said, for example, that plants with desirable characteristics such as frost and drought tolerance or pest resistance must be identified and preserved, while plants with unwanted genetic traits or diseases must be separated and destroyed in order to stabilize the genetics for THC expression and other desirable traits and understand how environmental factors, disease, and insect pressure affect the expression of those traits. According to comments, the THC concentration in such plants could exceed the acceptable THC level in the IFR and plant breeders could find themselves in violation of the law. As well, they explained that the IFR's disposal requirement could force breeders to destroy valuable plant material and waste years of work, as well as funding.

Other comments asked USDA to support research into hemp pollination and drift. Comments reported industry concern that cross pollination could reduce the value of neighboring CBD flower crops. They asked USDA to focus on grain producing geographic areas and varieties to provide the science to support large acreage growers.

Comments explained that the IFR's THC threshold of 0.3 percent reduces the incentive to conduct hemp variety research because of the likelihood that many plants will exceed that threshold. For example, comments suggested the THC limit for hemp plants in licensed breeding programs could be raised to 0.6 percent or 1.0 percent or higher. They suggested breeders be allowed to raise plants to maturity, collect data and save seed for further research, and be required to destroy noncompliant plant material at the end of the growing season. Other comments suggested that breeders and researchers should not have to wait for hemp plants to flower and undergo testing before they can remove and destroy those plants with undesirable traits.

Comments asserted that hemp strains used in genetic studies authorized by the 2014 Farm Bill and compliant with other program regulations may now be in jeopardy due to the uniform application of the IFR's 0.3 percent THC threshold and plant disposal requirements. They noted how a regulation that requires the disposal of what was previously compliant hemp will undermine the efforts and millions of dollars invested by farmers and researchers. Other comments indicated that not having the ability to replicate certain genetic traits from a plant that is noncompliant can slow the development of industry.

Comments from and about university research programs suggested that USDA make land grant universities eligible for special research carve-outs or regulatory

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exemptions to allow them to continue research efforts. Other comments suggested USDA define criteria under which researchers and other plant breeders could be eligible for special research program exemptions. They suggested USDA develop criteria for certification or qualification of hemp researches and breeders, and some suggested those meeting specified criteria could be exempt from the IFR's crop destruction and reporting requirements, provided they adhere to other restrictions, such as prohibiting research material from entering the chain of commerce, disposing of non-compliant plant material, and limiting plot size. Some commenters noted that without such allowances their university administrators would not allow them to continue research with any form of cannabis, including hemp, due to concerns about Federal grant disqualification.

One commenter requested an exemption for Tribal research facilities so that they will not have to destroy all non-compliant plants.

Comments noted that USDA's National Institute of Food and Agriculture had not issued requests for applications on hemp research and that hemp was not listed for funding under the Specialty Crop Research Initiative. Comments suggested more agronomic research is needed to address current gaps in knowledge related to hemp production and management and to standardize seed.

AMS response: Due to the variability in immature plants across producers, States, and Tribes, and the lack of consistency across varietals, USDA is unable to establish or standardize an approach to dealing with immature plants for USDA licensees. However, AMS acknowledges operations that grow hemp for certain purposes that do not bring plants to their flowering stage like clones and microgreens, may not need to meet the same sampling and testing requirements as operations that grow flowering hemp. The final rule provides States and Tribes the flexibility to consider performance-based sampling protocols to address these concerns. As allowed under the AMA, States and Indian Tribes can be more restrictive and may impose sampling and testing requirements on these producers.

USDA also acknowledges that research institutions face special circumstances when conducting hemp research. Accordingly, this rule provides sampling and testing flexibility to these institutions and producers working with them to conduct hemp research under the USDA plan. Producers that produce hemp for research must obtain a USDA license or a State or Tribal license. However, the hemp that is produced for research is not subject to the same sampling requirements or the requirements pertaining to non-compliant plants, provided that the producer adopts and carries out an alternative sampling method that has the potential to ensure, at a confidence level of 95 percent, that the cannabis plant species *Cannabis sativa* L. that will be subject to this alternative method will not test above the acceptable hemp THC level. USDA licensees will need to submit an alternative sampling method to USDA for approval and shall ensure the disposal of all non-compliant plants. USDA licensees shall also comply with the reporting requirements including reporting disposal of non-compliant plants.

AMS views this flexibility as necessary to help support research and development as it relates to hemp production by industry, particularly in its infancy. This decision allows these types of research facilities and institutions to oversee the study of hemp plants through trialing and genetics research. Over time, the flexibility provided by this final rule will help to stabilize industry by providing greater understanding of hemp genetics and how certain varietals respond differently to growing conditions in various geographic locations. All producers are expected to benefit from such knowledge as information about more stable and consistently reliable hemp varietals becomes available. Any non-compliant plants produced by research institutions as a result of research and development will still need to be disposed and disposal will need to be verified with documentation. Research institutions that handle ''hot'' hemp must follow CSA requirements for handling marijuana.

Sampling Agents

This final rule reiterates that samples of hemp collected for purposes of testing THC must be collected by sampling agents, or by Federal, State, Tribal or local law enforcement agents authorized by USDA to collect samples. Requirements and training materials for sampling agents are provided on USDA's website.

Third-party Sampling Agents: Some comments supported the use of third-party sampling agents to help offset the cyclical demand for hemp sample collection and to ensure integrity in the sampling process. Comments noted that some State agriculture departments have relied on in-house personnel to perform sampling activities and that these States did not use or require third-party sampling agents during piloting.

One comment reported use of third-party certified samplers for the 2020 season, and as of the date of their comment, had employed 74 certified sampling agents. The commenter said the State recommends producers make appointments with sampling agents 30 days in advance prior to intended harvests, and that they had not received any feedback regarding unavailability of sampling agents based on the 15-day window. The comment went on to report that the State had received numerous anecdotes of next-day availability for sampling, which the comment suggested would not be possible without the use of third-party sampling agents.

Resources: Several commenters worried that there would be insufficient numbers of appropriately trained, USDA-approved sampling agents available during harvest periods to ensure that all crops could be sampled, tested, and harvested within the 15-day window specified in the IFR. They asserted that sampling backlogs and delayed testing and harvesting would cause crops to mature beyond the acceptable hemp THC content concentration, resulting in crop disposals and financial losses for farmers. Several comments said producers in rural and remote mountainous areas would be particularly impacted, since sampling agent travel into those areas would require extra time and expense.

Comments described how some States developed sustainable hemp oversight programs using risk-based sampling methodology to support regulatory monitoring of hemp growers. They asserted these same States would find it difficult to meet the IFR's sampling requirement because of a limited budget to hire and train additional personnel for sampling all hemp production. Comments reported having to make appointments for sample collection a week in advance under risk-based sampling plans and predicted it would be even harder to arrange for sample collection on a timely basis under the IFR's requirement that all hemp lots be sampled and tested.

Commenters presented two proposals to alleviate this strain—allowing producers to collect their own samples and reducing the volume of farms and plants from which samples are collected.

Some commenters requested that USDA compile a publicly available national list of sampling agents.

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Sampling Agent Training: Comments highlighted the importance of providing robust training for sampling agents and recommended subsequent annual, documented refresher training be required. Some comments recommended USDA develop and implement a sampling agent certification scheme, while others suggested States and Tribes retain the authority to develop sampling agent training. Other comments suggested including a sampling agent training application on the USDA website.

Other Comments on Sampling Agents: Other comments objected to the IFR's provision that sampling agents be given unlimited access to all areas listed in the producer's license. Comments claimed that this provision, in addition to the fact that default sampling agents may also be law enforcement representatives, seems to associate the now legal hemp industry with potential illegal activity. Comments stated further that while State, Tribal, and USDA personnel may require such access for audits or other purposes, broad access is not necessary for sampling hemp, and that sampling access should be limited to cannabis plant material being cultivated as hemp.

Other commenters suggested that sampling agents should be agricultural specialists rather than law enforcement specialists in order to alleviate possible tension between Indian Tribes and law enforcement, and would ensure that the sampling agents have an understanding of the agricultural product they are working with.

AMS response: AMS agrees with the many commenters that sampling agent training should be enhanced. Standardized training for sampling agents will help achieve regulatory consistency. As such, AMS will provide training documents for sampling concurrently with publication of this final rule. The revised sampling agent training will establish uniform and standardized criteria, including sampling processes and procedures, to ensure the sampling agents understand regulatory provisions of this final rule and the appropriate processes associated with sampling activities. This will help ensure that sampling done by different agents will be conducted similarly. AMS anticipates this will minimize variances in sampling practices that may affect the samples and ultimately the test results.

Training documents will explain how sampling agents can meet the sampling requirements of this final rule. States and Indian Tribes with an approved plan may require the sampling agents used by their licensed producers to take the USDA training, or they may develop their own custom training. This decision does not change the requirement that designated agents collect samples. We are retaining the requirement from the IFR that the use of third-party agents is acceptable. Requiring sample collection by trained agents ensures that samples are collected consistently throughout the industry and no conflict of interest exists between the sampler and grower.

Further, AMS has addressed commenters' concerns about adequate resources by allowing for States and Indian Tribes to design a sampling plan in accordance with the AMA and this final rule that suits their needs and resources. Additional discussion of sampling methodologies and flexibilities is included elsewhere in this final rule.

AMS agrees with the concerns that sampling agents be given unlimited access to all areas listed in the producer's license and is clarifying that sampling agents need access only to areas where the hemp is grown and stored so they can perform their sampling work.

AMS agrees with comments that allowing third-party individuals to become certified hemp sampling agents creates jobs, gives producers greater flexibility during the harvest season, and allows the States and Tribes to reallocate resources. The final rule does not limit sampling agents to law enforcement officers and does not prevent agricultural specialists operating as sampling agents. Because States and Indian Tribes with approved plans may approve their own sampling agents, USDA encourages States and Tribes to maintain their own lists of sampling agents.

Sampling Methodology

AMS posted supplemental Sampling Guidelines for Hemp Growing Facilities on its website. The guidelines describe sampling procedures, including the number of cuttings to take for sampling each lot and how to pace a hemp field when sampling. A few comments addressed the Sampling Guidelines and recommended alternative sample volumes and field sampling patterns.

End-use/risk-based sampling: Comments asserted that hemp sampling requirements should differ based on the crop's end-use, primarily whether the crop is used for grain and fiber production or for cannabinoid extraction. They contended that the IFR requirement to sample every hemp lot, regardless of the crop's end-use, is expensive and burdensome for States, Indian Tribes, and individual growers. Comments generally discouraged requiring sampling and testing every lot for THC since THC concentration is significantly lower in male plants and grain/fiber varietals. Comments from State agriculture departments that administer pilot programs under the 2014 Farm Bill also explained how risk-based sampling requirements under their programs function. Comments emphasized that a ''one-size-fits-all'' regulation is inappropriate and discourages innovation as there are different risk-profiles for hemp based on its end-use.

Comments maintained that grain and fiber varietals are less likely than cannabinoid crops to exceed the THC threshold and argued that assessing all hemp by the same standard may result in strained oversight resources and inefficiencies. One comment asserted that THC concentration in varietals grown for grain is reduced dramatically by the production of seeds in the flower and, therefore, hemp grown for grain is at lower risk of exceeding the THC limit. Comments also noted that the flower parts, where a majority of the THC is concentrated, do not fairly represent the THC content of the entire plant, which is used in biomass and fiber production.

One State agriculture department noted that many of the seed and fiber varietals being grown in their State were originally bred in Canada and have been selected for low THC content as part of Canada's hemp program for many years. Several trade association comments noted that hemp grain/seed is not a source of cannabinoids, and that grain and fiber varietals are largely developed from certified, pedigreed seed that meets all THC testing standards. Commenters contrasted that with hemp crops grown for cannabinoids, and that the latter show higher phenotypic variability and lack of uniformity in the field because they have received less focus in breeding programs. One comment stated that hemp varietals grown for cannabinoid production often have questionable origins and are at a greater risk of producing higher THC than varieties grown for grain or fiber. Another comment claimed there are currently no certified varieties of hemp for CBD production.

Many comments agreed that hemp grown for cannabinoid production is more likely to exceed acceptable THC limits. Data from 2019 submitted with a comment showed that 13 percent of hemp samples tested exceeded 0.3 percent THC, and all were CBD varietals. The comment further recommends that certified seed varieties should be sampled and tested from a random selection of hemp grain and

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fiber fields 30 days prior to harvest. For uncertified varieties, it recommends requiring a post-harvest test, as well as a pre-harvest test of a random selection of fields within 30 days of harvest. According to comments, those hemp crops being grown for cannabinoids should be subject to higher scrutiny and more frequent testing.

Another commenter cited data from the Midwestern Hemp Database [18] showing that many publicly available varieties are exhibiting a linear (or curvilinear) relationship between Total CBD (%) and Total THC (%). Given this presumed relationship, Total CBD percentages are often not able to exceed 8 percent without exceeding the regulatory threshold of 0.3 percent THC. The commenter said these moderate levels of CBD production can have significant impacts on profitability as growers and therefore a whole plant testing methodology would help to mitigate this linear relationship.

Comments identified States and other institutions where they think risk-based oversight modeling works to ensure hemp is at 0.3% acceptable hemp THC level. For example, the Kentucky Department of Agriculture publishes a ''Varieties List'' to track THC content across hemp varieties. Comments characterized this as a useful tool for hemp farmers when planning production cycles and selecting hemp varietals. Several comments also described how, at the State level, other measures support risk-based oversight, like randomized sampling crops of a percentage of the total grower population or the use of risk criteria to identify ''high risk'' growers. Commenters credited these types of practices and activities with allowing states to efficiently oversee hemp production under pilot programs. Other comments described how financial institutions routinely incorporate risk-based modeling into the risk assessment of lending decisions, and that similar modeling should be adopted by USDA for sampling and testing.

Comments argued that subjecting all varietals to the same regulatory requirements under the final rule will compound logistical challenges to oversight bodies, strain resources, and increase costs for low-risk farmers. They said testing based on hemp's end-use created a more flexible approach to oversight while benefiting the farmer.

Two state department of agriculture comments supported end use or risk-based sampling methods in order to account for producers using certified seed, producing hemp for industrial use purposes, fiber, grain, seed, extraction of biomass, and indoor producers growing plants only in vegetative state for research or resale that pose a low risk for detectable THC content.

Several other comments suggested ways USDA could incorporate risk-based sampling into the domestic hemp production program. Comments recommended USDA evaluate and consider allowing greater regulatory flexibility for States and Tribes to develop and use risk-based modeling to guide their sampling and testing activities. According to comments, this approach would help offset the anticipated strain on resources during peak sampling that would otherwise result under the IFR requirements.

Two State agriculture departments recommended that crops produced from AOSCA-certified seed, which they said currently only include grain and fiber varietals, be considered low-risk for testing and compliance purposes. Comments said that as more CBD hemp varietals are developed and certified, they could also be subject to less stringent testing protocols.

A few comments suggested the adoption of a random risk-based sampling and testing scheme to reduce grower costs and relieve pressure on approved labs by reducing the number and volume of required tests. One comment indicated State hemp regulators have successfully developed sampling requirements for end-use that ensure adherence to State and Federal regulations, while allowing for flexibilities around State resources. Other comments sought requirements establishing a minimum number of cuttings per lot (*e.g.,* ''5'' cuttings per lot regardless of size.) For example, one comment suggested that when sampling lots of less than 1 acre, taking cuttings of one plant will not allow for a representative sample, so a minimum of 5 plants be identified for cuttings. Another comment said that the sampling requirements in the IFR, as applied to a 170-acre field, could require the sampling of as many as 110 plants from that field which would be impossible for a state department of agriculture to meet. As an alternative, USDA might provide a fixed sliding scale (for example, a lot of less than 10 acres requires 5 plants; a lot between 10 acres and 20 acres requires 6 plants; and so on) rather than leaving those calculations to each state. Alternatively, another comment explained how their state sampling protocol currently utilizes the parameters of a minimum of 6 cuttings per lot or acre, whichever is smaller, with the option for producers to increase the quantity of cuttings collected as they see fit (up to 150 cuttings per lot). Another comment described how contracted labs for their state have requested at least 40 grams of wet material and up to 60 grams if the licensee is also needing additional testing such as heavy metals, pesticides and mycotoxins.

One comment reported the results of a 2019 controlled study where the top 12 inches of the plant and the top 2 inches of flowering material were collected from each of 83 plants, for a total of 166 samples. The samples were tested using gas chromatography with flame ionization detection. Test results showing total delta-9 THC of the 2-inch cuttings were, on average, 0.0273 percent higher than results for the 12-inch cuttings. The comment interpreted the results to suggest that including vegetation from the entire plant yields lower THC results, and that all parts of hemp plants should be sampled because producers generally harvest the entire plant.

One comment reported that their State requires samples for any size lot to include 30 buds (subsamples) to insure there is large enough volume of material to provide for adequate sample testing. Another comment reported that State staff are directed to look at a cultivar and evaluate it for uniformity with respect to maturation, height, color, and basic plant architecture. According to the comment, uniformity within a cultivar results in fewer plants sampled than a cultivar exhibiting greater phenotypic diversity for the same acreage. The comment supported providing States with authority to establish sampling protocols, given the significant variation in plant counts between fields (on a per acre basis) and phenotypic diversity within and between cultivars. The comment also recommended that AMS provide guidance on a recommended number of plants to be sampled per unit area, including the plant density for each sample number recommendation.

One comment advocated revisions to USDA's sampling guidelines. The commenter said the State has had to deviate from USDA's sampling table, specifically for smaller lots. According to the comment, taking a sample from one plant does not provide enough material for lab testing, and the State has had to bear the cost of taking a second sample. The comment mentioned that some of the State-contracted labs have requested at least 40 grams of wet material and up to 60 grams, if the licensee is also requesting additional testing, such as for heavy

[18] *https://farmdoc.illinois.edu/field-crop-production/hemp/midwestern-hemp-database-a-new-tool-for-hemp-growers.html.*

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metals, pesticides, and mycotoxins. The comment also explained that to keep from delivering excess material from large lots to labs, inspectors take the required number of cuttings, then homogenize the sample, keep the required 40 to 60 grams, and leave the remaining sample material in the field. The comment supported a sampling protocol that would provide adequate testing material without unnecessarily overcutting plants material.

One comment reported results of a poll they conducted among States after the end of the 2018 growing season. According to the comment, three States—New York, Pennsylvania, and Minnesota—reported they had analyzed the THC content in microgreens, and none were found to be above 0.3 percent total THC.

One comment reported that their State has tested every hemp lot produced in Minnesota in the past five years, and that hemp grown for grain and fiber has never tested above the 0.3 percent total THC limit. According to the comment, varieties grown in Minnesota are certified varieties found either on the Health Canada List of Approved Cultivars or the European Union's Organization for Economic Co-operation and Development List of Varieties Eligible for Seed Certification.

One comment reported their State has implemented a risk-based sampling frequency schedule, under authorities provided for in the 2014 Farm Bill, using end-use and certified seed as guidance. According to the comment, official total THC results collected from regulatory samples and formal research samples showed that hemp grown from certified seed have a low risk of testing above 0.3 percent. Additionally, the grain or stalk components of hemp have zero to negligible levels of total THC. The comment recognizes that more research is needed in this area but is confident that the utilization of hemp variety categories to determine the department's sampling frequency has been successful to date.

AMS response: AMS agrees that States and Indian Tribes need more flexibility in developing sampling methodologies. For States and Indian Tribes with primary regulatory authority, USDA is altering the sampling requirements in this final rule to allow performance-based sampling methodologies. Information submitted by States that participated in the 2014 pilot program show various ways these States are already using performance-based sampling. Some States are using a list of varieties that work in their geographical area while others rely on evaluation on what they consider high risk producers. USDA finds the data submitted by commenters to be reliable because these States have been growing hemp since the 2014 pilot program started and they have sufficient data to develop their sampling plans. AMS agrees with commenters that the performance-based concept is the same method that financial institutions use. Further, performance-based programs are also used by other scientific and Federal agencies such as USDA's Food Safety and Inspection Service and FDA.

AMS finds that it makes sense to encourage States and Indian Tribes to consider performance-based alternatives when developing sampling plans. The final rule provides the standard; however, States and Indian Tribes have the flexibility to determine how to achieve that standard tailored to their specific needs.

The sampling requirements for State and Tribal plans allow for States and Indian Tribes to develop unique sampling protocols for hemp licensees under their jurisdiction. State and Tribal plans must include a procedure for accurate and effective sampling of hemp that meets the requirements of the final rule. The method used for sampling must be sufficient at a confidence level of 95 percent that no more than one percent of the plants in each lot would exceed the acceptable hemp THC level. Alternatively, States and Indian Tribes may design a sampling method that is performance-based that ensures, at a confidence level of 95 percent, that plants will not test above the acceptable hemp THC level. This plan must be part of the State or Tribal plan. A performance-based method may consider: (1) A seed certification process or process that identifies varieties that have consistently demonstrated to result in compliant hemp plants in that State or territory of the Indian Tribe; (*2*) whether a producer is conducting research at an institution of higher learning or that is funded by a Federal, State, or Tribal government; (*3*) whether a producer has consistently produced compliant hemp plants over several years or several seasons; and other similar factors. USDA believes this will provide needed flexibility to States and Indian Tribes to develop logical and enforceable sampling requirements that take into consideration their unique circumstances. AMS will still require States and Indian Tribes to submit their individual sampling requirements for review as a component of the plan approval process. Sampling protocols submitted by States and Indian Tribes must comply with the thresholds established by the 2018 Farm Bill and this final rule. If performance-based sampling requirements are not included in a State or Tribal plan, every lot, and thereby every producer must be sampled and tested.

When evaluating sampling protocols submitted by States and Indian Tribes, USDA will take into consideration whether the performance-based factors the State or Indian Tribe used have the potential to ensure compliance at a 95 percent confidence level. USDA licensed producers are required to comply with the sampling requirements in this final rule. Additional guidance on sampling for USDA licensees or States and Indian Tribes that decide to use these guidelines is available on the USDA website at *https://www.ams.usda.gov/rules-regulations/hemp/information-sampling.* USDA may develop a performance-based sampling in the future if data is available and if it deems appropriate. Separate rulemaking and comment process will be necessary to establish a performance-based sampling plan by USDA.

USDA plans to audit State and Tribal activities to assess program compliance with all Federal requirements, which includes review of the performance-based sampling implemented by States and Indian Tribes.

Sampling Guidance: A comment noted that although the sampling protocol was issued as a guideline, it appears to be binding with regard to how hemp must be sampled. The comment said AMS should clarify that there may be other acceptable sampling procedures that would meet the IFR's sampling requirement. The comment explained further that some States operating hemp programs under the 2014 Farm Bill have established detailed hemp sampling protocols that producers are used to and should be allowed to continue.

Another comment appreciated the IFR's provision that the AMS Sampling Guidelines may need continual updating and refinement as industry, academia, and government discover new evidence, science, products, and innovations.

A comment described the hemp field sampling plan they adopted from Florida's nematode sampling plan. The plan recognizes that nematodes are unlikely to be evenly distributed throughout an orchard or field, which would also allow for accurate detection of THC fluctuation within a hemp field. The comment said Florida's sampling plan is accepted by every State and country to whom they send citrus plant material that has been screened for nematodes and recommended AMS

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revise the hemp Sampling Guidelines to incorporate Florida's sampling plan.

A comment said Kentucky requires cuttings from five plants per lot, believing this standard provides a reasonably representative sampling of the plants in each lot. It opposed the sliding scale in AMS's Sampling Guidelines, saying the sliding-scale calculation relies upon a decades-old pesticide residue sampling regime that may or may not be appropriate for calculating confidence levels in a hemp plant's THC levels. The comment asserted the sliding scale formula, which depends on a variable factor based on historical data, is likely to create state-to-state variations in the number of samples that must be collected, and would require States with historically lower rates of non-compliant THC test results to take more samples per lot than those States with historically higher rates of non-compliance, which the comment found to be illogical. The comment explained that applying the Sampling Guidelines' sliding scale calculation to a 170-acre field could require the sampling of as many as 110 plants from that field. It went on to say that sampling a single field under that scenario would overburden available sampling and laboratory staff, make transporting sample material difficult, and make grinding sample material an impossible workload. The comment recommended AMS specify a single number of plants to be sampled from every lot, regardless of the lot's size, or publish a fixed sliding scale for industry-wide use, rather than leaving those calculations to each State. This comment was supported by several state departments of agriculture.

A comment noted the importance of moisture content consistency in compliance sampling and recommends 8–12 percent moisture content standardization. They also noted the need for best practices to be identified for drying sample material.

Several comments said USDA's sliding scale sampling protocol results in too little a sample for small acreages and too large a sample for large acreages. Comments asserted, for example, that one cutting for four acres or less would not be suitable to collect a representative sample and could put small acreage farmers at a higher risk of being violative or not might be sufficient to capture uncertainty related to population variability in a newly established crop. Another comment said that a true representative sample needs to entail multiple subsamples collected spatially across a field and pooled into an average sample. Further, according to the comment, since cannabinoids tend to increase along the height of the plant, floral material should be sampled at random heights from plants rather than all from the tops of plants to be representative.

Another comment recommended revisions to the Sampling Guidelines to provide that sampling agents should sample fields in a zig-zag pattern. The comment further recommended that AMS revise the Sampling Guidelines to provide that three cuttings should be taken from every plant sampled, and that the three cuttings should be taken of floral, stem, leaf and stalk material at three different points on the plant. It argued that floral material makes up only 25 to 30 percent of hemp plants and that, to be truly representative of the sampled plant, the sample should consist of cuttings of all plant materials from throughout the plant.

One comment recommended requiring that samples consist of a minimum of 4 ounces of material to provide an adequate amount for testing. Another comment suggested USDA research and review multiple sampling protocols and select the best among them.

AMS response: AMS agrees that establishing clear and standardized Sampling Guidelines is important for all hemp producers and States and Indian Tribes with primary regulatory authority over hemp. AMS issued Sampling Guidelines and is updating that guidance to reflect the changes from the IFR to this final rule. States and Indian Tribes with USDA-approved hemp production plans may develop their own sampling procedures that take into account regional and other differences and are performance-based, so long as those procedures meet the requirements in the regulations at § 990.3. The entirety of the State or Tribal sampling plan, including any guidelines, must be included in the State or Tribal plan submitted to USDA for approval. When developing such plans the State or Indian Tribe must follow the requirements of this final rule that relate to where the cutting takes place including only flower material, and the number of inches necessary for sampling. Specific to sample size or weight of a cutting, AMS does not agree that establishing a specific volume is prudent given the variances in flower size and densities, and different scales of hemp production. It would be difficult to consistently sample at an exact weight of plant material across the spectrum of producers and therefore is not included in this final rule. Rather, AMS specifies a length (approximately five to eight inches) from the ''main stem'' (that includes the leaves and flowers), ''terminal bud'' (that occurs at the end of a stem), or ''central cola'' (cut stem that could develop into a bud) of the flowering top of the plant.

This is considered appropriate and fair to balance the collection of sufficient plant material necessary for compliance laboratory testing while avoiding the need to cut excessive and unreasonable amounts of plant material.

Further, AMS determined this final rule must provide some additional degree of flexibility for States and Indian Tribes in the development of their sampling plans, which is why as an alternative, this final rule allows for performance-based sampling methodologies in State and Tribal plans.

Flexibilities afforded to States and Indian Tribes developing their own hemp production plans will allow them to incorporate best practices, as those change and develop over time. For example, States and Indian Tribes can adapt field-walking patterns to various sized and shaped hemp grower operations. AMS believes that a national standard would be difficult to consistently apply given the various grower operations and that standard ''zig-zag,'' or letters ''M'' or ''Z'' walk patterns may not be feasible for sample collection of micro-acreage producers, very large scale producers or those with polygonal hemp lots.

As an alternative option, AMS has updated the Sampling Guidelines and Protocols in conjunction with the publication of this final rule. This resource document is available online and offers guidance States or Indian Tribes can adopt and incorporate into their own USDA-approved sampling procedures.

Flower Versus Whole Plant Sampling

The IFR requires the collection of samples from the flower material of hemp plants for laboratory testing.

Comments: Several comments expressed support for sampling only hemp flowers, as provided in the IFR, although many recommended changes to the overall flower material sampling requirements. Those recommendations and commenters' explanations for them are addressed in another section of the comment analysis. Numerous comments opposed the IFR's floral material sampling requirement, preferring instead composite sampling of the flowers, stems, stalks, and seeds, and asserting such samples would be more truly representative of the entire plant and lot. Numerous comments agreed that cannabinoid concentrations are higher in the flower than in other parts of the plant, and many comments

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argued that sampling only floral material would cause more samples to inappropriately and unfairly test ''hot'' and lead to unwarranted and costly crop disposals.

Several comments said that sampling only the flowering material of the hemp plant is inconsistent with the definition of industrial hemp, as amended by the 2018 Farm Bill, which refers to the whole hemp plant. Comments asserted that the statute did not limit sampling to floral material and challenged USDA's interpretation of the statutory sampling requirement. As well, comments argued that requiring sampling of only flowering material could lead to legal challenges from producers who would be forced to destroy hemp that may be statutorily compliant, but not compliant with the IFR. They recommended that the regulations provide for sampling the whole plant and that USDA define the term ''whole plant'' to include the flower, stalk, and leaves.

Some comments stated that sampling only flower material ignores the hemp grown for seed and stalk end-uses, and not for cannabinoids. Comments claimed that sampling and testing only flowering material would limit industry diversification in terms of producing hemp for biomass intended for uses other than THC production. To address this, several recommendations for revisions to the IFR's sampling requirements were offered. Some comments recommended taking larger samples from prescribed parts of hemp plants that would include other than flowering material. For example, both State departments of agriculture and Indian Tribes recommended taking branch samples from two or more specified parts of plants that would include flowers, stems, stalks, and seeds, and proposed a range of sample lengths they considered appropriate, from 4 to 18 inches. Some recommended taking samples of the lower part of branches as well as flowering tips from the same plant. Several comments urged USDA to adopt risk-based sampling requirements that would better align with the intended end-use of hemp crops, like grain and fiber. Other comments recommended revising the IFR to allow States and Indian Tribes to design sampling requirements to meet the particular needs of producers in their jurisdictions, like producers who are well experienced with growing hemp and understand the potential to grow a non-compliant crop.

Commenters expressed the widely shared view that cuttings for hemp samples must come from various locations on the plant, not just the top third as indicated by the Sampling Guidelines. They explained that marketable hemp product comes from a composite of the entire plant, not just the top, and asserted that flower material samples should likewise come from the entire plant to ensure the sample accurately reflects the lot from which it is taken. Comments also voiced the need for greater regulatory clarity on the size of the floral cuttings due to concerns that no regulatory requirements address floral collection by authorized sampling agents, and variances in types of materials collected may affect test results.

Cannabinoid Concentrations: Comments described phytochemical characteristics of *Cannabis sativa* L and argued that samples taken from only one part of the plant are not representative of the whole plant. Some comments contended that flowers at the top of the plant have higher concentrations of THC and other cannabinoids—by as much as 30 percent, according to some—than flowers elsewhere on the plant. One comment cited a study [19] that found that top-only sampling, as prescribed in many State testing programs, leads to an overestimation of THC content by nearly 37 percent. The study stated that to better represent total crop THC levels, samples should be taken from the top, middle, and bottom of plants in equal quantities. Commenters asserted that sampling flowers from only the top of the plant could lead to incorrect conclusions about the lot's compliance and lead to inappropriate and costly lot disposals.

Other comments contended that THC concentrations are not necessarily higher at the top of the hemp plant. One comment used data to show that the distribution of THC concentrations throughout hemp plants is not consistent between varieties. It cited a 2019 comparison study in which 4-inch cuttings of floral material from two hemp varieties were taken from the top, middle, and bottom sections of plants. In one variety, total THC was highest in samples taken at the top, and lowest in samples taken from the bottom of plants. In the other variety, total THC varied little between samples from plant top, middle, and bottom positions. The comment said the data refutes the belief that THC levels are highest at the top of the plant and supports sampling from all parts of the plant to obtain an accurate representation of each lot's composite marketable hemp product.

Sampling technique: Some comments cautioned that inconsistent potency measurements may be the result of divergent sampling approaches and recommended that USDA provide regulatory clarity as to the proper sampling process.

A comment encouraged USDA to establish clear numeric designations of how much floral material is taken from each plant. Comments varied in their suggestions on sample cut including: 12 inches per plant; cuts from the top and bottom 18 inches of a terminal branch of the plant to achieve a more representative sample; cutting from the top twenty centimeters from the main stem of the female plant; eight to ten inches of the plant's primary stem; whole plant sampling whereby the top 1/3rd, middle 1/3rd and bottom 1/3rd are each sampled; and to ground the whole plant—not only the top 1/3rd—as that is not representative of the delta-9 THC level of the plant.

AMS response: The IFR required the collection of samples from the flower material of hemp plants for laboratory testing. Following the publication of the IFR, AMS made available at *www.ams.usda.gov/rules-regulations/hemp* a supplemental document addressing Sample Guidelines as a reference resource to industry. This resource document indicates that hemp samples are comprised of cuttings from just underneath a flower material located at the top one-third of the plant. Following review of public comment from various stakeholders, AMS determined this final rule will allow for additional sampling methodologies for determining the sample size from the lot as described previously under the ''Sample Size'' discussion. However, since THC is concentrated in the flower material of the plant, the flower material is more appropriate to test than the entire plant. The final rule specified pre-harvest samples shall be approximately five to eight inches from the ''main stem'' (that includes the leaves and flowers), ''terminal bud'' (that occurs at the end of a stem), or ''central cola'' (cut stem that could develop into a bud) of the flowering top of the plant. This aligns provisions of this final rule with the common practices of several States that significantly participated in the 2014 Farm Bill hemp pilot programs. This decision further balances the need to collect a sufficiently large portion of the plant's flower, where THC and other cannabinoids are at their most concentrated, and the need to avoid cutting a portion of the hemp plant that

[19] ''THC Distribution in Field Grown Hemp Prior to Harvest,'' J. Scott Lowman, Jack He, Mike Clark, and Mark Gignac; The Institute for Advanced Learning and Research (IALR), Danville, Virginia.

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poses logistical challenges to shipment, drying and preparing for laboratory tests. AMS believes this provision will help standardize sampling across the nation.

AMS considered the differences of pre-harvest vs. post-harvest sampling and determined the most practicable way to identify THC concentrations of the plant is through pre-harvest sampling since the floral material is still intact. Floral material must be intact to assure the material submitted for testing is in fact the flower part of a hemp plant and it has not been compromised or mixed with other plant parts. AMS also considered the many commenters who endorsed ''whole plant'' sampling. AMS concluded that measuring THC concentration through floral material testing is more appropriate and practicable than testing the entire plant because testing the entire plant will dilute the THC concentration in the sample, except as allowable under remediation, as discussed elsewhere in this final rule. Further, the study cited by a commenter that shows THC concentrations throughout hemp plants are not consistent between varieties does not support the use of whole plant sampling because it compares different plant varieties, not the THC level on different parts of the same plant variety where the sample is taken. Accordingly, sampling the top part of the plant will provide the most accurate results.

Since THC is concentrated in the flower material of the plant, the flower material is more appropriate to test than the entire plant. AMS will modify the sampling requirement to state that the sample shall be approximately five to eight inches from the ''main stem'' that includes the leaves and flowers, ''terminal bud'' that occurs at the end of a stem, ''or ''central cola'' (cut stem that could develop into a bud) of the flowering top of the plant. AMS believes this consistency will help establish a level playing field for all U.S. hemp producers. The Sampling Guidelines issued concurrently with this rule includes additional details.

AMS also includes additional flexibilities for disposal and remediation of ''hot'' hemp that would reduce the costs to producers. These are discussed later in this final rule and in separate guidelines published concurrently.

Measurement of Uncertainty (MU)—Field Sampling

The IFR did not address the subject of uncertainty when conducting field samples and only speaks to the measurement of uncertainty in performing laboratory tests for regulatory compliance.

Comments: Several comments noted that not accounting for MU in sampling is a potential oversight that should be addressed in the final rule. Several comments note that field sampling is the largest source of variability in any testing process, due to the choices individual sampling agents make and field condition variability. Comments argued that there is a wide degree of variability among individual plants in a hemp crop and that this contributes to further uncertainty in field sampling. Due to this uncertainty in the field during sample collection, commenters suggested that an MU for field sampling be included in the final rule.

Several State agriculture departments argued that the MU value should account for variability in the steps that occur before a sample reaches the laboratory. Comments noted the various steps in the field sampling process, such as cutting, bagging, sealing, transporting, and handling, and explained that each increases uncertainty in the THC testing results before the sample even arrives at the laboratory for compliance testing. Commenters asserted that uncertainty related to each step in the field sampling collection process should be accounted for in the MU.

Several comments argued that, without a standardized MU for field sampling, some hemp crops with specific end-uses would be disproportionately impacted. According to comments, hemp crops grown for cannabinoids show the most phenotypic variability and lack of uniformity in the field. Comments said this variability should be accounted for before the sample reaches the laboratory.

One comment suggested following the ISO 15189 standards that take into account uncertainty sources during the analytical phase where the measurement actually occurs. Several comments requested that USDA establish a standardized method of calculating uncertainty resulting from sample collection procedures and for uncertainty in laboratory testing methods. One comment noted that USDA's Sampling Guidelines do not require the USDA-approved sampling agent to communicate to the laboratory anything related to crop variations or the agent's sampling methodologies that may contribute to uncertainty in testing the hemp crop for compliance.

A comment suggested a method for calculating MU that would include pre- and post-laboratory activities: MU would be calculated as the square root of the sum of squared values for pre- and post-laboratory activities, or, (a) squared plus (b) squared = (c) squared, where (a) is field sampling activities and (b) is laboratory MU. The comment offered this example: *If the in-laboratory measurement of uncertainty (b) is calculated as 0.0300 percent, and the field sampling measurement of uncertainty (a) is estimated to be 0.0400 percent, then the total measurement of uncertainty (c) would be 0.0500 percent.*

An institute that commented discussed research which found that sampling from the whole plant more accurately reflected what was observed in a field. The comment explained how the current USDA method, which analyzes only the top ⅓ of the plant, generates data that is error-prone and results that likely do not represent the actual THC levels that are present in the hemp plants in the field as a whole. It said, for example, in one research field, THC levels ranged from 0.06 percent to 2.46 percent in the top ⅓ plant samples when individual plants were evaluated separately.

The research also found significant variation in THC concentration across plants, which the commenter attributed to the lack of ability of the sampling procedure to generate a consistent, reproducible sample from any given hemp field. The research found if the field contains plants that are not completely uniform in their THC levels relative to each other, it is possible that this small subsample in any given analysis could over-represent plants that have higher levels of THC, thereby leading to failure of the field. On the other hand, equally possible, that analysis could over-represent plants that have lower levels of THC, leading to passing the field. The research stated that the most likely result of a sampling test is an inaccurate assessment of the total THC levels based on the method used to sample the plants in the field and then prepare them for extraction.

A comment from a private laboratory noted that when field sampling and pre-analysis handling and processing is done properly and uniformly, the pre-analysis measurement uncertainty can be reduced to 5–10 percent. The comment suggested that test results might be more consistent and uniform when collecting samples in a ''W'' pattern with a minimum of 10–15 individual cuttings taken from the top and middle third of the plant.

Some comments recommended USDA conduct or fund a study to determine appropriate requirements for calculating sampling uncertainty.

AMS response: AMS appreciates the different suggestions submitted by commenters on ways to handle potential

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variability and uncertainty associated with sampling. AMS recognizes that a variability in sampling may contribute to the overall uncertainty of the final result. For reasons explained below, AMS in unable to adopt a national standard for calculating the MU for sampling. However, States and Indian Tribes, may include one in their State or Tribal plan as part of their performance-based alternative method for sampling under § 990.3(a)(2)(iii).

In order to develop a standardized approach to sampling MU, a sampling plan must first be well-established, standardized, and studied to accurately account for uncertainty differences in sampling methodologies. To measure uncertainty of the complete process, from primary sampling through analytical determination, all steps in the process must be included. There are many intermediary steps that must be measured, such as sampling conditions, sample preparation, sample preservation, and transportation, all of which are not always present and/or completed the same each time sampling occurs. States producing hemp under the 2014 Farm Bill have developed sampling plans that vary widely; sampling MU is not something that can be easily studied, calculated, or broadly standardized. Due to the variability in sampling across producers, States, and Indian Tribes, and the lack of available data, USDA is unable to establish or standardize a specific MU value or boundaries (upper or lower) for general use.

In the future, standards organizations, such as ASTM International through their Committee (D37) on Cannabis, will be establishing sampling standards that States, Indian Tribes, and producers could use to improve or help control sampling uncertainty. USDA also recognizes that States and Indian Tribes may have or will conduct their own study of the sampling uncertainty within their States or territories taking into account the conditions that may affect sampling. Those States and Indian Tribes may be able to calculate or standardize the MU for sampling within their States and territories. For those reasons, States and Indian Tribes may incorporate a sampling MU as part of an alternative method for sampling under § 990.3(a)(2)(iii).

Post-Sample Harvest Window

The IFR required testing for total delta-9 tetrahydrocannabinol concentration levels and sampling for such testing was required to occur within 15 days prior to the anticipated harvest of cannabis plants. The IFR required sampling to be conducted by a Federal, State, local, or Tribal law enforcement agency or their designee.

Comments: Numerous comments expressed opposition to the 15-day post-sample harvest window. Comments argued that a 15-day window is too short and urged AMS to make it longer, providing several examples of anticipated difficulties with the 15-day window.

According to comments, the 15-day sampling window in the IFR did not allow enough flexibility to reckon with adverse weather conditions that could delay or preempt field sampling and harvest activities. Comments said that isolated producers and others with limited access to harvest machinery might not be able to complete harvests within 15 days of sampling if weather prevents them from getting into the fields. Comments also noted that in some hemp production areas, climate changes are trending toward wetter harvest seasons, with frequent and catastrophic flooding in recent years. Other comments provided examples of climate variations across the U.S. and explained that the 15-day window is not uniformly suitable for all regions, some of which may be more prone to early freezes and other conditions that could forestall a timely harvest or force producers to harvest before receiving test results in order to save their crops.

Comments also pointed out that a 15-day window does not adequately accommodate a commonly employed two-phase harvest technique, wherein farmers first harvest the seeds and flowers and then the plant's stalks.

Comments additionally stated logistical challenges related to sampling on larger hemp farms or farms with several varietals. They asserted that the number of required samples greatly increased under the IFR from what was required under most State administered pilot programs, and that collecting, drying, and submitting samples for those additional lots will be very difficult within the 15-day window. A commenter stated that, in 2019, Colorado sampled only 23 percent of all registered hemp lots within a 30-day sampling window under the pilot program, while under the IFR requirements, they would need to collect more than four times as many samples in half the time.

Many commenters—from producers, state departments of agriculture, and Tribal governments—anticipated bottlenecking delays at laboratory testing facilities due to the limited number of DEA-registered laboratories available to provide testing. Comments from laboratories agreed that the increased demand for hemp testing would strain existing resources and make it difficult to return results to farmers in time to complete harvesting within the 15-day window. One commenter from a private laboratory also noted the strain on human resources this would create to oversight activities because laboratory employees are required to accompany sampling agents through the sampling process within the window. Other comments noted a possible shortage of available farm workers during a tight harvest window.

Comments from Indian Tribes stated that the requirement to test within 15 days prior to harvest by DEA registered laboratories is not practical for Indian Tribes, explaining that many Indian Tribes were moved to desolate lands where growing crops is hampered by location, quality of the land, available water and infrastructure, and access to ready transportation. Further, Indian Tribes said growers are hampered by the economies of size. Comments suggested that in much of the Indian Tribe territories, Tribes will not be able to develop large farms that reduce risk.

Many comments recommended increasing the sampling window to 30 days. Some suggested that producers be allowed to harvest before the return of laboratory results, but not be allowed to release product until test results are obtained. One comment added that allowing post-harvest testing would incentivize farmers to monitor their crops prior to harvest in order to minimize the need to destroy crops. Another comment recommended that all hemp testing labs be required to return results to growers within 15 days of receiving samples. Other comments proposed revising the regulations to require only that harvest commence, rather than be completed, within the specified period following sampling.

Data on compliance testing from North Carolina [20] cited a recent study showed an average of 12.65 days taken to receive test results, with a range of between 2 days and 41 days. It estimates that 50 percent of growers would begin to harvest before receiving the results of their THC compliance test and 22.5 percent would complete their harvest without receiving their results.

Another State department of agriculture said it has been operating their pilot program utilizing a 25-day harvest window but noted that 25 days has proved an insufficient amount of time in their experience managing their pilot program. They recommend the

[20] *https://beta.regulations.gov/comment/AMS-SC-19-0042-5294.*

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final rule utilize, at minimum, a 30-day sampling window.

A State extension service cited data from the Midwestern Hemp Database and reports from Rock River Laboratory which shows that 68 percent of the requests for THC compliance testing were submitted during the period of September 8th–October 1st and note this will create a tight peak window during which samples will be submitted. Due to this peak timeframe of compliance testing needs, several State departments of agriculture note that during these peak times there will be staffing shortages, delays in sampling, delays in analyzing material, delays in the reporting of results and delays due to unsuitable harvest conditions.

Another State department of agriculture recommends that certified seed varieties should be sampled and tested from a random selection of hemp grain and fiber fields 30 days prior to harvest. For uncertified varieties, it recommends requiring a post-harvest test, as well as a pre-harvest test of a random selection of fields within 30 days of harvest.

One commenter discussed data showing that different cultivars accumulate cannabinoids at different rates and at different times. Given the rapid changes in cannabinoid levels, the comment said its data highlights the challenges of scheduling pre-harvest regulatory samples and harvest dates.

Finally, a few comments asked for clarification about the 15-day window. Some said it was unclear whether harvest must commence or be completed within the window. Others asked whether a producer is prohibited from harvesting before testing is completed. One comment stated that the 2018 Farm Bill does not contain a timing requirement.

One comment reported that their current sample-to-harvest window is 25 days, and that it does not appear to be long enough to sample all the State's outdoor hemp crops maturing concurrently.

One comment reported that the IFR's 15-day harvest window is not feasible to implement and puts incredible stress on the developing State's hemp industry. According to the comment, the State applied a 30-day sample-to-harvest window during the four years it participated under the 2014 pilot program. During the 2020 growing season, the State reported it has struggled to sample and test the 5,809 acres and 1.46 million indoor square feet that comprise the fields and facilities of the State's 700 licensed growers within 20 days. The comment claims that the State does not have the financial capability or staff resources to ensure sampling can be achieved at every field within the optimal and correct time.

Data analysis provided by North Carolina State University [21] evaluated the 2018–2020 turnaround times for labs reporting THC test results to growers on 3,317 lots. The analysis found that in 22.5 percent of cases, growers would have had to commence harvest with no knowledge of their test results to meet the 15-day harvest window requirement in the IFR. The comment asserted that in reality, growers would need lab results in 10 days or less in order to make informed harvest decisions, in which case they assumed approximately 50 percent of the state growers would have had to start harvesting without knowing their test results. The comment referenced NCSU farm cost studies that showed farmers with some equipment at their disposal will spend approximately $14,000 per acre on hemp cultivation. Noting that of those costs, seed/plant acquisition and labor are the greatest expenses, the comment asserted that harvest is the most labor-intensive activity, and that requiring farmers to harvest without knowing whether their hemp crop is compliant or marketable puts them at great financial risk. The comment recommended extending the post sampling harvest window to 30 days to reduce financial risk for farmers.

A comment from another state noted that given the State's size and geography, distances between hemp production sites could be greater than 2000 miles, making the 15-day sample-to-harvest window impractical for them. The comment recommended allowing States and Tribes, who are better aware of their geographies and resources, to determine their own windows, up to 30 days.

One comment reported the State has three inspectors geographically dispersed throughout the State, servicing approximately 200 farms harvesting within the same 8-week time period. The comment advocated extending the harvest window to 30 days to cope with unforeseen weather events, extended travel, lab turnaround, resampling and testing, and other delays.

One comment contained preliminary findings from an ongoing 2020 study [22] conducted by a state and a state university that showed different cultivars of hemp accumulate cannabinoids at different rates and at different times in plant maturity. Study data showed that some cultivars can rapidly accumulate THC and CBD, with weekly changes of as much as 0.1 percent THC and 1.5 percent CBD in some cases. The study found that the rates of THC and CBD accumulation were parallel in the four cultivars studied, with the CBD:THC ratio staying consistent around 24:1. The study concluded that given the rapid rate of change in cannabinoid levels, samples taken 2, 3, or 4 weeks prior to harvest may not accurately reflect the cannabinoid profile of the harvested material. The study further concluded that a larger harvest window increases the likelihood that non-compliant plant material will be harvested and potentially rejected at market, costing the grower the additional expense of harvesting.

AMS response: AMS recognizes weather and climate-related factors affect all cycles of agricultural production including pre-planting, planting, management, and harvest. AMS also understands these factors may vary by region from year to year, and that certain conditions might cause some farmers to alter their normal harvest timeframe as a result of factors beyond their control as mentioned in several comments. It is common agricultural practice to harvest crops taking into consideration weather patterns such as rain, wind or freezes. Producers also harvest crops based on the availability of labor and transportation, crop rotation and market demand among many factors. A 15-day harvest window may not allow producers the flexibility needed to take all these factors into consideration.

AMS considered the impact of the 15-day window on resources needed for sampling and testing activities. We acknowledge that sample collection may require an authorized sampling agent to visit multiple farms of varying sizes over a very short period of time. AMS further understands that in some places, the sampling agent may visit a farm on multiple occasions due to the size and harvest cycle of the farm. AMS also considered the turnround time for producers to receive results from laboratory testing.

This final rule allows farmers to commence harvests before receiving test results, as did the IFR. However, crops may not be released in commerce or further processed until tests confirm that the lots in question are compliant with the regulations. Harvests must be completed within the 30-day timeframe

[21] Ibid.

[22] Pearce, Bob et al. Sequential Sampling of Four Hemp Cultivars for Cannabinoids—2020; University of Kentucky, College of Agriculture, Food, and Environment and Kentucky Department of Agriculture. *https://beta.regulations.gov/comment/AMS-SC-19-0042-5762.*

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provided by the final rule. AMS does not believe harvests should occur after that time because, generally, total THC levels continue to increase with time and there is too great a risk that the levels would increase after 30 days and thus the sample that was tested would not be an accurate reflection of the total THC of the harvested crop.

Regarding comments on laboratory resources, AMS considered input from our Science and Technology Program, which conducts laboratory testing for numerous agricultural commodities and oversees our third-party laboratory approval program. AMS assessed testing activities, which include the receiving, selection, drying, processing (through liquid or gas chromatography), analysis, storage, and reporting of hemp test results. AMS considered the time necessary to ship samples to the laboratory and to issue test results back to the grower, recognizing that not all farms have readily available internet to expedite receipt of electronic laboratory notifications. Standard mail may be the primary means of communication for rural populations in certain regions and Tribal lands. AMS also considered the level of routine work at testing facilities across the nation and their capacity to efficiently process hemp samples while continuing unrelated, non-hemp laboratory activities. AMS agrees that it may be difficult at the peak of the season for high-volume laboratories to consistently issue timely results to growers, as producers experienced and DEA acknowledged, impacting growers' ability to make harvest decisions.

Based on comments received and knowledge of agricultural practices, AMS determined that the post-sampling harvest window should be extended to allow hemp harvests to be completed within 30 days after sampling. AMS believes allowing the additional time will provide flexibility for dealing with unforeseen weather events and other agricultural factors, and better accommodate complicated harvest processes. AMS also believes this will reduce strain on testing resources and ensure test results can be returned to growers on a timely basis.

Laboratory Accreditation—Laboratory Approval Program (LAP) and International Standards Organization (ISO)

The IFR required hemp growers to obtain testing from DEA-registered laboratories to ensure proper handling, disposal, and reporting of samples that exceed allowable THC limits for hemp and may therefore be controlled substances. As part of the IFR, AMS asked stakeholders whether laboratory accreditation should also be required for hemp testing labs. Specifically, AMS asked about accreditation through AMS's LAP, through the ISO standards (ISO 17025), or through both, and if so, which would be preferable.

Comment: Comments reflected a range of views across the industry, both in support of and opposition to additional laboratory certification requirements. In general, commenters preferred more regulatory flexibility to address the widespread concern of insufficient laboratory capacity as a result of laboratory certification/registration/accreditation requirements imposed by USDA regulation.

Supportive of LAP and ISO: Some comments supported requiring additional accreditation through both LAP and ISO. Comments explained that LAP accreditation imposes analytical standards and limits that ensure reliable and consistent results across hemp labs, while ISO 17025 accreditation ensures that labs adhere to their own established protocols. Comments asserted that additional accreditation is essential to ensure that laboratories, government entities, and farmers comply with regulations. One comment that supported requiring both accreditations said the scope of the ISO 17025 standards should include hemp testing methods.

One comment said requiring LAP and/or ISO accreditation in conjunction with DEA registration is a step in the right direction because current standards are subpar and do the industry a disservice, while adding LAP and/or ISO accreditation would provide a baseline standard that benefits all stakeholders, including consumers.

Either LAP or ISO: Other comments advocated requiring additional accreditation through either LAP or ISO, but not both. Comments said that requiring one or the other would be adequate to provide testing integrity, but that requiring both would unnecessarily overburden labs and create a testing bottleneck as labs worked toward accreditation. One comment said that since hemp products are consumable, public health and safety should be of paramount concern when choosing a lab accreditation program.

Comments supporting LAP accreditation specifically said such accreditation would improve grower access to qualified labs and would improve the efficiencies and protect the competitive interests of non-DEA labs. Comments favoring LAP accreditation pointed out that LAP already incorporates ISO 17025 standards and includes regular audits and records management requirements. Comments added that incorporating ISO standards into LAP accreditation lends confidence in testing procedures and results, which in turn creates a fair marketplace for hemp. They asserted that the benefits of LAP accreditation outweigh the costs because they emphasize quality controls and accurate analytical performance by knowledgeable and trained staff. One comment suggested that using LAP-approved labs would facilitate USDA's hemp program oversight and the development of an evidence-based data tracking system. Another comment pointed out that LAP offers growers a complete online listing of qualified labs from which to choose.

Some comments argued against adopting LAP accreditation, saying the accreditation process is expensive and burdensome for laboratories, and that the user-fee program benefits only USDA. One comment said that it is unclear from the IFR how LAP differs from ISO and whether LAP accreditation offers more confidence in test results than ISO accreditation. Another comment said that LAP accreditation would be redundant to ISO accreditation and is not necessary.

Some comments favored the use of laboratories with ISO 17025 accreditation in addition to or instead of DEA-registration. Comments noted that hemp laboratories in many States already have ISO accreditation, although some are not DEA-registered. They suggested use of those labs should be grandfathered into approved hemp production plans. Some comments asserted that between LAP- and ISO-accreditation, ISO is the best alternative for the hemp industry because it meets the needs of the hemp industry, and at a reported cost of $25,000, it reduces unnecessary expense and regulatory burden for labs and growers. One comment recommended that USDA specify that the most current ISO 17025 standard be required for accreditation—the 2017 version.

Neither LAP nor ISO: Several comments opposed requiring additional laboratory accreditation on top of DEA-registration. Some comments called it ''overkill,'' and said requiring additional accreditation would put an undue strain on laboratories and delay testing and reporting results for growers.

None of the Above: Several comments opposed specifying any particular laboratory registration or accreditation and recommended instead that States and Indian Tribes be authorized to determine appropriate standards for hemp testing laboratories under their respective production plans. Comments said that allowing States and Indian Tribes to determine their own lab

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certification schemes would allow them to maintain appropriate testing capability while finding the best fit for the economic profile of their regulated jurisdictions. One comment suggested USDA encourage laboratories to participate in the Hemp Proficiency Testing Program established by the University of Kentucky, rather than building an accreditation program from scratch through LAP.

Other Alternatives: One comment asked USDA to clarify why any additional accreditation should be required. Another comment suggested that if laboratory accreditation is necessary, AMS should explore the most cost-effective choice from among LAP, ISO, or other commercial accreditations to minimize costs for growers. A comment suggested that DEA-registered labs not be required by the rule but be allowed as backups for labs with other accreditations. Another comment speculated that if only LAP or ISO accreditation were required, and DEA registration was not, growers would test their crops more frequently. Some comments recommended that no specific accreditation be required because the process is too costly and time consuming and would discourage labs from participating in the program. One comment suggested that USDA encourage labs to adhere to ISO 17025 standards, but not require accreditation.

Some comments suggested that LAP accreditation would be beneficial to the industry, but that such a program should be developed incorporating the expertise of former DEA or other chemists with experience testing cannabis. Other comments supported using ISO-accredited labs until LAP accreditation can be fully developed and used on a trial basis to gather adequate experience and data. One comment suggested allowing States, Tribes, and USDA to contract with commercial labs or use private labs that adhere to ISO standards.

AMS response: AMS noted that commenters generally preferred more regulatory flexibility to address the widespread concern of insufficient laboratory capacity as a result of laboratory registration requirements outlined in DEA regulations. Adding ISO 17025 or other accreditation requirement to laboratories would decrease the number of laboratories available to perform hemp tests. AMS also noted some commenters opposed accreditation requirements due to cost implications and additional burden. While we strongly encourage laboratories to be accredited to ISO/IEC 17025 (by an International Laboratory Accreditation Cooperation Mutual Recognition Agreement (ILAC MRA) signatory accreditation body), because it will help ensure lab results are more accurate, ISO 17025 accreditation requires significant time and financial commitment to pursue and maintain. This it is most challenging for smaller and start-up labs. The initial accreditation can cost $5,000–$10,000 (and in some case more) and yearly ongoing costs are $3,000–$8,000. Smaller labs may not have the resources to pursue accreditation in a timely manner or they may have to spend more time and money for consultants to assist them in setting up a quality management system and to navigate the application and audit processes.

Based on this input, AMS will not require USDA administered lab approval program or require ISO 17025 accreditation because doing so would increase the financial burden on producers and reduce the availability of laboratories that can test for THC level in hemp. AMS is committed to continue looking into this option.

DEA Laboratory Registration Requirement

The IFR required that laboratory testing of hemp for the purpose of determining compliance under the program be conducted by laboratories appropriately registered with DEA. However, on February 27, 2020, USDA announced guidance delaying the requirement to use laboratories registered with DEA for testing. Under this guidance, testing can be conducted by labs that are not yet DEA-registered until the final rule is published, or Oct. 31, 2021, whichever comes first. This deadline was later extended to December 31, 2022. This change was intended to allow additional time to increase DEA-registered analytical lab capacity.

Comments: A few comments supported the DEA-registration requirement. Some comments favored dual laboratory accreditation (*e.g.,* DEA and ISO 17025 accreditation or DEA and AMS LAP accreditation) saying that such combinations would assure technically competent, unbiased testing and results reporting. One comment agreed with DEA lab registration but said that labs that have applied for DEA registration by Nov 1, 2020, should be allowed to continue testing (as under pilot programs) as the certification process takes so long. It further observed that while the IFR seemed settled on HPCL as the testing method, the rule does not specify the detection method as it should. The comment recommended mass spectrometry as the most accurate.

Another comment agreed with DEA lab registration, saying that otherwise, any lab could be handling controlled substances without observing stringent DEA requirements. The comment argued that allowing any lab to test hemp creates an unfair business advantage for non-DEA labs that do not have to pay high costs of maintaining DEA registrations. Further, those non-DEA labs would be handling controlled substances inconsistent with Federal law.

More commonly, comments opposed the DEA-registration requirement for hemp testing laboratories. Commenter concerns were as follows:

Logistics: Numerous comments stated there are not enough DEA-registered labs to handle the volume of samples required under the IFR's sampling and testing regulations. Comments predicted that such limited capacity would exacerbate existing bottlenecks, greatly increasing the likelihood that THC levels in sampled crops would continue to rise while farmers wait for test results. Several comments noted that the IFR allowed farmers to harvest sampled crops before receiving test results, however many prefer not to expend time and money harvesting a crop that might not be marketable. Comments also anticipated growers' testing fees would increase to cover the addition of testing resources at existing DEA-registered labs.

Some comments noted that not all States or Tribal lands have DEA-registered labs within or near their boundaries. According to comments, where DEA labs do exist, they are generally located in urban areas at some distance from rural farms. They explained that the scarcity of DEA-registered labs in reasonable proximity to farms will increase costs for transporting samples and increase the turnaround time for obtaining test results. Some comments submitted by Indian Tribes also asserted that the DEA had failed to consult with Tribes about its accreditation process and that it failed to timely respond to Tribes' requests for lab results.

Accreditation: Comments said that DEA-registration is costly and time consuming for laboratories and that such expenses would discourage existing labs from seeking DEA registration. One comment said that DEA accreditation is too expensive to be required for ''low-level THC testing.'' Comments suggested alternatives, including:

- Allow testing by labs accredited under ISO 17025
- Allow testing by labs approved under AMS's LAP

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- Allow testing by labs accredited by States or Tribes
- Allow testing by labs accredited under other accreditation programs
- Allow testing by labs with dual accreditation (*e.g.* DEA and ISO, or DEA and LAP)
- Allow continued testing by labs approved to do so under the 2014 Farm Bill
- Allow for a transition period to allow labs time to work toward registration

One comment suggested that allowing for alternative laboratory accreditation would increase competition between labs, reduce costs for growers, and reduce the potential bottleneck created by allowing for only DEA-registered lab testing.

Another comment argued that although accreditation is costly, relying on it could help enforce strict standards and ensure less variability between testing labs. Some comments suggested USDA fund accreditation of private labs to help offset the cost of expensive accreditations and encourage more labs to seek necessary accreditation.

Other comments suggested DEA expedite its lab approval process and make it easier for existing labs to obtain DEA registration.

Other commenters stated that the DEA lab accreditation process requires State approval and not Tribe approval and that this is unworkable because of occasionally difficult relationships between some Tribes and States and because hemp is prohibited in a couple of States.

Finally, several comments recommended AMS provide a phase-in period of as much as two years to allow existing labs to continue hemp testing while they work toward DEA registration so the industry will have access to adequate testing options during its development.

DEA and Controlled Substances: Comments expressed concern about many aspects of DEA's involvement with the hemp program. Comments argued that hemp is a legal agricultural commodity under the 2018 Farm Bill and requiring testing by DEA labs insinuates hemp is a controlled substance regulated under the Controlled Substance Act. Commenters asserted that treating hemp as a controlled substance exceeds the intent of the 2018 Farm Bill. Comments also suggested USDA's IFR impeded Congressional intent to foster the development of a new agricultural sector.

One commenter representing a processor of hemp, specifically for CBD products, said they were concerned about an IFR published by DEA and that the rule by DEA could inadvertently criminalize hemp at various stages of its production process. They encouraged USDA to eliminate DEA's involvement.

Comments also said DEA involvement in USDA's program discourages participation by laboratories and by growers, neither of whom may care to risk prosecution for inadvertent criminal acts if a test result indicates they raised or possess a controlled substance. Some comments said private labs with ISO or other accreditation don't want to obtain DEA accreditation, fearing the tension it will cause between themselves and their grower customers because of the requirement to report potential criminal activity. Other comments said growers fear repercussions related to possible felony prosecution for growing crops considered illegal, including loss of chemical application permits that allow them to manage other crops. One comment argued that it isn't necessary to involve DEA in hemp testing, that it distracts that agency from other vital Federal work.

According to some comments, most DEA-registered laboratories are crime labs that do not offer commercial testing services. As reported by a State, the DEA may be reluctant to even visit—let alone approve—certain laboratories because of the handling and testing of marijuana, although considered legal by the State. Other States with legal medical and/or recreational marijuana provisions commented that their labs may not want to seek DEA registration because they choose to focus on marijuana testing. Some comments said labs that handle marijuana may not in fact obtain DEA registration, thus laboratory capacity to process hemp samples at the volume and speed required by the IFR may not materialize.

One comment assumed DEA-registered labs might test only for cannabinoids, while other commercial labs would be able to perform additional testing, for instance for microbes, heavy metals, and pesticide residues, saving growers the additional expense of multiple tests.

Some comments recommended USDA waive the requirement to use DEA-registered labs in States where recreational marijuana is legal, thus increasing the number of labs available for hemp testing. Other comments recommended DEA change its standards to allow labs that handle legal marijuana to also handle hemp.

Cost Management: A few comments suggested that restricting hemp testing to DEA-registered labs creates a monopoly among labs that already have such accreditation or have the financial backing of large, vertically integrated companies to enable them to do so. Comments recommended that existing State, Indian Tribe, university, or other Federal labs with demonstrated ability to perform testing according to USDA standards be allowed to do so, thus providing opportunities for more interested participants and keeping testing costs down for growers. Some comments suggested USDA contract with State, Tribe, or Federal labs to provide required testing. Other comments recommended capping costs for DEA-registered lab testing at $25–$50 per test.

Alternatives: One comment asked USDA to clarify whether all independent labs must be DEA-registered to test hemp or whether only State labs needed to obtain that accreditation.

AMS response: In consultation with the Department of Justice, AMS determined it must retain the provisional requirement that laboratories testing hemp for the purposes of regulatory compliance be registered with DEA. This requirement further extends to any laboratory testing hemp throughout the growing season to informally monitor THC concentration. The basis for this determination is rooted to the statutory requirements of the Controlled Substances Act (CSA), which requires any laboratory that might potentially handle a controlled substance to undergo the DEA registration process. The CSA states that it is unlawful to possess a controlled substance (21 U.S.C 844) and requires any laboratory that might potentially handle a controlled substance to undergo the DEA registration process (21 U.S.C. 822) with a few specific exemptions. Further, 21 CFR 1301.13 includes categories that require registration with DEA, including chemical analysis where laboratories fall.

AMS is aware through stakeholder comment that many stakeholders oppose the DEA registration requirement. AMS is also aware of widely held concern among stakeholders, especially Indian Tribes, that an insufficient number of DEA-registered laboratories exist and have limited accessibility to those in rural or regional locations away from metropolitan areas. AMS understands how this combination of variables leads to delays in sample processing by DEA-registered laboratories and how this affects producers' harvest timetables. AMS also knows that since the IFR was published, numerous laboratories have applied for registration and DEA is

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working diligently to process these requests. For this reason, DEA is delaying enforcement of this requirement until December 31, 2022. AMS anticipates this delay will provide adequate time for testing facilities to obtain DEA registration.

While we understand the commenters' concern about DEA involvement, the 2018 Farm Bill distinguishes hemp from marijuana, a controlled substance under DEA's regulatory authority, based on the THC concentration level in the cannabis plant. Although a producer may have intended to cultivate hemp, it is possible that the plant is marijuana because of the THC concentration level. If that is the case, the producer would then be subject to DEA regulations and jurisdiction. USDA coordinated with DEA so that producers that inadvertently produce marijuana may be able to take remediation steps consistent with DEA's regulations to avoid potential criminal liability. Additionally, the 2018 Farm Bill makes clear that negligent production of hemp will not subject the producer to criminal enforcement activity. *See* 7 U.S.C. 1639p(e)(2)(C).

AMS also acknowledges that some laboratories believe the DEA-registered laboratories are crime labs that do not offer commercial testing services and DEA may be reluctant to approve laboratories because of the handling and testing of marijuana, although considered legal by the State. However, AMS does not have any information that would support this belief. AMS is aware that DEA continues to add laboratories to their approved list.

Accordingly, any laboratory testing hemp for purposes of regulatory compliance must be registered by DEA to conduct chemical analysis of controlled substances (in accordance with 21 CFR 1301.13). Registration is necessary because laboratories could potentially handle cannabis that tests above the 0.3 percent concentration of THC on a dry weight basis, which is, by definition, marijuana and a Schedule 1 controlled substance. Instructions for laboratories to obtain DEA registration, along with a list of approved laboratories, are available on the USDA Domestic Hemp Production Program website.

Laboratory accreditation options are discussed earlier in this rule. USDA does not have any authority over the DEA's laboratory accreditation process.

DEA's IFR published August 21, 2020, (85 FR 51639) is out of the scope of this final rule.

Measurement of Uncertainty (MU)—Laboratory Testing

The IFR required that laboratories calculate and include the measurement of uncertainty (MU) when they report THC test results.

Comments: Several comments expressed support for requiring that the MU be accounted for when testing the THC concentration of hemp due to the variability in laboratory testing equipment and complex mathematical principles involved. Comments generally emphasized that the inclusion of a standardized MU was needed for the industry to develop, as hemp farmers should not be exposed to risks of economic loss that are created by mathematical inconsistencies within an individual laboratory's computations. Several comments emphasized the importance of USDA clarifying the method for MU calculation in the rule because it is part of what determines whether hemp must be disposed.

One commenter cited a study [23] that found that test results on samples from each field sent to five different labs deviated significantly, ranging from a low of 22 percent deviation to a high of 41 percent depending on the field.

Some comments expressed the need for a standard, specific MU in the final rule to prevent licensees from ''shopping around'' for laboratories with the most lenient testing. Comments noted there is no universally accepted way to calculate MU, so differences in MU values used by various laboratories are just as likely to result from differences in calculation method as they are from differences in instrument quality or use. Several comments explained that the lack of a standardized MU in the rule incentivizes inaccuracy by potentially driving customers to laboratories willing to use MUs with greater ranges.

Many comments advocated specifying an MU to create uniformity in testing across the nation. One comment noted that variation in MU values could be problematic for interstate commerce and result in a hemp crop that is compliant in one state being shipped to another state where it would be considered noncompliant. Other comments argued that it may be too soon in the scientific process for USDA to include a standard MU because laboratories, particularly in States that didn't previously have cannabis programs, haven't had time to do the research necessary to determine an appropriate MU.

[23] Evaluation of methods used to sample hemp for regulatory compliance testing;'' Gang, David R. and Anna Berim; Washington State University, Pullman, WA; 2020.

Comments from States that administered pilot programs under the 2014 Farm Bill offered several suggestions on approaches to MU calculations. A comment recommended using laboratories participating in the University of Kentucky—Division of Regulatory Services' Hemp Proficiency Testing Program to establish an MU through a set of guidelines rather than in the rule. The commenter concluded that the Hemp Proficiency Testing Program could be tasked with calculating and announcing an MU that would be used for compliance testing purposes on a nationwide basis. The comment added that including the MU in the guidelines rather in the rule would allow it to be refined over time as instrumentation and calculations develop, rather than having to modify the hemp regulation.

Some comments advocated having multiple testing methodologies to choose from and including requirements for calculating MU for each method. Other comments recommended that instead of requiring a specific MU, USDA should determine a maximum threshold for allowable MU value. Comments argued that a maximum threshold would prevent forum shopping by consumers looking for laboratories with the most lenient MU ranges, but still allow laboratories to use their own calculations. One comment recommended revising the MU provision of the IFR to include a maximum uncertainty level that laboratories cannot exceed and suggested the maximum uncertainty value should be one-third or less of the target uncertainty. Another comment suggested USDA use guidelines from the United States Pharmacopeia for determining THC concentration, which include calculations for significant figures such as MU.

A comment asked USDA to clarify the role of significant figures in using MU to determine total THC concentration because, they argued, in both of the IFR's examples for determining compliance, the lower end of the range can be written as 0.3 percent, if rounding to match significant figures. It suggested requiring the lower value of the THC calculation distribution range, which accounts for uncertainty, to be less than or equal to 0.30 percent rather than 0.3 percent.

One commenter stated that for the cannabis plants exceeding the acceptable THC levels, USDA should incorporate a MU for laboratory deviation of .0500 percent for the many different variable ways that a sample arriving at a laboratory could result in an inaccurate test. This includes cutting,

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bagging, sealings, transporting, handling, and other pre-laboratory activities.

One comment cited guidance from the National Institute of Standards and Technology providing that assigned uncertainty should be small relative to the total uncertainty targeted for test samples. The comment asserted that, as a rule of thumb, assigned uncertainties should be about one-third or less of the target uncertainty to ensure that uncertainty in the certified value will have negligible influence on the results of measurements. According to the comment, laboratories with well-developed processes will provide the most accurate and precise results and their uncertainty will be very small. The comment advocated that USDA provide an uncertainty range that cannot be exceeded by participating laboratories, thereby reducing the risk that producers will shop for laboratories with the widest uncertainty. The comment asserted that such a provision would also improve data comparability across the hemp industry.

AMS response: AMS appreciates the different suggestions submitted by commenters on ways to improve the calculation of MU and also acknowledges the variability in laboratory testing equipment that may exist. However, based on the input received and limited data available at the time of its review, AMS will only require that hemp testing laboratories complete a MU calculation as part of the mathematical test result for THC concentration. This final rule does not establish or standardize an upper or lower boundary for general use by laboratories to calculate a measurement of uncertainty. MU is typically not standardized, but rather is controlled using test methods controlled by performance standards (*e.g.,* AOAC Standard Method Performance Requirements 2019.003 that can be found at *https://www.aoac.org/resources/smpr-2019003/*).

USDA does not recommend establishing a MU upper limit (maximum) because (1) MU is typically not standardized, but is controlled using standard test methods, and (2) USDA does not have the data to set an upper limit, so setting it would be arbitrary, not scientific. The hemp and scientific industries are just beginning to discuss standard test methods, and the final rule does not establish an explicit test method. Setting an upper limit or maximum MU does not resolve the core issue and would not encourage or drive labs to improve accuracy and precision.

Setting an upper limit would in effect be setting a maximum or absolute MU. This may encourage labs to adopt the maximum MU as their MU, rather than drive for a smaller uncertainty. USDA may allow for establishing limits in the future, if needed, once methods are established and USDA has access to Proficiency Testing results and the reported MUs.

Additionally, this rule retains the flexibility for State and Tribal Departments of Agriculture to include specific requirements regarding MU for laboratories conducting hemp regulatory testing under their specific state or Tribal hemp programs if they meet the minimum standard set in this final rule. AMS encourages State and Tribal regulatory agencies to coordinate in developing proficiency and testing methods, similar to the program administered by the University of Kentucky, but participation in these types of programs is not required by this regulation.

Disposal

The IFR stipulated that cannabis exceeding an acceptable THC level must be disposed of in accordance with the CSA and DEA regulations because such material constitutes marijuana, a Schedule I controlled substance under the CSA, rather than hemp.

Destruction vs. *Disposal:* Several comments noted that the 2018 Farm Bill specifies only ''disposal,'' of hemp testing above the acceptable THC level, yet the IFR required ''destruction'' of such material. Comments argued that the IFR's destruction requirement is an overreach. Comments asked USDA to revise the regulations to require only disposal of non-compliant plants or plant parts, and to provide either general parameters or specific provisions regarding acceptable methods of disposal. Several comments asked AMS to provide or expand the requirements for disposal of non-compliant material.

Although a few comments supported destroying non-compliant hemp crops, most comments that addressed the topic argued against total crop destruction if alternative disposal methods are available and practical. Comments explained that crop loss is financially devastating to growers—and doubly punitive if the grower must pay to destroy the crop—as well as a waste of valuable resources that could be repurposed and provide at least some return to growers. Comments explained that crop destruction can be a drain on limited official resources, depending on the availability of law enforcement personnel and equipment for the potential need to collect, transport, and oversee the destruction of non-compliant plant material. Further, a comment from an Indian Tribe noted that requiring crop destruction is culturally offensive to indigenous people that traditionally use every part of every animal and plant that can be utilized.

Disposal Methods: Several comments asserted that the only disposal methods available under DEA regulations are incineration or chemical digestion and argued that the current rules under the CSA are designed for disposal of pharmaceuticals and chemical-based illegal drugs, not for the disposal of agricultural crops. Comments asserted that incineration by DEA is not efficient or environmentally sound, and in some places may not be allowed. They noted that burning crops releases harmful carbon dioxide and other pollutants into the air, contributes to the risk of wildfires, and wastes valuable plant nutrients that could be used elsewhere.

Numerous comments stated that the rule should provide alternative methods of disposal for non-complaint hemp plants to protect growers against total crop loss and preserve valuable resources. Several comments recommended USDA adopt disposal rules established under their various State and Tribal regulations. Comments suggested growers be allowed to mulch or disc the non-compliant crop into the soil at the farm, which would build up soil nutrients, improve soil water holding capacity, and improve soil tilth. Other comments suggested growers could recuperate some of their investment by marketing non-compliant crops for other non-ingestible or non-consumable products like fiber, building materials, biofuel, biochar, bioplastics, and animal bedding. A few comments suggested growers should be permitted to export or ship non-compliant hemp to countries or States that have legalized recreational or medical marijuana. Numerous comments recommended a surgical approach to disposing of non-compliant plants by allowing for the removal and disposal of only the plant parts testing over the acceptable THC level, while allowing growers to market the remaining parts. One comment suggested the Federal Government could buy non-compliant crops for no less than 50 percent of the market value and use them to manufacture paper, plastics, and fuel for government and military uses. Other comments proposed remediation as an alternative to crop destruction; comments on remediation are discussed in another section of this comment analysis. One comment suggested further research be conducted to identify appropriate alternatives for crop disposal, and one comment

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suggested that industry stakeholders, governments, regulators, and law enforcement officials work together to develop disposal options under the program.

Disposal Oversight: Several comments recommended that States, Indian Tribes, or local authorities be allowed to determine appropriate crop disposal methods for their jurisdictions. Comments further recommended that State, Tribal, or local regulatory officials be authorized to oversee disposal of non-compliant hemp, as several have done prior to the establishment of the Domestic Hemp Production Program. One comment recommended further that hemp disposals handled by the State should not imply criminal intent on the part of growers. Comments said that allowing for local oversight would reduce strain on DEA and other law enforcement resources and ensure disposals can be handled on a timely basis. One comment from a State agriculture department said that when law enforcement officers have been invited to attend crop disposals in their jurisdiction, officers are typically unavailable. Other comments argued that growers should automatically become DEA-registered reverse distributors if their test results exceed acceptable hemp THC levels so they can dispose of the non-compliant crops themselves and provide acceptable evidence (*e.g.,* photo or video) that they have done so, or so they can do so in the presence of regulatory officials. Some said USDA should pay for official oversight of crop disposal or there should be no charge for that service.

Comments noted that AMS had not yet posted disposal guidelines on its website at the time those comments were submitted, although the IFR had committed AMS to doing so. Some comments said interested entities were unable to complete applications for program participation because AMS had not yet provided disposal requirements.

Several comments asserted that DEA regulations do not mandate specific disposal methods, so long as the ''desired result'' is achieved. Comments asked for more specifics on DEA disposal procedures, including what disposal methods or processes were allowed under the IFR, what the timeline is for disposal, and what results are desired.

One comment asked whether all of a grower's crops would be disposed if one of the lots tested above the acceptable hemp THC level. Others asked whether marketing non-compliant crops for non-ingestible and non-consumable products would be considered a form of disposal. One comment asked whether USDA would consider providing crop insurance for losses due to disposal of ''hot'' crops. One comment asked whether stored hemp product produced under previous programs that allowed for higher THC levels would be disposed under the new program, or could be ''grandfathered'' in.

One comment contended that certain language in the IFR was inconsistent, and as a result, the IFR could be interpreted to require disposal of hemp that does not meet the IFR's definition of hemp, rather than the disposal of hemp that does not meet the acceptable hemp THC level.

AMS response: AMS received significant comments on this requirement from State and Tribal regulatory agencies, producers, and other hemp industry stakeholders and based on this input, AMS determined it necessary to include specific on-farm hemp disposal activities and to provide oversight flexibilities.

As explained in the IFR, State and Tribal plans are required to include procedures for ensuring effective disposal of plants produced in violation of this Part. As part of its review, AMS noted the cultural implication of the use of the term 'destruction' and accordingly amended the regulatory provision to clarify the disposal activities required of growers in cases when a sample tests above the acceptable total THC level.

AMS also determined that producers benefit from greater regulatory flexibility to control on-farm disposal activities according to production schedules that are not dictated by the availability of reverse distributors to physically witness disposal activity. State and Tribal plans must still include procedures to verify disposal. This may come in the form of in-person verification by State or Tribal representatives, or alternative requirements the direct growers to provide pictures, videos, or other proof that disposal occurred successfully. State and Tribal plans must also include requirements to submit to AMS the monthly disposal report documenting any on-farm disposals that occurred during the prior month. Additional information on specific disposal methods is available to producers, State, and Tribal oversight agencies is available on the AMS website.

Disposal through the agricultural practices appearing in this final rule reflected those allowable under the IFR, and previously published to the AMS web page in February 2020. These included plowing under, mulching/composting, disking, bush mower/chopper, deep burial, and burning. These activities align with normal and routine production actions by farmers. AMS believes specifying these activities help hemp growers determine which activity best supports their operation to transition non-compliant crop into a non-retrievable or non-ingestible form. These methods also allow recycling non-compliant plant materials back into the earth, a viewpoint AMS learned through public comment to be especially relevant for producers practicing cultural conservation practices. AMS recognized that controlled burning is the closest farm practice to incineration but controlled burns may not be a viable option for producers in some places due to wildfire risk or state prohibition against using controlled burns.

Remediation

The IFR stipulated that cannabis exceeding the acceptable THC level must be disposed of in accordance with the CSA and DEA regulations because such material constitutes marijuana, a Schedule I controlled substance under CSA, rather than hemp. In addition, the IFR stated that noncompliant plants may not be further handled, processed, or enter the stream of commerce, and that the licensee shall ensure the lot is disposed. The IFR did not stipulate any provisions to allow for remediation activities that reduce the THC concentration to levels within the acceptable limit.

Remediation of non-compliant crops into compliant plant biomass: Numerous comments expressed support for remediation of non-compliant plants to help farmers mitigate against financial loss. Comments claimed that not having remediation options would be a barrier to industry growth because farmers would be unable to bear the financial risk of losing crops. One commenter used 2019 production and economic data to project that applying the IFR to 2019 statewide non-compliant test rates (17 percent), farmgate losses due to crop destruction could have totaled $842.6 million in Colorado.[24] According to the comment, adding losses related to lost processing and manufacturing due to the same crop destruction could have brought the economic cost to approximately $1.2 billion. It suggested that allowing for remediation of non-compliant crops testing between 0.3 and 1.0 percent THC in the same scenario would preserve

[24] Polis, Jared; Phillip J. Weiser; and Kate Greenwood: State of Colorado Comments in Response to USDA Establishment of a Domestic Hemp Production Program; *https://beta.regulations.gov/comment/AMS-SC-19-0042-3358.*

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about $798 million in direct farmgate value, or $1.1 billion of total economic value for the State.

Numerous comments explained that non-compliant plants can be remediated by chemical processes that either remove and destroy THC or dilute THC concentrations, thereby transitioning the remaining material into biomass blends which then test at or below the Federally allowable THC threshold of 0.3 percent. Thus, according to comments, crop remediation through one of these processes is a viable alternative to total crop loss. Some comments suggested processors could be registered with DEA to handle such remediation processes to ensure THC is extracted, handled, and disposed or marketed legally. Other comments suggested that USDA could issue processor permits to allow them to handle hot crops to bridge the perceived legal gap between farmer and consumer. Some comments further suggested growers could bear processing costs then retake possession of the remaining biomass for use or sale elsewhere. Several comments suggested growers themselves could be allowed to merge ''hot'' lots with lots testing below allowable hemp THC limits to create a compliant, homogenized blend.

Some comments suggested non-compliant crops could be remediated by removing the only flowers and retaining the seeds and stalks for other use. Other comments argued that the IFR testing provisions conflict with CSA provisions that exempt seeds and stalks of plant material from the definition of marijuana, and several comments urged USDA to modify the IFR to require only that the parts of the plant exceeding the THC limit be destroyed.

One comment advocated that States be allowed to remediate non-compliant crops through milling and blending the harvest lot to include the entire plant to a homogenized state, then retesting the lot. The comment included the results of a comparative analysis based on crops that initially tested over the legal threshold of 0.3 percent total THC during Arizona's 2019–2020 growing season.[25] According to the comment, producers opted to attempt remediation as described for a total of 25 lots representing 568.6 acres of hemp. Of the 25, 19 lots representing 507 acres successfully reduced the total THC amount to be compliant, for an 89.71 percent recovery of acres that would otherwise have required disposal. The comment reported that the average amount of THC was reduced by 31.61 percent, and suggested that while this remediation process might not be successful for crops that are significantly over the legal threshold, and while the market value of the resulting biomass may be reduced, the process may allow growers to recover some of their losses.

One comment[26] reported on a survey of all Minnesota hemp growers who had experienced lot failures since the beginning of their pilot program in 2016. According to the comment, reported losses varied greatly, ranging between $22,000 and $70,000 per year. The comment further described the State's analysis of 1,492 hemp lot samples from 2016 through September 2020, which showed that 10.3 percent tested at or above 4.0 percent total delta-9 THC, although there was no indication of non-compliance with program rules or of illegal drug activity on the part of growers. The comment recommended that States and Tribes be allowed to develop remediation plans to salvage non-compliant crops.

Post-harvest sampling and retesting: Several comments suggested retesting post-harvest samples to confirm THC levels. Comments provided examples of some State agriculture departments that implemented post-harvest sampling and testing processes under the 2014 Pilot Programs. For instance, one comment cited results from the 2018 season in which they allowed post-harvest retesting of hemp plots that originally tested between 0.4 and 1.0 percent THC. The comment said under Kentucky rules, farmers were allowed to choose between immediate destruction of the leaf and floral material of the crop, without additional testing, or paying the $250 fee for a post-harvest retest of harvested and ground up hemp material, in which the THC concentration was diluted. It stated that of 29 growers whose lots tested between 0.4 and 1.0 percent THC, 22 chose retesting and none of those returned a second measurement above 0.3999 percent THC. Thus, those growers were able to realize a return on their investment. The remaining seven cases did not elect to retest—five elected to destroy the entire plant and 2 destroyed only floral and leaf materials, salvaging the stalks. The data showed the acreage destroyed represented approximately one percent of total acreage. The comment concluded that post-harvest grinding and retesting offers a viable economic solution for farmers seeking to recuperate their investment on crops that initially test non-compliant. Other comments urged USDA to provide for retesting provisions, including remediation activities, that more favorably support farmers who seek to salvage crop value. Some of these comments requested that USDA clarify retesting procedures if a harvest has already occurred.

Statutory implications: Comments from Tribes and other stakeholders expressed concern that the 2018 Farm Bill only requires ''procedure for effective disposal,'' and urged USDA to allow producers greater regulatory leniency as they become familiar with growing a new crop by permitting alternative remediation methods that do not require crop destruction.

AMS Response: This final rule covers testing of the hemp plant to determine acceptable THC levels as required by the 2018 Farm Bill. This final rule does not cover testing for seeds and stalks individually nor does it cover processing or the licensing of processors.

As described in the IFR, hemp exceeding the acceptable THC level may not be further handled, processed, or enter the stream of commerce. The licensee shall ensure the disposal of the noncompliant crop. Before such disposal occurs, AMS believes it important and necessary that hemp growers be provided the opportunity to remediate THC from non-compliant crops in order to stave off financial risk associated with the loss of investment in their hemp crop.

AMS agrees with comments that consider remediation as a viable activity for farmers to minimize crop loss and to salvage the value of remaining compliant plant material. For this reason, the final rule provides regulatory flexibility that allows remediation activities—either disposing of flower materials and salvaging the remainder of the plant or blending the entire plant into biomass plant material. Through both forms of remediation, the farmer may be able to minimize losses and, in some case, produce a return on investment. A guidance document will be published with this rule to illustrate approved remediation techniques. USDA will also finalize the guidance document on disposal techniques.

Additionally, AMS determined that pre-harvest sampling and testing yield the truest measurement of THC concentration at the point of harvest. AMS further maintains this position in this final rule. AMS notes that if the test results show the original THC

[25] Caravetta, John: Arizona Department of Agriculture Additional Comments on USDA Interim Final Rules on Domestic Hemp Production; *https://beta.regulations.gov/comment/AMS-SC-19-0042-5645.*

[26] Petersen, Thom: Minnesota Department of Agriculture Comments on USDA Interim Rule: Establishment of a Domestic Hemp Production Program; *https://beta.regulations.gov/comment/AMS-SC-19-0042-5548.*

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concentration exceeded the Federally allowable limit, the licensee may request the laboratory retest the pre-harvest sample. This retest would not entail the use of post-harvest plant material. However, if the farmer elects to perform remediation activities under a USDA, State or Tribal plan, an additional sampling and testing of the remediated crop must occur to determine THC concentration levels. Only those crops testing below the acceptable hemp THC level limit will be considered successfully remediated and thus allowed to enter the stream of commerce. All other remaining non-compliant crops must then be properly disposed.

AMS believes the inclusion in the final rule of remediation and post-harvest sampling after remediation provides the additional flexibility requested by commenters that expressed the need for farmers to have greater opportunity of success entering the hemp production industry.

Reverse Distributors

The IFR requires the collection and destruction of noncompliant material by a person authorized under the CSA to handle marijuana, such as a DEA-registered reverse distributor, or a duly authorized Federal, State, or local law enforcement officer or their designee.

Comments: Comments largely opposed the use of DEA-registered reverse distributors to dispose of noncompliant material. Comments asserted that many States and producers operating under the 2014 Farm Bill have implemented policies related to disposal of non-compliant material that do not require DEA involvement. Comments argued there are relatively few registered reverse distributors on DEA's 2019 list and pointed out that some of the major hemp production States have very few or no registered reverse distributors. Comments claimed existing DEA-registered reverse distributors haven't the resources or training to oversee destruction of large plots of agricultural crops in remote areas, and that such limitations would create a compliance bottleneck. Comments asked USDA to clarify who would be responsible for paying DEA reverse distributors for crop disposal services.

One comment asserted that DEA regulations prohibit reverse distributors from accepting controlled substances from other than DEA registrants, making it impossible for hemp farmers to release non-compliant hemp directly to DEA reverse distributors. One comment suggested that hemp growers could automatically become reverse distributors if their hemp samples test above acceptable THC levels so growers could legally manage crop destruction on their own. Another comment asked whether DEA would allow for a waiver from the current limitation on reverse distributors to allow reverse distributors to accept cannabis material for disposal from individuals or entities who cultivate hemp in accordance with their state's approved plan, but who do not hold a Schedule I DEA registration.

Numerous other comments expressed concern that alternative law enforcement agencies (non-DEA) will face the same resource constraints as the DEA. Comments described how State law enforcement officials are typically unwilling or unavailable to participate in the disposal of noncompliant crops and suggested this is due to the lower prioritization of hemp compliance oversight in light of more pressing public safety and crime intervention responsibilities. For example, a comment representing rural counties said this conflict in priorities is particularly acute in rural areas where resources are already stretched too thin. The comment asserted that while preventing serious violations of controlled substances laws is a priority for law enforcement agencies, hemp with slightly elevated THC levels is unlikely to be sold as marijuana. The comment advocated formulating hemp disposal procedures entirely outside the scope of law enforcement. One comment worried about the stress and stigma on growers having law enforcement personnel descend upon their farms in connection with hemp disposals. Other comments supported allowing State regulatory authorities to oversee or authorize disposal of non-compliant material, asserting that States can safely and efficiently complete the process at a much lower cost to producers and States.

Some comments supported disposal of non-compliant material by law enforcement. Some suggested that States, rather than Federal agencies, work with State and local law enforcement to handle disposals. One comment suggested that the definition of ''duly authorized Federal, State, or local law enforcement officer'' be modified to include disposal under the authority of State or local law enforcement in order to address the anticipated increase in required disposals. Finally, comments from Indian Tribes urged USDA to expand the definition of law enforcement in the final rule to include Tribal law enforcement.

AMS response: AMS acknowledges the many stakeholders who expressed through comment concerns about the collection of non-compliant plants by DEA-registered reverse distributors, or duly authorized Federal, State, or local law enforcement. AMS notes that law enforcement policies and priorities are not set by USDA and the 2018 Farm Bill does not provide this authority. To address public comment, this final rule will retain disposal requirements stated in the IFR but will further clarify what ''disposal'' means relative to the role of reverse distributors.

AMS relaxed the disposal requirements enacted under the IFR in February 2020. This decision followed consultation with DEA. This provided growers the added flexibility to conduct on-farm disposal activities themselves, without required onsite law-enforcement supervision. Based on positive feedback received from State and Tribal oversight agencies and producers following the relaxation of disposal requirements, AMS is permanently allowing for on-farm disposal flexibility in the final rule.

Under this final rule producers do not need to use a DEA-registered reverse distributor or law enforcement to dispose of non-compliant plants (7 CFR 990.3(a)(3)(iii)(E) and 990.27) if the producer disposes of the plants using one or more of the means described by USDA at *https://www.ams.usda.gov/rules-regulations/hemp/disposal-activities.* It is the agency's intent that these methods allow producers to apply common on-farm practices as a means of disposal while rendering the controlled substance non-retrievable or non-ingestible. Producers must document the disposal of all non-compliant plants in accordance with § 990.27. Reporting can be accomplished by providing USDA with a completed: ''USDA Hemp Plan Producer Disposal Form.''

Cannabis with a THC level of over 0.3 percent on a dry weight basis is a controlled substance, that must be disposed of onsite according to the disposal methods approved by USDA. The State, Indian Tribe or the state's department of agriculture wishing to have primary regulatory responsibility have the responsibility for establishing protocols and procedures to ensure non-compliant plants are appropriately disposed of in compliance with applicable State, Tribal, and Federal law. States and Indian Tribes operating under approved hemp production plans must notify USDA of any occurrence of non-conforming plants or plant material and provide the disposal record of those plants and materials monthly. There is a similar requirement for producers operating under the USDA plan. Additionally, USDA will conduct

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random audits of licensees to verify hemp is being produced in accordance with the provisions of the rule.

State and Tribal plans must still include procedures to verify disposal but would have the additional flexibility to use in-person verification where deemed necessary or, when practicable, require producers provide pictures, videos, or other proof of disposal. AMS believes this decision will further alleviate the strain to oversight resources and allow State and Tribal authorities to more efficiently and autonomously monitor hemp production in their jurisdictions.

Additionally, the final rule expands the definition of ''law enforcement'' to include Tribal law enforcement.

Negligent Violation Threshold

The IFR specified that a producer commits a negligent violation when a reasonable effort to grow hemp is made and the total THC dry weight concentration exceeds 0.5 percent.

Supporting an increase of negligent violation threshold: Most comments that addressed negligent violations opposed the 0.5 percent total THC threshold in the IFR, and many advocated raising the threshold to 1.0 percent or higher, offering suggestions ranging between 0.99 and 5.0 percent total THC. Comments said the 0.5 percent threshold can be too easily breached by prudent farmers for any number of environmental or genetic factors that are beyond grower control. One comment supported the 0.5 percent negligence threshold, and others noted it but signaled neither support for nor opposition to the threshold particularly.

Some comments suggested that a 1.0 percent threshold would provide a safe environment in which both new and veteran farmers can operate comfortably. Comments in favor of a 1.0 percent negligence threshold noted that several States and other countries have established a 1.0 percent threshold for their jurisdictions that seems reasonable and achievable in most situations. A few comments pointed out that a 1.0 percent threshold is relatively low compared to the THC levels in marijuana, which commenters said typically range from 10 to 15 percent. Other comments advocated higher thresholds that they claim would give farmers the peace of mind to continue building an industry that is just taking off. Finally, one comment asked whether an MU was figured into the IFR's negligent violation threshold and advocated setting the threshold at 1.5 percent THC and specifying that that threshold includes the MU.

A state department of agriculture estimates that 42 licenses would need to be revoked at 0.5 percent stated in the IFR. They further estimate that this number would shrink to only about 12 licenses were the threshold increased to 1.0 percent under the final rule.

A state hemp steering committee commented that a 0.5 percent threshold will deter the experimentation of different varietals and that this research is essential to discovering which varietals work best in different climate zones and soil types as well as for the development of better genetics.

Another state department of agriculture explained that 13 percent of the hemp samples taken in 2019 tested over the THC limit. The average THC level in those failures was 1.07 percent Delta-9 THC post-decarboxylation. A hemp association within the state agreed with the commenter's recommendation that the level defined for negligence should be increased to 1 percent THC.

One comment reported that more than 5.5 percent of the pre-harvest samples collected under the State's plan in 2019 were found to have a THC concentration of greater than 0.5 percent. Another comment reported that 13 percent of hemp samples taken in 2019 tested over the THC limit. According to the comment, data for all years through September 2020 show that most hemp lot failures occur between 0.4 percent and 1.0 percent THC.

Data submitted with a comment from a State University researcher showed that 8.5 percent of 3,508 samples tested during 2018–2020 exceeded the IFR's negligent violation threshold of 0.5 percent THC. The comment said that 65 percent of those would not be considered negligent violations if the threshold were raised to 1.0 percent. Framing study results another way, the comment explained that at a negligence threshold of 0.5 percent, the State would have revoked 42 producer licenses, whereas at a 1.0 percent threshold, the State would have revoked only 12 licenses, given three negligent violations in a five-year period, a reduction of 72 percent in revocations by changing the threshold to 1.0 percent.

One comment reported that based on test results they'd seen this year, 1.0 or 1.5 percent would be a more appropriate threshold for negligence, due to the heterogeneity of the plant and the awareness of the industry.

Implementation timeframe: Some comments suggested that it is too early in the industry's development to determine a realistic numeric threshold, and they recommended USDA delay fixing a uniform standard until the industry has more experience and better understanding of the relationship between all the hemp production factors. Still other comments asserted that negligence should not be determined numerically at all, but by a determination about the farmer's intent. Several comments said that ''negligence is a state of mind, not a number.''

General comments on 0.5 percent threshold: Several comments argued USDA arbitrarily determined the 0.5 percent negligence threshold. One comment asked USDA to provide the research reports used to inform the selection of the 0.5 percent negligence threshold. Another questioned whether USDA used test results based on the total THC standard established in the IFR to set the negligence threshold, since it was the commenter's experience that producers routinely report difficulty meeting that standard. One comment reported anecdotally that its farm sends three samples from the same composite lot sample to three testing laboratories and gets three different results, which the comment ascribes to the variation in lab procedures. Another comment said that there are no established uniform standards for cannabinoid testing, such that even from reputable labs it will not be entirely clear what the results mean.

The impact of the 0.5 percent threshold on production: Several comments said the 0.5 percent negligence threshold in the IFR provided very little buffer (at 0.2 percent) between the 0.3 percent THC allowed under the program and the 0.5 percent threshold for determining a negligible violation. What several comments called a ''safe harbor'' for growers was nevertheless considered too narrow by many, saying that it left virtually no room for error. Comments argued that requiring growers to both exercise reasonable care *and* produce crops with only 0.5 percent THC or less is too stringent a standard and does not really offer the ''safe harbor'' intended. One comment argued that USDA cannot provide a ''safe harbor'' for violations of the 0.3 percent THC cap because that cap is enforced by other Federal and State agencies. A few comments said that the THC levels in 2014 DEA confiscations averaged 11.84 percent THC and argued that the negligence level under USDA hemp program rules should be closer to the average DEA culpability level.

A comment from a state department of agriculture used 2019 production and testing data to demonstrate that raising the IFR's threshold from 0.5 percent to 1.0 percent could theoretically reduce

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the number of its farmers exceeding the negligent violation threshold by more than 75 percent. Several comments advocated a 2.0 percent threshold, while others suggested the elimination of the negligence threshold altogether.

Comments highlighted uncertainty in the genetic variation of hemp varietals and other factors like weather conditions, soil type, plant disease, and pest pressures that may further exacerbate the risk of exceeding the 0.5 percent threshold. As well, comments explained that hemp plants mature rapidly just before harvest. One commenter described seeing plants go from 0.18 to 0.62 percent total THC in one week. Comments suggested that enforcing the 0.5 percent negligence threshold on growers who truly do not intend to grow marijuana is excessive penalization when THC levels can change that rapidly. Comments argued that it is not appropriate to add further penalties to hot crop destruction. Other comments suggested that administrative and logistical factors beyond the grower's control, such as bottlenecks in sampling and testing, can likewise create compliance risks for growers under the 0.5 percent threshold.

AMS response: Based on these comments, AMS is increasing the negligent violation to a 1.0 percent threshold. AMS acknowledges that a lower total THC threshold will result in a higher number of negligent violations. AMS also understands that factors beyond the control of farmers may cause an increase in total THC-levels, such as seed genetic, weather and climate, and may contribute to crops exceeding the negligent violation threshold. AMS believes that the data provided in the comments clearly showed that increasing the negligent violation threshold to 1.0 percent would diminish the risk that producers would incur negligent violations without adding a greater risk of non-compliant material reaching channels of commerce.

AMS also reviewed the test results of certified hemp varieties planted in Kentucky in 2017 and 2018 under its 2014 Farm Bill program. Kentucky has a certified seed program that it believes will yield hemp. The plants from the certified varieties tested below 0.8 percent THC concentration level. Additionally, AMS reviewed the test results of varieties that were eligible to be cultivated under the Nevada 2014 Farm Bill program in 2018. The plants from those varieties tested below 0.9 percent THC concentration level. Given those test results based on varieties that those two states believed would yield hemp, AMS determined that a 1 percent THC concentration level for negligence would account for the fact that a reasonable reliance on certified or eligible varieties may still yield a plant that tests above the acceptable hemp THC level.

The impact of the 0.5 percent threshold on crop research: Comments described the IFR's 0.5 percent negligent violation threshold as a rate limiting factor to industry innovation and hemp research. One comment said that hemp farmers, growing under pilot authorization of the 2014 Farm Bill, routinely planted multiple varieties of hemp to see which performed best. According to the comment, the low negligence threshold in the IFR discourages such hemp trialing and innovation because farmers face greater risk of receiving three negligent violations in one or two seasons and losing eligibility to grow hemp for another five years. Comments from research universities found the IFR's negligent violation provisions unworkable for institutions testing numerous varieties and production variables each season for the same reason. Comments suggested a higher threshold for negligent violation would give industry the regulatory flexibility to conduct research with reduced risk of violating regulatory requirements.

AMS response: AMS recognizes the violation threshold may incentivize (or disincentivize) innovation by research institutions and producers. AMS acknowledges more innovation and research across industry will bring more stability to stakeholders. The 1.0 percent negligent violation threshold provides new and existing producers across States and Indian Tribes additional flexibility to innovate and research with reduced risk for noncompliance. AMS believes the 1.0 percent threshold incentivizes innovation across industry more so than a 0.5 percent violation threshold.

Statutory implications: Some comments argued that establishment of the 0.5 percent negligence threshold in the IFR was arbitrary and capricious under the APA and asked USDA to provide more information about how the threshold for negligence was determined. Some comments asserted that *negligence* is a well-established legal doctrine, and they argued that USDA cannot artificially and arbitrarily declare a threshold for negligence. A couple of comments suggested that putting farmers on probation, suspending them from program participation, and requiring them to destroy their crops based on an arbitrary number rather than on court findings is a violation of due process under the U.S. Constitution's Fifth Amendment.

AMS response: Congress established the definition of hemp and defined the threshold of THC concentration at 0.3 percent dry weight. The statute did not define negligent violation. USDA derived the definition of negligence from the definition of negligence in Black's Law Dictionary (10th ed. 2014). USDA set the level of total THC concentration at 0.5 percent for a negligent violation to establish a clear buffer so that any crop testing out of compliance would not automatically trigger a violation. The 0.5 percent was based on data from three states participating in the 2014 Farm Bill pilot program. AMS believes raising the negligent violation threshold from 0.5 percent to 1.0 percent in the final rule provides a greater buffer and reduces farmers' exposure to risk of violation accrual and license suspension.

Oversight Authority: Several comments suggested the government should have the ability to determine negligence and culpability based on facts and circumstances surrounding violations and not solely on a numeric threshold. Other comments asserted that the 2018 Farm Bill's language leaves room for an Indian Tribe to apply its own negligence standard. Similarly, other comments from the industry said that States should be allowed to evaluate potentially negligent violations of State plans.

AMS response: With regard to violations and culpability determination, AMS seeks to establish a regulatory framework that ensures consistency in oversight activities of hemp production. Variations of criteria or the use of subjectivity in oversight could result in bias against or leniency to some hemp farmers simply based on location. Leaving the decision of what constitutes a negligent violation to abstract factors rather than objective metrics may result in differences between States and Indian Tribes. Because farmers may grow hemp in different locations, and in some cases are subject to multiple oversight authorities, it is important the thresholds for violations are consistent across oversight authority jurisdictions to which the grower is responsible. Having a threshold that is well established and transparent provides a minimum framework to producers.

In developing the compliance requirements for State and Tribal plans, USDA recognizes that there may be significant differences across States and Indian Tribes in how they will administer their respective hemp programs. Accordingly, if, at a minimum, the requirements of the 2018 Farm Bill and applicable parts of this

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regulation are met, States and Indian Tribes are free to determine whether or not a licensee under their applicable plan has taken reasonable steps to comply with plan requirements. As previously stated, this final rule provides that a producer shall not be subject to more than one negligent violation per calendar year. State and Tribal plans may tailor the timing around this requirement to align with their growing season or other applicable dates.

Financial and business risk: Several comments linked the 0.5 percent THC threshold with a greater likelihood of producers committing negligent violations, receiving corrective action plans, and even committing culpable negligent violations. Comments stressed that a low negligence threshold puts farmers at higher risk of accumulating negligent violations, even when growers take reasonably prudent steps to mitigate against the production of noncompliant plants. According to comments, this, in addition to the loss of the crop, jeopardizes farmers' access to crop insurance and business loans.

Comments addressed the negative impact of the accrual of negligent violations on the financial stability of the individual business. They described how a hemp grower's access to credit and insurance is jeopardized when negligent violations accumulate and lead to a determination of culpable negligence. Comments explained that lending institutions and insurance providers look for risk factors. They also raised questions about how the accrual of negligent violations may be interpreted by lender or providers. Comments said that many insurers will not cover crop losses if losses are due to the growers' negligence. Commenters implored USDA to explain how violations can lead to determinations of culpable negligence and to provide guidance about how a reasonable farmer can avoid growing noncompliant hemp.

AMS response: AMS acknowledges institutional lenders view violations as risk factors in decision making. AMS also notes that not all culpable violations are derived from the accrual of negligent violations. Culpable violations may be the result of producers violating other parts of the 2018 Farm Bill. However, the 2018 Farm Bill explicitly considers certain actions as constituting negligent violations. AMS's intention is to provide a threshold between 0.3 percent THC level and what would be considered a negligent violation so not all hemp that tests over the 0.3 percent be considered a negligent violation. Because a producer will not have committed a negligent violation every time he or she grows hemp with a concentration of hemp above the 0.3 percent level, this will assist producers when requesting loans or other financial assistance. AMS will provide risk mitigation activities such as remediation and disposal provisions as well as increasing the negligent violation threshold to 1.0 percent to diminish the number of violations that are considered negligent.

Some producers have more than one field or farm in a state or across state boundaries. Assigning more than one negligent violation might be detrimental to these producers. For example, if a producer uses the same seed in multiple locations, and that seed results in a THC level over 0.3 percent, all of that production must be disposed or remediated. All of these locations could be determined a separate violation. However, AMS wants to clarify that a producer may not be found to have committed more than one negligent violation per year.

Barriers to entry: Several comments suggested that a 0.5 percent negligence threshold threatens the survival of farmers in an emerging industry. Comments suggested that the low threshold is a barrier to entry for new farmers or farmers with no experience growing hemp, who risk high initial capital investments to establish operations. Comments argued that the low threshold favors larger farms using industrialized hemp varieties and production practices, and that the low negligence threshold in the IFR would unnecessarily criminalize farmers working with a legal agricultural commodity.

AMS response: All persons interested in growing hemp must meet the eligibility criteria established in the 2018 Farm Bill and this final rule. Negligent violations document instances when the statue or rule are violated such as when a grower fails to report a legal description of land on which hemp is grown or fails to dispose of a noncompliant crop. All farmers, regardless of the size of their operations, face the same set of requirements. Even though the 2018 Farm Bill sets the THC concentration level at 0.3 percent, it does not define what THC level in cannabis will give rise to a negligent violation. Left undefined, this lack of definition is troublesome as it could make enforcement uneven among States and Indian Tribes. The IFR provided that hemp producers do not commit a negligent violation if they make reasonable efforts to grow hemp and the marijuana does not have a THC concentration of more than 0.5 percent. Increasing this threshold to 1.0 percent benefits producers, including small and new farmers, that intended to grow hemp but whose crops tested ''hot'' even though they made reasonable efforts to grow hemp.

Resources and enforcement: One State commented that it currently enforces a 1.0 percent negligence threshold. According to the comment, lowering the threshold to 0.5 percent would significantly increase the rate of negligent violations in that State, require more State and Federal resources to enforce the regulation, and be financially burdensome to novice farmers. It stated that the 0.5 percent negligence threshold is lower than the threshold DEA designates as the upper THC limit for ''inconclusive marijuana/hemp.'' The comment found the IFR's 0.5 percent threshold inconsistent with some laboratories' testing capabilities and suggests raising the rule's threshold to 1.0 percent.

AMS response: AMS anticipates that the closer the negligent violation threshold is to 0.3 percent total THC, the greater the likelihood that oversight authorities issue more negligent violations. Moreover, whenever a producer commits a negligent violation, the oversight authorities must also establish a corrective action plan as required by regulation. AMS believes that increasing the negligent violation threshold to 1.0 percent would therefore reduce some burden to oversight authorities by reducing the number of negligent violations and corrective action plans that oversight authorities must issue and administer. AMS notes that regardless of the negligent violation threshold, any crop exceeding the Federal allowable total THC concentration must be disposed of according to regulatory requirements. AMS disagrees that the DEA's enforcement program for marijuana should affect how AMS manages its compliance program for hemp.

State and Tribal Resources

The IFR required States and Tribal governments to certify they have the resources and personnel to carry out the practices and procedures of their respective plans. Further, the IFR provided for audits of State and Tribal plans to include review of the resources and personnel employed to administer and oversee its approved plan. Finally, the IFR specified audit reporting requirements and remediation steps for States and Tribal governments found to be non-compliant with USDA requirements.

Comments: Comments from many States expressed enthusiasm for partnering with USDA in the regulation

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of domestic hemp production. The comments were supportive of establishing a national regulatory framework that would bring clarity and consistency to the regulation of hemp production across the U.S. They emphasized that many States have enacted legislation to facilitate the regulation of hemp production. No comments received from the States demonstrated a reluctance to work with USDA in establishing regulations.

The requirement for States and Indian Tribes to certify to USDA that they have the capacity to administer a domestic hemp program was not addressed explicitly in any of States' comments. However, many of the comments from the States and Indian Tribes registered concerns with some aspects of the IFR. Most of the comments from States and Indian Tribes delineated areas where the burden of regulatory oversight might be reduced, or efficiencies realized, by revisions to the regulations.

Several comments expressed concern that State and Tribal governments would not be able to perform their responsibilities under the program as currently established. One comment said the lack of appropriate personnel, training, and protocol would lead to an untenable backlog in the collection and testing of samples. Many comments focused on the sheer number of samples that must be collected, processed, and tested under the program. The shortage of DEA-registered labs in the States and the new sample collection protocols were also areas of concern, although that was addressed shortly after the IFR went into effect with the announcement of enforcement discretion.[27] Points of potential weakness in the States' and Tribal governments' implementation of the IFR were raised by many commenters, both explicitly and in implied remarks. Many of the comments referenced State and Tribal government infrastructures being strained under the new regulatory requirements, especially during peak harvest intervals, and that those factors could contribute to the failure of the States and Indian Tribes to fulfill their oversight obligations. A number of comments alluded to the burden of any breakdown in the regulatory scheme being borne by hemp producers directly, as with samples that are not timely collected by State inspectors and the samples then testing ''hot'' without any remediation options, or labs that are not able to process samples due to capacity issues.

Numerous comments made recommendations to address the increased regulatory burden on States and Tribal governments. Many recommended changing the 15-day post-sample harvest period to 30 days to allow more time for States and Tribal governments to collect and process samples, balance workloads, and alleviate potential backlogs. In addition, several comments contended that the increased sampling requirements in the proposal (*i.e.* requiring sampling of every lot) would burden the process and contribute to delays in growers receiving results. Those comments recommended revising the sampling protocol (reducing number of samples required per producer) to help relieve the strain on government resources. Lastly, comments suggested that allowing labs that are ISO 17025 accredited to process samples, as opposed to only allowing labs with DEA registration, would enhance the State's ability to provide validated, accurate, and timely testing.

One commenter said they had talked with a number of States that expressed strong concerns over the additional burdens as a result of the IFR. The commenter further stated that some states they are considering whether to ''opt-out'' of administering a hemp production plan themselves in favor of USDA administering a plan.

Lastly, one comment stated that if there was a bureaucratic slow down or insufficient resources on the part of USDA, a farm should be allowed to have some recourse to be able to harvest. That comment, and others that were similar in spirit, effectively questioned what mitigation efforts would be undertaken for producers in the short run if a State or Indian Tribe ultimately lacks the necessary resources and personnel to administer its plan and fails to perform the obligations it certified it could undertake.

AMS Response: The issues raised in these comments are mostly addressed under other sections in this rule (*e.g.,* 15-day harvest window, laboratory accreditation). AMS agrees that there are regulatory burdens of this program, which are discussed in this rule. States and Indian Tribes have multiple options that would allow producers in their States or territories to grow hemp. States and Indian Tribes can develop their own plan, send their producers to grow under the USDA plan, or States can continue under the 2014 Farm Bill pilot program. Many States and Indian Tribes assess fees on producers to cover their expenses for sampling, oversight and other costs of this program. These options provide producers different alternatives to grow hemp under different regulatory schemes. Additionally, USDA has decreased the risk of the regulatory burden on States and Indian Tribes being borne by hemp producers by addressing various issues commenters identified that could cause States and Indian Tribes to be unable to timely fulfill their responsibilities such as by modifying the sampling protocol and changing the 15-day post-sample harvest period to 30 days. Other burdens associated with this final rule that the producer must cover should be considered by producers, as in any agricultural business, before a decision to grow hemp is made.

Appeals—Denial of Application and Appeal of Test Results

The IFR addressed the denial of applications to grow hemp in Part V. APPEALS. The IFR also provided an option to appeal test results in which producers can request that a second test be performed if they disagree with the first test results.

Comments: A comment recommended that USDA establish a clear deadline for applicants who wish to appeal the denial of their grower applications. The comment noted that the IFR already required a State or Indian Tribe appealing the suspension or revocation of a hemp production plan to file an appeal ''within the time-period provided in the letter of notification or within 30 business days from receipt of the notification, whichever occurs later.'' The commenter noted that no such similar deadline is identified for applicants who have been denied USDA hemp grower licenses.

One comment asserted that denials of ''licensure'' may occur for ''whatever reason.'' Two other commenters submitted examples of State regulatory language from California and Ohio, each of which include provisions for the denial of applications for license.

Several comments suggested USDA establish an appeals process through which someone with a felony conviction may demonstrate completion of appropriate steps to become eligible hemp producers.

AMS response: This rule retains the IFR provision that an applicant for a USDA hemp production program license may appeal a license denial to the AMS Administrator. USDA licensees may appeal denials of a license, renewals, license suspensions, or license revocations to the AMS Administrator must be submitted in writing and received within 30 days of the receipt of notification of the denial or within the time-period provided in the letter of notification, whichever occurs later. State and Tribal plans reviewed and approved by USDA are

[27] *https://www.ams.usda.gov/rules-regulations/hemp/enforcement.*

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required to include an appeal process for producers to appeal licensure decisions. In response to the comment that USDA should establish an appeals process through which someone with a relevant felony conviction may demonstrate completion of appropriate steps to become eligible hemp producers, it is important to note that limitations as a result of relevant felonies are set in the 2018 Farm Bill.

Appeals—Technical

The IFR stated that producers can request a second test be performed if they disagree or have doubts about the original test results.

Comments: One comment indicated that if there is a discrepancy between compliance testing for THC concentration, there needs to be a process for farmers to appeal. Another comment noted that no administrative appeal process exists for producers who wish to challenge a decision they believe adversely affects them, such as test result. Another commenter cited personal experience with one State agriculture department and described as ''unfair'' a regulatory system that does not allow for an appeal process through which a farmer may contest test results.

AMS response: USDA is maintaining its position that producers *under a USDA plan* are able to request a second test be conducted when they do not agree or have questions about a test result. This rule provides flexibility to allow States and Indian Tribes to provide for retesting if the State or Indian Tribe chooses to do so.

Transportation and Shipping Documents

Under the 2018 Farm Bill and the IFR, neither States nor Indian Tribes may interfere with the transportation of lawfully produced hemp through States or Tribal territories, even if hemp production is prohibited within a particular State or Tribal territory. Public comments related to transporting hemp focused primarily on facilitating the interstate transportation of hemp.

Interstate commerce: Many comments applauded the IFR's reiteration of the statutory provision that allows for interstate shipments of lawfully produced hemp and hemp products without interference by State or Tribal law enforcement. Some asked USDA to clarify that prohibited interference includes that from State, Tribal, or Federal law enforcement, including DEA. Other comments wanted confirmation that interstate commerce includes entry into and egress from Tribal territories and that Tribal hemp production licenses be honored for purposes of interstate commerce transport and commerce.

Commenters stated they had already encountered situations where States passed temporary regulations conflicting with the 2018 Farm Bill and impeding interstate commerce. For example, comments noted an Idaho Executive Order—Transportation of Hemp—issued in 2019, that they claimed would ''excessively frustrate interstate hemp transportation and growth of the hemp industry.'' One airline carrier comment explained that under this Order, ''transporters may have to stop, get inspected, and be subject to detention each time they cross jurisdictional boundaries'' and that airlines would avoid carrying hemp if this issue is not remedied.

Comments from Indian Tribes expressed concern that despite the 2018 Farm Bill, Tribes transporting hemp through States have a bias against Tribal hemp production. There were suggestions of the use of a USDA form or stamp authorizing transportation to address these obstacles. One commenter also requested that USDA provide for recourse for Indian Tribes that are prohibited from moving hemp through neighboring States.

AMS Response: At this time, USDA recommends that transporters carry a copy of the producer's license or authorization, as well as any other information the governing State or Indian Tribe recommends or requires that will validate that the transporter is transporting legally-grown hemp. As allowed under the 2018 Farm Bill, States and Indian Tribes can be more restrictive, which includes possible transportation paperwork requirements by States or Indian Tribes. USDA is not adding transportation paperwork requirements to this rule because it does not have jurisdiction over common carriers or other types of transporters.

Comment: A comment asserted that intrastate commerce of hemp that does not meet all the requirements of the IFR should remain under the State's authority, and farmers producing hemp compliant with the 2018 Farm Bill but not the IFR should be allowed to do so, as long as that hemp is not transported across State lines. The comment advocated for no Federal preemption, citing to section 297B(a) of the 2018 Farm Bill, which provides that ''nothing in this subsection preempts or limits any law of a State or Indian Tribe that (i) regulates the production of hemp; and (ii) is more stringent than this subtitle.''

AMS Response: The 2018 Farm Bill does not preempt State law provided that the State adopts a plan that is approved by USDA and the plan may provide for more stringent requirements. A State has the responsibility for enforcing the requirements of its plan. Thus, hemp that is produced under a State's plan should meet the requirements of the final rule.

Shipping Documentation: Several comments encouraged USDA to facilitate the unimpeded flow of hemp in interstate commerce by implementing identity preservation or tracking systems or requiring the use of standardized shipping labels, packaging, or other documentation to certify to stakeholders and law enforcement authorities that the cargo in transport is Federally legal hemp. Comments suggested the use of USDA-issued stamps or forms that are recognizable, understood, and accepted by all law enforcement authorities. Several Indian Tribes made this suggestion because they are concerned about law enforcement transportation issues, particularly in Idaho, South Dakota, Maine, New York and Wisconsin. According to comments, such forms could verify that cargo hemp is compliant with USDA-approved production plans. Other comments suggested the use of a standardized bill of lading across the industry that sets out essential information about the shipment for easy reference by transporters, regulators, processors, and law enforcement officials to ensure all loads have been lawfully produced in accordance with Federal, State, or Tribal law. A comment from an association of county agriculture commissioners and sealers suggested USDA require the officially certified lab report to accompany shipments of hemp product during interstate shipment.

Comments suggested various commercial systems for recognizing legally produced hemp in transport. Other comments asked USDA to devise a standard documentation system for hemp carriers that would more easily absolve them of legal liability related to transporting hemp. Comments recommended that USDA coordinate with the hemp industry; Federal agencies such as DEA, the Department of Transportation, and the Department of Justice; and State agencies, including law enforcement and transportation departments, to develop such documentation.

Some comments additionally recommended adopting specific hemp packaging and labeling requirements on the basis that they would support compliance and enforcement tasks. Some comments advised USDA to provide specific regulations for testing hemp in transit so that such testing, if

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necessary, be conducted in a standard manner, consistent with the requirement that all pre-harvest Total THC testing be conducted by DEA-registered laboratories. Other comments recommended that hemp loads be sealed to ensure their integrity and mitigate the interference of illicit products.

Comments advocated that USDA host a central hemp database for reporting data applicable to all phases of hemp production that would be ''read only'' to law enforcement, saying such a system would be particularly beneficial in resolving questions related to interstate commerce. One comment advocated for the use of a centralized hemp clearinghouse to capture hemp flower transfer to processors or manufacturers for CBD extraction, including information on the licensed producers and receivers of raw materials, the total weight of materials being transferred, testing certificates indicating THC levels of the materials being transferred, and other State-mandated criteria, as well as information on the vehicles being used to transport the materials. It further recommended USDA evaluate methods to physically identify and segregate products containing hemp-derived CBD to differentiate legitimate from potentially illicit products.

AMS response: AMS understands the importance of ensuring safe passage of hemp across states and Tribal jurisdictions. Section 10114 of the 2018 Farm Bill specifically states that ''Nothing in this title or an amendment made by this title prohibits the interstate commerce of hemp.'' USDA issued a memorandum addressing this issue.[28] Several States already identified documents to facilitate transportation of hemp across states. AMS strongly encourages producers of hemp and carriers providing transportation services to provide the following documentation accompanying the hemp cargo: Copies of the laboratory testing report(s), hemp grower license, invoice/bill of lading, and contact information of buyer and seller. The 2018 Farm Bill does not provide specific authority to USDA to This final rule does not adopt any requirement for interstate transportation of hemp. As required by the 2018 Farm Bill, USDA is developing a database that will share information about hemp production with law enforcement. The database will identify the contact information for the producer, a legal description of the land on which hemp is produced, and status of the producer's license or other required authorization from the State or Indian Tribe.

''In-Process'' Material

Comments: Several comments mentioned ''in-process material,'' described as material made from otherwise qualifying hemp plant material, such as crude CBD oil and distillate, or as any hemp material that is compounded, blended, ground, extracted, sifted, sterilized, derived by chemical reaction, or processed in any way for use in the manufacture of hemp products. Commenters asked USDA to clarify that once hemp has been tested and allowed to enter commerce, it should be considered legal material thereafter. One comment suggested the establishment of specifications or guidance for any part in the ''in-process material'' manufacturing record where control is necessary to help ensure that specifications are met for the identity, purity, strength, and composition of the hemp products and, as necessary, for limits on those types of contamination that may adulterate or may lead to adulteration of the finished batch of the hemp product.

One comment explained the perception that in-process materials are not allowed to transfer freely between processors, causing bottlenecks in product processing. According to the comment, some hemp processors may be limited to performing only one step of a multi-step process to derive hemp products, such as distilling CBD oil and isolating the CBD molecule. It said processor-to-processor transfers of in-process hemp materials should be authorized between U.S. States with valid hemp programs, which would open a processing bottleneck and allow both hemp materials and cash to flow more freely. The comment asserted such authorization would improve prices for CBD end-products, which would trickle down to hemp growers.

Some commenters stated that it is commonly known that THC levels in initially compliant hemp may rise above the 0.3 percent delta-9 THC limit during subsequent processing. Commenters expressed concern that some jurisdictions believe the ''in-process material'' should be diluted to always maintain the level below 0.3 percent delta-9 THC, even during transportation to another processor. However, several comments argued that ''in-process material'' is neither consumer ready nor a ''finished'' product and that dry-weight measurements related to hemp THC levels are calculated on the initial plant material and not the finished product to ensure compliance with the threshold.

AMS response: The 2018 Farm Bill directed USDA to establish a national regulatory framework for hemp production in the U.S., and the final rule outlines provisions for this mandate. The IFR and this final rule do not cover hemp or its products beyond production. Further, DEA has issued regulations covering some of these products or ''in-process materials''.[29] Accordingly, this final rule does not address ''in-process materials,'' processors, end-products, processing of CBD or other cannabinoids or anything that may contain hemp or hemp byproducts.

Equal Treatment for Tribes

Comments: Some commenters said that final rule should provide Indian Tribes at least as many opportunities regarding hemp production and regulation as those granted to States and that the final rule should allow Indian Tribes to catch up quickly with States that have been allowed to develop production methods and markets under the 2014 Farm Bill provisions.

AMS Response: This final rule does not distinguish between States and Indian Tribes. USDA recognizes that both State and Tribal governments have the ability to authorize and to regulate the production of hemp within their States or territories consistent with the 2018 Farm Bill and the final rule.

Psychoactive Effects of Cannabinoids

Delta 9 THC or THC is the primary psychoactive component of cannabis. As mandated by the 2018 Farm Bill, hemp must be verified as having THC concentration levels of 0.3 percent or below on a dry weight basis.

Comments: Several comments referenced different studies to support conflicting positions regarding the psychoactive effects of THC and used study findings to argue that the IFR's THC limit should be revised. Many comments cited the ''Defining Hemp: A Fact Sheet'' from the Congressional Research Service, updated March 22, 2019, that said a level of about 1 percent THC is considered the threshold for cannabis to have a psychotropic effect or an intoxicating potential. Other commenters argued THC levels of 5 percent or more are necessary for marijuana to have a psychoactive impact or commercial value. Comments noted that hemp is generally characterized as plants that are low in delta-9 THC and high in levels of CBD,

[28] Memorandum from Stephen Vaden, Office of General Counsel to Sonny Perdue, Secretary of Agriculture, Legal Opinion on Certain Provisions of the Agriculture Improvement Act of 2018 Relating to Hemp (May 29, 2019).

[29] *https://www.govinfo.gov/content/pkg/FR-2020-08-21/pdf/2020-17356.pdf.*

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the primary non-psychotropic compound. Many comments stated that research shows that CBD affects the ability of THC to bind to CB1 receptor in cells, thus blocking the psychoactive effects of THC.

Other comments representing health organizations stated that research is challenging the widely accepted premise that CBD is not intoxicating. They further stated that the THC found in CBD products can be intoxicating and has caused significant and serious consequences in terms of job loss, health, and exposure to pediatric populations. Some comments provided personal testimony that while using CBD for health benefits they had not experienced psychoactive or intoxicating effects.

Other comments reported that the United Nations standard STR/NAR/40 uses a ratio of ([THC] + [CBN])/[CBD] to determine whether a plant is likely to have a psychoactive effect.

AMS response: AMS appreciates understanding different views on the psychoactive effects of THC. However, this topic is outside the scope of the final rule, and AMS made no revisions to the program based on these comments. The 2018 Farm Bill defined hemp as having a THC concentration of 0.3 percent or less. Medicinal use of hemp or CBD is covered under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. ch. 9, sec. 301, *et seq.* and under the FDA's jurisdiction.

Miscellaneous Comments

Comments: One comment pointed out that the IFR's hemp definition did not include the application of an MU, but that the definition of acceptable hemp THC level does. The comment said references to the definition of hemp should be changed to refer to acceptable hemp THC level so there is uniformity across the final rule.

AMS Response: USDA has made references to acceptable hemp levels when appropriate. The acceptable hemp levels include the MU to account for differences in laboratory conditions or environments. There is no intention to change the definition of hemp that is stated by the 2018 Farm Bill.

Comments: Another comment recommended improving the clarity of the final rule by deleting the words ''or THC'' from the definition of delta-9 THC, as well as deleting the sentence ''For the purposes of this part, delta-9 THC and THC are interchangeable.'' The comment further recommended that the definition of Total delta-9 THC be expanded to clarify that it includes delta-9 THC combined with delta-9 THCA to account for the conversion of delta-9 THCA into delta-9 THC when the plant material is dried. Finally, the comment recommended that in all cases where ''THC'' is referenced throughout the final rule document with no further clarification, ''THC'' should be changed to ''delta-9 THC.'' The comment said these clarifications will be helpful in administration of the rule.

AMS Response: AMS is adding a definition of ''Total THC'' to clarify the use of the term in this rule. Total THC accounts for the conversion of THCA into THC. We believe using THC and delta-9 THC interchangeably is appropriate.

Comment: One comment claimed that making the IFR effective immediately gave farmers preparing for imminent harvest no time to comply with the new testing and threshold requirements, increasing their risk of producing plants that were legal under the 2014 and 2018 Farm Bill statutes but potentially illegal under the IFR.

AMS response: USDA's decision to make the IFR effective immediately was to provide a framework for the 2020 growing season. However, States had the option to continue operating under the 2014 Farm Bill. States and Indian Tribes were provided time to develop plans on time for their planting and harvest season.

Comment: USDA should work with other agencies, including DEA and DOJ, to develop cohesive information and guidance regarding enforcement related to hemp.

AMS response: AMS has worked with DEA and other agencies in developing these regulations to assure that the intent of the 2018 Farm Bill provisions for hemp are met. USDA is responsible for the regulatory oversight of hemp production and DEA and other law enforcement agencies are responsible for enforcing the law regarding marijuana.

Miscellaneous Comments—Out of Scope

In addition to addressing specific provisions of the IFR, comments also addressed other topics related to the hemp industry.

Comments: One comment advocated the creation of a USDA commodity checkoff program for one or more categories of hemp (*e.g.* grain, fiber, CBD) and recommended that USDA work with hemp industry trade organizations and stakeholders to administer checkoff funds to support hemp agronomic and market development. Another comment included a newsletter item quoting USDA as saying that such a program could be developed.

One comment asked USDA to support the hemp industry by adding hemp seed foods to those offered through school lunch and other government feeding programs.

One comment said that hemp extracts and concentrates and byproducts from hemp should be afforded the same legal status and protections as the hemp from which they originated.

One comment suggested that the IFR did not consider compliant hemp topical products that make up a large portion of the market or other applications that cannot be inhaled or ingested.

One comment advocated that hemp and CBD should be covered and protected under the Perishable Agricultural Commodities Act (7 U.S.C. 499 *et seq.*).

Some comments said farmers should only be allowed to sell hemp to licensed brokers, handlers, and processors, and not directly to the public. They further advocated requiring license information to be part of the documentation that accompanies hemp shipments.

A couple of comments urged USDA to establish good manufacturing practices for CBD manufacture.

One comment claimed that chemical and seed providers have developed aggressive tactics which may be used to hamper hemp producers.

One comment requested updating banking regulations to allow banks to do business with entities whose income is derived from hemp and/or legal cannabis. Another comment requested an examination on how bonding could protect hemp farmers against companies and contracts that have not been honored, causing financial harm to the grower.

One commenter suggested to discontinue the program totally or at least discontinue the CBD portion because there is too much potential for abuse and waste of taxpayer dollars. The commenter stated that it could be okay to continue the coverage for the seed and fiber. They also stated that USDA should not be in the marijuana business.

AMS received comments on the impact of the current statutory and regulatory structure on banking and insurance related to hemp production. Commenters expressed concern that the 0.3 percent THC ceiling and the required disposal of cannabis testing above 0.3 percent THC would hinder the ability of hemp producers to obtain insurance, loans, or other financial services. One commenter also urged AMS to clarify if the preemption language in section 10114(a) of the 2018 Farm Bill encompasses interstate banking, financial services, and

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insurance transactions and if USDA intends to supersede, coordinate, or adopt guidance issued by other Federal agencies related to hemp production.

A comment suggested banks could offer insurance for crop losses if the hemp had a THC concentration that was greater than 0.3 percent but less than or equal to 0.5 percent, similar to offering coverage for losses due to factors beyond the grower's control, depending on various USDA culpability findings. Another comment advocated that crop insurance be available for hot hemp.

A comment stated that Non-Irrigated (NI) acreage should be uninsurable because good producers who are serious about growing the crop would not bother with NI acreage. Another comment discussed establishment of ''Earliest Plant Dates'' (EPD), Late Plant Period (LPP), and Final Plant Date (FPD), and references sections of what may be a State or Tribe plan and the difficulty of finding farmers growing hemp in comparable environments for determining such dates and insurance coverage. It also recommended developing a Replant Endorsement (with premium associated) to insure 50 to 75 percent of seed costs for replant. Finally, a commenter stated that germination tests should be required before the crop is planted and set a minimum standard of 85 percent germination—and those under that standard would be uninsurable. Several commenters argued that USDA should (1) ban hemp and hemp related products imported into the United States; (2) establish import limits on the number of clone material; (3) eliminate all imported hemp and concentrates into the U.S. for the next 2 years, except for trades to the Canadian marketplace, but exportation must still be open for our country and product markets outside the United States; and (4) establish clear rules on how imported hemp and hemp products will be regulated.

One commenter expressed concern about the current regulation of CBD as a prescription drug arguing that the prescription-only status for CBD is unwarranted and will facilitate the illegal market that continues to exist for these products. One commenter noted that the regulatory ambiguity resulting from the FDA's lack of guidance on CBD negatively impacts hemp producers and requires greater clarity.

One commenter raised concerns about the ability of farm workers seeing U.S. naturalization to be able to participate in hemp production based on a fear that U.S. Immigration and Customs Enforcement will view work in hemp production as an ''exclusionary activity'' that would be a barrier to naturalization.

Several commenters expressed concern regarding hemp production in close proximity to other agricultural crops. Commenters also expressed concern regarding drying and processing of hemp near other crops and residential areas. One commenter suggested that AMS support research on pollination and drift related to hemp production.

One comment asked USDA to clarify whether section 10114(a) of the 2018 Farm Bill extends to interstate banking, insurance, or financial services involving hemp and hemp products. According to the comment, it is not clear whether interstate commerce in hemp and hemp products necessarily includes the payment for any hemp and hemp products through various methods, such as wires, checks, automated clearinghouse transactions, credit card or other financial transactions, including loan proceeds.

One comment advocated the use of their company's blockchain technology to address industry and law enforcement concerns about chain-of-custody in sampling, transporting, and testing hemp.

One comment requested that a clear statement be included in the final rule that USDA concurs that the exportation of hemp and hemp products is legal. It noted that the 2018 Farm Bill does not prohibit exports, and stated, without providing any empirical evidence, that there is sufficient interest in exporting hemp and hemp products from the U.S. It also suggested that a dedicated tariff code for hemp and hemp-derived products be established to facilitate export trade.

AMS Response: These comments all address issues that are beyond the scope of the rule. This rule only covers the production of hemp. Issues such as promotion of hemp under a research and promotion program; adding this product to other programs including feeding programs or PACA; importing or exporting of hemp; who can produce hemp in the U.S.; processing the commodity; insurance and banking; research or setting production boundaries; requirements on further products such as CBD; or other subjects mentioned above, are not the subject of this rulemaking or within other USDA or federal, State, Tribal, or private industry responsibilities and authorities.

Comments on the IFR's Regulatory Analyses

Civil Rights Review

The IFR included a Civil Rights review that found the rule would not have adverse effects on protected persons or groups, deny them program benefits, or subject them to discrimination.

Comments: One comment indicated that small farmers face challenges related to costs of seed. Another commenter associated the destruction of non-compliant hemp as posing a great risk of economic hardship on hemp farmers, especially the small minority farmers.

Several comments from Indian Tribes explained that certain provisions of the IFR, for example laboratory DEA-registration requirements, the definition of key participants, and Tribal law enforcement availability, did not sufficiently account for the specific circumstances and challenges facing Indian Tribes across the nation such as the remote location of many Indian Tribes, the limited economic resources of Indian Tribes, and Tribal decision-making structures. Comments pointed out that this final rule must ensure Tribal civil regulatory authority to help Tribal nations build and implement successful plans. Other Tribal comments identified the requirements for the complete destruction of the plant as, ''disproportionately economically disastrous for our small Native American farmers,'' explaining that Native American farmers tend to be significantly smaller and operate on very small margins.

One commenter suggested that AMS reconsider the potential civil rights implications of this rule on the convicted felons because the IFR, if unchanged, will have a disproportionate negative impact on both Black and Latino Americans, who according to DOJ data, represent 38.8 percent and 37.2 percent (respectively) of the total population of Federally sentenced drug offenders. The commenter compares this data to the data from U.S. Department of Health and Human Services' rates of illicit drug use among White Americans (9.5%), Black Americans (10.5%,) and Latino American (8.8%).

Another commenter claimed that using ''flawed/inaccurate science with lower standards is a direct example of failing to preserve the protection of the public at large,'' and ''USDA cannot legally implement their proposed rules without violating the mission statement of the agency.''

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AMS response: AMS considered the potential civil rights implications of this rule on minorities, women, and persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information. Additionally, this rule would not deny any persons or groups the benefits of the program or subject any persons or groups to discrimination. This rule is neutral and of general applicability.

We also note that some of the burdens or hardship described in the comments are required by the 2018 Farm Bill. First, the 10-year ineligibility restriction applicable to persons convicted of a State or Federal felony is a requirement of the 2018 Farm Bill. Also, as stated previously the basis for the DEA lab registration is rooted to the statutory requirements of the Controlled Substances Act, that requires any laboratory that might potentially handle a controlled substance to undergo the DEA registration process and thus cannot be eliminated. Additionally, the 2018 Farm requires effective disposal of non-compliant plants.

Moreover, AMS conducted a Civil Rights Impact Analysis in accordance with USDA's Departmental Regulation 4300–004: Civil Rights Impact Analysis.[30] AMS's analysis did not find any evidence that the final rule would adversely or disproportionality impact hemp producers in protected groups, regions or Tribes as compared to the general population of hemp producers or State Departments of Agriculture.

Regulatory Impact Analysis

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives when an action is deemed to have significant impacts. If regulation is necessary, then agencies must select the action that maximizes net benefits, including potential economic, environmental, public health and safety effects, and equity. Executive Order 13771 mandates that agencies provide the best approximation of total costs associated with a new or repealed regulation. AMS prepared a Regulatory Impact Analysis (RIA) with the purpose of accomplishing these objectives.

Comments: Very few comments addressed the RIA specifically, but we received many comments with information related to assumptions that fed into the RIA such as percent of hot hemp, testing burdens, lab registration burdens. AMS addressed these comments in the general comment section and took into consideration information provided for the RIA.

One comment acknowledged that USDA's economic analysis was based on sound and reasonable methodology but said that its expectations were not confirmed by actual market events in 2019. The commenter compiled production data provided in other comments in an effort to present a more current analysis of the hemp market. The comment pointed out that the RIA underestimated the number of hemp production licenses that would be issued and hemp acres that would be planted in the 2019 growing season. According to the comment, while the RIA called only for a doubling of licenses beyond the 2018 benchmark, the actual rate of licenses increased by 476 percent in 2019. Similarly, the comment reported actual planted hemp acreage in 2019 to be close to 230,000 acres, well over the 155,000 acres assumed by the RIA. The comment went on to say that the rate of growth for new licenses outpaced the rate of growth for consumer sales by 3:1, while the RIA had assumed a 1:1 rate over the next four years. The comment explained that supply growth has outstripped demand and created significant market imbalance and, as a result, market prices have dropped and driven down revenues to hemp producers.

The comment cited the gross revenue for floral material estimated in Table 1 of the RIA, which ranges from $2,333 to $24,000 per acre under the assumption that two-thirds of an acre is planted for floral material. Based on market data published in November 2019, after the IFR's publication, the comment suggested that the actual range of gross revenue for floral material per two-thirds of an acre was $2,728 to $17,261. The comment then applied the variable cost of planting one full acre of floral material estimated in the RIA, $28,638 per acre, to this range of gross revenue. This calculation resulted in a loss of $11,377 to $25,910 per acre, which the comment said is incorrect given that the variable cost per acre of floral material was deducted from the gross revenue per two-thirds of an acre. For an accurate estimate of net revenue, it stated that gross revenue and costs must be represented in terms of the same unit of measurement.

The comment suggested that the downstream effects of an unbalanced economic supply equation would further disrupt the profitability of sectors that are intended to support the transportation, processing, and retail sales of the product. It cited sales data reporting a 50 percent decline in the price of CBD extracts and concentrates from April 2019, stating that the oversupply of hemp has affected the entire commercial supply chain.

The commenter disagreed with the methodology used to project the net social benefit of hemp per acre in the IFR, saying that methodology assumed social benefit is a static figure. The commenter asserted instead that social benefit is ''a fluid figure that is heavily influenced by time and supply and demand economics'' and that it will likely fall over time.[31]

Further, it argued that the estimated 2019 societal willingness to pay of $2,650 per acre, which was calculated in the RIA using Kentucky grower sales and planted acreage, is not representative of the rest of the United States. Based on the hemp product sales in Chart 1 of the RIA, the estimated return to producers of processor sales of 31 percent, which was calculated in the RIA by comparing Kentucky grower and processor sales, and total U.S. planted acres estimated in Table 3 of the RIA, the comment calculates a 2019 national societal willingness to pay of $2,325 per acre. This result indicates that the societal willingness to pay based on Kentucky data is 14 percent higher than the estimate for the United States as a whole. The comment also calculates a national societal willingness to pay for 2018 of $4,047, which illustrates that a decline in societal willingness to pay of 42.5 percent occurred in 2019.

The comment cautioned that the net social benefit calculated in the IFR was over inflated because it represents a point in time during the industry's infancy. The comment argued that the industry faces a market depression and recommended a quota system for licensing classified by intended use. In this recommendation, the comment offered a detailed approach to estimating acreage required to meet demand for hemp grown for use in the CBD market. The analysis resulted in an estimated 44,509 acres required to meet demand in 2020, 83,336 acres for 2021, 188,558 acres for 2022, 255,899 acres for 2023, and 309,773 acres for 2024. The comment expanded upon its recommendation of a quota licensing system, suggesting that a number of licenses be granted by range of acreage, thereby ensuring that a share of licenses is reserved for small farmers.

Another comment asserted that unless the IFR definition of hemp is revised to include cannabis with a total THC level

[30] *https://www.ocio.usda.gov/sites/default/files/docs/2012/CRIA%20DR%204300-004-final.pdf.*

[31] *https://beta.regulations.gov/comment/AMS-SC-19-0042-1490.*

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of not more than 1.0 percent on a dry weight basis, it will not be economically viable to grow hemp for flower in the U.S. According to the comment, if the THC limits of the IFR are maintained in the final rule, the RIA should be revised to reflect the impact of the rule on total yield and CBD concentration of harvestable flowers, reduced value of CBD hemp seed, and the unknowable market value of CBD. The comment predicted that although the value of hemp seed for flower might be reduced marginally, other input costs would remain very high.

One comment recommended differentiation between hemp biomass and hemp flowers in the IFR's analysis of market prices for floral material. The comment said that hemp biomass refers to full plant material, including stems, leaves, and flowers, while hemp flower refers to the part of the plant that contains trichomes which houses richly and densely populated cannabinoid content. The comment said the prices in the RIA are consistent with prices for hemp biomass, and suggested prices for hemp flowers ranging from $25 to $800 per pound, depending on the percentage of CBD present.

Two comments asserted that USDA grossly underestimated the sampling time and cost in the IFR. Comments were concerned that readers might assume hemp sampling and testing costs fees are preset. The comments suggested that hemp sampling is a more complex logistical problem than contemplated in the IFR because of the geography and scope of sampling on farms. The comments encouraged USDA to calculate anticipated sampling costs to include a minimum number of hours for each step in the sampling process, and to consider factors such as travel time and coordination of supplies and personnel for the sampling effort.

One comment disagreed with the IFR statement that the new hemp production program would expand production and sales of domestic hemp, benefitting U.S. growers and consumers. The commenter said that production costs for his CBD hemp farm were approximately $16,000 per acre, but because of the IFR's restrictiveness and his resulting inability to bring the crop to full maturity, the crop would likely only return $9,000 per acre. The commenter said they were unwilling to make that kind of risky investment and was unwilling to decide whether to plan for future crops until USDA finalizes its rule.

AMS response: AMS is aware that the number of licenses and amount of acreage that were estimated in the RIA of the IFR were underestimated. Entrance of producers into the market spiked at an unexpected rate in 2019, driving up acreage along with licenses. AMS utilized the most current data available to it in its analysis of the hemp market in the IFR and the final rule.

Regarding the estimate in one comment of net loss ranging from $11,377 to $25,910 per acre, it is important for gross revenue and costs to be represented in the same unit of measure for an accurate net revenue calculation, which, in this case, they are not. The variable cost per one acre of floral material was deducted from the gross revenue per two-thirds of one acre of floral material, resulting in a larger loss than if calculated using the same unit of measurement. AMS has adjusted the calculation of net revenue in the table below using the market price data cited by the comment. AMS appreciates the comment's citation of its sources and utilized similar sources in the RIA of this final rule.

Planted acres	Yield	Price	Gross revenue	Variable cost	Net revenue
Low estimate					
2/3	1,000	$4.09	$2,727	$19,092	$(16,365)
1	1,000	4.09	4,090	28,638	(24,548)
High estimate					
2/3	1,200	21.58	17,264	19,092	(1,828)
1	1,200	21.58	25,896	28,638	(2,742)

Furthermore, AMS understands and appreciates the commenter's argument that net social benefit andsocietal willingness to pay are over inflated in the IFR. Due to the relative scarcity of industry data, AMS made many assumptions in its analysis in the IFR, some of which were not realized. In order to caution industry stakeholders of the volatility of the hemp market, however, AMS used variable cost estimates to calculate net returns to producers, which ranged from a loss of nearly $17,000 to a gain of $6,240. In the single year since publication of the IFR, a greater amount of data has become available to AMS, which allows the analysis in the final rule to rely less on assumptions that may not be actualized.

AMS only has the authority regarding hemp regulation granted to it by the 2018 Farm Bill. The recommendations to establish a quota system for issuing licenses based on intended use and to revise the definition of hemp such that it includes cannabis with up to 1.0 percent total THC on a dry weight basis are outside of the authority of USDA. The 2018 Farm Bill provided USDA no authority to regulate production volume. Additionally, USDA cannot adjust the statutory definition of hemp.

AMS has also reviewed the sampling procedures and costs characterized in approved state and Tribal plans to better estimate the time and resultant fees that will be charged to producers for sampling in the hemp program.

Small Business Impacts

AMS performed a Regulatory Flexibility Analysis (RFA) in conjunction with the IFR that considered the effects of the rule on small businesses particularly.

Comments: One organization that represents the views of small entities stated that small hemp producers have significant startup costs that affect their ability to be competitive in the hemp industry. The comment notes that hemp production is labor-intensive and has licensing and regulatory costs that are not typically incurred by producers of other agricultural crops. Small entities indicated that only those businesses with adequate capital and large-scale operations would be able to survive and comply with the requirements of this rule. Further, comments conveyed that this rule will raise real barriers to entry for small and disadvantaged producers and could prevent these critically important producer groups from even entering the hemp industry.

Other comments stated that the negative effects of the regulatory incongruence in the IFR

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disproportionately affect farmers, in particular new and small farmers—and small or already disadvantaged hemp farmers will face additional risks if the IFR is not changed.

One comment claimed the 2014 and 2018 Farm Bills presented an innate prejudice for institutional research, including State departments of agriculture and institutions of higher education and this prejudice continued in the IFR. The commenter says this is similar to the bias of California's draft State plan, where individuals permitted to be grower or breeders, but the program's compliance burdens are effectively beyond the reach of most individuals.

Commenters stated that this rule will disrupt small producers who were successfully producing hemp under prior pilot programs. One organization reported that hemp producers have stopped growing hemp altogether until they can be certain about what the requirements for producing hemp. Comments also reported that some hemp buyers have not renewed their contracts. Comments stated that several of the provisions of this rule impose unnecessary burdens on small entities. Comments suggested that many of the sampling and testing requirements should be revisited and alternatives should be considered and analyzed to minimize the burden to small producers. In addition, comments said that small business are very concerned about the risk of losing their economic investment due to mandatory disposal, the lack of control over growing conditions, genetics of neighboring crops, and timing and precision of the testing.

Comments from State departments of agriculture expressed strong concern as to the additional burdens they would incur as a result of the rule. These burdens may be directly passed to small producers in the form of delayed responses to license applications, renewals, and appeals; testing backlogs; duplicative reporting requirements; new license fees; and other programmatic issues.

One comment claimed that, based on six years of administering their hemp program, many of the most rigid requirements of the IFR are not only unnecessary, but also likely to have a disproportionately adverse impact on new farmers and farmers with smaller operations. According to the comment, these farmers already face great risk in the current marketplace, and need regulatory help, rather than impediments, in order to grow and thrive. The comment urged AMS to provide a more sensible, flexible, and practical regulatory scheme to encourage industry growth.

*AMS response: A*MS understands that there is a great deal of uncertainty in the hemp industry currently and has made efforts to minimize any burden which may befall producers as a result of this rule. To that end, USDA is not charging producers any fees for licensing or collecting any fees from producers to support AMS' administration of the hemp program. The fee structure developed by States and Indian Tribes to administer their hemp programs lies outside of the purview of USDA. On average, AMS anticipates total fees paid by producers under a State or Tribal Plan to amount to $800 per grower. This amount includes licensing and other fees intended to generally fund the operations of States or Tribal Programs. Fees for sampling and testing, on average, amount to about $300 per lot. The cost for an annual background check for three key participants is $54. AMS estimates an annual reporting and recordkeeping burden of $129 per grower. Altogether, these costs total $1,283 per grower, assuming one lot requires sampling and testing. This total cost is 0.1 percent of $1 million, which is the largest amount in annual receipts that a grower may receive to be considered to be a ''small business'' under the Small Business Size Standards of the U.S. Small Business Administration (SBA).

In response to comments, AMS has revised its sampling and testing methodology to allow for performance-based sampling, which should reduce the burden on all producers, large and small. Section 990.3 details this revised methodology. In addition, AMS has modified its disposal requirements, and allows for remediation of noncompliant crops. These remediation options are described in § 990.27.

AMS understands the concerns raised by state departments of agriculture regarding the requirements of administering a commercial hemp program. For this reason, AMS has made every effort to provide States and Indian Tribes flexibility to administer their hemp programs, including whether they charge for fees or other costs or cover those expenses from other State or Tribal resources. If the burden for a State or Indian Tribe to administer its own hemp program remains too great, however, the State or Indian Tribe may elect to participate in the Federal plan and allow AMS to administer the program. By providing this flexibility, USDA believes it is less likely that the burdens on State and Tribal resources will be passed on to small businesses.

Tribal Matters

The IFR provided that States and Indian Tribes may submit hemp production plans to USDA for approval. Individual producers from States or Tribal territories that do not have USDA-approved plans may file separate applications for hemp production licenses under the general USDA hemp production plan. Below are several comments and AMS's responses regarding matters of particular concern to Indian Tribes and Tribal members.

Comments: Comments said the regulations fail to treat Indian Tribes on an equal basis with States by repeatedly failing to include the term ''Tribe'' when referring to the State and local jurisdictions. According to comments, by doing so, the regulations fail to respect Tribal sovereignty and self-government.

AMS response: USDA agrees that Indian Tribes must be treated the same as States under the regulations. There were a few occasions where USDA mistakenly left out ''Tribe'' from the language in the regulation. USDA is correcting these mistakes in the IFR by revising the language of the final rule to insert ''Tribe'' after ''State'' in the definition of *Law Enforcement Agency* in § 990.1; insert ''Tribe'' after ''State'' in § 990.24(a); and revise § 990.40(d), which incorrectly referred to ''States and territories of Indian Tribes,'' to refer to ''States and Indian Tribes''.

Comments: Several comments asserted that USDA should not define ''territory of an Indian Tribe'' and claimed that by doing so, USDA violates Tribal treaty rights to farm on Tribal territories. Comments argued that such a definition should be left up to each Indian Tribe. Further, comments contended that the definition of ''territory of an Indian Tribe'' at § 990.1 inappropriately refers to a criminal statute, 18 U.S.C. 1151, to define an Indian Tribe's territory and regulatory jurisdiction. Other comments supported the use of the Indian country definition, but asked for the removal of the requirement that the lands must be within the Indian Tribe's jurisdiction, primarily because it causes uncertainty as to whether Indian Tribes may regulate hemp production on non-Indian owned fee lands within a Tribe's territorial boundaries. Comments also asked that AMS clarify that States cannot interfere with hemp production within the territory of an Indian Tribe.

AMS Response: If an Indian Tribe does not assume primary jurisdiction over the Tribe's Indian territory, USDA has jurisdiction over the hemp production on an Indian Tribe's

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territory pursuant to the 2018 Farm Bill. USDA, therefore, must know the limits of its jurisdiction over such Indian territory, just as it must know its jurisdiction over lands ordinarily within State jurisdiction.

The IFR defined ''territory of the Indian Tribe'' at 7 CFR 990.1 as having the same meaning as ''Indian Country'' in 18 U.S.C. 1151. Upon consideration of comments submitted by Indian Tribes, USDA concurs that reference to the criminal law definition of Indian country could be confusing.

Therefore, in the final rule USDA revised the definition of ''territory of the Indian Tribe'' to incorporate language from other Federal statutes, but without explicitly cross-referencing such statutes. Specifically, the final rule defines ''territory of the Indian Tribe'' to mean (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, including rights-of-way running through the reservation; (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same; and (d) any lands title to which is either held in trust by the United States for the benefit of any Indian Tribe or individual or held by any Indian Tribe or individual subject to restriction by the United States against alienation and over which an Indian Tribe exercises jurisdiction.

In the 2018 Farm Bill, Congress provided authority for any Indian Tribe to seek USDA approval to become the primary regulator of hemp production within the ''territory of the Indian Tribe.'' The 2018 Farm Bill did not provide a definition of the term territory of the Indian Tribe, and there is no universally accepted definition of that term, or similar terms, within the field of Federal Indian law. In describing jurisdictional boundaries associated with Indian Tribes, various Federal statutes use several terms, including Indian country, Indian lands, Federal Indian reservations, and areas within the Indian Tribe's jurisdiction, among others.

Thus, by its very nature and history, the statutory term ''territory of the Indian Tribe'' is ambiguous. According to the Indian canon of construction, ''statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit. . . .'' *Montana* v. *Blackfeet Tribe of Indians,* 471 U.S. 759, 766 (1985) (citations omitted). In addition, USDA may address ambiguities in a statute that it administers, with any reasonable interpretation of the ambiguous term entitled to judicial deference. *Chevron U.S.A. Inc.* v. *Nat. Res. Defense Council, Inc.,* 467 U.S. 837, 842–43 (1984). In this case, Congress provided no indication that the term ''territory of the Indian Tribe'' should apply more narrowly than similar terms that have been defined and interpreted in other Federal statutes and programs. Moreover, a narrow interpretation that excluded nontribal fee lands within reservations would perpetuate the problem of checkerboard jurisdiction over lands within Indian reservations, adding unnecessary confusion and uncertainty to the challenges of implementing the hemp program in Indian country. Therefore, the USDA includes a regulatory definition of the term ''territory of the Indian Tribe'' that is based on the definition of Indian country in 18 U.S.C. 1151 and the definition of Indian lands in the Indian Gaming Regulatory Act, 25 U.S.C. 2703(4).

The definition includes all lands within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, which encompasses on-reservation parcels held in fee simple by non-members of the Indian Tribe. Similar provisions are found in the criminal jurisdiction definition of Indian country, 18 U.S.C. 1151; in the Clean Water Act, 33 U.S.C. 1377(h); the Clean Air Act, 42 U.S.C. 7601(d)(2)(B).

The U.S. Environmental Protection Agency (''EPA'') interpreted the statutes that it administers as providing authority to Indian Tribes over non-Tribal fee lands within Indian reservations. EPA Final Rule: Indian Tribes—Air Quality Planning and Management, 63 FR 7254 (Feb. 12, 1998); EPA Interpretive Rule: Revised Interpretation of Clean Water Act Tribal Provision, 81 FR 30,183 (May 16, 2016). EPA found that the Clean Water Act and Clean Air Act provided a delegation of authority to Indian Tribes over non-Tribal fee land within reservations. *See Arizona Public Serv. Co.* v. *EPA,* 211 F.3d 1280 (D.C. Cir. 2000). The agency found legislative intent and a common-sense reasoning to treat Indian reservations holistically for purposes of environmental regulation.

Similarly, USDA interprets the 2018 Farm Bill as authorizing Indian Tribes to become—with USDA's approval of a hemp plan—the primary regulators of hemp production within their territories, including on nontribal fee lands within reservations. This authority applies without regard to the Indian Tribe's ability to demonstrate inherent regulatory authority over non-Indians under the factors set forth in *Montana* v. *United States,* 450 U.S. 544 (1981). Additionally, this definition will make clear the area over which USDA will have regulatory authority including licensing if the Indian Tribe does not have an approved plan or a plan submitted to USDA for approval.

Comment: Some comments said Indian Tribes did not have the benefit of operating under the 2014 Farm Bill and, consequently, have not developed the farming techniques and regulatory systems that States have. Therefore, according to comments, Indian Tribes should be given a grace period while they develop best practices.

AMS response: Not all States operated under the 2014 Farm Bill, and some Indian Tribes did enter into Tribal—State agreements under the 2014 Farm Bill. Therefore, establishing a regulatory grace period for Indian Tribes only is not workable. Indian Tribes may take advantage of training and technical assistance offered by the USDA and other entities to ensure that they implement the best systems possible.

Comments: Some comments claimed that negligent violations by Indian Tribes under § 990.6 may cause Indian Tribes to be ineligible for other programs.

AMS response: The 2018 Farm Bill describes three types of negligent violations under State and Tribal plans. The negligent violations detailed in § 990.6 are required to be included in State and Tribal plans pursuant to the 2018 Farm Bill.

Comment: A comment contended that the requirement for a geospatial site identification at § 990.3(a)(1)(ii) is too expensive for Indian Tribes, unnecessary, and not readily available. Comments said the Department of the Interior has land records that could be used to obtain necessary information.

AMS response: A legal description of the land where hemp is grown is required by the 2018 Farm Bill. Geospatial location is one form of meeting such requirement. Producers are required to provide information to FSA on the geographical location of hemp production. FSA offices will provide assistance in identifying such location at no cost to producers.

Comments: Some comments said USDA should conduct more Tribal consultations and provide USDA and DEA training for hemp producers. One Indian Tribe requested more time to

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allow Indian Tribes to organize a Tribal Advisory Council of Tribal Leaders to continue with the development and implementation of federal hemp policy.

AMS Response: In addition to previous Tribal consultations and extending and reopening the IFR's comment period, USDA added a September 2020 Tribal consultation to receive additional information, particularly from 2020 growing season producers. See the section on *E.O. 13175 Consultation and Coordination with Indian Tribal Governments* in this document for further discussion about the consultations. If Indian Tribes organize a Tribal Advisory Council of Tribal Leaders, USDA would appreciate any future feedback. Additionally, USDA is available to provide technical assistance when requested, including training. USDA is adding training for sampling to its website.

Comments: Comments said that Indian Tribes and individuals within the territory of the Indian Tribe should not have to be regulated by States, but should be able to go directly to USDA for licensing if the Indian Tribe opts out of developing its own Tribal plan and the Indian Tribe does not otherwise prohibit hemp production.

AMS Response: Subpart C, the USDA Hemp Production Plan, governs hemp producers in the absence of a Tribal plan. Therefore, any Indian Tribes or individuals wishing to produce hemp must comply with those regulations if not covered under a State or Tribal plan. If an Indian Tribe decides not to develop its own hemp plan, a producer may directly apply for a USDA license. States were not delegated authority under the 2018 Farm Bill to regulate hemp production within the territory of an Indian Tribe.

Comment: Indian Tribes should be allowed to implement their Tribal preference laws.

AMS Response: Nothing in the IFR or the final rule prevents Indian Tribes from implementing their Tribal preference laws.

Comment: A comment said that Tribal ordinances and interstate commerce regulations need to address price gouging in seeds and input.

AMS Response: This comment is outside the scope of this rule.

Comment: A comment said the Bureau of Indian Affairs and USDA should review 25 CFR part 162 governing agriculture and business leases to ensure that the hemp regulations here do not conflict with that part or cause additional regulatory hurdles.

AMS response: 25 CFR part 162 establishes certain requirements for leasing trust or restricted Indian lands. USDA conferred with the Department of the Interior, the agency regulating Indian land, and did not identify any conflicts between the two sets of regulations.

Comment: A comment suggested USDA hire an Indian law expert to assist with development of the final rule.

AMS response: USDA agreed and hired a consultant with 40 years-experience as an Indian law attorney to assist with the development of the final regulations and the review of Tribal plans.

Comment: Comments said the criminal history checks required by the IFR should be expanded to include the Department of Justice Tribal Access Program (TAP). According to comments, those using TAP would then be able to directly access criminal history checks. Comments also said the regulations need to clarify whether the criminal history check can be a name check or a finger-print check.

AMS Response: USDA conferred with the DOJ Office of Tribal Justice and was informed that Indian Tribes can use the TAP program to access the FBI Identity History Summaries. The FBI Identity History Summaries may be based on name check or a finger-print check.

Comment: Comments noted that the term ''key participant'' is defined at § 990.1 in a manner that is not necessarily consistent with an Indian Tribe's unique organization and methods of doing business. Comments explained, for example, that an Indian Tribe may be the owner of a hemp farm. Comments asserted that although the Indian Tribe's governing council may be the ultimate decision-maker as the owner, it would not be appropriate to include them in the felony and background investigations. Therefore, comments said Indian Tribes should be permitted to identify their own ''key participants'' if they are operating under a USDA plan and the requirements of § 990.22.

AMS Response: USDA understands the concerns raised by Indian Tribes regarding the application of the criminal history report requirement and the felony conviction restriction on Tribal leaders. However, USDA must ensure that entities operating under a USDA plan comply with the felony conviction restriction in the AMA. For reasons explained in the IFR, USDA believes that the appropriate approach in determining who participates in the program, and therefore subject to the felony conviction restriction, is to focus on those who exercise executive managerial control over hemp production. USDA also believes that this focus should be consistent across the USDA plan regardless of the person who is applying for a license. For the foregoing reasons, USDA has clarified the definition of key participants in the final rule to provide that the definition ''does not include a member of the leadership of a Tribal government who is acting in their capacity as a Tribal leader except when that member exercises executive managerial control over hemp production.'' AMS notes that an Indian Tribe may adopt its own hemp plans subject to USDA approval. When adopting a hemp plan, the Indian Tribe can determine who participates in its plan and will be subject to a criminal history check.

Comment: USDA received a comment that it should affirm Tribal sovereignty by not allowing other federal agencies, such as the DEA, to interfere with Tribal hemp remediation.

AMS Response: USDA does not have the authority to control the actions of other federal agencies acting properly within their authority.

Comment: USDA received comments that USDA owes a trust responsibility to Indian Tribes. According to commenters, that trust responsibility requires acknowledging the unique challenges that Indian Tribes face including that (1) most tillable land was taken from Indian Tribes during homesteading; (2) Tribes' participation in the farm program results in only a 60 percent yield of their non-Indian counterparts; (3) the finance system is usurious as financiers discount the value of Tribal assets or refuse to consider them at all; and (4) American Indian producers will be disproportionately disadvantaged because their farms are significantly smaller and are generally run with only one crop by families with small margins.

AMS Response: USDA acknowledges that it has a special government-to-government relationship with Indian Tribes, and believes that, in preparing and issuing this final rule it has acted in accordance with that relationship. In response to concerns regarding the unique challenges Indian Tribes face, as explained in the Civil Rights Review of this final rule, AMS conducted a ''Civil Rights Impact Analysis'' and did not find any evidence that the final rule would adversely or disproportionality impact Indian Tribes or Tribal members producing hemp as compared to the general population of hemp producers or State Departments of Agriculture. Indian Tribes may take advantage of training and technical assistance offered by the USDA to ensure that they

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implement the best systems possible. Additionally, USDA is available to provide technical assistance when requested.

State and Tribal vs. Federal Regulation

The preamble of the IFR stated that ''[n]othing preempts or limits any law of a State or Indian Tribe that regulates the production of hemp and is more stringent than the provisions in the 2018 Farm Bill.'' Further, Section 297B of the AMA expressly states that it does not preempt a State or Indian Tribe's ability to adopt more stringent requirements or to prohibit the production of hemp. This was codified in the IFR in § 990.3(b)(1), which provides that nothing in the part preempts or limits any law of a State or Indian Tribe that regulates the production of hemp and is more stringent than this part or Subtitle G of the Act.

Comments: Many of the comments received stated that the provisions of the IFR were more stringent than the regulations of pilot programs established by States under the authority of the 2014 Farm Bill. In fact, the majority of all comments received either took exception to the perceived increase in regulatory requirements for hemp production under the IFR, or presented recommendations for alternative requirements under the final rule that would not be as restrictive or burdensome as the provisions in the IFR.

No comments were received that either affirmed or opposed the rights of States and Indian Tribes to promulgate more stringent regulations for their jurisdictions. However, one comment said rather than using the flexibility allowed in the law to let states develop sensitive state plans, the IFR had rigid controls not required by law or correlated to the relatively low-level risk of non-compliant hemp. The comment further said USDA should establish baseline requirements but provide States flexibility to consider the dynamics of agricultural production that depend on farm and field conditions, weather, and the timing appropriate for planting, harvesting, the varieties being cultivated and the marketing of crops. Other comments agreed with recommendations to allow States and Indian Tribes to determine certain provisions that are not central to the minimum regulatory requirements of the IFR, such as application windows and reporting.

AMS response: The 2018 Farm Bill expressly preserved the ability for State and Tribal hemp production plans to establish additional provisions stricter than the baseline regulations required by the 2018 Farm Bill. These baseline regulations require all State and Tribal plans to include certain minimum requirements for licensing, sampling, testing, disposal, and information collection. These requirements could certainly be considered ''more burdensome'' than certain State hemp production plans operated under 2014 Farm Bill pilot program provisions, but they are intended to provide consistency and transparency among the U.S. hemp industry as it matures. Prior to the passage of the 2018 Farm Bill, States operating hemp pilot programs could administer these programs with minimal Federal oversight, and without baseline requirements around sampling, testing, and other program requirements because the 2014 Farm Bill programs are for research. The 2018 Farm Bill established baseline requirements for hemp production for hemp production across the U.S. regardless of the purpose of the production.

Preemption

Comment: AMS received comments asserting that the IFR did not abide by the mandate of the 2018 Farm Bill that there be no preemption of state or Tribal laws that regulate the production of hemp and are more stringent than the hemp provisions in the federal statute.

AMS response: Section 297B(a)(3) of the AMA provides that for States and Indian Tribes with primary regulatory jurisdiction over the production of hemp, there is no preemption if that State or Indian Tribe both regulates the production of hemp and that regulation is more stringent than the 2018 Farm Bill or the implementing regulations. Thus, the no preemption provision of the 2018 Farm Bill is to make clear that more stringent requirements are not preempted. AMS finds that the 2018 Farm Bill requires the implementation of federally mandated minimum standards, which all jurisdictions must follow, allowing for certain further restrictions by States and Indian Tribes.

Recordkeeping Requirement

Comment: One commenter argued that the recordkeeping requirements of the IFR violated the 4th Amendment's prohibition against unreasonable search and seizure and was ''arbitrary and capricious'' and a violation of the APA.

AMS Response: The 2018 Farm Bill established a hemp production program in the U.S. subject to oversight from the Secretary of Agriculture. Part of that congressional mandate is for the Department of Agriculture to establish a plan by which it collects information from producers to ensure compliance. While hemp is no longer a Schedule 1 drug, USDA can only make the determination of whether the crop is legal hemp (which it regulates) or illegal marihuana (which it does not regulate) through the mechanisms Congress has authorized. Recordkeeping requirements are paramount to that determination, which is required by Congress. AMS is retaining the recordkeeping requirements of the IFR.

APA Notice and Comment Concerns

Comment: Some commenters claimed that in issuing an IFR, AMS acted arbitrarily and capriciously in violation of the APA. Commenters argued that the good cause statement included in the IFR was not adequate to support its issuance rather than going through notice and comment rulemaking.

AMS Response: AMS does not agree with these comments and believes that there was good cause to issue the IFR. AMS has encouraged public input on the IFR since its issuance and has provided many opportunities for public comment.

Criminal Background Checks and Definition of Key Participants

Comment: Several commenters argued that the restrictions on participation in hemp production for people with criminal convictions related to a violation of a state or Federal controlled substance law are not necessary and that hemp should be treated the same as all other commodities, which do not have similar restrictions. Commenters argued that there should be an exception for people with disqualifying criminal convictions who could demonstrate rehabilitation and that this restriction conflicts with state statutory requirements in some states. One commenter argued that USDA should conduct all criminal background checks rather than States or Indian Tribes.

AMS Response: AMS acknowledges various stakeholders' advocacy for reduced restrictions to entry in hemp production. However, the restriction on participation-based on a criminal conviction for violation of a state or Federal law related to controlled substances is a requirement established by statute and AMS does not have the authority to change to waive this restriction.

Definition of Key Participants

Comment: Some commenters requested that AMS change the definition of key participants to more clearly state which individuals within a business entity would be required to submit a criminal history report. One commenter requested that AMS align the definition of key participant with

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the definitions of ''legal entities'' and ''beneficial owners'' in Department of Treasury regulations. Another commenter suggested that AMS define who must submit a criminal history report in States and Indian Tribes that have an approved plan for primary regulatory authority over hemp in their jurisdiction.

AMS Response: AMS acknowledges various stakeholders' advocacy for a single definition of ''key participants'' for all hemp producers. However, AMS will not require that States or Indian Tribes with an approved plan for primary regulatory authority over the production of hemp in their jurisdiction adopt the USDA definition of ''key participants.'' States and Indian Tribes are free to incorporate the AMS definition of key participants into their plan but they are not required to do so. They must, however, define who participates in their plan and, for each license or authorization they issue, must identify at least one individual who will be subject to a criminal history check. The Department of Treasury definitions of ''legal entities'' and ''beneficial owners,'' while similar to the definition of ''key participants'' adopted herein apply broadly to the corporate structure of a business entity. USDA finds the ''key participant'' definition to best describe those individuals responsible for compliance with this program or ''leadership structure of a business entity.''

X. Regulatory Analyses

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Domestic Hemp Production Program's information collection requirements have been previously approved by Office of Management and Budget (OMB) and assigned OMB No. 0581–0318. The 60-day public comment period was imbedded in the interim final rule (IFR) which was published on October 31, 2019, and ended on December 30, 2019. Because of the very tight timeline for publishing the IFR, OMB granted conditional emergency approval of these seven forms on December 3, 2019. The USDA Office of Chief Information Officer (OCIO) published the 30-day Notice for the three-year renewal at 85 FR 36828 on Thursday, June 18, 2020.

While writing the IFR there was very limited data available to make the initial burden calculations under the Paperwork Reduction Act (PRA). Since the IFR was published, USDA has been able to gather much more accurate data on the number of producers, disposal rates, and time burdens for completing the forms. Because of this new information, AMS is updating the burden calculations currently approved by OMB. AMS will submit an updated Information Collection to align the new calculations in the FR with the 0581–0318 package.

AMS received over 4,600 comments in the first public comment period and 1,100 during the second comment period on the overall regulation. A specific analysis of each topic area in the comment analysis section of the final rule. AMS did not receive public comments specifically on the PRA nor on the time burden hour calculations to complete any of the forms. One comment from the Alabama Department of Agriculture wrote that 10 minutes for a State or Tribal producer license application was too low, so that has been increased to 20 minutes.

AMS used an initial estimate of 9,000 total producers for the IFR. This was based on the limited data from State Departments of Agriculture and the hemp advocacy group, Vote Hemp. Based on a review of hemp production data from State Departments of Agriculture, and the data reporting services from Hemp Benchmarks and Vote Hemp, AMS now estimates 20,000 producers as a yearly average to use for the purposes of reporting calculations. These numbers will be updated every three years. While the current percent of hemp growers licensed under USDA is drastically smaller than this, AMS assumes approximately 20 percent or 4,000 producers will be licensed under the USDA plan, and the other 80 percent or 16,000 producers licensed under State and Tribal USDA-approved programs.

The description and function of the seven reporting forms remains the same from the IFR and initial OMB approval. These forms require specific information be submitted by States and Tribes operating their own domestic hemp plans, from producers participating in the USDA Plan, and from laboratories testing for THC content. Reporting and recordkeeping burdens reflecting revised reporting hours and the projected additional producers are described in the following sections. All time and cost figures have been approximated to the nearest whole number. The table below explains these changes numerically.

Costs of Reporting and Recordkeeping

The initial estimate of 100 State and Tribal plans remains accurate since the majority of States and Indian Tribes will have their own programs. As of the Fall of 2020, USDA has already approved 65 individual State and Tribal programs, with more to come. The amount of State approved programs will also increase once the 2014 Farm Bill pilot authority expires and those additional States submit plans. States and Indian Tribes with approved plans are required to report certain information to USDA through three Forms: The ''State and Tribal Hemp Producer Report'', the ''State and Tribal Hemp Disposal Report'', and the ''State and Tribal Hemp Annual Report''. USDA collects information from all hemp producers under a State, Tribal or USDA program through the FSA report form ''Report of Acreage''. USDA collects information from USDA producers through the ''USDA Producer Application'', the ''USDA Annual Report'' and the ''USDA Disposal Report''. Laboratories provide information on the ''Laboratory Test Report''.

AMS has updated PRA calculations using the Occupational Employment Statistics Survey of the Bureau of Labor and Statistics [32] using the 2019 data. The mean hourly wage of a compliance officer, as reported in May 2019, was $35 per hour. This is the same numerical value as the May 2018 report. Assuming 39 percent of total compensation accounts for benefits, the total compensation of a compliance officer is $57 per hour. This $57 per hour will be used throughout the PRA section.

Respondents: States or Tribes With Approved Plans

AMS initially estimated that the time required for States and Indian Tribes to fill in the information for each of these forms will be 20 minutes or 0.33 hours with a 5 minute or 0.08 hours record keeping burden. This estimate has been updated from 20 minutes to 60 minutes or one hour. The ''State and Tribal Hemp Producer Report'' and the ''State and Tribal Hemp Disposal Report'' are due to USDA every month. The ''State and Tribal Hemp Annual Report'' form must be submitted to USDA once per year. Similar to the other two State and Tribal forms, the annual time burden was initially 20 minutes but has been updated to 60 minutes. The time burden for each State and Indian Tribe to complete and maintain these three forms is now 12 hours for each monthly form and 1 hour for the annual report, for a total of 25 hours per State and Tribe with an approved plan. Given the estimated number of approved State and Tribal plans is 100, the total cost is 250 hours and $14,250.

[32] *https://www.bls.gov/oes/home.htm.*

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Respondents: Producers Under State or Tribal Plans (Information Only, Not Completing the Forms)

The time required of producers to supply the information for the ''State and Tribal Hemp Disposal Report'' and the ''State and Tribal Hemp Annual Report'' will stay the same at 10 minutes for reporting and 5 minutes for recordkeeping burden for each producer for these two forms. The ''State and Tribal Hemp Producer Report'' time estimate is now increased to 20 minutes with a 5 minute record keeping burden for each producer, per the suggestion from the Alabama Department of Agriculture.

In the IFR, AMS originally estimated that the majority of States and Indian Tribes would have three-year producer licenses, and producers would only submit this information once every three years. Since approving 60 State and Tribal plans, the majority of State and Tribal licenses are issued on a yearly basis instead. AMS estimates that the 16,000 State and Tribal producers will submit license information each year for State and Tribal programs. In addition to obtaining a license, all hemp producers are required to prove that they do not have prior drug related convictions that would disqualify them from participation in the program. States have some flexibility in what they require of applicants to make this demonstration. However, for purposes of this analysis, AMS will use the cost of the FBI Identify Summary, $18, as a proxy cost for all background reports, and 3 key participants for each license each year, although if we were to take into account comments, it is likely there will be more than 3 key participants each year. In the chart below is a cost breakdown of the application and background check for producers under a State or Tribal program.

FBI Identity Summary	Number of respondents	Number of responses	Total annual resposes	*3 Key participants	Cost of background check ($18)	Plus burden cost of application	Total cost
Cost for State and Tribal producers (3 key participants every year)	16,000	1.0000	16,000.00	48,000.00	$864,000.00	$379,666.00	$1,243,666.00

In the IFR, AMS estimated that 20 percent of lots will need to be disposed even though the current rate of disposal is closer to 12%. This assumption is based on the increased number of new entrants to the market who may not be successful in their first year or two. AMS is introducing a new performance-based method to sampling, which will decrease the amount of testing and noncompliant tests. Therefore, AMS estimates that 1,600 lots will be disposed under State and Tribal programs. The producers under a State or Tribal program will provide their disposal information to their individual regulatory body. The States and Indian Tribes will then use that information to complete the monthly ''State and Tribal Hemp Disposal Report''.

These are just the costs and burden of collecting and maintain the information associated with the disposal, not the actual disposal. The actual cost of disposing of the non-compliant ''hot'' hemp is discussed in the RIA.

In total, producers under a State or Tribal program provide information and hold records for three forms. The total time burden for these producers providing and maintaining this information is estimated at 11,061 total hours and $630,466.

Respondents: Producers Participating in the USDA Plan

To produce hemp under the USDA Plan, a producer, which may be an individual producer or a business, completes the ''USDA Hemp Plan Producer Licensing Application'' and an FBI Identity Summary. If all parts of the application and summary are valid, AMS issues a license. The total burden per respondent of this form will maintain the same as in the IFR; 10 minutes for the time and 5 minutes for record keeping for a total of 15 minutes, or .25 hours. Licenses under the USDA Plan must be renewed every three years, so each producer only submits this information once every three years. In the IFR, AMS initially estimated that there will be 1,000 participants in the USDA Plan. AMS has now updated this estimate to be 20 percent of the total hemp producers, or 4,000 producers each year. Because the USDA license is valid for three years, approximately 1,332 producers will complete this form each year. The total annual burden for this form is 544 hours and $31,603.

In addition to the ''USDA Hemp Plan Producer Licensing Application'' submitted once every three years, producers must submit criminal history reports for each of their key participants. AMS estimates each producer to have three key participants submit criminal history reports to USDA. The cost of a criminal history report is $18 apiece, so three key participates would cost $54 per participant. As stated previously, AMS estimates that it will receive 1,332 license renewals in each year. Each of these 1,332 renewals will include a background summary for three key participates. Adding the cost of 1,332 renewals at $71,928 with the cost of the background check is $31,603 for the renewals and means there is an annual cost of $103,531.

FBI Identity Summary	Number of respondents	Number of responses per respondents	Total annual resposes	*3 Key participants	Cost of background check ($18)	Plus burden cost of application	Total cost
Cost for USDA producers (3 key participants every three years)	4,000	0.3330	1,332.00	3,996.00	$71,928.00	$31,603.00	$103,531.00

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Similar to the required annual report submitted by States and Indian Tribes to USDA, producers operating under the USDA Plan must submit the ''USDA Hemp Plan Producer Annual Report'' to USDA each year. AMS estimates the time burden of submitting this form will maintain the same, at 25 minutes, or 0.42 hours, per respondent. AMS has updated the initial estimate of 1,000 participants in the USDA Plan, to 4,000 producers. Therefore, the total burden of this form has increased from 416 hours to 1,665 hours, costing $94,916 annually.

When a hemp sample tests above the acceptable hemp THC level, the material from the specific lot must be disposed. The producer and disposal agent must complete the ''USDA Hemp Plan Producer Disposal Form''. The burden for this form will stay at 25 minutes, or 0.42 hours, per respondent.

Using the same assumptions regarding the prevalence of non-compliant crops and the costs of disposal that were used in generating the estimates of hemp disposal reporting (and disposal) for State and Tribal programs, the 4,000 producers that will participate in the USDA Plan will generate 400 samples that test high for THC content. The total reporting burden of this form will amount to 167 hours and cost $9,492 annually.

Altogether, the annual burden for the USDA producers completing and maintain the three USDA forms ''USDA Hemp Plan Producer Licensing Application'', the ''USDA Hemp Plan Producer Disposal Form'', and the ''USDA Hemp Plan Producer Annual Report'' amounts to an annual total of 2,386 hours and a cost of $136,011.

Respondents: Laboratories

The 2018 Farm Bill requires that all domestically produced hemp be tested for total THC content on a dry-weight basis, whether produced under a State or Tribal Plan or the USDA Plan. Using data from FSA the initial estimate of two lots of hemp per producer remains accurate. However, the new performance-based sampling process will decrease the number of total samples that are collected and tested.

AMS requires all laboratories testing hemp for THC to submit all test results, whether passing or failing, via the ''Laboratory Test Results Report''. AMS maintains the estimated reporting and recordkeeping burden for this form at 35 minutes, or .58 hours. AMS originally estimated that 7,700 total hemp producers would submit 15,400 samples to test. AMS has updated this estimate to 8,000 total tests annually. Therefore, the total annual burden of these tests and the accompanying ''Laboratory Test Results Report'' form decreased from 8,399 hours to 4,664 hours, and costs $265,848.

Respondents: All Producers

The FSA collects information on crop acreage through the ''Report of Acreage'' form. Hemp producers under all plans are required to fill in the information for this form once they receive their license or authorization from USDA, a State, or Indian Tribe and have planted the crop. AMS will keep the initial reporting burden and record keeping burden at 35 minutes, or 0.58 hours. AMS has added 60 minutes or one hour for the travel time to and from the FSA office, for a total of 90 minutes. With the increased number of producers and the addition of travel time, AMS estimates the burden for the 20,000 producers will be 31,660 hours and cost $1,804,620.

Total Reporting and Recordkeeping Costs for All Respondents

Altogether, the annual burden for reporting and recordkeeping for all respondents is 52,296 hours, costing a total of $2,980,864 per year. This is the sum of the annual burden of reporting and recordkeeping to States and Indian Tribes operating their own plans, to producers participating in the State and Tribal Plans, to producers participating in the USDA Plan, including the cost of a criminal history report for three key participants, and to laboratories testing samples for THC content.

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TABLE

Name	Form	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total reporting hours	Number of record keepers	Annual hours per record keeper	Total record keeping hours	Total hours	× $57
State and tribal forms											
State and Tribal Hemp Producer Report (Old).	AMS–23	100	12.0000	1,200.00	0.3333	399.96	100	0.083	8.30	408.26	$23,270.82
State and Tribal Hemp Producer Report (Update).	AMS–23	100	12.0000	1,200.00	1.0000	1,200.00	100	0.083	8.30	1,208.30	68,873.10
State and Tribal Producer Responses (Old).	information only	8,000	0.3330	2,664.00	0.1670	444.89	2,664.00	0.083	221.11	666.00	37,962.00
State and Tribal Producer Responses (Update).	information only	16,000	1.0000	16,000.00	0.3333	5,332.80	16,000	0.083	1,328.00	6,660.80	379,665.60
State and Tribal Hemp Disposal Report (Old).	AMS–24	100	12.0000	1,200.00	0.3333	399.96	100	0.083	8.30	408.26	23,270.82
State and Tribal Hemp Disposal Report (Update).	AMS–24	100	12.0000	1,200.00	1.0000	1,200.00	100	0.083	8.30	1,208.30	68,873.10
State and Tribal Producer Disposal Responses (20% then x 2 for 2 lots/producer) (Old).	information only	2,680	1.0000	2,680.00	0.1670	447.56	2,680	0.083	222.44	670.00	38,190.00
State and Tribal Producer Disposal Responses (25% of lot from 80% of producers) (Update).	information only	1,600	1.0000	1,600.00	0.1670	267.20	1,600	0.083	132.80	400.00	22,800.00
State and Tribal Hemp Annual Report (Old).	AMS–25	100	1.0000	100.00	0.3333	33.33	100	0.083	8.30	41.63	2,372.91
State and Tribal Hemp Annual Report (Update).	AMS–25	100	1.0000	100.00	1.0000	100.00	100	0.083	8.30	108.30	6,173.10
State and Tribal Hemp Annual Report Response (Old).	information only	6,700	1.0000	6,700.00	0.1670	1,118.90	6,700	0.083	556.10	1,675.00	95,475.00
State and Tribal Hemp Annual Report Response (Update).	information only	16,000	1.0000	16,000.00	0.1670	2,672.00	16,000	0.083	1,328.00	4,000.00	228,000.00
USDA Producer Forms											
USDA Hemp Plan Producer Licensing Application (Old).	AMS–26	1,000	0.3330	333.00	0.1670	55.61	333	0.083	27.64	83.25	4,745.25
USDA Hemp Plan Producer Licensing Application (Update).	AMS–26	4,000	0.3330	1,332.00	0.1670	222.44	4,000.00	0.083	332.00	554.44	31,603.31
USDA Hemp Plan Producer Disposal Form (20% x 2 lots for 2 lots/producer) (Old).	AMS–27	400	1.0000	400.00	0.3333	133.32	400	0.083	33.20	166.52	9,491.64
USDA Hemp Plan Producer Disposal Form (25% x lots from 20% of all producers) (Update).	AMS–27	400	1.0000	400.00	0.3333	133.32	400	0.083	33.20	166.52	9,491.64

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TABLE—Continued

Name	Form	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total reporting hours	Number of record keepers	Annual hours per record keeper	Total record keeping hours	Total hours	× $57
USDA Hemp Plan Producer Annual Report (Old).	AMS–28	1,000	1.0000	1,000.00	0.3333	333.30	1,000	0.083	83.00	416.30	23,729.10
USDA Hemp Plan Producer Annual Report (Update).	AMS–28	4,000	1.0000	4,000.00	0.3333	1,333.20	4,000	0.083	332.00	1,665.20	94,916.40
All Producer Forms											
Report of Acreage (Old).	FSA–578	7,700	1.0000	7,700.00	0.5000	3,850.00	7,700	0.083	639.10	4,489.10	255,878.70
Report of Acreage (Update + 60 min travel time).	FSA–578	20,000	1.0000	20,000.00	1.5000	30,000.00	20,000	0.083	1,660.00	31,660.00	1,804,620.00
Laboratory Test Results Report (2 lots/all producers) (Old).	AMS–22	7,700	2.0000	15,400.00	0.5000	7,700.00	7,700	0.083	639.10	8,339.10	475,328.70
Laboratory Test Results Report (100% of CBD; 50% of fiber; 50% of grain) (Update).	AMS–22	8,000	1.0000	8,000.00	0.5000	4,000.00	8,000	0.083	664.00	4,664.00	265,848.00
Total for Updates										52,295.86	2,980,864.25

Each column is a section of the burden estimate, with the cost of $57 per hour calculated in the last column. Each row represents the old or the new reporting calculations.

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E-Government Act

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. We recognize using an electronic system will promote efficiencies in developing and implementing the new USDA Domestic Hemp Production Program. Since this is a new program, AMS is working to make this process as effective and user-friendly as possible.

Civil Rights Review

AMS has considered the potential civil rights implications of this rule on minorities, women, and persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information. This review included persons that are employees of the entities who are subject to these regulations. This final rule does not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Further, this rule does not deny any persons or groups the benefits of the program or subject any persons or groups to discrimination.

This final rule reflects AMS's response to public comment and input provided by stakeholders. The final rule provides States and Indian Tribes the regulatory authority over hemp production in their jurisdictions. It also establishes a Federal plan for hemp producers located in States or territories of Indian Tribes that do not have their own USDA-approved hemp oversight plan. There is no evidence that the final rule will potentially adversely or disproportionality impact hemp producers in protected groups, regions or Indian Tribes differently than the general population of hemp producers or State Departments of Agriculture.

Executive Order 13132—Federalism

AMS has examined the effects of provisions in this final rule on the relationship between the Federal Government and the States, as required by Executive Order 13132 on ''Federalism.'' Our conclusion is that this rule does have federalism implications because the rule has substantial and direct effects on States, on the relationship between the National Government and States, and on the distribution of power and responsibilities among the various levels of government. The federalism implications of the rule, however, flow from and are consistent with the underlying statute. Section 297B of the AMA, 7 U.S.C. 1639p, directs USDA to review and approve State plans that meet statutory requirements and to audit a State's compliance with its State plans. Overall, the final rule attempts to balance both the autonomy of the States with the necessity to create a Federal framework for the regulation of hemp production.

Section 3(b) of E.O. 13132 recognizes that national action limiting the policymaking discretion of States will be imposed ''. . . only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance.'' Section 297B of the AMA is the statutory authority underlying the rules for USDA to review, approve, disapprove, or revoke State plans for hemp production. Until the passage of the 2018 Farm Bill, hemp was a Schedule I controlled substance as it fell within the CSA definition of marijuana. When hemp was exempted from the definition of marijuana as part of the 2018 Farm Bill, in connection with removing it from that list, Congress established a national regulatory framework for the production of hemp. Because cannabis plants with a THC level higher than 0.3 are marijuana and on the Federal controlled substances list, ensuring that hemp produced under this program is not marijuana is of national significance.

In addition to establishing a national regulatory framework for hemp production, Congress expressly preempted State law with regard to the interstate transportation of hemp. Section 10114 of the 2018 Farm Bill States that ''[n]o State or Indian Tribe shall prohibit the transportation or shipment of hemp or hemp products produced in accordance with subtitle G of the Agricultural Marketing Act of 1946 (as added by section 10113) through the State or the territory of the Indian Tribe, as applicable.'' Thus, States and Indian Tribes may not prevent the movement of hemp through their States or territories even if they prohibit its production. Congress also expressly preempted a State's ability to prosecute negligent violations of its plan as a criminal act in section 297B(e)(2)(c). That preemption is incorporated into this rule.

Section 3(d)(2) of the E.O. 13132 requires the Federal Government to defer to the States to establish standards where possible. Section 4(a), however, expressly contemplates preemption when there is a conflict between exercising State and Federal authority under Federal statute. Section 297B of the AMA requires State plans to include six practice and procedures and a certification. It also expressly states that it does not preempt a State's ability to adopt more stringent requirements or to prohibit the production of hemp. Section 297D of the AMA requires USDA to promulgate regulations to implement subtitle G of the AMA, which includes section 297B. Subpart B of the final rule repeats those requirements, providing more detail where necessary. States have wide latitude to develop the required practice and procedures. Subpart B includes more details on the testing and sampling of hemp plants to establish a national standard to determine whether the plants meet the statutory definition of hemp. Likewise, the final rule requires States to follow DEA requirements for disposal of marijuana for cannabis plants exceeding the acceptable hemp THC level. Finally, the final rule also reaffirms that States may adopt more stringent standards and prohibit hemp production within their jurisdiction.

Section 6 of E.O. 13132 requires consultation with State officials in development of the regulations. AMS conducted significant outreach with State officials including individual meetings, participation in conferences with State officials, and listening sessions where State officials from all States were invited. During our consultation with the States, representatives from various State agencies and offices expressed the following concerns about sampling and testing procedures. Most requested that USDA adopt uniform, national requirements to facilitate the marketing of hemp. Some States advocated that USDA defer to each State to determine the appropriate procedures for its plan. USDA recognizes the value of a national standard to promote consistency while allowing States the flexibility to adopt procedures that fit their circumstances. As explained above, USDA is adopting performance standards for sampling and testing. As long as the procedures in the State plans meet those standards, AMS will find those procedures acceptable.

As AMS implements this new program, we will continue to consult with State officials to obtain their feedback on implementation.

Finally, we have considered the cost burden that this rule would impose on States as discussed in the Regulatory Impact Analysis of this document.

AMS has assessed this final rule in light of the principles, criteria, and

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requirements in Executive Order 13132. We conclude that this final rule: Is not inconsistent with that E.O.; will not impose significant additional costs and burdens on the States; and will not affect the ability of the States to discharge traditional State governmental functions.

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

AMS examined the effects of provisions in the final rule on the relationship between the Federal Government and Tribal governments, as required by E.O. 13175 on ''Consultation and Coordination with Indian Tribal Governments.'' We concluded that the final rule does have substantial direct effects on Tribal governments, on the relationship between the National Government and Tribal governments, and on the distribution of power and responsibilities among the various levels of government. The effects of the rule, however, flow from and are consistent with the underlying statute. Section 297B of the AMA, 7 U.S.C. 1639p, directs USDA to review and approve Tribal plans that meet statutory requirements and to audit a Tribal government's compliance with its Tribal plans. Overall, the final rule attempts to balance both the autonomy of the Tribal governments with the necessity to create a Federal framework for the regulation of hemp production.

As with States, Tribal governments will have wide latitude in adopting procedures including adopting requirements that are more stringent than the statutory ones. For reasons stated in the federalism analysis, AMS is adopting national standards for sampling, testing, and disposal of non-compliant plants that Tribal plans must also incorporate.

AMS conducted extensive outreach to Tribal governments through individual discussions with Tribal representatives, by extending the regulatory comment periods and through the following more formal consultations.

Tribal Consultation May 2019: On May 1 and 2, 2019, USDA held a formal Tribal consultation on the 2018 Farm Bill including a session on hemp production. This consultation occurred at the National Museum of the American Indian located in Washington DC. In addition to listening sessions for the general public, USDA hosted a listening session for Tribal governments following the formal Tribal consultation on May 2, 2019. USDA officials attended meetings with representatives of Tribal governments. On December 11, 2019, roughly 41 days after the publication of the domestic hemp production program interim final rule, USDA held a second formal Tribal consultation. This consultation provided information on the interim final rule. This consultation occurred in Las Vegas, Nevada, and attendees included USDA officials, Tribal leaders, Tribal proxies, non-consulting Tribal members, non-profit representatives, businesses, law firms, private individuals, and other government employees. On September 24, 2020, USDA held a third formal Tribal consultation and provided information on the interim final rule. This consultation occurred virtually and attendees included USDA officials, Tribal leaders, Tribal proxies, non-consulting Tribal members, non-profits representatives, Businesses, law firms, private individuals, and other government employees.

During the May 2019 consultation, Tribal representatives from several Tribal Governments expressed their opinions that the 2018 Farm Bill permitted the USDA Secretary to allow AMS to approve Tribal plans ahead of issuing regulations of the USDA plan. Indian Tribes stated that approving hemp plans immediately would allow those Indian Tribes (and States) with a plan to begin planting for the commercial production of hemp in 2019. The USDA Secretary released a Notice to Trade (NTT) on February 27, 2019, to explain that Tribal and State plans would not be reviewed or approved until AMS finalized regulations ahead of the 2020 planting season. Additionally, the NTT stated that until regulations were in place, States, Indian Tribes, and institutions of higher education could continue operating under authorities of the 2014 Farm Bill. The 2018 Farm Bill extension of the 2014 authority expired 12 months after USDA had established the plan and regulations required under the 2018 Farm Bill. Congress extended this expiration until January 1, 2022. After the May Tribal consultation, USDA issued a second NTT on May 27, 2019, to clarify that Tribal governments through the authorities in the 2014 Farm Bill are permitted to grow industrial hemp for research purposes during the 2019 growing season. USDA appreciates the urgency in which the Indian Tribes wish to engage in this new economic opportunity. We worked expeditiously to develop and promulgate the IFR so that States and Indian Tribes could submit their plans in time for the 2020 season.

Tribal Consultation December 2019: During this consultation Indian Tribes expressed how some provisions of the interim final rule are too rigid and that USDA did not consider practical problems and potential economic harm faced by Indian Tribes under the program.

Indian Tribes requested more extensive Tribal consultation and the inclusion of other agencies involved in hemp production and enforcement. In response, USDA extended the public comment date by thirty additional days to January 29, 2020 and agreed to conduct an additional consultation after the first growing season. AMS also reopened the public comment period for thirty days in the Fall of 2020.

Tribal Consultation September 2020: Consultation also occurred on September 24, 2020.

Based on the comments and consultations received, we made changes to the final regulations. Although Indian Tribes will still incur costs in complying with final rule, those costs should be outweighed by the benefits that the Indian Tribes realize in commercial hemp production occurring within their territories.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The USDA's Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian tribes and determined, in agreement with AMS, that this rule has substantial direct tribal implications that require continued outreach efforts to determine if tribal consultation under E.O. 13175 is required. Based on AMS outreach efforts to date, OTR does not believe that tribal consultation is necessary at this time. If a tribe requests consultation AMS will work with the OTR to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

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Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives when an action is deemed to have significant impacts. If regulation is necessary, then agencies must select the action that maximizes net benefits, including potential economic, environmental, public health and safety effects, and equity. This rule meets the definition of an economically significant regulatory action under Executive Order 12866, as it is likely to result in an annual effect on the economy of $100 million or more. USDA considers this to be a deregulatory action as it allows the development of a niche market that cannot exist under the state pilot programs authorized under the Agricultural Act of 2014 (2014 Farm Bill). This action finalizes the interim final rule published on October 31, 2019, that expanded production options and enabled interested farmers to grow hemp.

Executive Order 13771 mandates that agencies provide the best approximation of total costs associated with a new or repealed regulation. AMS has prepared this Regulatory Impact Analysis with the purpose of accomplishing these objectives. USDA considers this to be a deregulatory action under Executive Order 13771 as it allows for the development of a niche market that cannot exist under current regulation. This rule removes barriers to entry and enables domestic farmers to grow hemp.

Regulatory Impact Analysis

Regulations must be designed in the most cost-effective manner possible to obtain the regulatory objective while imposing the least burden on society. This rule finalizes and updates the interim final rule that established a national regulatory oversight program for the production of hemp. This program is necessary to effectuate the mandate in the Agriculture Improvement Act of 2018, known as the 2018 Farm Bill, to coordinate State and Tribal government hemp production regulations with the newly established federal regulations for hemp production in States and Indian Tribes not regulated by State or Tribal plans. This program is intended to provide consistency in production, sampling and testing of hemp product to ensure compliance with the acceptable hemp THC level.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform, and is not intended to have retroactive effect. The discussions on Executive Orders 13132 (Federalism) and 13179 (Consultation and Coordination with Tribal Governments), above, address the extent to which the rule preempts State law, and the impacts of the rule to Tribal governments. The discussion above regarding appeals under new part 990, subpart D, describes the administrative procedures that must be exhausted prior to a judicial challenge.

Introduction

On October 31, 2019, USDA promulgated an interim final rule establishing a national program for the production of industrial hemp. A regulatory analysis was performed in support of that regulation and published as part of the preamble to that rule. This analysis is intended to update the previous analysis to reflect additional information gained through the first year of operation of that program and to assess whether any of the modifications to the program made in response to public comment have significant impacts on the estimated costs or benefits of the final program.

In the IFR, AMS estimated lower and upper bounds to calculate the total net benefits of the rule to society at large. These net benefits were calculated for 2020 through 2022 only due to lack of data for future years. In the IFR, 2020 estimated net benefits ranged from a loss of nearly $4 million to a gain of $17.6 million; for 2021, a net benefit of $23 million to $46 million; and, for 2022, a net benefit of nearly $49 million to $74 million. In this final rule, the estimated net benefits, as shown in Table 12, are $46 million in 2020; $87 million in 2021; $135 million in 2022; $190 million in 2023; $226 million in 2024; and, $351 million in 2025.

The estimates of net benefits resulting from this final rule differ from those in the IFR due to a variety of factors. First of these is the large increase in planted acreage and market entrants in 2019, the scale of which was unexpected. (There may be other unexpected changes due to the pandemic, but we cannot estimate those at this time.) Changes in other variables, as well, contributed to the increase in net benefits in the final rule over the IFR. A comparison of the variables that are assumed constant (across years 2020 through 2025) in the IFR and the final rule is shown in Table 1 below. In the year between publication of the IFR and this final rule, additional information regarding the hemp industry has emerged to the benefit of this analysis. AMS believes that the modifications to the analysis from the IFR to the final rule represent the state of the hemp industry to the greatest extent practicable. The modifications in this final rule are intended to further support the hemp marketplace and provide the greatest flexibility possible while still ensuring the program complies with the 2018 Farm Bill.

AMS suspects that this rule, compared to the IFR, will incentivize participation in the market and allow for more farmers to be successful. In particular, AMS attributes this to two policies. First, AMS anticipates that the flexibilities in disposal and remediation of non-compliant hemp will help minimize the risk to farmers, therefore increasing participation in the industry. Second, AMS anticipates that the increased threshold for negligent hemp (from 0.5 percent to 1.0 percent) will also reduce risk to farmers and allow for more innovation.

AMS received numerous comments providing data on the different aspects of the hemp industry, that while informative, could not be incorporated in the RIA due to such factors as they were too regionally focused, small in sample size, or lacked the depth of data points to be representative of the national hemp market. An example of this is the portion of retests performed on hemp samples that initially tested higher than 0.3 percent THC.

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Table 1. Comparison of variables assumed constant in IFR and Final Rule

Variables	Intended Use	IFR Low	IFR High	Final Rule	Final Rule Data Sources
Price per lb	Cannabinoids	$ 3.50	$ 30.00	$ 3.90	The Jacobsen.
	Fiber	$ 0.07	$ 0.67	$ 0.09	Estimates based on
	Grain	$ 0.65	$ 1.70	$ 0.53	2019 and 2020 prices.
Yield per acre	Cannabinoids	1,000	1,200	1,500	Hemp enterprise
	Fiber	2,000	11,000	8,000	budgets from seven
	Grain	800	1,600	1,200	universities.
Portions of planted acreage by intended use	Cannabinoids	67%		80%	The Jacobsen. Hemp
	Fiber	17%		3%	Daily Bulletin,
	Grain	17%		17%	September 8, 2020.

Variables	Plans	IFR Low	IFR High	Final Rule	Final Rule Data Sources
Portions of lots sampled & tested	USDA	100%		Based on 95% CI and 1% margin of error	Standard statistical performance objective.
	State/Tribal	100%			
Sampling & testing cost	USDA (per lot)	$ 599	$ 830	$ 565	State departments of agriculture.
	State/Tribal (per license)	Included in program administration cost			

Variables	IFR	Final Rule	Final Rule Data Sources
Portion of sales attributable to the rule	50% of growth	20% of total	State depts. of ag.
Opportunity cost per acre	$ 591	$ 630	NASS.
Program administration cost	$ 1,000	$ 800	State depts. of ag.
Portion of lots testing > 0.3% THC	40%	25%	National Industrial Hemp Regulators.
Disposal cost per acre	$ 200	$ 14.25	State depts. of ag.

The 2014 Farm Bill defined hemp as the plant *Cannabis sativa* L. and any part of that plant with concentrations of THC no greater than 0.3 percent on a dry weight basis. While belonging to the same species as the plant that produces marijuana, hemp is distinctive from marijuana in its chemical makeup. The marijuana plant contains high levels of the cannabinoid delta-9 tetrahydrocannabinol (THC), which is the chemical that produces psychoactive effects. Hemp may contain no greater than 0.3 percent THC on a dry weight basis.

Prior to the 2014 Farm Bill, hemp had never been designated in a Federal law as different from cannabis generally. The first regulation of hemp occurred in 1937 with the Marihuana Tax Act, which required all producers of the species *Cannabis sativa* to register with and apply for a license from the Federal government. The ''Hemp for Victory'' Campaign during World War II promoted production of hemp for rope to be used by U.S. military forces. At the end of the war, however, the requirements in the Marihuana Tax Act resumed. In 1970, Congress passed the Controlled Substances Act, granting the Attorney General the authority to regulate production of cannabis, including hemp.

The 2014 Farm Bill authorized pilot programs, as permitted by State law, for hemp cultivation for research purposes to be administered by academic institutions and State departments of agriculture. By 2019 approximately half of the states had developed such a pilot program. The research under these pilot programs included market research, which allowed cultivated hemp to enter the stream of commerce as inputs into various consumer products. For example, in Kentucky, one of the first states to enact a pilot program, producer sales to processors totaled $1.6 million in 2016, $7.5 million in 2017, $17.7 million in 2018, and $51.3 million in 2019.[33] Hemp biomass contains concentrations of the cannabinoid cannabidiol, known as CBD. High prices for hemp harvested for cannabinoids, relative to those of other agricultural commodities, have fueled producer interest in hemp production since 2014.

2018 Farm Bill

The 2018 Farm Bill allowed the production and sale of industrial hemp either under a State or Tribal program approved by the USDA or under a Federal license for producers in areas with no approved plan and no explicit State or Tribal statute prohibiting the production of hemp. The 2018 Farm Bill explicitly preserved the authority of the U.S. Food and Drug Administration (FDA) to regulate hemp products under the Federal Food, Drug, and Cosmetic Act (FD&C Act) and section 351 of the Public Health Service Act (PHS Act). Accordingly, products containing cannabis and cannabis-derived compounds are subject to the same authorities and requirements as FDA-regulated products containing any other substance. The 2018 Farm Bill removed hemp from the list of controlled substances, decontrolling hemp production in all U.S. States, territories, and lands belonging to Indian Tribes, unless prohibited by State or Tribal

[33] Kentucky Department of Agriculture.

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Law. This action eliminates the uncertain legal status at the Federal level of hemp production and allows the U.S. Department of Agriculture (USDA) to provide hemp producers with crop insurance programs, potentially reducing risk to producers and providing easier access to capital. The statute also prohibits interference in the interstate transport of hemp by States, including those States that prohibit hemp production and sales. As a result, hemp producers will have access to nationwide markets.

Need for Regulation

The rule is necessary to facilitate the domestic cultivation of hemp for sale into the market for hemp products by creating a set of minimum standards to ensure that hemp being produced under this program meets all statutory requirements. The rule establishes minimum requirements for States and Indian Tribes to obtain program approval and, for producers operating under the Federal program to obtain a license and meet operating requirements under that license. Without these provisions, it would not be possible to grow hemp legally.

Both the declassification of hemp, and the prohibition on interference with interstate transportation apply to hemp that is grown under an approved State or Tribal plan, or under a Federal license. As a result, this regulation facilitates provisions of the 2018 Farm Bill that would otherwise be self-implementing.

Overview of the Action

The 2018 Farm Bill granted regulatory authority of domestic hemp production to the State departments of agriculture, Tribal governments, and USDA. States and Indian Tribes wishing to operate their own programs must submit to USDA plans that include provisions for maintaining information regarding the land on which hemp is produced, for testing the levels of THC, for disposal of plants that do not meet necessary requirements, and for procedures to ensure compliance with the requirements of the new part, including background checks of all key participants. State and Tribal Plans must be approved by USDA. This rule outlines requirements by which the USDA would approve plans submitted by States and Tribal governments for oversight of hemp production. The 2018 Farm Bill also directs USDA to develop a plan for use by hemp producers in States or Indian Tribes where no State or Tribal Plan has been approved and that do not prohibit the cultivation of hemp. These actions will promote consistency in regulations governing the legal production of hemp across the country.

Baseline Definition

The 2014 Farm Bill authorized hemp research pilot programs to be administered by states and universities. The 2018 Farm Bill repealed these pilot programs beginning one year from the publication of a USDA rule; however, the 2021 Continuing Appropriations Act extended the authorization of the 2014 pilot programs until January 1, 2022. From 2014 to 2018, planted acreage tripled in every year, reaching nearly 63,500 acres in 2018. In the year following the signing of the 2018 Farm Bill, planted acreage increased by more than 400 percent to 327,600 acres in 2019.[34] The surge of entrants into the hemp market in 2019 left many producers with unsold inventory. In Kentucky alone, more than $100 million of hemp material went unsold due to lack of buyers in 2019. The large number of entrants into the market in 2019 caused a surplus of hemp production, which in turn caused prices to fall and revenue losses to producers.

Despite the producer excitement that ensued in 2019 following the signing of the 2018 Farm Bill, only 17 states opted to participate in the new hemp programs in time for the 2020 growing season. These 17 states accounted for about 20 percent of the total estimated planted acreage in 2020. Given the apparent affinity by states for the 2014 pilot programs, AMS assumes that in the absence of the 2018 Farm Bill, the 2014 Farm Bill pilot programs would have continued indefinitely. Indeed, the 2014 Farm Bill offered no sunset date for these programs. In order to capture the impacts of this rule on affected entities, AMS attributes 20 percent of the estimated planted acreage from 2020 through 2025 to the 2018 Farm Bill and this rule which enables its prescriptions. This 20 percent reflects the amount of planted acreage in the 17 states that opted to participate in the 2018 Farm Bill hemp programs for the 2020 growing season. The 2020 growing season was the final opportunity for producers to cultivate hemp under the 2014 pilot programs until the 2021 Continuing Appropriations Act extended the authorization of the 2014 pilot programs to January 1, 2022. By enrolling in the new hemp programs, these 17 states expressed a preference for the hemp programs authorized by the 2018 Farm Bill over the 2014 Farm Bill pilot programs. The remaining 80 percent of planted acreage estimated from 2020 through 2025 will be treated as attributable to the 2014 pilot programs under the assumption that they would have continued in the absence of the 2018 Farm Bill which terminated them.

In the interim final rule (IFR), AMS attributed 50 percent of the growth in producer sales from 2020 through 2022 to the 2018 Farm Bill and this enabling rule. In deriving this assumption, AMS considered the rate at which hemp acreage had increased in recent years, the number of States whose hemp pilot programs produced a crop in recent years, and the number of States that passed legislation following the signing of the 2018 Farm Bill in anticipation of this rule's enactment in time for the 2020 growing season. In the time between publication of the IFR on October 31, 2019, and the beginning of the 2020 growing season, 17 states representing 20 percent of planted acreage opted to participate in the hemp programs mandated by the 2018 Farm Bill. This portion of enrollment is less than AMS anticipated in the IFR.

Affected Entities

As of July 2020, States, Indian Tribes, and USDA had issued 19,121 producer licenses. This figure represents licenses issued in 44 States and one Tribe. About 70 percent of states reported at the time that they were still accepting applications, which indicates that the number of 2020 producer licenses issued is likely to grow. For this reason, AMS estimates that up to 20,000 producer licenses will be issued in 2020. Based on the slowed pace in growth of producer licenses from 2019 to 2020, AMS assumes an annual growth rate in producer licenses of 10 percent from 2020 through 2025, for the purposes of this analysis. The result is shown in Table 2. AMS is unaware of any estimates that exist regarding the number of producer licenses that will be issued in the coming years; however, the novelty of hemp as a commercial agricultural commodity, the resolutions of uncertainty surrounding regulations, the expected growth in demand for existing and new hemp products, and the effective establishments of State, Tribal, and Federal hemp programs may

[34] Sources include the following: State Departments of Agriculture; Vote Hemp. 2016–2019 Crop Reports; and, Mark, Tyler, Jonathan Shepherd, David Olson, William Snell, Susan Proper, and Suzanne Thornsbury. February 2020. Economic Viability of Industrial Hemp in the United States: A Review of State Pilot Programs, EIB–217, U.S. Department of Agriculture, Economic Research Service.

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continue to draw producers into the market.

TABLE 2—ESTIMATED PROJECTION OF NUMBER OF PRODUCER LICENSES ISSUED

Year	2020	2021	2022	2023	2024	2025
Growers	20,000	22,000	24,200	26,620	29,282	32,210

Sources and notes:
2020 figure based on July 2020 National Industrial Hemp Regulators conference call.
2021–2025 figures based on assumed annual growth rate of 10% in producer licenses.

As of the writing of this analysis, three states had opted to participate in the USDA Federal Plan authorizing producers to cultivate hemp. These states are Hawaii, Mississippi, and New Hampshire. Together, they represent more than 300 producers in 2020. The number of licensed producers participating in the Federal Plan is likely to grow over time due to both greater entrance of producers into the market in these three states and additional states, Indian Tribes, and territories opting to participate in the USDA Plan. At the end of 2020, less than 2 percent of the total number of producers were licensed by USDA. The extension of the 2014 pilot programs to 2022, which was included in the 2021 Continuing Appropriations Act published October 1, 2020, resulted in fewer producers participating in the USDA Plan. Prior to the extension of the 2014 pilot programs, the portion of participants under the USDA Plan was about 10 percent of the total number of 2020 producers, with the expectation for further enrollment. For the purposes of this analysis, therefore, AMS assumes that 20 percent of the total number of licensed producers will be participants of the USDA Plan, and the remaining 80 percent will be participants of a State or Tribal Plan.

In addition to hemp producers, this rule will impact state departments of agriculture, Tribal governments, and USDA as these entities will bear the responsibility to ensure that hemp producers abide by the State and Tribal Plans and the USDA Plan for regulating hemp. At the time this document was written, more than 40 Indian Tribes, at least 40 states, and two U.S. territories had plans approved by USDA or were in the process of submitting plans for USDA approval. At least three states have opted to participate in the USDA plan, and one state and one territory await legislation authorizing hemp production. AMS anticipates receiving further interest in both the Federal Plan and the plans administered by states, Indian Tribes, and territories in the coming months when the provisions of the 2014 Farm Bill expire and States and Tribes start implementing their programs. For the purposes of this analysis, AMS assumes that 100 states, Indian Tribes, and territories will administer their own plans in every year from 2020 through 2025. AMS acknowledges that this number is likely to change from year to year, depending on market conditions, which affect the ability of a state, tribe, or territory to manage its own hemp program. Because AMS has no way to predict future market or state political conditions, for simplicity, it assumes a constant of 100 states, Indian Tribes, and territories administering their own plans from 2020 through 2025.

Finally, this rule will impact laboratories that will provide testing services to producers and program administrators. As of the writing of this analysis, there were 67 laboratories that test hemp that are registered with the DEA. USDA is requiring that all samples tested for THC concentration levels be conducted in DEA-registered laboratories; however, enforcement of this requirement has been delayed until December 31, 2022.

Expected Costs and Benefits of the Rule

The 2018 Farm Bill grants authorization for production of hemp to all states and Indian Tribes, unless prohibited by State or Tribal Law. This rule enables states, Indian Tribes, and USDA to regulate this authorization. This rule is expected to generate benefits and costs to hemp producers, state departments of agriculture, Tribal governments, USDA, and laboratories. The benefits of this rule are expected to outweigh the costs, however, and the burden on the impacted entities is anticipated to be minimal.

Producers

Using figures from Hemp Industry Daily and the Brightfield Group, AMS estimates retailer sales of hemp products to range from $2.5 billion in 2020 to nearly $17 billion in 2025. Based on price spreads from farm to consumer, published by the Economic Research Service (ERS), AMS assumes a pass-through rate of 20 percent from retailer to producer.[35] AMS also assumes that import values account for 15 percent of the producer share of retail sales. This estimate was derived using 2019 and 2020 import data from the Foreign Agricultural Service (FAS) of USDA. At the time of this analysis, import data for 2020 was only available for the months of January through August. In order to gauge what total 2020 imports might be, AMS applied to the figure of total imports for January through August 2020 ($55 million) the average percentage change that occurred in the four months from August through December of recent years (40 percent). Applying the assumptions of 20 percent price pass-through from retailer to producer and import values of 15 percent of the producer share of retail sales to the estimates of retailer sales results in estimated total producer sales of $432 million in 2020 to $2.9 billion in 2025, shown in Table 3.

TABLE 3—ESTIMATED RETAILER AND PRODUCER HEMP PRODUCT SALES

[Millions]

Year	2020	2021	2022	2023	2024	2025
Total retailer sales [1]	$2,540	$4,485	$6,740	$9,310	$10,995	$16,800

[35] ERS. Price Spreads from Farm to Consumer. September 2020.

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TABLE 3—ESTIMATED RETAILER AND PRODUCER HEMP PRODUCT SALES—Continued

[Millions]

Year	2020	2021	2022	2023	2024	2025
Producer share of retail sales [2]	508	897	1,348	1,862	2,199	3,360
Imports [3]	76	135	202	279	330	504
Total producer sales [4]	432	762	1,146	1,583	1,869	2,856

[1] Retailer sales estimates based on the following stores: 2020–2024 estimates from Hemp & CBD Industry Facebook 2019, Hemp Industry Daily, ''Annual U.S. Hemp-Derived CBD Retail Sales Estimates.'' Published October 16, 2019. 2025 estimate from Brightfield Group. ''US CBD Market Forecast Reduced Due to Health Consolidation.'' Published July 31, 2020.

[2] Product of total retailer sales and 20% share of retail sales passed to producers; estimate of 20% share of retailer prices based on Economic Research Service publications of ''Price Spreads from Farm to Consumer''.

[3] Assumes imports account for 15% sales at the producer level; source for assumption is FAS 2015–2019 import data, HTS codes 1207990320 and 5302100000.

[4] Difference of producer share of retail sales and imports.

The estimates in Table 3 reflect total producer sales in aggregate. AMS is unaware of any data that currently exists that would indicate sales by individual producer. Given the varied nature of the hemp industry, producer sizes are anything but uniform; therefore, AMS has not attempted to project sales by individual producer as it would likely result in false conclusions and misleading information. Similarly, data comparing sales by producers under the 2018 Farm Bill and what sales under the 2014 Farm Bill may have been in the absence of the 2018 Farm Bill does not currently exist. Further, AMS believes that this estimate would not differ greatly given the greater access to nationwide markets and flexibilities provided to producers under the 2018 Farm Bill.

In addition, AMS acknowledges that raw harvested hemp product may take years to enter the retail market after it passes through the supply chain. For instance, product sold at the retail level in 2021 may include hemp that was harvested in 2019. In acknowledging this, AMS understands that the estimated producer sales for a given year in Table 3 may not represent actual producer sales for that year, but rather, sales from prior years. AMS is unaware of any data that exists that would identify when a harvested hemp crop is sold into the retail market. For the purposes of this analysis, therefore, and for simplicity, AMS assumes that the producer sales estimated in Table 2 represent sales at the producer level for the same year as the retail sales from which they are derived.

As discussed in the ''Baseline Definition'' section of this analysis, AMS estimates that 20 percent of the producer planted acreage from 2020 through 2025 will be attributable to the 2018 Farm Bill and this rule which enables its prescriptions. This 20 percent reflects the amount of planted acreage in the 17 states that opted to participate in the 2018 Farm Bill hemp programs in time for the 2020 growing season. The 2020 growing season was the final opportunity for producers to cultivate hemp under the 2014 pilot programs. By enrolling in the new hemp programs, these 17 states expressed a preference for the hemp programs authorized by the 2018 Farm Bill over the 2014 Farm Bill pilot programs. The remaining 80 percent of producer planted acreage estimated from 2020 through 2025 will be treated as attributable to the 2014 pilot programs under the assumption that they would have continued in the absence of the 2018 Farm Bill which terminated them. In Table 4, AMS has calculated total planted acreage inclusive of all domestic producers, using the estimates of total producer sales in Table 3 and assumptions that are stated and cited in the table. From the estimates of total planted acreage in Table 4, AMS calculated the planted acreage due to the rule in Table 5, along with the estimate of sales attributable to the rule. These estimates of sales due to the rule will be referenced as the benefits of the rule to producers in the calculation of net benefits in Table 10.

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Table 4. Calculation of planted acreage required to meet estimated total producer sales

Assumed constant in each year						
Intended use	Portion of total sales[1]	Yield (lbs/acre)[2]	Price per lb[3]	Price per acre[4]	Portion of harvested volume sold[5]	Portion of planted acreage harvested[6]
Cannabinoids	99%	1,500	$ 3.90	$ 5,850	65%	75%
Fiber	0.5%	8,000	$ 0.09	$ 720	90%	
Grain	0.5%	1,200	$ 0.53	$ 636	95%	

Year	Total producer sales (millions)[7]	Intended use	Sales by use (millions)[8]	Acres-worth sold[9]	Volume sold (lbs)[10]	Volume harvested (lbs)[11]	Harvested acreage[12]	Planted acreage[13]
2020	$ 432	Cannabinoids	$ 427	73,074	109,610,769	168,631,953	112,421	159,102
		Fiber	$ 2	2,999	23,988,889	26,654,321	3,332	
		Grain	$ 2	3,395	4,073,585	4,287,984	3,573	
2021	$ 762	Cannabinoids	$ 755	129,030	193,545,000	297,761,538	198,508	280,934
		Fiber	$ 4	5,295	42,358,333	47,064,815	5,883	
		Grain	$ 4	5,994	7,192,925	7,571,500	6,310	
2022	$ 1,146	Cannabinoids	$ 1,134	193,905	290,856,923	447,472,189	298,315	422,184
		Fiber	$ 6	7,957	63,655,556	70,728,395	8,841	
		Grain	$ 6	9,008	10,809,434	11,378,352	9,482	
2023	$ 1,583	Cannabinoids	$ 1,567	267,842	401,762,308	618,095,858	412,064	583,165
		Fiber	$ 8	10,991	87,927,778	97,697,531	12,212	
		Grain	$ 8	12,443	14,931,132	15,716,981	13,097	
2024	$ 1,869	Cannabinoids	$ 1,850	316,318	474,476,538	729,963,905	486,643	688,711
		Fiber	$ 9	12,980	103,841,667	115,379,630	14,422	
		Grain	$ 9	14,695	17,633,491	18,561,569	15,468	
2025	$ 2,856	Cannabinoids	$ 2,827	483,323	724,984,615	1,115,360,947	743,574	1,052,327
		Fiber	$ 14	19,833	158,666,667	176,296,296	22,037	
		Grain	$ 14	22,453	26,943,396	28,361,470	23,635	

Sources and notes:

[1] Kentucky Department of Agriculture 2019 producer data.

[2] Hemp Enterprise Budgets from University of Kentucky, University of Tennessee, University of Georgia, North Dakota State University, Alabama A&M and Auburn Universities, Cornell University, and Penn State University.

[3] The Jacobsen. Estimates based on 2019 and 2020 prices; for biomass, CBD% assumed to be 6%.

[4] Product of yield and price per lb.

[5] Kentucky Department of Agriculture 2019 producer data.

[6] State departments of agriculture.

[7] See Table 3.

[8] Product of total producer sales and portions of total sales.

[9] Quotient of sales by use and price per acre.

[10] Product of yield and acres-worth sold.

[11] Quotient of volume sold and portion of harvested volume sold.

[12] Quotient of harvested volume and yield.

[13] Quotient of the sum of harvested acreage and portion of planted acreage harvested.

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To calculate total planted acreage nationwide in Table 4, from which planted acreage due to this rule will be estimated in Table 5, AMS assumed the following to remain constant in each year from 2020 through 2025: Portion of total sales by intended use; yields by intended use; prices per pound by intended use; portions of harvested volume sold by intended use; and the portion of planted acreage that is typically harvested. Using 2019 producer data from the Kentucky Department of Agriculture, AMS estimates that of total sales of hemp products, cannabinoids accounts for 99 percent, and fiber and grain each account for 0.5 percent. Also based on data from the Kentucky Department of Agriculture, AMS estimates that 65 percent of the harvested volume of hemp for cannabinoids is sold, 90 percent of hemp harvested for fiber is sold, and 95 percent of hemp harvested for grain is sold.[36] This assumption is also referenced in Table 5. AMS compared the hemp enterprise budgets published by seven different academic institutions for yield estimates which

[36] The Kentucky Department of Agriculture is widely recognized as a reliable source for hemp market data as it has collected data from its producers since the inception of its hemp program in 2014. Much of this data is publicly available and was cited by many commenters.

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represent the growing conditions across the country. Aside from these seven, AMS is unaware of any other hemp enterprise budgets published by an academic institution.

Based on 2019 and 2020 prices published by the Jacobsen, AMS assumes constant per-pound prices for cannabinoids, fiber, and grain of $3.90, $0.09, and $0.53, respectively.[37] AMS acknowledges that prices are unlikely to remain constant from year to year, particularly for cannabinoids; however, AMS has considered 68 weeks of cannabinoids prices in determining its estimate of $3.90 per pound. This price assumes 6 percent CBD at $0.65 per CBD percentage per pound. Using these prices and yield estimates, AMS calculated a price per acre for each intended use of hemp. Finally, the assumption that 75 percent of planted acreage is harvested was estimated using data from multiple state departments of agriculture. The assumed constants of the portion of planted acreage that is harvested, yield by intended use, portion of harvested volume that is sold, and prices by intended use are also utilized in Table 5.

Table 5. Calculation of producer sales attributable to the rule

Assumed constant in each year

Intended use	Portion of planted acreage due to the rule[1]	Portion of planted acreage[2]	Portion of planted acreage harvested[3]	Yield (lbs/acre)[4]	Portion of harvested volume sold[5]	Price per lb[6]
Cannabinoids	20%	80%	75%	1,500	65%	$ 3.90
Fiber		3%		8,000	90%	$ 0.09
Grain		17%		1,200	95%	$ 0.53

Year	Total planted acreage[7]	Planted acreage due to rule[8]	Intended use	Planted acreage due to rule by use[9]	Harvested acreage due to rule[10]	Volume harvested due to rule[11]	Volume sold due to rule[12]	Sales by use due to rule (millions)[13]	Total sales due to rule (millions)[14]
2020	159,102	31,820	Cannabinoids	25,456	19,092	28,638,339	18,614,920	$ 72.6	$ 76
			Fiber	955	716	5,727,668	5,154,901	$ 0.5	
			Grain	5,409	4,057	4,868,518	4,625,092	$ 2.5	
2021	280,934	56,187	Cannabinoids	44,949	33,712	50,568,090	32,869,259	$ 128.2	$ 133
			Fiber	1,686	1,264	10,113,618	9,102,256	$ 0.8	
			Grain	9,552	7,164	8,596,575	8,166,747	$ 4.3	
2022	422,184	84,437	Cannabinoids	67,549	50,662	75,993,072	49,395,497	$ 192.6	$ 200
			Fiber	2,533	1,900	15,198,614	13,678,753	$ 1.2	
			Grain	14,354	10,766	12,918,822	12,272,881	$ 6.5	
2023	583,165	116,633	Cannabinoids	93,306	69,980	104,969,659	68,230,279	$ 266.1	$ 277
			Fiber	3,499	2,624	20,993,932	18,894,539	$ 1.7	
			Grain	19,828	14,871	17,844,842	16,952,600	$ 9.0	
2024	688,711	137,742	Cannabinoids	110,194	82,645	123,967,928	80,579,153	$ 314.3	$ 327
			Fiber	4,132	3,099	24,793,586	22,314,227	$ 2.0	
			Grain	23,416	17,562	21,074,548	20,020,820	$ 10.6	
2025	1,052,327	210,465	Cannabinoids	168,372	126,279	189,418,934	123,122,307	$ 480.2	$ 499
			Fiber	6,314	4,735	37,883,787	34,095,408	$ 3.1	
			Grain	35,779	26,834	32,201,219	30,591,158	$ 16.2	

Sources and notes:

[1] Portion of planted acreage in states which had plans approved by USDA for a hemp production program to begin in time for the 2020 growing season; planted acreage data from state departments of agriculture.

[2] The Jacobsen. Hemp Daily Bulletin, September 8, 2020. Estimated US Hemp Acreage 2020.

[3] State departments of agriculture.

[4] Hemp Enterprise Budgets from University of Kentucky, University of Tennessee, University of Georgia, North Dakota State University, Alabama A&M and Auburn Universities, Cornell University, and Penn State University.

[5] Kentucky Department of Agriculture 2019 producer data.

[6] The Jacobsen. Estimates based on 2019 and 2020 prices; for biomass, CBD% assumed to be 6%.

[7] See Table 4.

[8] Product of total planted acreage and portion of planted acreage due to rule.

[9] Product of planted acreage due to rule and portion of planted acreage by use.

[10] Product of planted acreage due to rule by use and portion of planted acreage harvested.

[11] Product of harvested acreage due to rule and yield.

[12] Product of volume harvested due to rule and portion of harvested volume sold.

[13] Product of volume sold due to rule and price per lb.

[14] Sum of sales by use due to rule.

[37] The Jacobsen Publishing Company. Weekly hemp prices from July 2019 through August 2020.

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In addition to the assumptions already identified in reference to Table 4, AMS assumes constant the portion of planted acreage due to the rule and portions of planted acreage by intended use. As described in the ''Baseline Definition'' section, AMS assumes that 20 percent of total planted acreage can be considered as attributable to the rule. This proportion represents the amount of planted acreage of the states that had plans approved by USDA for a hemp production program, as authorized by the 2018 Farm Bill, in time for the 2020 growing season. The 2020 growing season was the final opportunity for producers to cultivate hemp under the 2014 pilot programs. By enrolling in the new hemp programs, these states expressed a preference for the hemp programs authorized by the 2018 Farm Bill over the 2014 Farm Bill pilot programs.

The Jacobsen estimated that of total planted acreage in 2020, 80 percent was for cannabinoids, 3 percent was for fiber, and 17 percent was for grain. AMS acknowledges that planted acreage by intended use is likely to change from year to year as a result of market conditions. The portion of acreage intended for cannabinoids has, indeed, decreased from its levels in 2019, with grain and fiber gaining greater consumer attention. AMS is unaware of any data that forecasts planted acreage by intended use in years beyond 2020. For the purposes of this analysis, and for simplicity, therefore, AMS assumes constant the portions of planted acreage by intended use as reported for 2020.

To reiterate, AMS is aware that raw hemp product at the producer level may take years to enter the retail market. The analysis in Tables 4 and 5 is meant to show potential consumer demand for hemp products at the producer level in years 2020 through 2025, and not necessarily the producer sales of hemp cultivated in these specific years. These estimates are sensitive to changes in price. Because planted acreage is derived from total sales, a change in price causes an inverse change in the estimate of planted acreage; however, the relationship between price and sales is, of course, positive.

Many states reported to AMS that the land on which hemp is currently grown was previously utilized for cultivation of corn. Using data from the National Agricultural Statistics Service (NASS) on the production value of corn for grain and acres harvested, AMS determines a value per harvested acre of corn of $630. This value is a national average of the three-year period of 2017 through 2019, which are the most recent years for which data is available.[38] For the purposes of this analysis, this value of $630 per acre will serve as the opportunity cost to hemp producers. The opportunity cost is the potential returns that are foregone in pursuit of an alternative. The potential foregone returns, in this case, are $630 per acre for corn cultivation; and, the alternative is hemp cultivation. Applying this value to the estimates of acreage required to meet estimated producer sales as calculated in Table 5 results in the total opportunity cost to producers in years 2020 through 2025 as shown in Table 6.

TABLE 6—CALCULATION OF OPPORTUNITY COST OF HEMP CULTIVATION UNDER RULE

2017–2019 average returns per acre of corn for grain [1]						$630
Year	2020	2021	2022	2023	2024	2025
Planted acres due to rule [2]	31,820	56,187	84,437	116,633	137,742	210,465
Opportunity cost (millions) [3]	$20	$35	$53	$73	$87	$133

Sources and notes:
[1] National Agricultural Statistics Service (NASS).
[2] See Table 5 estimate calculation.
[3] Product of 2017–2019 average retunns per acre of corn for grain and acres worth of hemp sold.

In the IFR, AMS calculated an opportunity cost of $591 per acre, using an average of returns per acre for all cropland, weighted by area planted or bearing. This estimate utilized NASS crop totals for fruits, vegetables, and traditional field crops. At the time of the writing of the IFR, AMS had little information as to the prior uses of land currently being cultivated for hemp. To address this in the final rule, AMS sought input from state departments of agriculture, most of which reported that the land on which hemp is currently grown was previously utilized for cultivation of corn.

AMS has modified its sampling and testing requirements, which are described in the section in this rule titled ''Sampling for total THC'', to allow for ''performance-based sampling''. A performance-based protocol must have the potential to ensure at a confidence level of 95 percent that no more than one percent of the plants in each lot would exceed the acceptable hemp THC level. Performance-based sampling achieves defined objectives and focuses on results. It differs significantly from a prescriptive action in which licensees are provided detailed direction on how those results are to be obtained. A performance-based approach would simply set a performance objective (*e.g.,* reliability of 95 percent) and allow the States and Indian Tribes considerable freedom in how to achieve that reliability objective with their sampling methodology.

To estimate the number of lots to be sampled in each year, AMS employs the Cochran Formula:

$$n_0 = \frac{Z^2 p(1-p)}{e^2},$$

where n_0 is the sample size, Z is the z-value associated with a confidence interval, p is the estimated proportion of the population that has the attribute in question, and e is the margin of error or the desired level of precision.

Inserting the z-value that corresponds to a 95 percent confidence interval, assuming maximum variability for p at 50 percent, and applying the margin of error of one percent results in the following sample size:

[38] NASS. Quick Stats. Variable ''Corn, grain—production, measured in $'' divided by variable ''Corn, grain—acres harvested''.

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$$n_0 = \frac{1.96^2(0.5(1-0.5))}{0.01^2} = 9{,}604\ samples.$$

The Cochran Formula assumes an unlimited population size; however, the formula can be modified to return a smaller sample size for a finite population:

$$n = \frac{n_0}{1+\frac{(n_0-1)}{N}},$$

where n is the modified sample size, n_0 is the Cochran Formula sample size, and N is the population size.

Table 7 shows the number of sampled lots, n, required for a 95 percent confidence interval and one percent margin of error for each year's total number of lots, N. The total annual cost of sampling and testing borne by producers is calculated using a cost per lot of $565, which was estimated using hourly rates for inspectors and for laboratory services of $75 and $98, respectively; two hours, apiece, spent sampling, driving, and testing; 120 miles driven; and, $0.58 per mile compensation. In its calculation of total number of lots from total planted acreage, AMS utilized the portions of planted acreage by intended use, introduced in Table 5, and data from the Farm Service Agency (FSA) from which average lot sizes for hemp by intended use were derived.

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Table 7. Calculation of sampling and testing costs to producers

Assumed constant in each year

Intended use	Portions of planted acreage by use[1]	Average number of acres per lot[2]	Cochran Formula[3]	Modification for small sample size[4]	Sampling & testing cost per lot[5]
Cannabinoids	80%	10	$n_0 = \frac{Z^2 p(1-p)}{e^2}$	$n = \frac{n_0}{1 + \frac{(n_0 - 1)}{N}}$	$ 565
Fiber	3%	15			
Grain	17%	37			

Year	Total planted acreage[6]	Intended use	Total planted acreage by use[7]	Total number of lots[8]	n_0	n	Sampling & testing costs (millions)[9]
2020	159,102	Cannabinoids	127,282	12,728	9,604	5,659	$ 3.20
		Fiber	4,773	318			
		Grain	27,047	731			
2021	280,934	Cannabinoids	224,747	22,475	9,604	6,886	$ 3.89
		Fiber	8,428	562			
		Grain	47,759	1,291			
2022	422,184	Cannabinoids	337,747	33,775	9,604	7,606	$ 4.30
		Fiber	12,666	844			
		Grain	71,771	1,940			
2023	583,165	Cannabinoids	466,532	46,653	9,604	8,069	$ 4.56
		Fiber	17,495	1,166			
		Grain	99,138	2,679			
2024	688,711	Cannabinoids	550,969	55,097	9,604	8,272	$ 4.67
		Fiber	20,661	1,377			
		Grain	117,081	3,164			
2025	1,052,327	Cannabinoids	841,862	84,186	9,604	8,688	$ 4.91
		Fiber	31,570	2,105			
		Grain	178,896	4,835			

Sources and notes:

[1] The Jacobsen. Hemp Daily Bulletin, September 8, 2020. Estimated US Hemp Acreage 2020.

[2] Farm Service Agency producer data.

[3] Where n_0 is the sample size, Z is the z-value associated with a confidence interval, p is the estimated proportion of the population that has the attribute in question, and e is the margin of error or the desired level of precision.

[4] Where n is the modified sample size, n_0 is the Cochran Formula sample size, and N is the population size.

[5] Assumes hourly rates for inspector of $75 and for laboratory services of $98; also assumes time spent sampling, time spent driving, and time spent testing of 2 hours each; assumes 120 miles driven and mileage compensation rate of $0.58 per mile.

[6] See Table 4.

[7] Product of total planted acreage and portions of planted acreage by use.

[8] Quotient of total planted acreage and average number of acres per lot.

[9] Product of sample size n and sampling & testing cost per lot.

Some portion of tested lots are likely to return results with THC concentrations greater than 0.3 percent. To estimate this percentage, AMS utilized data, specific to this very question, collected by the National Industrial Hemp Regulators during a November 2019 meeting. The average portion of tests that would return results of THC concentrations greater than 0.3 percent, weighted by the number of tests administered in each state, was 25 percent. In Table 8, AMS applies this percentage to estimate total noncompliant lots in each year and the cost to dispose of noncompliant acreage. AMS is aware of other estimates of THC concentration failure rates. As of November 2020, States and Tribes operating under the 2018 Farm Bill reported 4,192 licensed producers representing 6,166 acres planted. Of these acres planted, approximately 12 percent were destroyed due to THC levels exceeding 0.3 percent. This data, however, is limited because many approved plans have not all been fully

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implemented. USDA expects more data will be available as the 2021 season begins and States and Tribes implement their programs.

Table 8. Calculation of disposal costs to producers

Assumed constant in each year

Intended use	Portion of tests with results of noncompliant THC levels[1]	Portions of planted acreage by use[2]	Average number of acres per lot[3]	Disposal time per acre of hemp (hours)[4]	Compliance officer hourly salary[5]	Cost per acre of noncompliant hemp disposal[6]
Cannabinoids	25%	80%	10	0.25	$ 57	$ 14.25
Fiber		3%	15			
Grain		17%	37			

Year	Intended use	Sampled & tested lots[7]	Noncompliant lots[8]	Noncompliant acres[9]	Total noncompliant acreage disposal costs (millions)[10]
2020	Cannabinoids	5,659	1,415	11,319	$ 0.30
	Fiber			637	
	Grain			8,899	
2021	Cannabinoids	6,886	1,721	13,772	$ 0.36
	Fiber			775	
	Grain			10,828	
2022	Cannabinoids	7,606	1,902	15,212	$ 0.40
	Fiber			856	
	Grain			11,961	
2023	Cannabinoids	8,069	2,017	16,139	$ 0.42
	Fiber			908	
	Grain			12,689	
2024	Cannabinoids	8,272	2,068	16,544	$ 0.43
	Fiber			931	
	Grain			13,008	
2025	Cannabinoids	8,688	2,172	17,377	$ 0.46
	Fiber			977	
	Grain			13,663	

Sources and notes:

[1] National Industrial Hemp Regulators' conference call. November 2019.

[2] The Jacobsen. Hemp Daily Bulletin, September 8, 2020. Estimated US Hemp Acreage 2020.

[3] Farm Service Agency producer data.

[4] AMS estimate based on state and producer feedback.

[5] Bureau of Labor and Statistics. Occupational Employment Statistics Survey. May 2019; see PRA section.

[6] Product of disposal time per acre of hemp and compliance officer hourly salary.

[7] See Table 7 sample size *n*.

[8] Product of sampled & tested lots and portion of tests with results of noncompliant THC levels.

[9] Product of noncompliant lots, portions of planted acreage by use, and average number of acres per lot.

[10] Product of the sum of noncompliant acres and cost per acre of noncompliant hemp disposal.

AMS has issued guidance on approved methods for disposal of noncompliant hemp material, including plowing under, mulching or composting, disking, bush mowing or chopping, deep burial, and burning. AMS requires disposal of noncompliant hemp using one of these methods. Discussion with state departments of agriculture and producers led AMS to estimate an average of 15 minutes per acre required to dispose of noncompliant material. This 15-minute estimate is an average across all disposal methods. According to the May 2019 Occupational Employment Statistics Survey of the Bureau of Labor and Statistics, the mean hourly wage of a compliance officer is $35. Assuming 39 percent of total compensation accounts for benefits, then total compensation of a compliance officer is $57 per hour. This is described in the Paperwork Reduction Act (PRA) section of this

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rule. Applying the total hourly salary of a compliance officer to the disposal time per acre of hemp results in a per acre cost of $14.25 for disposal of noncompliant hemp acreage.

The PRA section details the burdens of reporting and recordkeeping and their associated costs. Table 9 shows the calculations of the reporting and recordkeeping costs to producers that will be imposed by this rule. All assumptions in this table have been previously introduced. The PRA section describes how each estimate of time was calculated per required form.

Table 9. Calculation of total reporting and recordkeeping costs to producers

Assumed constant in each year							
Portions of producer licenses issued by Plan[1]		Portion of total planted acreage or lots under USDA Plan[2]	Reporting & recordkeeping hours per producer (required of all)[3]		Reporting & recordkeeping hours per disposed lot[4]		Hourly salary of a compliance officer[5]
USDA Plan	State/Tribal Plans	15%	USDA Plan	State/Tribal Plans	USDA Plan	State/Tribal Plans	$ 57
20%	80%		2.14	2.25	0.42	0.25	

Year	Producers[6]			Noncompliant lots for disposal[7]		Total reporting & recordkeeping hours[8]		Total producer reporting & recordkeeping cost (millions)[9]
	Total	USDA Plan	State/Tribal Plans	USDA Plan	State/Tribal Plans	USDA Plan	State/Tribal Plans	
2020	20,000	4,000	16,000	212	1,203	8,640	36,289	$ 2.56
2021	22,000	4,400	17,600	258	1,463	9,514	39,953	$ 2.82
2022	24,200	4,840	19,360	285	1,616	10,466	43,951	$ 3.10
2023	26,620	5,324	21,296	303	1,715	11,508	48,330	$ 3.41
2024	29,282	5,856	23,426	310	1,758	12,650	53,131	$ 3.75
2025	32,210	6,442	25,768	326	1,846	13,908	58,422	$ 4.12

Sources and notes:

[1] Portions of the number of producers under the USDA Plan and the State and Tribal Plans in 2020; data from state departments of agriculture.

[2] Portion of planted acreage in states operating under USDA Plan; planted acreage data from state departments of agriculture.

[3] See PRA section.

[4] See PRA section.

[5] Bureau of Labor and Statistics. Occupational Employment Statistics Survey. May 2019; see PRA section.

[6] See Table 2 for total producers; product of total producers and portions of producer licenses issued by Plan.

[7] Product of noncompliant lots in Table 8 and portions of total planted acreage or lots under USDA Plan versus State/Tribal Plans.

[8] Sum of the product of reporting & recordkeeping hours per producer and producers and the product of reporting & recordkeeping hours per disposed lot and noncompliant lots for disposal.

[9] Product of hourly salary of a compliance officer and the sum of total reporting & recordkeeping hours.

In order to obtain a producer license, AMS requires that each producer, or key participant of a business entity, submit to a background check, or criminal history report, at least every three years. A key participant is a person with a direct or indirect financial interest in the hemp-producing entity, including a chief executive officer, a chief operating officer, and a chief financial officer. The cost of a criminal history report conducted by the Federal Bureau of Investigation (FBI) is $18 per record. For the purposes of this analysis, AMS assumes each producer license to represent three key participants. The total annual cost of a background check for three key participants every three years at minimum is $18 per producer.

The producer net benefits of this rule to society are shown in Table 10. Subtracted from producer sales due to the rule are the opportunity costs of the land on which hemp is currently grown; sampling and testing costs; disposal of noncompliant acreage; reporting and recordkeeping burdens; and, annual background checks. The producer net benefits of this rule to society range from $49 million in 2020 to $357 million in 2025.

TABLE 10—PRODUCER NET BENEFITS TO SOCIETY

[Millions]

	2020	2021	2022	2023	2024	2025
Grower sales due to rule	$75.51	$133.34	$200.38	$276.78	$326.88	$499.46
Opportunity cost	(20.05)	(35.40)	(53.20)	(73.48)	(86.78)	(132.59)
Sampling & testing	(3.20)	(3.89)	(4.30)	(4.56)	(4.67)	(4.91)
Disposal of noncompliant material	(0.30)	(0.36)	(0.40)	(0.42)	(0.43)	(0.46)
Reporting & recordkeeping	(2.56)	(2.82)	(3.10)	(3.41)	(3.75)	(4.12)
Background checks	(0.36)	(0.40)	(0.44)	(0.48)	(0.53)	(0.58)
Net benefits	49.05	90.47	138.95	194.43	230.72	356.80

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States, Indian Tribes, and USDA

States and Indian Tribes have the authority to establish fee structures to fund their hemp programs. As of the writing of this analysis, about half of the states with plans approved by USDA reported their programs as being full funded through user-fees. To estimate the cost of administering a hemp program, AMS calculated an average of the total fees charged to producers by these states, which reported as fully user-fee funded, to use as a proxy for the per producer cost of hemp program administration. The fees used to calculate this average included those with such designations as application fee, site registration fee, licensing fee, and others. The average did not include fees associated with sampling and testing as these were calculated separately in Table 7. AMS estimates an average cost per producer of hemp program administration of $800 annually. AMS has no reason to believe that Indian Tribes or USDA will be any more or any less efficient than states in program administration. AMS believes, therefore, that this figure is a suitable proxy for the cost of program administration to states, Indian Tribes, and USDA per producer who cultivates hemp as a result of this rule.

As discussed in the ''Baseline Definition'' section, 17 states opted to participate in the new hemp programs authorized by the 2018 Farm Bill in time for the 2020 growing season. These states represented 20 percent of both planted acreage nationwide and the number of producers nationwide. By applying this percentage to the total number of producers in each year, as shown in Table 2, AMS estimates the number of producers that will cultivate hemp due to this rule. The product of the number of producers due to this rule and the $800 per grower proxy for administration costs results in program administration costs to States, Indian Tribes, and USDA of $3 million in 2020 to $5 million in 2025.

This rule places a reporting and recordkeeping burden on states and Indian Tribes as detailed in the PRA section of this rule. The total time required per state or tribe for reporting and recordkeeping is 25.25 hours annually. AMS assumes constant the number of states and Indian Tribes that will operate their own hemp programs at 100 in total from 2020 through 2025. In total, the time required of 100 states and Indian Tribes for 25.25 hours of reporting and recordkeeping is 2,525 hours. Applying the hourly salary of a compliance officer of $57 to this total results in an annual cost to all states and Indian Tribes of reporting and recordkeeping of $143,919, or $1,439 per state or tribe.

The total administration costs to states, Indian Tribes, and USDA are calculated in Table 11. They include the costs to all three entities of program administration, and the costs of reporting and recordkeeping to states and Indian Tribes. Total administration costs to states, Indian Tribes, and USDA range from $3 million in 2020 to $5 million in 2025.

TABLE 11—TOTAL COSTS TO STATES, INDIAN TRIBES, AND USDA

[Millions]

	2020	2021	2022	2023	2024	2025
Program administration	$(3.20)	$(3.52)	$(3.87)	$(4.26)	$(4.69)	$(5.15)
Reporting & recordkeeping	(0.14)	(0.14)	(0.14)	(0.14)	(0.14)	(0.14)
Total costs	(3.34)	(3.66)	(4.02)	(4.40)	(4.83)	(5.30)

Laboratories

This rule also places a reporting and recordkeeping burden on laboratories as they will be required to report on the results of samples tested for THC content to the entities administering the hemp programs. The PRA section of this rule estimates an annual reporting and recordkeeping requirement for laboratories of 0.58 hours per sampled and tested lot. As calculated in Table 7, the total number of lots to be sampled and tested in each year is 5,659 in 2020; 6,886 in 2021; 7,606 in 2022; 8,069 in 2023; 8,272 in 2024; and, 8,688 in 2025. Multiplying the total number of lots to be sampled and tested in each year by the annual reporting and recordkeeping requirement of 0.58 hours per sampled and tested lot and by the hourly salary of a compliance officer of $57 results in the total annual costs to laboratories as shown in Table 12.

TABLE 12—TOTAL COSTS TO LABORATORIES

[Millions]

	2020	2021	2022	2023	2024	2025
Reporting & recordkeeping	$(0.19)	$(0.23)	$(0.25)	$(0.27)	$0.27)	$(0.29)

Total Net Benefit

Producers, states, Indian Tribes, and USDA, and laboratories are the entities most likely to be impacted by this rule. For this reason, the net benefits or costs of this rule to these entities have been evaluated in this analysis. The total net benefits to society as a whole and their present values by year are shown in Table 13. The rule has a positive net benefit in every year, ranging from $46 million in 2020 to $351 million in 2025.

TABLE 13—TOTAL NET BENEFITS TO SOCIETY

[Millions]

Entity	2020	2021	2022	2023	2024	2025
Producers	$49.05	$90.47	$138.95	$194.43	$230.72	$356.80
States, Tribes & USDA	(3.34)	(3.66)	(4.02)	(4.40)	(4.83)	(5.30)

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TABLE 13—TOTAL NET BENEFITS TO SOCIETY—Continued

[Millions]

Entity	2020	2021	2022	2023	2024	2025
Laboratories	(0.19)	(0.23)	(0.25)	(0.27)	(0.27)	(0.29)
Total	45.52	86.58	134.68	189.76	225.61	351.21
Present values of net benefits annualized at the given discount rates						
Discount rates	2020	2021	2022	2023	2024	2024
3%	$45.52	$84.06	$126.95	$173.66	$200.45	$302.96
7%	45.52	80.92	117.63	154.90	172.12	250.41

Alternatives

In developing this final rule, AMS considered several alternatives to the policies that were adopted. The first of these was related to methodologies for sampling. The methodologies considered include sampling and testing of all lots, as mandated in the IFR, sampling and testing based on risk, and sampling and testing based on performance. The latter of these was the sampling methodology that was chosen for the final rule as it results in the lowest total cost to producers.

Performance-based sampling also grants flexibility to States and Indian Tribes in the development of sampling methodologies. In the IFR, AMS required sampling of every hemp lot, regardless of intended use; however, AMS has determined that compliance to this method would too greatly burden producers as well as program administrators, whose responsibility it would be to enforce it. AMS also considered requiring risk-based sampling, which would mandate minimum portions of sampling of lots by intended use. The portions of lots to be sampled by intended use that were considered were 50 percent of lots for cannabinoids, 10 percent of lots for fiber, and 10 percent of lots for grain. AMS currently lacks sufficient data to successfully carry out a risk-based sampling methodology that would be applicable to the varying growing regions nationwide; therefore, the risk-based sampling methodology was not chosen for this final rule. An analysis of these sampling methodologies is illustrated in Table 14.

Table 14. Analysis of alternative sampling methodologies

Intended use	Portions to be sampled & tested based on methodology			Cost per lot of sampling & testing
	All lots (IFR)	Risk-based	Performance-based (FR)	
Cannabinoids	100%	50%	USDA Plan acreage only	$ 565
Fiber		10%		
Grain		10%		

Year	Intended use	Total number of lots	Lots sampled & tested			Total cost of sampling & testing		
			IFR	Risk-based	Performance-based	IFR	Risk-based	Performance-based
2020	Cannabinoids	12,728	13,777	6,469	5,659	$ 7,784,210	$ 3,654,983	$ 3,197,536
	Fiber	318						
	Grain	731						
2021	Cannabinoids	22,475	24,327	11,423	6,886	$ 13,744,954	$ 6,453,779	$ 3,890,515
	Fiber	562						
	Grain	1,291						
2022	Cannabinoids	33,775	36,559	17,166	7,606	$ 20,655,739	$ 9,698,656	$ 4,297,440
	Fiber	844						
	Grain	1,940						
2023	Cannabinoids	46,653	50,499	23,711	8,069	$ 28,531,888	$ 13,396,808	$ 4,559,260
	Fiber	1,166						
	Grain	2,679						
2024	Cannabinoids	55,097	59,639	28,003	8,272	$ 33,695,823	$ 15,821,472	$ 4,673,701
	Fiber	1,377						
	Grain	3,164						
2025	Cannabinoids	84,186	91,126	42,787	8,688	$ 51,486,114	$ 24,174,691	$ 4,908,947
	Fiber	2,105						
	Grain	4,835						

Sources and notes:
See Table 7 for calculations and references.

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Secondly, AMS considered retaining at 0.5 percent the limit for total THC content that would result in a negligent violation, as required in the IFR. Based on comments, however, AMS has determined this requirement to too greatly burden producers as factors beyond the control of the producer, such as seed genetics, weather and climate, may cause an increase in total THC-levels. By increasing the negligent violation threshold to 1.0 percent, AMS diminishes the risk to producers of incurring a negligent violation, which results in time and cost savings to producers and to program-administering entities.

Finally, AMS considered mandating a post-sample harvest window of 15 days, as required in the IFR. Based on comments and in consideration of the time required to complete sampling and testing activities, AMS has determined that requiring a 15-day post-sample harvest window would place undue strain on resources. AMS believes that the extension of the post-sample harvest window to 30 days will provide producers with a beneficial flexibility to adjust to unforeseen weather events and will accommodate complicated harvest processes.

Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities. AMS prepared an initial regulatory flexibility act analysis presented with the interim final rule, and has now prepared this Final Regulatory Flexibility Act Analysis. AMS has determined that this rule will have a significant economic impact on a substantial number of small businesses because many small businesses will not be able to participate in the hemp market without this rule.

Need for Regulation

The rule is necessary to facilitate the domestic cultivation of hemp for sale into the market for hemp products by creating a set of minimum standards to ensure that hemp being produced under this program meets all statutory requirements. The rule establishes minimum requirements for States and Indian Tribes to obtain program approval and, for producers operating under the Federal program to obtain a license and meet operating requirements under that license. Without these provisions, it would not be possible to grow hemp legally.

Both the declassification of hemp, and the prohibition on interference with interstate transportation apply to hemp that is grown under an approved State or Tribal plan, or under a Federal license. As a result, this regulation facilitates provisions of the 2018 Farm Bill that would otherwise be self-implementing.

Overview of the Action

The 2018 Farm Bill granted regulatory authority of domestic hemp production to the State departments of agriculture, Tribal governments, and USDA. States and Indian Tribes wishing to operate their own programs must submit to USDA plans that include provisions for maintaining information regarding the land on which hemp is produced, for testing the levels of THC, for disposal of plants that do not meet necessary requirements, and for procedures to ensure compliance with the requirements of the new part, including background checks of all key participants. State and Tribal Plans must be approved by USDA. This rule outlines requirements by which the USDA would approve plans submitted by States and Tribal governments for oversight of hemp production. The 2018 Farm Bill also directs USDA to develop a plan for use by hemp producers in States or Indian Tribes where no State or Tribal Plan has been approved and that do not prohibit the cultivation of hemp. These actions will promote consistency in regulations governing the legal production of hemp across the country.

Potentially Affected Small Entities

The Small Business Administration (SBA) defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $1 million. Unfortunately, very little data exists on hemp grower sales receipts. To conduct this analysis, however, AMS estimated prices per acre by intended use of hemp to find the acreage equivalent of $1 million per intended use. AMS encountered data limitations due to the lack of reporting by States and Tribes that have not started implementing the 2018 Farm Bill provisions and the extension of the 2014 Farm Bill provisions which do not require reporting from States.

To this end, AMS utilized data on acreage by intended use from the Kentucky Department of Agriculture and the Montana Department of Agriculture. Together, Kentucky and Montana make up a large amount of domestic acreage and represent diversity in hemp planted by intended use. For the purpose of this analysis, therefore, AMS assumes that the combined planted acreage by intended use in Kentucky and Montana adequately represent the planted acreage by intended use across the United States.

For yield estimates, AMS compared the hemp enterprise budgets published by seven different academic institutions that represent the growing conditions across the country. Aside from these seven, AMS is unaware of any other hemp enterprise budgets published by an academic institution. AMS sourced 2019 and 2020 prices from the Jacobsen to estimate per-pound prices for cannabinoids, fiber, and grain of $3.90, $0.09, and $0.53, respectively. The price for cannabinoids assumes 6 percent CBD content at $0.65 per CBD percentage per pound.

Using these prices and yield estimates, AMS calculated a price per acre for each intended use of hemp, as shown in Table 15. From the estimates of price per acre by intended use, AMS calculated the equivalent of $1 million in acres of hemp product per intended use. Of the 922 unique producers in the combined data from the Kentucky and Montana Departments of Agriculture, 97 percent reported acreage no greater than the amounts necessary to reach $1 million, based on the estimated prices per acre. Assuming that these data are representative of the U.S. as a whole, then 97 percent of domestic producers of hemp would meet the SBA size standard of a small business of annual receipts of no greater than $1 million.

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Table 15. Calculation of the portion of producers considered to be small per SBA standards

Intended use	Yield (lbs/acre)[1]	Price per lb[2]	Price per acre[3]
Cannabinoids	1,500	$ 3.90	$ 5,850
Fiber	8,000	$ 0.09	$ 720
Grain	1,200	$ 0.53	$ 636

Intended use	Acreage equivalent of $1 million[4]	Small producers
Cannabinoids	171	97%
Fiber	1,389	
Grain	1,572	

Sources and notes:

[1] Hemp Enterprise Budgets from University of Kentucky, University of Tennessee, University of Georgia, North Dakota State University, Alabama A&M and Auburn Universities, Cornell University, and Penn State University.

[2] The Jacobsen. Estimates based on 2019 and 2020 prices; for biomass, CBD% assumed to be 6%.

[3] Product of yield and price per lb.

[4] Quotient of $1 million and price per acre by intended use.

Alternatives Considered To Minimize Impacts of the Rule

In developing this final rule, due to comments received and experiences from the 2020 season, AMS considered several alternatives to the policies that were adopted. The first of these was related to methodologies for sampling. The methodologies considered include sampling and testing of all lots, as mandated in the IFR, sampling and testing based on risk, and sampling and testing based on performance. The latter of these was the sampling methodology that was chosen for the final rule as it results in the lowest total cost to producers. Performance-based sampling also grants flexibility to States and Indian Tribes in the development of sampling methodologies. Some States currently have considered performance-based sampling under the 2014 Farm Bill. However, this information is not available and will need to be evaluated and approved by USDA as part of State and Tribal plans before it can be implemented under the 2018 Farm Bill program if States and Tribes decide to utilize this option. In the IFR, AMS required sampling of every hemp lot, regardless of intended use; however, AMS has determined that compliance to this method would too greatly burden producers as well as program administrators, whose responsibility it would be to enforce it. AMS also considered requiring risk-based sampling, which would mandate minimum portions of sampling of lots by intended use. The portions of lots to be sampled by intended use that were considered were 50 percent of lots for cannabinoids, 10 percent of lots for fiber, and 10 percent of lots for grain. AMS currently lacks sufficient data to successfully carry out a risk-based sampling methodology that would be applicable to the varying growing regions nationwide; therefore, the risk-based sampling methodology was not chosen for this final rule.

Secondly, AMS considered retaining at 0.5 percent the limit for total THC content that would result in a negligent violation, as required in the IFR. Based on comments, however, AMS has determined this requirement to too greatly burden producers as factors beyond the control of the producer, such as seed genetics, weather and climate, may cause an increase in total THC-levels. By increasing the negligent violation threshold to 1.0 percent, AMS diminishes the risk to producers of incurring a negligent violation, which results in time and cost savings to producers and to program-administering entities.

Finally, AMS considered mandating a post-sample harvest window of 15 days, as required in the IFR. Based on comments and in consideration of the time required to complete sampling and testing activities, AMS has determined that requiring a 15-day post-sample harvest window would place undue strain on resources. AMS believes that the extension of the post-sample harvest window to 30 days will provide producers with a beneficial flexibility to adjust to unforeseen weather events and will accommodate complicated harvest processes.

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as ''major,'' as defined by 5 U.S.C. 804(2).

List of Subjects in 7 CFR Part 990

Acceptable hemp THC level, Agricultural commodities, Cannabis, Corrective action plan, Delta-9 tetrahydrocannabinol, Drugs, Dry weight basis, Hemp, Liquid chromatography, Laboratories, Marijuana.

■ For the reasons stated in the preamble, AMS revises 7 CFR part 990 to read as follows:

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PART 990—DOMESTIC HEMP PRODUCTION PROGRAM

Subpart A—Definitions

Sec.

990.1 Meaning of terms.

Subpart B—State and Tribal Hemp Production Plans

990.2 State and Tribal plans; General authority.
990.3 State and Tribal plans; Plan requirements.
990.4 USDA approval of State and Tribal plans.
990.5 Audit of State or Tribal plan compliance.
990.6 Violations of State and Tribal plans.
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Subpart C—USDA Hemp Production Plan

990.20 USDA requirements for the production of hemp.
990.21 USDA hemp producer license.
990.22 USDA hemp producer license approval.
990.23 Reporting hemp crop acreage with USDA Farm Service Agency.
990.24 Responsibility of a USDA licensee prior to harvest.
990.25 Standards of performance for detecting total delta-9 tetrahydrocannabinol (THC) concentration levels.
990.26 Responsibility of a USDA producer after laboratory testing is performed.
990.27 Non-compliant cannabis plants.
990.28 Compliance.
990.29 Violations.
990.30 USDA producers; License suspension.
990.31 USDA licensees; Revocation.
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Subpart D—Appeals

990.40 General adverse action appeal process.
990.41 Appeals under the USDA hemp production plan.
990.42 Appeals under a State or Tribal hemp production plan.

Subpart E—Administrative Provisions

990.60 Agents.
990.61 Severability.
990.62 [Reserved]
990.63 Interstate transportation of hemp.

Subpart F—Reporting Requirements

990.70 State and Tribal hemp reporting requirements.
990.71 USDA plan reporting requirements.

Authority: 7 U.S.C. 1639o note, 1639p, 1639q, 1639r.

Subpart A—Definitions

§ 990.1 Meaning of terms.

Words used in this subpart in the singular form shall be deemed to impart the plural, and vice versa, as the case may demand. For the purposes of provisions and regulations of this part, unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

Acceptable hemp THC level. When a laboratory tests a sample, it must report the total delta-9 tetrahydrocannabinol content concentration level on a dry weight basis and the measurement of uncertainty. The acceptable hemp THC level for the purpose of compliance with the requirements of State or Tribal hemp plans or the USDA hemp plan is when the application of the measurement of uncertainty to the reported total delta-9 tetrahydrocannabinol content concentration level on a dry weight basis produces a distribution or range that includes 0.3 percent or less. For example, if the reported total delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is 0.35 percent and the measurement of uncertainty is ±0.06 percent, the measured total delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for this sample ranges from 0.29 percent to 0.41 percent. Because 0.3 percent is within the distribution or range, the sample is within the acceptable hemp THC level for the purpose of plan compliance. This definition of ''acceptable hemp THC level'' affects neither the statutory definition of hemp, 7 U.S.C. 1639o(1), in the 2018 Farm Bill nor the definition of ''marihuana,'' 21 U.S.C. 802(16), in the CSA.

Act. Agricultural Marketing Act of 1946.

Agricultural Marketing Service or *AMS.* The Agricultural Marketing Service of the U.S. Department of Agriculture.

Applicant. (1) A State or Indian Tribe that has submitted a State or Tribal hemp production plan to USDA for approval under this part; or

(2) A producer in a State or territory of an Indian Tribe that is not subject to a State or Tribal hemp production plan and who has submitted an application to USDA for a license under the USDA hemp production plan under this part.

Audit. An official inspection of an individual's or organization's accounts and paperwork or documentation by an independent body. An audit also refers to a compliance audit of States and Indian Tribes with approved hemp production plans by USDA to determine compliance with their approved plan, the regulations in this part, and the Act. For this part, audit relates to documentation related to authorities under the 2018 Farm Bill to produce hemp.

Cannabis. A genus of flowering plants in the family Cannabaceae of which *Cannabis sativa* is a species, and *Cannabis indica* and *Cannabis ruderalis* are subspecies thereof. Cannabis refers to any form of the plant in which the total delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.

Controlled Substances Act (CSA). The Controlled Substances Act as codified in 21 U.S.C. 801 *et seq.*

Conviction. Means any plea of guilty or nolo contendere, or any finding of guilt, except when the finding of guilt is subsequently overturned on appeal, pardoned, or expunged. For purposes of this part, a conviction is expunged when the conviction is removed from the individual's criminal history record and there are no legal disabilities or restrictions associated with the expunged conviction, other than the fact that the conviction may be used for sentencing purposes for subsequent convictions. In addition, where an individual is allowed to withdraw an original plea of guilty or nolo contendere and enter a plea of not guilty and the case is subsequently dismissed, the individual is no longer considered to have a conviction for purposes of this part.

Corrective action plan. A plan proposed by a licensed hemp producer and approved by the governing entity for correcting a negligent violation or non-compliance with the applicable State, Tribal, or USDA hemp production plan, its terms, the applicable law(s), and/or this part. Also, a plan proposed by a State or Tribal government for correcting violations or non-compliances with USDA-approved State or Tribal hemp programs.

Criminal history report. The Federal Bureau of Investigation's Identity History Summary.

Culpable mental state greater than negligence. To act intentionally, knowingly, willfully, or recklessly.

Decarboxylated. The completion of the chemical reaction that converts THC-acid (THCA) into delta-9 THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a molecular mass conversion ratio that sums delta-9 THC and eighty-seven and seven tenths (87.7) percent of THC-acid ((delta-9 THC) + (0.877 * THCA)).

Decarboxylation. The removal or elimination of carboxyl group from a molecule or organic compound.

Disposal. An activity that transitions the non-compliant product into a non-retrievable or non-ingestible form. Such activities include plowing, tilling, or disking plant material into the soil; mulching, composting, chopping, or bush mowing plant material into green

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manure; burning plant material; burying plant material into the earth and covering with soil.

Delta-9 tetrahydrocannabinol or *THC.* Delta-9 THC is the primary psychoactive component of cannabis. For the purposes of this part, delta-9 THC and THC are interchangeable.

Drug Enforcement Administration or DEA. The United States Drug Enforcement Administration.

Dry weight basis. The ratio of the amount of moisture in a sample to the amount of dry solid in a sample. A basis for expressing the percentage of a chemical in a substance after removing the moisture from the substance. Percentage of THC on a dry weight basis means the percentage of THC, by weight, in a cannabis item (plant, extract, or other derivative), after excluding moisture from the item.

Entity. A corporation, joint stock company, association, limited partnership, limited liability partnership, limited liability company, irrevocable trust, estate, charitable organization, or other similar organization, including any such organization participating in the hemp production as a partner in a general partnership, a participant in a joint venture, or a participant in a similar organization.

Farm Service Agency or *FSA.* An agency of the United States Department of Agriculture.

Gas chromatography or *GC.* A type of chromatography in analytical chemistry used to separate, identify, and quantify each component in a mixture. GC relies on heat for separating and analyzing compounds that can be vaporized without decomposition.

Geospatial location. A location designated through a global system of navigational satellites used to determine the precise ground position of a place or object.

Handle. To harvest or store hemp plants or hemp plant parts prior to the delivery of such plants or plant parts for further processing. ''Handle'' also includes the disposal of cannabis plants that are not hemp for purposes of chemical analysis and disposal of such plants.

Hemp. The plant species *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a total delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

Immature plants. A cannabis plant that is not flowering.

Indian Tribe or *Tribe.* As defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

Information sharing system. The database that allows USDA to share information collected under State, Tribal, and USDA plans with Federal, State, Tribal, and local law enforcement.

Key participants. A sole proprietor, a partner in partnership, or a person with executive managerial control in a corporation. A person with executive managerial control includes persons such as a chief executive officer, chief operating officer, and chief financial officer. This definition does not include non-executive managers such as farm, field, or shift managers. This definition also does not include a member of the leadership of a Tribal government who is acting in their capacity as a Tribal leader except when that member exercises executive managerial control over hemp production.

Law enforcement agency. Any Federal, State, Tribal, or local law enforcement agency.

Liquid chromatography or *LC.* A type of chromatography technique in analytical chemistry used to separate, identify, and quantify each component in a mixture. LC relies on pumps to pass a pressurized liquid solvent containing the sample mixture through a column filled with a solid absorbent material to separate and analyze compounds.

Lot. A contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout the area. The term lot also means the terms ''farm,'' ''tract,'' ''field,'' and ''subfield'' as these are terms used by FSA in 7 CFR 718.2 to define lot.

Marijuana. Or ''marihuana'', as defined in the CSA, means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. The term ''marihuana'' does not include hemp, as defined in section 297A of the Agricultural Marketing Act of 1946, and does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination (7 U.S.C. 1639o). ''Marihuana'' means all cannabis that tests as having a THC concentration level of higher than 0.3 percent on a dry weight basis.

Measurement of Uncertainty (MU). The parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.

Negligence. Failure to exercise the level of care that a reasonably prudent person would exercise in complying with the regulations set forth under this part.

Phytocannabinoid. Cannabinoid chemical compounds found in the cannabis plant, two of which are delta-9 tetrahydrocannabinol (delta-9 THC) and cannabidiol (CBD).

Plan. A set of criteria or regulations under which a State or Tribal government, or USDA, monitors and regulates the production of hemp.

Post-decarboxylation. In the context of testing methodologies for THC concentration levels in hemp, means a value determined after the process of decarboxylation that determines the potential total delta-9 tetrahydrocannabinol content derived from the sum of the THC and THCA content and reported on a dry weight basis. The post-decarboxylation value of THC can be calculated by using a chromatograph technique using heat, gas chromatography, through which THCA is converted from its acid form to its neutral form, THC. Thus, this test calculates the total potential THC in a given sample. The post-decarboxylation value of THC can also be calculated by using a liquid chromatograph technique, which keeps the THCA intact. This technique requires the use of the following conversion: [Total THC = (0.877 x THCA) + THC] which calculates the potential total THC in a given sample. See the definition for decarboxylation.

Produce. To grow hemp plants for market, or for cultivation for market, in the United States.

Producer. A producer as defined in 7 CFR 718.2 specifically of hemp.

Remediation. Remediation refers to the process of rendering non-compliant cannabis, compliant. Remediation can occur by removing and destroying flower material, while retaining stalk, stems, leaf material, and seeds. Remediation can also occur by shredding the entire plant into a biomass like material, then re-testing the shredded biomass material for compliance.

Reverse distributor. A person who is registered with the DEA in accordance with 21 CFR 1317.15 to dispose of

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marijuana under the Controlled Substances Act.

Secretary. The Secretary of Agriculture of the United States Department of Agriculture.

State. Any one of the fifty States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

State department of agriculture. The agency, commission, or department of a State government responsible for agriculture in the State.

Territory of the Indian Tribe. (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, including rights-of-way running through the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State;

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same; and

(4) Any lands title to which is either held in trust by the United States for the benefit of any Indian Tribe or individual or held by any Indian Tribe or individual subject to restriction by the United States against alienation and over which an Indian Tribe exercises jurisdiction.

Total THC. Total THC is the value determined after the process of decarboxylation, or the application of a conversion factor if the testing methodology does not include decarboxylation, that expresses the potential total delta-9 tetrahydrocannabinol content derived from the sum of the THC and THCA content and reported on a dry weight basis. This post-decarboxylation value of THC can be calculated by using a chromatograph technique using heat, such as gas chromatography, through which THCA is converted from its acid form to its neutral form, THC. Thus, this test calculates the total potential THC in a given sample. The total THC can also be calculated by using a liquid chromatograph technique, which keeps the THCA intact. This technique requires the use of the following conversion: [Total THC = (0.877 x THCA) + THC] which calculates the potential total THC in a given sample.

Tribal government. The governing body of an Indian Tribe.

USDA licensee. A person, partnership, or corporation licensed under the USDA planto grow hemp under the terms established in this part and who produces hemp.

Subpart B—State and Tribal Hemp Production Plans

§ 990.2 State and Tribal plans; General authority.

States or Indian Tribes desiring to have primary regulatory authority over the production of hemp in the State or territory of the Indian Tribe shall submit to the Secretary for approval, through the State department of agriculture (in consultation with the Governor and chief law enforcement officer of the State) or the Tribal government, as applicable, a plan under which the State or Indian Tribe monitors and regulates that production.

§ 990.3 State and Tribal plans; Plan requirements.

(a) *General requirements.* A State or Tribal plan submitted to the Secretary for approval must include the practice and procedures described in this paragraph (a).

(1) A State or Tribal plan must include a practice to collect, maintain, and report to the Secretary relevant, real-time information for each producer licensed or authorized to produce hemp under the State or Tribal plan regarding:

(i) Contact information as described in § 990.70(a)(1);

(ii) A legal description of the land on which the producer will produce hemp in the State or territory of the Indian Tribe including, to the extent practicable, its geospatial location; and

(iii) The status and number of the producer's license or authorization in a format prescribed by USDA.

(2) A State or Tribal plan must include a procedure for accurate and effective sampling of hemp that includes the requirements in this paragraph (a)(2).

(i) Samples from cannabis plants must be collected within 30 days prior to the anticipated harvest, for total delta-9 tetrahydrocannabinol concentration level testing. Samples must be collected by a sampling agent. Producers may not collect samples from their own growing facilities.

(ii) Samples shall be obtained from the flowering tops of plants when flowering tops are present, and shall be approximately five to eight inches in length from the ''main stem'' (that includes the leaves and flowers), ''terminal bud'' (that occurs at the end of a stem), or ''central cola'' (cut stem that could develop into a bud) of the flowering top of the plant.

(iii) The method used for sampling must be sufficient at a confidence level of 95 percent that no more than one percent of the plants in each lot would exceed the acceptable hemp THC level and ensure that a representative sample is collected that represents a homogeneous composition of the lot. Alternatively, States and Tribes may adopt a performance-based method that meets the requirements in paragraphs (a)(2)(iii)(A) and (B) of this section.

(A) The alternative method must be part of the State or Tribe's hemp plan and is subject to USDA approval.

(B) The alternative method must have the potential to ensure, at a confidence level of 95 percent, that the cannabisplant species *Cannabis sativa* L. that will be subject to the alternative method will not test above the acceptable hemp THC level. The alternative method may consider one or more of the following factors:

(*1*) Seed certification process or process that identifies varieties that have consistently demonstrated to result in compliant hemp plants in that State or territory of the Indian Tribe;

(*2*) Whether the producer is conducting research on hemp;

(*3*) Whether a producer has consistently produced compliant hemp plants over an extended period of time; and

(*4*) Factors similar to those in this paragraph (a)(2)(iii)(B).

(iv) During a scheduled sample collection, the producer or an authorized representative of the producer shall be present at the growing site if possible.

(v) Sampling agents shall be provided with complete and unrestricted access during business hours to all hemp and other cannabis plants (whether growing or harvested), to areas where hemp is grown and stored, and to all land, buildings, and other structures used for the cultivation, handling, and storage of all hemp and other cannabis plants, and all locations listed in the producer license.

(vi) A producer shall not harvest the cannabis crop prior to samples being taken.

(vii) Sampling agents must be trained using USDA, State, or Tribal training procedures. States and Indian Tribes must maintain information, available to producers, about trained sampling agents.

(3) A State or Tribal plan must include a procedure for testing that is able to accurately identify whether the sample contains a total delta-9 tetrahydrocannabinol content concentration level that exceeds the acceptable hemp THC level. The procedure must include a validated testing methodology that uses post-

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decarboxylation or other similarly reliable methods. The testing methodology must consider the potential conversion of THCA in hemp into THC and the test result must report the total available THC derived from the sum of the THC and THCA content. Testing methodologies meeting the requirements of this paragraph (a)(3) include, but are not limited to, gas or liquid chromatography with detection. The total THC concentration level shall be determined and reported on a dry weight basis.

(i) Any test of a representative sample resulting in higher than the acceptable hemp THC level shall be conclusive evidence that the lot represented by the sample is not in compliance with this part and shall be disposed of or remediated in accordance with § 990.27.

(ii) Samples of hemp plant material from one lot shall not be commingled with hemp plant material from other lots.

(iii) Laboratories conducting analytical testing for purposes of detecting the concentration levels of Total THC shall meet the following requirements:

(A) Laboratory quality assurance must ensure the validity and reliability of test results;

(B) Analytical method selection, validation, and verification must ensure that the testing method used is appropriate (fit for purpose), and that the laboratory can successfully perform the testing;

(C) The demonstration of testing validity must ensure consistent, accurate analytical performance;

(D) Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this part; and

(E) Effective disposal procedures for non-compliant samples that do not meet the requirements of this part.

(F) Measurement of uncertainty (MU) must be estimated and reported with test results. Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty.

(G) Sample preparation of pre- or post-harvest samples shall require grinding of sample to ensure homogeneity of plant material prior to testing. Sample preparation may follow a procedure described by USDA.

(H) After December 31, 2022, States and Indian Tribes shall require that only laboratories registered with the DEA may conduct testing under this section.

(4) A State or Indian Tribe shall require testing laboratories to comply with USDA reporting requirements in subpart F of this part. Laboratories shall only submit test results used to determine compliance with this part. Test results from informal testing conducted throughout the growing season shall not be reported to USDA.

(5) A State or Tribal plan must include a procedure to comply with the enforcement procedures in § 990.6.

(6) A State or Tribal plan must include a procedure for the disposal or remediation of cannabis plants if the sample representing that plant tests above the acceptable hemp THC level.

(i) The disposal must be conducted either by using a DEA-registered reverse distributor or law enforcement; or on site at the farm or hemp production facility.

(ii) The State or Tribal plan must include procedures to verify the disposal or remediation of the cannabis plant. This may come in the form of in-person verification by State or Tribal representatives, or alternative requirements that direct growers to provide pictures, videos, or other proof that disposal or remediation occurred successfully. Disposal and remediation means are described at AMS's website.

(iii) If a producer elects to perform remediation activities, an additional sampling and testing of the post-remediated crop must occur to determine THC concentration levels.

(7) A State or Tribal plan must include a procedure for conducting annual inspections of, at a minimum, a random group of producers to verify that hemp is not produced in violation of this part.

(8) A State or Tribal plan must include a procedure for submitting the report described in § 990.70 to the Secretary by the first of each month. If the first of the month falls on a weekend or holiday, the report is due by the first business day following the due date. All such information must be submitted to the USDA in a format that is compatible with USDA's information sharing system.

(9) The State or Tribal government must certify that the State or Indian Tribe has the resources and personnel to carry out the practices and procedures described in paragraphs (a)(1) through (9) of this section.

(10) The State or Tribal plan must include a procedure to collect and share information with USDA to support the information sharing requirements in 7 U.S.C. 1639q(d). The State or Tribal government is responsible for reporting the information identified in paragraphs (a)(10)(i) through (iii) of this section with AMS. The State or Tribal hemp production plan must include the following:

(i) A requirement that producers report their hemp crop acreage to the FSA, consistent with the requirement in § 990.7.

(ii) Assignment of a license or authorization identifier for each producer in a format prescribed by USDA.

(iii) A requirement that producers report the total acreage of hemp planted, harvested, and, if applicable, disposed or remediated. The State or Tribal government shall collect this information and report it to AMS.

(b) *Relation to State and Tribal law.* A State or Tribal plan may include any other practice or procedure established by a State or Indian Tribe, as applicable; *Provided,* That the practice or procedure is consistent with this part and Subtitle G of the Act.

(1) *No preemption.* Nothing in this part preempts or limits any law of a State or Indian Tribe that:

(i) Regulates the production of hemp; and

(ii) Is more stringent than this part or Subtitle G of the Act.

(2) *References in plans.* A State or Tribal plan may include a reference to a law of the State or Indian Tribe regulating the production of hemp, to the extent that the law is consistent with this part.

§ 990.4 USDA approval of State and Tribal plans.

(a) *General authority.* No later than 60 calendar days after the receipt of a State or Tribal plan for a State or Tribal territory in which production of hemp is legal, the Secretary shall:

(1) Approve the State or Tribal plan only if the State or Tribal plan complies with this part; or

(2) Disapprove the State or Tribal plan if the plan does not comply with this part. USDA shall provide the State or Tribe with written notification of the disapproval and the cause for the disapproval.

(b) *Amended plans.* A State or Tribal government, as applicable, must submit to the Secretary an amended plan if:

(1) The Secretary disapproves a State or Tribal plan and the State or Indian Tribe wishes to have primary regulatory authority over hemp production within its State or territory of the Indian Tribe; or

(2) The State or Indian Tribe makes substantive revisions to its plan or its laws which alter the way the plan meets the requirements of this part. If this occurs, the State or Tribal government must re-submit the revised plan for USDA approval. Such re-submissions should be provided to USDA within 60 days from the date that the State or

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Tribal laws and regulations are effective. Producers shall continue to comply with the requirements of the existing plan while such modifications are under consideration by USDA. If State or Tribal government laws or regulations in effect under the USDA-approved plan change but the State or Tribal government does not submit a revised plan within 60 days from the effective date of the new law or regulation, the existing plan is revoked.

(3) USDA approval of State or Tribal government plan shall remain in effect unless an amended plan must be submitted to USDA because of a substantive revision to a State's or Tribe's plan, a relevant change in State or Tribal laws or regulations, or approval of the plan is revoked by USDA.

(4) Upon USDA approval of a Tribal plan, an Indian Tribe may exercise jurisdiction and therefore primary regulatory authority over all production of hemp in its Territory regardless of the extent of its inherent regulatory authority.

(c) *Technical assistance.* The Secretary may provide technical assistance to help a State or Indian Tribe develop or amend a plan. This may include the review of draft plans or other informal consultation as necessary.

(d) *Approved State or Tribal plans.* If the Secretary approves a State or Tribal plan, the Secretary shall notify the State or Indian Tribe by letter or email.

(1) In addition to the approval letter, the State or Indian Tribe shall receive their plan approval certificate either as an attachment or via website link.

(2) The USDA shall post information regarding approved plans on its website.

(3) USDA approval of State or Tribal government plans shall remain in effect unless:

(i) The State or Tribal government's laws and regulations in effect under the USDA-approved plan change, thus requiring such plan to be revised and re-submitted for USDA approval.

(ii) A State or Tribal plan must be amended in order to comply with future amendments to Subtitle G the Act and this part.

(e) *Producer rights upon revocation of State or Tribal plan.* If USDA revokes approval of a State or Tribal plan due to noncompliance as defined in paragraph (b)(2) of this section and § 990.5, producers licensed or authorized to produce hemp under the revoked State or Tribal plan may continue to produce for the remainder of the calendar year in which the revocation became effective. Producers operating in a State or Tribal territory with a revoked plan would have to apply to USDA for a license to continue producing.

§ 990.5 Audit of State or Tribal plan compliance.

The Secretary may conduct an audit to determine a State or Indian Tribe's compliance with their approved plan.

(a) *Frequency of audits.* Compliance audits may be scheduled, no more frequently than every three years, based on available resources. Audits may include an onsite-visit, a desk-audit, or both. The USDA may adjust the frequency of audits if deemed appropriate based on program performance, compliance issues, or other relevant factors identified and provided to the State or Tribal governments by USDA.

(b) *Scope of audit review.* The audit may include, but is not limited to, a review of the following:

(1) The resources and personnel employed to administer and oversee its approved plan;

(2) The process for licensing and systematic compliance review of hemp producers;

(3) Sampling methods and laboratory testing requirements and components;

(4) Disposal and/or remediation of non-compliant hemp plants or hemp plant material practices, to ensure that correct reporting to the USDA has occurred;

(5) Results of and methodology used for the annual inspections of producers; and

(6) Information collection procedures and information accuracy (*i.e.,* geospatial location, contact information reported to the USDA, legal description of land).

(c) *Audit reports.* (1) Audit reports will be issued to the State or Tribal government no later than 60 days after the audit concludes. If the audit reveals that the State or Tribal government is not in compliance with its USDA approved plan, USDA will advise the State or Indian Tribe of non-compliances and the corrective measures that must be completed to come into compliance with the Act and regulations in this part. The USDA will require the State or Indian Tribe to develop a corrective action plan, which must be reviewed and approved by the USDA. The corrective action plan must include a reasonable date by which the State or Indian Tribe will correct make corrections. USDA will approve or deny the corrective action plan within 60 days of its receipt. USDA will conduct a second audit to determine if the State or Indian Tribe is in compliance with the corrective action plan and has corrected the non-compliances.

(2) If the USDA determines that the State or Indian Tribe is not in compliance after the second audit, the USDA may revoke its approval of the State or Tribal plan for one year or until the State or Indian Tribe becomes compliant whichever occurs later. USDA will not approve a State or Indian Tribe's plan until the State or Indian Tribe demonstrates upon inspection that it is in compliance with all regulations in this part.

§ 990.6 Violations of State and Tribal plans.

(a) *Producer violations.* Producer violations of USDA-approved State and Tribal hemp production plans shall be subject to enforcement in accordance with the terms of this section.

(b) *Negligent violations.* Each USDA-approved State or Tribal plan shall contain provisions relating to negligent producer violations as defined under this part. Producers shall not receive more than one negligent violation per growing season. Negligent violations shall include:

(1) Failure to provide a legal description of land on which the producer produces hemp;

(2) Failure to obtain a license or other required authorization from the State department of agriculture or Tribal government, as applicable; or

(3) Production of cannabis with a total delta-9 tetrahydrocannabinol concentration exceeding the acceptable hemp THC level. Hemp producers do not commit a negligent violation under this paragraph (b)(3) if they make reasonable efforts to grow hemp and the cannabis (marijuana) does not have a total delta-9 tetrahydrocannabinol concentration of more than 1.0 percent on a dry weight basis.

(c) *Corrective action for negligent violations.* Each USDA-approved State or Tribal plan shall provide for the correction of negligent violations. Each corrective action plan shall include, at a minimum, the following terms:

(1) A reasonable date by which the producer shall correct the negligent violation.

(2) A requirement that the producer periodically report to the State department of agriculture or Tribal government, as applicable, on its compliance with the State or Tribal plan and corrective action plan for a period of not less than the next 2 years from the date of the negligent violation.

(3) A producer that negligently violates a State or Tribal plan approved under this part shall not as a result of that violation be subject to any criminal

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enforcement action by the Federal, State, Tribal, or local government.

(4) A producer that negligently violates a State or Tribal plan three times during a 5-year period shall be ineligible to produce hemp for a period of 5 years beginning on the date of the third violation.

(5) The State or Indian Tribe shall conduct an inspection to determine if the corrective action plan has been implemented as submitted.

(d) *Culpable violations.* Each USDA-approved State or Tribal plan shall contain provisions relating to producer violations made with a culpable mental state greater than negligence, including that:

(1) If the State or Tribal government determines that a producer has violated the plan with a culpable mental state greater than negligence, the State or Tribal government, as applicable, shall immediately report the producer to:

(i) The U.S. Attorney General; and

(ii) The chief law enforcement officer of the State or Indian Tribe, as applicable.

(2) Paragraphs (b) and (c) of this section shall not apply to culpable violations.

(e) *Felonies.* Each USDA-approved State or Tribal plan shall contain provisions relating to felonies. Such provisions shall state that:

(1) A person with a State or Federal felony conviction relating to a controlled substance may not participate in the plan and may not produce hemp under the State or Tribal plan for 10 years from the date of the conviction. An exception applies to a person who was lawfully growing hemp under section 7606 of the Agricultural Act of 2014 (7 U.S.C. 5940) before December 20, 2018, and whose conviction also occurred before that date.

(2) The State or Tribal plan shall define who is participating in the plan or program and is subject to the felony conviction restriction for purposes of paragraph (e)(1) of this section. To determine whether a person is subject to the felony conviction restriction, the State or Tribe much obtain a criminal history report for that person. The State or Indian Tribe may require additional reports or checks as it deems necessary.

(3) For each license or authorization that the State or Indian Tribe issues, its plan must identify at least one individual as participating in the plan and for whom it will obtain a criminal history report to determine eligibility under paragraph (e)(1) of this section.

(f) *False statement.* Each USDA-approved State or Tribal plan shall state that any person who materially falsifies any information contained in an application to participate in such program shall be ineligible to participate in that program.

(g) *Appeals.* For States and Indian Tribes who wish to appeal an adverse action, subpart D of this part will apply.

§ 990.7 Establishing records with USDA Farm Service Agency.

All producers licensed to produce hemp under an USDA-approved State or Tribal plan shall report hemp crop acreage to FSA and shall provide, at minimum, the following information:

(a) Street address and, to the extent practicable, geospatial location for each lot or greenhouse where hemp will be produced. If an applicant operates in more than one location, or is producing under multiple licenses, production information shall be provided for each location.

(b) Acreage dedicated to the production of hemp, or greenhouse or indoor square footage dedicated to the production of hemp.

(c) License or authorization identifier in a format prescribed by USDA.

§ 990.8 Production under Federal law.

Nothing in this subpart prohibits the production of hemp in a State or the territory of an Indian Tribe for which a State or Tribal plan is not approved under this subpart if produced in accordance with subpart C of this part, and if the production of hemp is not otherwise prohibited by the State or Indian Tribe.

Subpart C—USDA Hemp Production Plan

§ 990.20 USDA requirements for the production of hemp.

(a) *General hemp production requirements.* The production of hemp in a State or territory of an Indian Tribe where there is no USDA approved State or Tribal plan must be conducted in accordance with this subpart, provided that the production of hemp is not prohibited by the State or territory of an Indian Tribe where production will occur.

(b) *Convicted felon ban.* A person with a State or Federal felony conviction relating to a controlled substance is subject to a 10-year ineligibility restriction on participating in and producing hemp under the USDA plan from the date of the conviction. An exception applies to a person who was lawfully growing hemp under section 7606 of the Agricultural Act of 2014 (7 U.S.C. 5940) before December 20, 2018, and whose conviction also occurred before that date.

(c) *Falsifying material information on application.* Any person who materially falsifies any information contained in an application for a license under the USDA plan shall be ineligible to participate in the USDA plan.

§ 990.21 USDA hemp producer license.

(a) *General application requirements*—(1) *Requirements and license application.* Any person producing or intending to produce hemp must have a valid license prior to producing hemp. A valid license means the license is unexpired, unsuspended, and unrevoked.

(2) *Application dates.* Applicants may submit an application for a license at any time.

(3) *Required information on application.* The applicant shall provide the information requested on the application form, including:

(i) *Contact information.* Full name, residential address, telephone number, and email address. If the applicant is a business entity, the full name of the business, the principal business location address, full name and title of the key participants, title, email address (if available), and employer identification number (EIN) of the business; and

(ii) *Criminal history report.* A current criminal history report for an individual, or if the applicant is a business entity, all key participants, dated within 60 days of the application submission date. A license application will not be considered complete without all required criminal history reports.

(4) *Submission of completed application forms.* Completed application forms shall be submitted to USDA.

(5) *Incomplete application procedures.* Applications missing required information shall be returned to the applicant as incomplete. The applicant may resubmit a completed application.

(6) *License expiration.* USDA-issued hemp producer licenses shall be valid until December 31 of the year three years after the year in which license was issued.

(b) *License renewals.* USDA hemp producer licenses must be renewed prior to license expiration. Licenses are not automatically renewed. Applications for renewal shall be subject to the same terms, information collection requirements, and approval criteria as provided in this subpart for initial applications unless there has been an amendment to the regulations in this part or the law since approval of the initial or last application.

(c) *License modification.* A license modification is required if there is any

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change to the information submitted in the application including, but not limited to, sale of a business, the production of hemp in a new location, or a change in the key participants under a license.

(d) *Licensing for research.* (1) Producers that produce hemp for research must obtain a USDA license. However, the hemp that is produced for research and does not enter the stream of commerce is not subject to the sampling requirements in §§ 990.24 and 990.26; provided that the producer adopts and carries out a USDA approved alternative sampling method that has the potential to ensure, at a confidence level of 95 percent, that the cannabis plant species *Cannabis sativa* L. that will be subject to this alternative method will not test above the acceptable hemp THC level.

(2) USDA licensees shall ensure the disposal of all non-compliant plants in accordance with § 990.27. Only research institutions registered with DEA to handle marijuana can keep hemp that tests over the 0.3 acceptable hemp THC level until the end of the study.

(3) USDA licensees shall comply with the reporting requirements in § 990.71 including reporting disposal of non-compliant plants.

§ 990.22 USDA hemp producer license approval.

(a) A license shall not be issued unless:

(1) The application submitted for USDA review and approval is complete and accurate.

(2) The criminal history report(s) submitted with the license application confirms that all key participants to be covered by the license have not been convicted of a felony, under State or Federal law, relating to a controlled substance within the past ten (10) years unless the exception in § 990.20(b) applies.

(3) The applicant, if the applicant was previously or is currently licensed, submitted all reports required as a participant in the hemp production program by this part.

(4) The application contains no materially false statements or misrepresentations and the applicant has not previously submitted an application with any materially false statements or misrepresentations.

(5) The applicant's license is not currently suspended, if the applicant is currently licensed.

(6) The applicant is not applying for a license as a stand-in for someone whose license has been suspended, revoked, or is otherwise ineligible to participate.

(7) The State or territory of the Indian Tribe where the person produces or intends to produce hemp does not have a USDA-approved plan or has not submitted a plan to USDA for approval and is awaiting USDA's decision.

(8) The State or territory of the Indian Tribe where the person produces or intends to produce hemp does not prohibit the production of hemp.

(b) USDA shall provide written notification to applicants whether the application has been approved or denied. USDA shall provide written notification to applicants in a State or territory of an Indian Tribe that has submitted a plan to USDA and is awaiting USDA approval that their application is being returned.

(1) If an application is approved, a license will be issued.

(2) Licenses will be valid until December 31 of the year three after the year in which the license was issued.

(3) Licenses may not be sold, assigned, transferred, pledged, or otherwise disposed of, alienated or encumbered.

(4) If a license application is denied, the notification from USDA will explain the reason for denial. Applicants may appeal the denial in accordance with subpart D of this part.

(c) If the applicant is producing in more than one State or territory of an Indian Tribe, the applicant may have more than one license to grow hemp. If the applicant has operations in a location covered under a State or Tribal plan, that operation must be licensed under the State or Tribal plan, not the USDA plan.

§ 990.23 Reporting hemp crop acreage with USDA Farm Service Agency.

All USDA licensees shall report hemp crop acreage to FSA within 30 days of hemp been planted and shall provide, at a minimum, the following information:

(a) Street address and, to the extent practicable, geospatial location of the lot, greenhouse, building, or site where hemp will be produced. All locations where hemp is produced must be reported to FSA.

(b) Acreage dedicated to the production of hemp, or greenhouse or indoor square footage dedicated to the production of hemp.

(c) The hemp license number.

§ 990.24 Responsibility of a USDA licensee prior to harvest.

USDA licensees must:

(a) No more than 30 days prior to the anticipated harvest of cannabis plants, have a sampling agent collect samples from the cannabis plant for total delta-9 tetrahydrocannabinol concentration level testing.

(b) Have samples collected from the flowering tops of the plant by cutting the top five to eight inches from the ''main stem'' (that includes the leaves and flowers), ''terminal bud'' (that occurs at the end of a stem), ''or ''central cola'' (cut stem that could develop into a bud) of the flowering top of the plant. Sampling guidelines and training requirements for sampling agents are available from USDA. The method used for sampling must be sufficient at a confidence level of 95 percent that no more than one percent (1%) of the plants in the lot would exceed the acceptable hemp THC level. The method used for sampling must ensure that a representative sample is collected that represents a homogeneous composition of the lot.

(c) Have an authorized representative of the USDA licensee present at the growing site during a scheduled sample collection, if possible.

(d) Ensure that sampling agents are provided with complete and unrestricted access during business hours to all hemp and other cannabis plants, (whether growing or harvested), all hemp production and storage areas, all land, buildings, and other structures used for the cultivation, handling, and storage of all hemp and other cannabis plants, and all locations listed in the producer license.

(e) Not harvest the cannabis crop prior to samples being taken.

(f) Use post-harvest samples only for remediated biomass.

§ 990.25 Standards of performance for detecting total delta-9 tetrahydrocannabinol (THC) concentration levels.

Analytical testing for purposes of determining total THC in cannabis plants shall meet the standards in this section.

(a) Laboratory quality assurance must ensure the validity and reliability of test results.

(b) Analytical method selection, validation, and verification must ensure that the testing method used is appropriate (fit for purpose), and that the laboratory can successfully perform the testing.

(c) The demonstration of testing validity must ensure consistent, accurate analytical performance.

(d) Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this part.

(e) Laboratory must have an effective disposal procedure for non-compliant samples that do not meet the requirements of this part.

(f) Measurement of uncertainty (MU) must be estimated and reported with

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test results. Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty.

(g) At a minimum, analytical testing of samples for total THC must use post-decarboxylation or other similarly reliable methods approved by the Secretary. The testing methodology must consider the potential conversion of THCA in hemp into THC and the test result must reflect the total available THC derived from the sum of the THC and THCA content. Testing methodologies meeting the requirements of this paragraph (g) include, but are not limited to, gas or liquid chromatography with detection.

(1) The total THC shall be determined and reported on a dry weight basis. Additionally, measurement of uncertainty (MU) must be estimated and reported with test results. Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty.

(2) Any sample test result exceeding the acceptable hemp THC level shall be conclusive evidence that the lot represented by the sample is not in compliance with this part.

(3) After December 31, 2022, USDA licensees may only use laboratories registered with the DEA to conduct testing under this section.

§ 990.26 Responsibility of a USDA producer after laboratory testing is performed.

(a) The producer shall harvest the crop no later than thirty (30) days after the date of sample collection.

(b) If the producer fails to complete harvest within thirty (30) days of sample collection, a second pre-harvest sample of the lot shall be required to be submitted for testing.

(c) Harvested lots of hemp plants shall not be commingled with other harvested lots or other material.

(d) Lots that meet the acceptable hemp THC level may enter the stream of commerce.

(e) Lots that do not meet the acceptable hemp THC level are subject to § 990.27.

(f) Any producer may request additional pre-harvest testing if it is believed that the original total delta-9 tetrahydrocannabinol concentration level test results were in error. Additional testing may be conducted by the laboratory that conducted the initial test, or another laboratory.

§ 990.27 Non-compliant cannabis plants.

(a) Cannabis plants exceeding the acceptable hemp THC level constitute marijuana, a schedule I controlled substance under the Controlled Substances Act (CSA), 21 U.S.C. 801 *et seq.,* and producers must either use a DEA-registered reverse distributor or law enforcement to dispose of non-compliant plants or ensure the disposal of such cannabis plant on site at the farm or hemp production facility.

(b) Producers must notify USDA of their intent to dispose of or remediate non-conforming plants and verify disposal or remediation by submitting required documentation.

(c) If a producer elects to perform remediation activities, an additional sampling and testing of the post-remediated crop must occur to determine THC concentration levels.

§ 990.28 Compliance.

(a) *Audits.* USDA licensees may be audited by the USDA. The audit may include a review of records and documentation, and may include site visits to farms, fields, greenhouses, storage facilities, or other locations affiliated with the producer's hemp operation. The audit may include the current crop year, as well as any previous crop year(s). The audit may be performed remotely or in person.

(b) *Frequency of audit verifications.* Audit verifications may be performed once every three (3) years unless otherwise determined by USDA. If the results of the audit find negligent violations, a corrective action plan may be established.

(c) *Assessment of producer's hemp operations for conformance.* The producer's operational procedures, documentation, recordkeeping, and other practices may be verified during the audit verification. The auditor may also visit the production, cultivation, or storage areas for hemp listed on the producer's license.

(1) *Records and documentation.* The auditor shall assess whether required reports, records, and documentation are properly maintained for accuracy and completeness.

(2) [Reserved]

(d) *Audit reports.* Audit reports will be issued to the producer no later than 60 days after the audit is concluded. If USDA determines through an audit that the producer is not compliant with the Act or this part, USDA shall require a corrective action plan. The corrective action plan must include a reasonable date by which the producer will correct the negligent violation. USDA will approve or deny the corrective action plan within 60 days of its receipt. Producers operating under a corrective action plan must also periodically report to USDA on their compliance with the plan for a period of not less than two calendar years following the violation. The producer's implementation of a corrective action plan may be reviewed by USDA during a future site visit or audit. If additional instances of noncompliance occur, USDA may revoke the producer's USDA license for one year or until the producer becomes compliant whichever occurs later.

§ 990.29 Violations.

Violations of this part shall be subject to enforcement in accordance with the terms of this section.

(a) *Negligent violations.* Hemp producers are not subject to more than one negligent violation per calendar year. A hemp producer shall be subject to enforcement for negligently:

(1) Failing to provide an accurate legal description of land where hemp is produced;

(2) Producing hemp without a license; and

(3) Producing cannabis exceeding the acceptable hemp THC level. Hemp producers do not commit a negligent violation under this paragraph (a) if they make reasonable efforts to grow hemp and the cannabis does not have a total THC concentration of more than 1.0 percent on a dry weight basis.

(b) *Corrective action for negligent violations.* For each negligent violation, USDA will issue a Notice of Violation and require a corrective action plan from the producer. The producer shall comply with the corrective action plan to cure the negligent violation. Corrective action plans will be in place for a minimum of two (2) years from the date of their approval. Corrective action plans will, at a minimum, include:

(1) The date by which the producer shall correct each negligent violation;

(2) Steps that will be taken to correct each negligent violation; and

(3) A description of the procedures that will demonstrate compliance must be submitted to USDA.

(c) *Negligent violations and criminal enforcement.* A producer who negligently violates this part shall not, as a result of that violation, be subject to any criminal enforcement action by any Federal, State, Tribal, or local government.

(d) *Subsequent negligent violations.* If a subsequent negligent violation occurs while a corrective action plan is in place, a new corrective action plan must be submitted with a heightened level of quality control, staff training, and quantifiable action measures.

(e) *Negligent violations and license revocation.* A producer that negligently violates the license 3 times in a 5-year

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period shall have their license revoked and be ineligible to produce hemp for a period of 5 years beginning on the date of the third violation.

(f) *Culpable mental state greater than negligence.* If USDA determines that a licensee has violated the terms of the license or of this part with a culpable mental state greater than negligence:

(1) USDA shall immediately report the licensee to:

(i) The U.S. Attorney General; and

(ii) The chief law enforcement officer of the State or Indian territory, as applicable, where the production is located; and

(2) Paragraphs (a) and (b) of this section shall not apply to culpable violations.

§ 990.30 USDA producers; License suspension.

(a) USDA may issue a notice of suspension to a producer if USDA or its representative receives some credible evidence establishing that a producer has:

(1) Engaged in conduct violating a provision of this part; or

(2) Failed to comply with a written order from the USDA–AMS Administrator related to negligence as defined in this part.

(b) Any producer whose license has been suspended shall not handle or remove hemp or cannabis from the location where hemp or cannabis was located at the time when USDA issued its notice of suspension, without prior written authorization from USDA.

(c) Any person whose license has been suspended shall not produce hemp during the period of suspension.

(d) A producer whose license has been suspended may appeal that decision in accordance with subpart D of this part.

(e) A producer whose license has been suspended and not restored on appeal may have their license restored after a waiting period of one year from the date of the suspension. If the license was issued more than three years prior to the date of restoration, the producer shall submit a new application and criminal history report to USDA.

(f) A producer whose license has been suspended may be required to provide, and operate under, a corrective action plan to fully restore their license.

§ 990.31 USDA licensees; Revocation.

USDA shall immediately revoke the license of a USDA licensee if such licensee:

(a) Pleads guilty to, or is convicted of, any felony related to a controlled substance; or

(b) Made any materially false statement with regard to this part to USDA or its representatives with a culpable mental state greater than negligence; or

(c) Is found to be growing cannabis exceeding the acceptable hemp THC level with a culpable mental state greater than negligence or negligently violated this part three times in five years.

§ 990.32 Recordkeeping requirements.

(a) USDA licensees shall maintain records of all hemp plants acquired, produced, handled, disposed of, or remediated as will substantiate the required reports.

(b) All records and reports shall be maintained for at least three years.

(c) All records shall be made available for inspection by USDA inspectors, auditors, or their representatives during reasonable business hours. The following records must be made available:

(1) Records regarding acquisition of hemp plants;

(2) Records regarding production and handling of hemp plants;

(3) Records regarding storage of hemp plants; and

(4) Records regarding disposal and remediation of all cannabis plants that do not meet the definition of hemp.

(d) USDA inspectors, auditors, or their representatives shall have access to any premises where hemp plants may be held during reasonable business hours.

(e) All reports and records required to be submitted to USDA as part of participation in the program in this part which include confidential data or business information, including but not limited to information constituting a trade secret or disclosing a trade position, financial condition, or business operations of the particular licensee or their customers, shall be received by, and at all times kept in the custody and control of, one or more employees of USDA or their representatives. Confidential data or business information may be shared with applicable Federal, State, Tribal, or local law enforcement or their designee in compliance with the Act.

Subpart D—Appeals

§ 990.40 General adverse action appeal process.

(a) Persons who believe they are adversely affected by the denial of a license application under the USDA hemp production program may appeal such decision to the AMS Administrator.

(b) Persons who believe they are adversely affected by the denial of a license renewal under the USDA hemp production program may appeal such decision to the AMS Administrator.

(c) Persons who believe they are adversely affected by the revocation or suspension of a USDA hemp production license may appeal such decision to the AMS Administrator.

(d) States and Indian Tribes that believe they are adversely affected by the denial of a proposed State or Tribal hemp plan may appeal such decision to the AMS Administrator.

§ 990.41 Appeals under the USDA hemp production plan.

(a) *Appealing a denied USDA-plan license application.* A license applicant may appeal the denial of a license application.

(1) If the AMS Administrator grants an applicant's appeal of a licensing denial, the applicant will be issued a USDA hemp production license.

(2) If the AMS Administrator denies an appeal, the applicant's license application will be denied. The applicant may request a formal adjudicatory proceeding within 30 days to review the decision. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture's Rules of Practice Governing Adjudicatory Proceedings, 7 CFR part 1, subpart H.

(b) *Appealing a denied USDA-plan license renewal.* A producer may appeal the denial of a license renewal.

(1) If the AMS Administrator grants a producer's appeal of a licensing renewal denial, the applicant's USDA hemp production license will be renewed.

(2) If the AMS Administrator denies the appeal, the applicant's license will not be renewed. The denied producer may request a formal adjudicatory proceeding within 30 days to review the decision. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture's Rules of Practice Governing Formal Adjudicatory Proceedings, 7 CFR part 1, subpart H.

(c) *Appealing a USDA-plan license termination or suspension.* A USDA hemp plan producer may appeal the revocation or suspension of a license.

(1) If the AMS Administrator grants the appeal of a license termination or suspension, the producer will retain their license.

(2) If the AMS Administrator denies the appeal, the producer's license will be terminated or suspended. The producer may request a formal adjudicatory proceeding within 30 days to review the decision. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture's Rules of Practice Governing Formal Adjudicatory Proceedings, 7 CFR part 1, subpart H.

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(d) *Filing period.* The appeal of a denied license application, denied license renewal, suspension, or revocation must be filed within the time-period provided in the letter of notification or within 30 business days from receipt of the notification, whichever occurs later. The appeal will be considered ''filed'' on the date received by the AMS Administrator. The decision to deny an appeal of a license application or renewal, or suspend or terminate a license, is final unless a formal adjudicatory proceeding is requested within 30 days to review the decision. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture's Rules of Practice Governing Adjudicatory Proceedings, 7 CFR part 1, subpart H.

(e) *Where to file.* Appeals to the Administrator must be filed in the manner as determined by AMS.

(f) *What to include.* All appeals must include a copy of the adverse decision and a statement of the appellant's reasons supporting why the decision was not proper or made in accordance with applicable program regulations in this part, policies, or procedures.

§ 990.42 Appeals under a State or Tribal hemp production plan.

(a) *Appealing a State or Tribal hemp production plan application.* A State or Indian Tribe may appeal the denial of a proposed State or Tribal hemp production plan by the USDA to the AMS Administrator.

(1) If the AMS Administrator grants a State or Indian Tribe's appeal of a denied hemp plan application, the proposed State or Tribal hemp production plan shall be established as proposed.

(2) If the AMS Administrator denies an appeal, the proposed State or Tribal hemp production plan shall not be approved. Prospective producers located in the State or territory of the Indian Tribe may apply for hemp licenses under the terms of the USDA plan. The State or Indian Tribe may request a formal adjudicatory proceeding be initiated within 30 days to review the decision. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture's Rules of Practice Governing Adjudicatory Proceedings, 7 CFR part 1, subpart H.

(b) *Appealing the suspension or termination of a State or Tribal hemp production plan.* A State or Tribe may appeal the revocation by USDA of an approved State or Tribal hemp production plan.

(1) If the AMS Administrator grants a State or Indian Tribe's appeal of a State or Tribal hemp production plan suspension or revocation, the associated hemp production plan will remain in place and effective.

(2) If the AMS Administrator denies an appeal, the State or Tribal hemp production plan will be suspended or revoked as applicable. Producers located in that State or territory of the Indian Tribe may continue to produce hemp under their State or Tribal license until the end the calendar year in which the State or Tribal plan's disapproval was effective or when the State or Tribal license expires, whichever is earlier. Producers may apply for a USDA license under subpart C of this part unless hemp production is otherwise prohibited by the State or Indian Tribe. The State or Indian Tribe may request a formal adjudicatory proceeding be initiated to review the decision. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture's Rules of Practice Governing Formal Adjudicatory Proceedings, 7 CFR part 1, subpart H.

(c) *Filing period.* The appeal of a State or Tribal hemp production plan suspension or revocation must be filed within the time-period provided in the letter of notification or within 30 business days from receipt of the notification, whichever occurs later. The appeal will be considered ''filed'' on the date received by the AMS Administrator. The decision to deny a State or Tribal plan application or suspend or revoke approval of a plan, is final unless the decision is appealed in a timely manner.

(d) *Where to file.* Appeals to the Administrator must be filed in the manner as determined by AMS.

(e) *What to include in appeal.* All appeals must include a copy of the adverse decision and a statement of the appellant's reasons supporting why the decision was not proper or made in accordance with applicable program regulations in this part, policies, or procedures.

Subpart E—Administrative Provisions

§ 990.60 Agents.

As provided under 7 CFR part 2, the Secretary may name any officer or employee of the United States or name any agency or division in the United States Department of Agriculture, to act as their agent or representative in connection with any of the provisions of this part.

§ 990.61 Severability.

If any provision of this part is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this part or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 990.62 [Reserved]

§ 990.63 Interstate transportation of hemp.

No State or Indian Tribe may prohibit the transportation or shipment of hemp lawfully produced under a State or Tribal plan approved under subpart B of this part, under a license issued under subpart C of this part, or under 7 U.S.C. 5940 through the State or territory of the Indian Tribe, as applicable.

Subpart F—Reporting Requirements

§ 990.70 State and Tribal hemp reporting requirements.

(a) *State and Tribal hemp producer report.* Each State and Indian Tribe with a plan approved under this part shall submit to USDA, by the first of each month, a report providing the contact information and the status of the license or other authorization issued for each producer covered under the applicable State and Tribal plans. If the first of the month falls on a weekend or holiday, the report is due by the first business day following the due date. The report shall be submitted using a digital format compatible with USDA's information sharing systems, whenever possible. The report shall contain the information described in this paragraph (a).

(1)(i) For each new producer who is an individual and is licensed or authorized under the State or Tribal plan, the report shall include the full name of the individual, license or authorization identifier, Employee Identification Number (''EIN'') of the business entity, business address, telephone number, and email address (if available).

(ii) For each new producer that is an entity and is licensed or authorized under the State or Tribal plan, the report shall include full name of the entity, the principal business location address, license or authorization identifier, and the full name, title, and email address (if available) of each employee for whom the entity is required to submit a criminal history report.

(iii) For each producer that was included in a previous report and whose reported information has changed, the report shall include the previously reported information and the new information.

(2) The status of each producer's license or authorization.

(3) The period covered by the report.

(4) Indication that there were no changes during the current reporting cycle, if applicable.

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(b) *State and Tribal hemp disposal or remediation report.* If a producer has produced cannabis exceeding the acceptable hemp THC level, the cannabis must be disposed of or remediated. States and Tribes with plans approved under this part shall submit to USDA, by the first of each month, a report notifying USDA of any occurrence of non-conforming plants or plant material and providing a disposal or remediation record of those plants and materials. This report would include information regarding name and contact information for each producer subject to a disposal or remediation during the reporting period, and date disposal or remediation was completed. If the first of the month fall on a weekend or holiday, reports are due by the first business day following the due date. The report shall contain the information described in this paragraph (b).

(1) Name and address of the producer.

(2) Producer license or authorization identifier.

(3) Location information, such as lot number, location type, and geospatial location or other location descriptor for the production area subject to disposal or remediation.

(4) Disposal or remediation completion date.

(5) Total acreage.

(c) *Annual report.* Each State or Indian Tribe with a plan approved under this part shall submit an annual report to USDA. The report form shall be submitted by December 15 of each year and contain the information described in this paragraph (c).

(1) Total planted acreage.

(2) Total harvested acreage.

(3) Total acreage disposed and remediated.

(d) *Test results report.* Each producer must ensure that the laboratory that conducts the test of the sample(s) from its lots reports the test results to USDA. Informal testing conducted throughout the growing season for purposes of monitoring THC concentration do not need to be reported to USDA. The test results report shall contain:

(1) Producer's license or authorization identifier.

(2) Name of producer.

(3) Business address of producer.

(4) Lot identification number for the sample.

(5) Name of laboratory and, no later than December 31, 2022, the DEA registration number of laboratory for testing.

(6) Date of test and report.

(7) Identification of a pre-harvest or post-harvest retest.

(8) Test result.

§ 990.71 USDA plan reporting requirements.

(a) *USDA licensing application.* USDA will accept applications on a rolling basis. Licenses will be valid until December 31 of the year three years after the license is issued. The license application will be used for both new and renewal applicants. The application shall include:

(1) *Contact information.* (i) For an applicant who is an individual, the application shall include full name of the individual, Employee Identification Number (''EIN'') of the business entity, business address, telephone number, and email address (if available).

(ii) For an applicant that is an entity, the application shall include full name of the entity, the principal business location address, and the full name, title, and email address (if available) of each key participant of the entity.

(2) *Criminal history report.* As part of a complete application, each applicant shall provide a current Federal Bureau of Investigation's Identity History Summary. If the applicant is a business entity, a criminal history report shall be provided for each key participant.

(i) The applicant shall ensure the criminal history report accompanies the application.

(ii) The criminal history report must be dated within 60 days of submission of the application submittal.

(3) *Consent to comply with program requirements.* All applicants submitting a completed license application, in doing so, consent to comply with the requirements of this part.

(b) *USDA licensee disposal and remediation form.* USDA licensee conducts a disposal or remediation activity, that licensee must report the activity on the appropriate form to USDA no later than 30 days after the date of completion of disposal or remediation activity. The report shall contain the information described in this paragraph (b).

(1) Name and address of the producer.

(2) The USDA licensee's USDA license number.

(3) Geospatial location, or other valid land descriptor, for the production area subject to disposal or remediation.

(4) Date of completion of disposal or remediation.

(5) Signature of the USDA licensee or authorized representative.

(c) *USDA licensee annual report.* Each USDA licensee shall submit an annual report to USDA. The report form shall be submitted by December 15 of each year and contain the information described in this paragraph (c).

(1) USDA licensee 's license number.

(2) USDA licensee 's name.

(3) USDA licensee's address.

(4) Lot, location type, geospatial location, total planted acreage, total acreage disposed and remediated, and total harvested acreage.

(d) *Test results report.* Each USDA licensee must ensure that the laboratory that conducts the test of the sample(s) from its lots reports the test results for all samples tested to USDA. Informal testing conducted throughout the growing season for purposes of monitoring THC concentration do not need to be reported to USDA. The test results report shall contain the information described in this paragraph (d) for each sample tested.

(1) USDA licensee 's license number.

(2) Name of the USDA licensee.

(3) Business address of the USDA licensee.

(4) Lot identification number for the sample.

(5) Name of testing laboratory.

(6) Date of test and report.

(7) Identification of a pre-harvest or post-harvest retest.

(8) Test result.

Bruce Summers,

Administrator, Agricultural Marketing Service.

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Attachment: California Industrial Hemp Law and Regulations (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-010; Prohibition

CALIFORNIA DEPARTMENT OF FOOD & AGRICULTURE

CALIFORNIA INDUSTRIAL HEMP LAW AND REGULATIONS

EXTRACTS FROM THE

CALIFORNIA FOOD AND AGRICULTURAL CODE

Division 24

CALIFORNIA CODE OF REGULATIONS

Title 3, Division 4, Chapter 8
Article 1. Registration of Industrial Hemp Growers
Article 2. Regulations for Industrial Hemp Cultivation
Article 3. Abatement and Enforcement

Rev. 01/19/21

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State of California
Gavin Newsom, Governor

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California Industrial Hemp Law

The following sections are extracts from Division 24 the California Food and Agricultural Code. They have been prepared by the Nursery, Seed, and Cotton Program, Pest Exclusion Branch, California Department of Food and Agriculture. These extracts are provided for information purposes only. For the official text, the user should consult the California Food and Agricultural Code published by the California State Legislature.

81000. Definitions.

(a) For purposes of this division, the following terms have the following meanings:

(1) "Approved state plan" means a state plan for California that is approved pursuant to Section 297B of the federal Agricultural Marketing Act of 1946 (added by Section 10113 of the federal Agriculture Improvement Act of 2018 (Public Law 115-334)) and in effect.

(2) "Board" means the Industrial Hemp Advisory Board.

(3) "Cultivar" means a variety of industrial hemp.

(4) "Established agricultural research institution" means an institution that is either of the following:

(A) A public or private institution or organization that maintains land or facilities for agricultural research, including colleges, universities, agricultural research centers, and conservation research centers.

(B) An institution of higher education, as defined in Section 101 of the federal Higher Education Act of 1965 (20 U.S.C. Sec. 1001), that grows, cultivates, or manufactures industrial hemp for purposes of research conducted under an agricultural pilot program or other agricultural or academic research.

(5) "Hemp breeder" means an individual or a public or private institution or organization that is registered with the commissioner to develop cultivars intended for sale or research.

(6) "Industrial hemp" or "Hemp" means an agricultural product, whether growing or not, that is limited to types of the plant Cannabis sativa L. and any part of that plant, including the seeds of the plant and all derivatives, extracts, the resin extracted from any part of the plant, cannabinoids, isomers, acids, salts, and salts of isomers, with a delta-9 tetrahydrocannabinol concentration of no more than 0.3 percent on a dry weight basis.

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(7) "Industrial hemp program" means growth of industrial hemp pursuant to this division and, if in effect, an approved state plan.

(8) "Premises" has the same meaning as defined in subdivision (ap) of Section 26001 of the Business and Professions Code.

(9) "THC" means delta-9 tetrahydrocannabinol.

(10) "Variety development plan" means a strategy devised by a hemp breeder, or applicant hemp breeder, detailing their planned approach to growing and developing a new cultivar for industrial hemp.

(b) This section shall remain operative only until the date on which a state plan for California is approved pursuant to Section 297B of the federal Agricultural Marketing Act of 1946 (added by Section 10113 of the federal Agricultural Improvement Act of 2018 (Public Law 115-334)), and as of January 1 of the following year is repealed.

(Amended by Stats. 2019, Ch. 838, Sec. 2. (SB 153) Effective January 1, 2020. Repealed on the date prescribed by its own provisions. See later operative version added by Sec. 3 of Stats. 2019, Ch. 838.)

81000. Definitions.

(a) For purposes of this division, the following terms have the following meanings:

(1) "Approved state plan" means a state plan for California that is approved pursuant to Section 297B of the federal Agricultural Marketing Act of 1946 (added by Section 10113 of the federal Agriculture Improvement Act of 2018 (Public Law 115-334)) and in effect.

(2) "Board" means the Industrial Hemp Advisory Board.

(3) "Cultivar" means a variety of industrial hemp.

(4) "Established agricultural research institution" means an institution of higher education, as defined in Section 101 of the federal Higher Education Act of 1965 (20 U.S.C. Sec. 1001), that grows, cultivates, or manufactures industrial hemp for purposes of agricultural or academic research.

(5) "Hemp breeder" means an individual or a public or private institution or organization that is registered with the commissioner to develop cultivars intended for sale or research.

(6) "Industrial hemp" or "Hemp" means an agricultural product, whether growing or not, that is limited to types of the plant Cannabis sativa L. and any part of that

plant, including the seeds of the plant and all derivatives, extracts, the resin extracted from any part of the plant, cannabinoids, isomers, acids, salts, and salts of isomers, with a delta-9 tetrahydrocannabinol concentration of no more than 0.3 percent on a dry weight basis.

(7) "Industrial hemp program" means growth of industrial hemp pursuant to this division and, if in effect, an approved state plan.

(8) "Premises" has the same meaning as defined in subdivision (ap) of Section 26001 of the Business and Professions Code.

(9) "Research plan" means a strategy devised by an established agricultural research institution, or applicant established agricultural research institution, detailing its planned approach to growing or cultivating hemp for academic or agricultural research.

(10) "THC" means delta-9 tetrahydrocannabinol.

(11) "Variety development plan" means a strategy devised by a hemp breeder, or applicant hemp breeder, detailing their planned approach to growing and developing a new cultivar for industrial hemp.

(b) This section shall become operative as of the date on which a state plan for California is approved pursuant to Section 297B of the federal Agricultural Marketing Act of 1946 (added by Section 10113 of the federal Agricultural Improvement Act of 2018 (Public Law 115-334)).

(Repealed (in Sec. 2) and added by Stats. 2019, Ch. 838, Sec. 3. (SB 153) Effective January 1, 2020. Operative on the date prescribed by its own provisions.)

81001. (a) There is in the department an Industrial Hemp Advisory Board. The board shall consist of 13 members, appointed by the secretary as follows:

(1) Five of the board members shall be growers of industrial hemp that are registered pursuant to the provisions of this division.

(2) Two of the board members shall be members of an established agricultural research institution.

(3) One member of the board shall be a representative as provided by the California State Sheriffs' Association and approved by the secretary.

(4) One member of the board shall be a county agricultural commissioner.

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(5) One member of the board shall be a representative of the Hemp Industries Association or its successor industry association.

(6) Two members of the board shall be representatives of businesses that sell industrial hemp products.

(7) One member of the board shall be a member of the public.

(b) It is hereby declared, as a matter of legislative determination, that growers and representatives of industrial hemp product manufacturers and businesses appointed to the board pursuant to this division are intended to represent and further the interest of a particular agricultural industry, and that the representation and furtherance is intended to serve the public interest. Accordingly, the Legislature finds that persons who are appointed to the board shall be subject to the conflict-of-interest provisions described in Sections 87100 and 87103 of the Government Code.

(c) The term of office for a member of the board is three years. If a vacancy exists, the secretary shall, consistent with the membership requirements described in subdivision (a), appoint a replacement member to the board for the duration of the term.

(d) A member of the board shall not receive a salary but may be reimbursed by the department for attendance at meetings and other board activities authorized by the board and approved by the secretary.

(e) The board shall advise the secretary and may make recommendations on all matters pertaining to this division, including, but not limited to, industrial hemp seed law and regulations, enforcement, annual budgets required to accomplish the purposes of this division, and the setting of an appropriate assessment rate necessary for the administration of this division.

(f) The board shall annually elect a chair from its membership and, from time to time, other officers as it deems necessary.

(g) The board shall meet at the call of its chair or the secretary, or at the request of any four members of the board. The board shall meet at least once a year to review budget proposals and fiscal matters related to the proposals.

(Amended by Stats. 2019, Ch. 838, Sec. 4. (SB 153) Effective January 1, 2020.)

81002. (a) Except when grown by a registered established agricultural research institution or by a registered hemp breeder developing a new cultivar, industrial hemp shall be grown only if it is on the list of approved cultivars, or produced by clonal propagation of industrial hemp that is on the list of approved cultivars and therefore genetically identical to, and capable of exhibiting the same range of characteristics as, the parent cultivar.

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(b) The list of approved cultivars shall include all of the following:

(1) Industrial hemp cultivars that have been certified by member organizations of the Association of Official Seed Certifying Agencies, including, but not limited to, the Canadian Seed Growers' Association.

(2) Industrial hemp cultivars that have been certified by the Organization of Economic Cooperation and Development.

(3) California varieties of industrial hemp cultivars that have been certified by a seed-certifying agency pursuant to Article 6.5 (commencing with Section 52401) of Chapter 2 of Division 18.

(c) (1) Upon recommendation by the board or the department, the secretary may update the list of approved cultivars by adding, amending, or removing cultivars.

(2) The adoption, amendment, or repeal of the list of approved cultivars, and the adoption of a methodology and procedure to add, amend, or remove a cultivar from the list of approved cultivars, pursuant to this section shall not be subject to the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(3) The department, in consultation with the board, shall hold at least one public hearing with public comment to determine the methodology and procedure by which a cultivar is added, amended, or removed from the list of approved cultivars.

(4) The department shall finalize the methodology and procedure to add, amend, or remove a cultivar from the list of approved cultivars and send the methodology and procedure to the Office of Administrative Law. The Office of Administrative Law shall file the methodology and procedure promptly with the Secretary of State without further review pursuant to Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. The methodology and procedure shall do all of the following:

(A) Indicate that the methodology and procedure are adopted pursuant to this division.

(B) State that the methodology and procedure are being transmitted for filing.

(C) Request that the Office of Administrative Law publish a notice of the filing of the methodology and procedure and print an appropriate reference in Title 3 of the California Code of Regulations.

(d) The department, in consultation with the board, may determine the manner in which the public is given notice of the list of approved cultivars, and any addition, amendment, or removal from that list.

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(Amended by Stats. 2019, Ch. 838, Sec. 5. (SB 153) Effective January 1, 2020.)

81003. (a) (1) Except for an established agricultural research institution subject to Section 81004.5 or a hemp breeder subject to Section 81004, and before cultivation, a grower of industrial hemp shall register with the commissioner of the county in which the grower intends to engage in industrial hemp cultivation.

(2) The application shall include all of the following:

(A) The name, physical address, and mailing address of the applicant.

(B) The legal description, Global Positioning System coordinates, and map of the land area on which the applicant plans to engage in industrial hemp cultivation, storage, or both.

(C) The approved cultivar to be grown, including the state or county of origin.

(3) The application shall be accompanied by a registration fee, as determined pursuant to Section 81005.

(4) A registration issued pursuant to this section shall be valid for one year, after which the registrant shall renew the registration and pay an accompanying renewal fee, as determined pursuant to Section 81005.

(b) If the commissioner determines that the requirements for registration pursuant to this division are met and that the applicant is eligible to participate in the industrial hemp program, in accordance with Sections 81012 to 81014, inclusive, the commissioner shall issue a registration to the applicant.

(c) A registrant that wishes to change or alter the land area on which the registrant conducts industrial hemp cultivation or storage, or both, shall, before any alteration or change, submit to the commissioner an updated registration with the legal description, Global Positioning System coordinates, and map specifying the proposed land change or alteration. Once the commissioner has received the change to the registration and the commissioner determines that the requirements pursuant to this division are met, the commissioner shall notify the registrant that it may cultivate industrial hemp on the changed or altered land area.

(d) A registrant that wishes to change the cultivar grown shall submit to the commissioner the name of the new, approved cultivar to be grown. Once the commissioner has received the change to the registration and the commissioner determines that the requirements pursuant to this division are met, the commissioner shall notify the registrant that it may cultivate the new cultivar.

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(e) (1) The commissioner shall transmit information collected under this section to the department.

(2) The following information shall be transmitted by the commissioner to the department no more than 10 business days, and submitted by the department to the United States Department of Agriculture no more than 30 business days, after the date on which it is collected, or, in the case of subparagraph (C), the date of a change in registration status:

(A) Contact information for each grower of industrial hemp.

(B) A legal description of the land on which the grower engages in industrial hemp cultivation.

(C) Registration status of the grower of industrial hemp.

(f) The department and the commissioner shall retain information collected under this section for at least three years after collecting or receiving it.

(Amended by Stats. 2019, Ch. 838, Sec. 6. (SB 153) Effective January 1, 2020.)

81004. (a) (1) Except when grown by an established agricultural research institution subject to Section 81004.5, and before cultivation, a hemp breeder shall register with the commissioner of the county in which the hemp breeder intends to engage in industrial hemp cultivation.

(2) The application shall include all of the following:

(A) The name, physical address, and mailing address of the applicant.

(B) The legal description, Global Positioning System coordinates, and map of the land area on which the applicant plans to engage in industrial hemp cultivation, storage, or both.

(C) A variety development plan, which shall include all of the following:

(i) If a new cultivar is to be certified by a seed-certifying agency, the name of the seed-certifying agency that will be conducting the certification.

(ii) The industrial hemp varieties that will be used and, if applicable, how those varieties will be used in the development of a new cultivar.

(iii) A plan for testing all of the plants grown.

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(iv) The measures that will be taken to destroy any plants with THC concentrations that test above 0.3 percent.

(v) The measures that will be taken to prevent the unlawful use of industrial hemp under this division.

(vi) A procedure for the maintenance of records documenting the development of the new cultivar.

(3) The application shall be accompanied by a registration fee, as determined pursuant to Section 81005.

(4) A registration issued pursuant to this section shall be valid for one year, after which the registrant shall renew its registration and pay an accompanying renewal fee, as determined pursuant to Section 81005.

(b) If the commissioner determines that the requirements for registration pursuant to this division are met and that the applicant is eligible to participate in the industrial hemp program, in accordance with Sections 81012 to 81014, inclusive, the commissioner shall issue a hemp breeder registration to the applicant.

(c) A registrant that wishes to change or alter the land area on which the registrant conducts industrial hemp cultivation or storage, or both, shall, before any alteration or change, submit to the commissioner an updated registration with the legal description, Global Positioning System coordinates, and map specifying the proposed land change or alteration. Once the commissioner has received the change to the registration and the commissioner determines that the requirements pursuant to this division are met, the commissioner shall notify the registrant that it may cultivate industrial hemp on the changed or altered land area.

(d) A registrant that wishes to change the cultivar grown shall submit to the commissioner the name of the new, approved cultivar to be grown. Once the commissioner has received the change to the registration and the commissioner determines that the requirements pursuant to this division are met, the commissioner shall notify the registrant that it may cultivate the new cultivar.

(e) A registrant developing a new cultivar who wishes to change any provision of the variety development plan shall submit to the commissioner the revised variety development plan. Once the commissioner has received the change to the registration and the commissioner determines that the requirements pursuant to this division are met, the commissioner shall notify the registrant that the registrant may cultivate under the revised variety development plan.

(f) All records pertaining to the variety development plan shall be kept and maintained by the hemp breeder and be available upon request by the commissioner, a law enforcement agency, or a seed certifying agency.

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(g) (1) The commissioner shall transmit information collected under this section to the department.

(2) The following information shall be transmitted by the commissioner to the department no more than 10 business days, and submitted by the department to the United States Department of Agriculture no more than 30 business days, after the date on which it is collected, or, in the case of subparagraph (C), the date of a change in registration status:

(A) Contact information for each hemp breeder.

(B) A legal description of the land on which the hemp breeder engages in industrial hemp cultivation.

(C) Registration status of the hemp breeder.

(h) The department and the commissioner shall retain information collected under this section for at least three years after collecting or receiving it.

(Amended by Stats. 2019, Ch. 838, Sec. 7. (SB 153) Effective January 1, 2020.)

81004.5. (a) (1) Before cultivating hemp for agricultural or academic research, an established agricultural research institution shall register with the commissioner of the county in which it intends to cultivate.

(2) The registration application shall include all of the following:

(A) The name, physical address, and mailing address of the applicant.

(B) The legal description, Global Positioning System coordinates, and map of the geographic area where the applicant plans to engage in hemp cultivation or storage, or both.

(C) A research plan that shall include all of the following:

(i) The hemp varieties that will be used and, if applicable, how those varieties will be used for purposes of agricultural or academic research.

(ii) A plan for testing all of the plants cultivated.

(iii) The measures that will be taken to destroy any plants with THC concentrations that test above 0.3 percent.

(iv) The measures that will be taken to prevent the unlawful use of hemp under this division.

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(v) A procedure for the maintenance of records documenting the agricultural or academic research.

(3) A registration issued pursuant to this section shall be valid for one year, after which the registrant shall renew its registration if it will continue cultivating hemp beyond that term.

(b) If the commissioner determines that the requirements for registration pursuant to this division are met and that the applicant is eligible to participate in the hemp program, in accordance with Sections 81012 to 81014, inclusive, the commissioner shall issue an established agricultural research institution registration to the applicant.

(c) A registrant that wishes to change or alter the land area on which the registrant conducts hemp cultivation or storage, or both, shall, before any alteration or change, submit to the commissioner an updated registration with the legal description, Global Positioning System coordinates, and map specifying the proposed land change or alteration. Once the commissioner has received the change to the registration and the commissioner determines that the requirements pursuant to this division are met, the commissioner shall notify the registrant that it may cultivate hemp on the changed or altered land area.

(d) A registrant conducting agricultural or academic research who wishes to change any provision of the research plan shall submit to the commissioner a revised research plan. Once the commissioner has received the revised research plan, and the commissioner determines that the requirements of this division are met, the commissioner shall notify the registrant that it may cultivate under the revised research plan.

(e) All records pertaining to the research plan shall be kept and maintained by the established agricultural research institution and be available upon request by the commissioner or a law enforcement agency.

(f) (1) The commissioner shall transmit information collected under this section to the department.

(2) The following information shall be transmitted by the commissioner to the department no more than 10 business days, and submitted by the department to the United States Department of Agriculture no more than 30 business days, after the date on which it is collected, or, in the case of subparagraph (C), the date of a change in registration status:

(A) Contact information for each registered established agricultural research institution.

(B) A legal description of the land on which the established agricultural research institution engages in hemp cultivation.

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(C) Registration status of the established agricultural research institution.

(g) The department and the commissioner shall retain information collected under this section for at least three years after collecting or receiving it.

(h) This section shall become operative as of the date on which a state plan for California is approved pursuant to Section 297B of the federal Agricultural Marketing Act of 1946 (added by Section 10113 of the federal Agricultural Improvement Act of 2018 (Public Law 115-334)).

(Added by Stats. 2019, Ch. 838, Sec. 8. (SB 153) Effective January 1, 2020. Operative on the date prescribed by its own provisions.)

81005. (a) The department shall establish a registration fee and appropriate renewal fee to be paid by growers of industrial hemp and hemp breeders, not including an established agricultural research institution, to cover the actual costs of implementing, administering, and enforcing the provisions of this division.

(b) Fees established pursuant to subdivision (a) that are collected by the commissioners upon registration or renewal pursuant to Section 81003 or 81004, except for amounts retained pursuant to this subdivision, shall be forwarded, according to procedures set by the department, to the department for deposit into the Department of Food and Agriculture Fund to be used for the administration and enforcement of this division. A commissioner or the county, as appropriate, may retain the amount of a fee necessary to reimburse direct costs incurred by the commissioner in the collection of the fee.

(c) The board of supervisors of a county may establish a reasonable fee, in an amount necessary to cover the actual costs of the commissioner and the county of implementing, administering, and enforcing the provisions of this division, except for costs that are otherwise reimbursed pursuant to subdivision (b), to be charged and collected by the commissioner upon registrations or renewals required pursuant to Section 81003 or 81004 and retained by the commissioner or the county, as appropriate.

(Amended by Stats. 2019, Ch. 838, Sec. 9. (SB 153) Effective January 1, 2020.)

81006. Industrial Hemp Growth Limitations; Prohibitions; Imports; Laboratory Testing.

(a) Except when grown by a registered established agricultural research institution or a registered hemp breeder, industrial hemp shall be grown in acreages of not less than one-tenth of an acre at the same time.

(b) Clandestine cultivation of industrial hemp is prohibited. All plots shall have adequate signage indicating they are industrial hemp.

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(c) Industrial hemp shall not be cultivated on a premises licensed by the department to cultivate or process cannabis. Industrial hemp, regardless of its THC content, that is cultivated on a premises licensed by the department for cannabis cultivation shall be considered cannabis as defined in subdivision (f) of Section 26001 of the Business and Professions Code and subject to licensing and regulatory requirements for cannabis pursuant to Division 10 (commencing with Section 26000) of the Business and Professions Code.

(d) Industrial hemp shall include products imported under the Harmonized Tariff Schedule of the United States (2013) of the United States International Trade Commission, including, but not limited to, hemp seed, per subheading 1207.99.03, hemp oil, per subheading 1515.90.80, oilcake, per subheading 2306.90.01, true hemp, per heading 5302, true hemp yarn, per subheading 5308.20.00, and woven fabrics of true hemp fibers, per subheading 5311.00.40.

(e) (1) Except when industrial hemp is grown by a registered established agricultural research institution and tested in accordance with an approved research plan or by a registered hemp breeder and tested in accordance with an approved variety development plan, a registrant that grows industrial hemp under this section shall, before the harvest of each crop and as provided below, obtain a laboratory test report indicating the THC levels of a random sampling of the dried flowering tops of the industrial hemp grown.

(2) Sampling shall occur no more than 30 days before harvest.

(3) The sample collected for THC testing shall be taken with the grower or hemp breeder present. The department shall establish, by regulation, the sampling procedures, including all of the following:

(A) The number of plants to be sampled per field, and any composting of samples.

(B) The portions of the plant to be sampled.

(C) The plant parts to be included in a sample.

(D) Additional procedures as necessary to ensure accuracy and the sanitation of samples and fields.

(4) The sample collected for THC testing shall be accompanied by the registrant's proof of registration.

(5) The laboratory test report shall be issued by a laboratory approved by the department, using a department-approved testing method. The testing method shall use postdecarboxylation or similarly reliable methods for determining THC concentration levels. The laboratory test report shall indicate the percentage concentration of THC on a dry-weight basis, indicate the date and location of

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samples taken, and state the Global Positioning System coordinates and total acreage of the crop. If the laboratory test report indicates a percentage concentration of THC that is equal to or less than 0.3 percent, the words “PASSED AS CALIFORNIA INDUSTRIAL HEMP” shall appear at or near the top of the laboratory test report. If the laboratory test report indicates a percentage concentration of THC that is greater than 0.3 percent, the words “FAILED AS CALIFORNIA INDUSTRIAL HEMP” shall appear at or near the top of the laboratory test report.

(6) If the laboratory test report indicates a percentage concentration of THC that is equal to or less than 0.3 percent, the laboratory shall provide the person who requested the testing not less than 10 original copies signed by an employee authorized by the laboratory and shall retain one or more original copies of the laboratory test report for a minimum of two years from its date of sampling.

(7) If the laboratory test report indicates a percentage concentration of THC that is greater than 0.3 percent and does not exceed 1 percent, the registrant that grows industrial hemp shall submit additional samples for testing of the industrial hemp grown.

(8) A registrant that grows industrial hemp shall destroy the industrial hemp grown upon receipt of a first laboratory test report indicating a percentage concentration of THC that exceeds 1 percent or a second laboratory test report pursuant to paragraph (7) indicating a percentage concentration of THC that exceeds 0.3 percent but is less than 1 percent. If the percentage concentration of THC exceeds 1 percent, the destruction shall begin within 48 hours, and be completed within seven days, after receipt of the laboratory test report. If the percentage concentration of THC in the second laboratory test report exceeds 0.3 percent but is less than 1 percent, the destruction shall take place as soon as practicable, but no later than 45 days after receipt of the second test report.

(9) A registrant that intends to grow industrial hemp and who complies with this section shall not be prosecuted for the cultivation or possession of marijuana as a result of a laboratory test report that indicates a percentage concentration of THC that is greater than 0.3 percent but does not exceed 1 percent.

(10) A registered established agricultural research institution or a registered hemp breeder shall obtain laboratory results in accordance with its approved research plan or variety development plan. The secretary may authorize a registered established agricultural research institution or hemp breeder to cultivate or possess industrial hemp with a laboratory test report that indicates a percentage concentration of THC that is greater than 0.3 percent in accordance with its approved research plan or variety development plan if that cultivation or possession contributes to the development of types of industrial hemp that will comply with the 0.3 percent THC limit established in this division.

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(11) A registrant that grows industrial hemp shall retain an original signed copy of the laboratory test report for two years from its date of sampling, make an original signed copy of the laboratory test report available to the department, the commissioner, or law enforcement officials or their designees upon request, and shall provide an original copy of the laboratory test report to each person purchasing, transporting, or otherwise obtaining from the registrant that grows industrial hemp the fiber, oil, cake, or seed, or any component of the seed, of the plant.

(Amended by Stats. 2019, Ch. 838, Sec. 10. (SB 153) Effective January 1, 2020. Note: This section was amended on Nov. 8, 2016, by initiative Prop. 64.)

81007. As part of the registration program established pursuant to this division, the department may establish and carry out, by regulation, an agricultural pilot program pursuant to Section 7606 of the federal Agricultural Act of 2014 (7 U.S.C. Sec. 5940) in accordance with the purposes of that section.

(Added by Stats. 2018, Ch. 986, Sec. 6. (SB 1409) Effective January 1, 2019.)
81008. Attorney General Reports; Requirements.

(a) Not later than January 1, 2019, the Attorney General shall report to the Assembly and Senate Committees on Agriculture and the Assembly and Senate Committees on Public Safety the reported incidents, if any, of the following:

(1) A field of industrial hemp being used to disguise marijuana cultivation.

(2) Claims in a court hearing by persons other than those exempted in subdivision (f) of Section 81006 that marijuana is industrial hemp.

(b) A report submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.

(c) Pursuant to Section 10231.5 of the Government Code, this section is repealed on January 1, 2023, or four years after the date that the report is due, whichever is later.

(Amended November 8, 2016, by initiative Proposition 64, Sec. 9.5. Section operative January 1, 2017, pursuant to Section 81010. Repealed on January 1, 2023, or later as prescribed by its own provisions.)

81009. Not later than January 1, 2019, or five years after the provisions of this division are authorized under federal law, whichever is later, the board, in consultation with the Hemp Industries Association, or its successor industry association, shall report the

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following to the Assembly and Senate Committees on Agriculture and the Assembly and Senate Committees on Public Safety:

(a) The economic impacts of industrial hemp cultivation, processing, and product manufacturing in California.

(b) The economic impacts of industrial hemp cultivation, processing, and product manufacturing in other states that may have permitted industrial hemp cultivation.

(Added by Stats. 2013, Ch. 398, Sec. 4. (SB 566) Effective January 1, 2014. Section operative January 1, 2017, pursuant to Section 81010.)

81010. This division, and Section 221 shall become operative on January 1, 2017.

(Amended by Stats. 2017, Ch. 27, Sec. 112. (SB 94) Effective June 27, 2017. Note: This section was amended on Nov. 8, 2016, by initiative Prop. 64, making Division 24 (commencing with Section 81000) operative on January 1, 2017.)

81011. Before cultivating industrial hemp, an established agricultural research institution shall provide the Global Positioning System coordinates of the planned cultivation site to the commissioner of the county in which the site is located.

(Added by Stats. 2018, Ch. 986, Sec. 7. (SB 1409) Effective January 1, 2019.)

81012. (a) Enforcement of the approved state plan shall comply with subdivision (e) of Section 297B of the federal Agricultural Marketing Act of 1946 (added by Section 10113 of the federal Agriculture Improvement Act of 2018 (Public Law 115-334)).

(b) A grower of industrial hemp, established agricultural research institution, or hemp breeder that the secretary determines has violated a provision of this division listed in the approved state plan or an additional requirement listed pursuant to subdivision (b) of Section 81015, including, but not limited to, by failing to provide a legal description of the land on which industrial hemp is grown, failing to register as required, or exceeding the 0.3 percent THC limit established in this division, shall be subject to the following consequences:

(1) For a negligent violation, as determined by the secretary, the consequences under state laws for a violation of this division shall be as follows:

(A) If the violation is not a repeat violation subject to subparagraph (B), the grower of industrial hemp, established agricultural research institution, or hemp breeder shall comply with a corrective action plan, to be established by the secretary, that includes both of the following:

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(i) A reasonable date by which the grower of industrial hemp, established agricultural research institution, or hemp breeder shall correct the negligent violation.

(ii) A requirement that the grower of industrial hemp, established agricultural research institution, or hemp breeder shall periodically report to the secretary, for a period of at least the next two calendar years, on its compliance with this division or the approved state plan.

(B) A grower of industrial hemp, established agricultural research institution, or hemp breeder that commits a negligent violation three times in a five-year period shall be ineligible to participate in the industrial hemp program for a period of five years beginning on the date of the finding of the third violation.

(2) For a violation committed intentionally, or with recklessness or gross negligence, the secretary shall immediately report the grower of industrial hemp, established agricultural research institution, or hemp breeder to the Attorney General of the United States and the Attorney General of this state, as applicable.

(c) This section shall become operative as of the date on which a state plan for California is approved pursuant to Section 297B of the federal Agricultural Marketing Act of 1946 (added by Section 10113 of the federal Agricultural Improvement Act of 2018 (Public Law 115-334)).

(Added by Stats. 2019, Ch. 838, Sec. 11. (SB 153) Effective January 1, 2020. Operative on the date prescribed by its own provisions.)

81013. Any person convicted of a felony relating to a controlled substance under state or federal law before, on, or after January 1, 2020, shall be ineligible, during the 10-year period following the date of the conviction, to participate in the industrial hemp program.

(Added by Stats. 2019, Ch. 838, Sec. 12. (SB 153) Effective January 1, 2020.)

81014. A person that materially falsifies any information contained in an application or registration under Section 81003 or 81004, or other application to participate in the industrial hemp program, shall be ineligible to participate in the industrial hemp program.

(Added by Stats. 2019, Ch. 838, Sec. 13. (SB 153) Effective January 1, 2020.)

81015. (a) On or before May 1, 2020, the secretary, in consultation with the Governor and the Attorney General, shall develop and submit to the United States Secretary of Agriculture a state plan, consistent with this division, pursuant to Section 297B of the federal Agricultural Marketing Act of 1946 (added by Section 10113 of the federal

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Agriculture Improvement Act of 2018 (Public Law 115-334)), including a certification that the state has the resources and personnel to carry out the practices and procedures described in clauses (i) to (iv), inclusive, of subparagraph (A) of paragraph (2) of subsection (a) of that section.

(b) In an annex to the state plan, the secretary shall list the provisions of this division that are included in the state plan, and any additional requirements in the state plan, that shall be subject to enforcement pursuant to Section 81012.

(Added by Stats. 2019, Ch. 838, Sec. 14. (SB 153) Effective January 1, 2020.)

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Registration Application and Criminal History Report

The following sections are extracts from the California Code of Regulations. They have been prepared by the Nursery, Seed, and Cotton Program, Pest Exclusion Branch, California Department of Food and Agriculture. These extracts are provided for information purposes only. For the official text, the user should consult the California Code of Regulations published by Barclays Law Publishers.

California Code of Regulations
Title 3. Food and Agriculture
Division 4. Plant Industry
Chapter 8. Industrial Hemp Cultivation
Article 1. Registration of Industrial Hemp Growers

4900. Registration Fees

(a) The Secretary establishes the following fees for registration of growers of industrial hemp for commercial purposes and seed breeders to be submitted along with the registration application as authorized in sections 81003 and 81004 of the Food and Agricultural Code:

(1) Prior to cultivation, a fee of nine-hundred dollars ($900) per applicant shall be submitted with the application to the commissioner.

(2) A separate registration is required for each county in which the applicant intends to grow industrial hemp.

(3) This registration is valid for one year from date of issuance by the commissioner.

(b) The Secretary establishes the following fee for registration renewal of growers of industrial hemp for commercial purposes and seed breeders:

(1) Upon expiration of registration, a fee of nine-hundred dollars ($900) per registrant shall be due to the commissioner in each county in which the applicant intends to continue to grow industrial hemp.

(2) Renewed registration is valid for one year from date of issuance of renewal by the commissioner.

Note: Authority cited: Sections 407, 483, and 81005, Food and Agricultural Code.
Reference: Sections 81003, 81004, and 81005, Food and Agricultural Code.

4901. Registration Application for Industrial Hemp

(a) Definitions.

(1) "Cultivation site" means contiguous land area on which the applicant plans to engage in industrial hemp cultivation, storage, or both.

(b) Registration.

(1) Except for an established agricultural research institution subject to Food and Agricultural Code section 81004.5 or a hemp breeder subject to Food and Agricultural Code section 81004, before cultivation, a grower of hemp shall register with the commissioner of the county in which the grower intends to engage in industrial hemp cultivation. The registration application for growers of hemp shall include:

(A) the name, physical address, and contact information of the applicant, including mailing address, telephone number, and email (if available),

(B) the business type (sole proprietor, partnership, corporation, limited liability corporation, or specified other), business name(s) including all DBAs ("doing business as"), and the employer identification number (EIN) of the business entity,

(C) the name(s) and title(s) of all key participants as defined in Section 4902(a)(2),

(D) the legal description, Global Positioning System coordinates, and map of the cultivation site(s),

(E) the approved cultivar to be grown, including the state or country of origin, and

(F) the applicant's signature certifying the following:

1. the information provided on the application is true and correct,

2. the cultivation site(s) to be registered for industrial hemp cultivation is not on premises licensed by the department to cultivate or process cannabis,

3. the applicant shall comply with all the requirements outlined in Division 24 of the Food and Agricultural Code and this chapter, and

4. any changes to the registration shall be provided to the commissioner in accordance with Section 4901(c).

(2) Except for an established agricultural research institution subject to Food and Agricultural Code section 81004.5, before cultivation, a hemp breeder shall register with the commissioner of the county in which the hemp breeder intends to engage in industrial hemp cultivation. The registration application for hemp breeders shall include:

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(A) the name, physical address, and contact information of the applicant, including mailing address, telephone number, and email (if available),

(B) the business type (sole proprietor, partnership, corporation, limited liability corporation, specified other), business name(s) including all DBAs ("doing business as"), and the employer identification number (EIN) of the business entity,

(C) the name(s) and title(s) of all key participants as defined in Section 4902(a)(2),

(D) the legal description, Global Positioning System coordinates, and map of the cultivation site(s),

(E) a variety development plan, which shall include:

1. the name of the seed-certifying agency that will be conducting the certification if a new cultivar is to be certified by a seed-certifying agency,

2. the hemp varieties that will be used and, if applicable, how those varieties will be used in the development of a new cultivar,

3. a plan for testing the THC concentration of all the plants grown,

4. the measures that will be taken to destroy any plants with THC concentrations that test above 0.3 percent,

5. the measures that will be taken to prevent the unlawful use of hemp under Division 24 of the Food and Agricultural Code and this chapter, and

6. a procedure for the maintenance of records documenting the development of the new cultivar, and

(F) the applicant's signature certifying the following:

1. the information provided on the application is true and correct,

2. the cultivation site(s) to be registered for hemp cultivation is not on premises licensed by the department to cultivate or process cannabis,
3. the applicant shall comply with all the requirements outlined in Division 24 of the Food and Agricultural Code and this chapter, and

4. any changes to the registration shall be provided to the commissioner in accordance with Section 4901(c).

(3) Each registration application shall be accompanied with:

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(A) the registration or renewal fee in accordance with Section 4900, and

(B) criminal history reports for all key participants in accordance with Section 4902.

(c) Alterations or changes to registration.

(1) Registrants shall submit an updated registration application to the commissioner for any of the following alterations or changes:

(A) Any alterations or changes to business name, contact information, or key participants as defined by Section 4902(a)(2) must be submitted within 15 calendar days of the change.

(2) Any alterations or changes to cultivation sites, approved cultivars, or variety development plans must be approved by the commissioner prior to planting.

(d) Registration renewal.

(1) A registrant shall submit a registration application to the commissioner in each county in which the applicant intends to renew the registration at least 30 calendar days prior to the expiration of registration. Renewal applications received less than 30 calendar days from registration expiration may result in noncompliance with Section 4901(b).

(e) Commissioner approval, refusal, or revocation.

(1) Once the commissioner receives the application for registration, registration amendment, or renewal and determines that the requirements pursuant to Division 24 of the Food and Agricultural Code and this chapter are met, the commissioner shall issue a registration to the applicant and notify the registrant that it may cultivate hemp using the registered cultivar(s), cultivation site(s), and variety development plan(s).

(2) If the commissioner determines that the application for registration or renewal does not meet the requirements outlined Division 24 of the Food and Agricultural Code and this chapter, the commissioner shall provide written notification to the applicant of the deficiencies in the application. The applicant shall have 30 calendar days from the receipt of the notification to provide the requested information to the commissioner. If the requested information is not provided within the timeframe, the commissioner will deny registration.

(A) If registration is denied due to deficiencies in the application for registration or renewal, the applicant must submit a new application and registration or renewal fee to the commissioner in order to register to cultivate hemp.

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Note: Authority cited: Sections 407, 81003, 81004, 81005, 81006, and 81013, Food and Agricultural Code.
Reference: Sections 81003, 81004, 81005, 81006, and 81013, Food and Agricultural Code.

4902. Criminal History Report for Industrial Hemp Registration

(a) Definitions.

(1) "Criminal history report" means the Federal Bureau of Investigation's Identity History Summary.

(2) "Key Participants" means any person in the entity producing industrial hemp who is:

(A) a sole proprietor, a partner in partnership, or a person with executive managerial control in a corporation producing industrial hemp, or

(B) a person with executive managerial control over the entity producing industrial hemp, including persons such as a chief executive officer, chief operating officer and chief financial officer.

(C) This definition does not include a person in a management position with no executive managerial control over the entity producing industrial hemp, such as farm, field, or shift managers.

(3) "Disqualifying conviction" means any plea of guilty or nolo contendere, or any finding of guilt for a State or Federal felony related to a controlled substance, except:

(A) when the finding of guilt is subsequently overturned on appeal, pardoned, or expunged, or

(B) where an individual is allowed to withdraw an original plea of guilty or nolo contendere and enter a plea of not guilty and the case is subsequently dismissed.

(b) Registration requirements.

(1) Before cultivation, a criminal history report for each key participant listed pursuant to Section 4901 shall be submitted along with the registration application to the commissioner. A registration application will not be considered complete without all required criminal history reports.

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(A) Any registration applications approved by the commissioner prior to April 30, 2020 must comply with Section 4902(b) by April 30, 2020. Any registrations that do not comply with Section 4902(b) by April 30, 2020 shall be revoked.

(2) Any changes to key participants must be reported along with criminal history reports for any additional key participants to the commissioner as an amendment to the registration within 15 calendar days of the change.

(3) Except as provided in Section 4902(b)(3)(A), all criminal history reports must be dated within 60 calendar days of submission of the registration application.

(A) All criminal history reports submitted pursuant to Section 4902(b)(1)(A) must be dated within 60 calendar days of submission of the amendment to the registration application.

(4) Registrants shall notify the commissioner in writing within 48 hours of the registrant or a key participant receiving a disqualifying conviction.

(5) If an applicant, registrant, or key participant is found to have a disqualifying conviction as defined in Section 4902(a)(3), the applicant or key participant shall be ineligible to participate in the hemp program for ten (10) years from the date of the conviction.

(6) Any falsification of criminal history reports shall be considered as materially falsifying information in an application or registration and shall result in revocation or refusal of registration and ineligibility to participate in the industrial hemp program.

Note: Authority cited: Sections 407, 81003, 81004, and 81013, Food and Agricultural Code.
Reference: Sections 81003, 81004, 81013, and 81014, Food and Agricultural Code.

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Regulations for Industrial Hemp Cultivation

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California Code of Regulations
Title 3. Food and Agriculture
Division 4. Plant Industry
Chapter 8. Industrial Hemp Cultivation
Article 2. Regulations for Industrial Hemp Cultivation

4920. List of Approved Seed Cultivars

(a) The Secretary, as provided in Section 81002 of the Food and Agricultural Code, adopts the following list of approved seed cultivars.

(1) Industrial hemp seed or propagative materials certified as breeder, foundation, registered, or certified seed or stock by one of the following agencies:

(A) Member organizations of the Association of Official Seed Certifying Agencies,

(B) Organization of Economic Cooperation and Development, or

(C) An officially approved and recognized seed-certifying agency listed in Title 3, California Code of Regulations, Section 3875, as provided in Section 52401 of the Food and Agricultural Code.

(2) Industrial hemp seed or propagative materials produced in a quality assurance program approved by one of the following agencies:

(A) Member organizations of the Association of Official Seed Certifying Agencies,

(B) Organization of Economic Cooperation and Development, or

(C) An officially approved and recognized seed-certifying agency listed in Title 3, California Code of Regulations, Section 3875, as provided in Section 52401 of the Food and Agricultural Code.

(3) Industrial hemp seed or propagative materials produced by an authorized participant in a state industrial hemp agricultural pilot program, pursuant to Section 7606 of the federal Agricultural Act of 2014 (7 U.S.C. Sec. 5940).

(A) The crop from which the seed or propagative materials were harvested from

shall have been tested in accordance with a testing method approved by the regulatory authority in the state of origin and found to have no more than three-tenths of one percent tetrahydrocannabinol (THC) on a dry weight basis.

(B) The commissioner shall be notified of the importation of all propagative materials into the county. The shipment is subject to inspection by the commissioner and shall not be used for cultivation until released by the commissioner (California Food and Agricultural Code Division 4, Part 2, Chapter 2 § 6401 and § 6501).

(4) Industrial hemp seeds or tissue culture plants imported from outside the United States that meets federal importation requirements.

(A) The crop from which the seeds or tissue culture plants were harvested from shall have been tested in accordance with a testing method approved by the department of agriculture in the country of origin and found to have no more than three-tenths of one percent THC on a dry weight basis.

(B) The commissioner shall be notified of the importation of all propagative materials into the county. The shipment is subject to inspection by the commissioner and shall not be used for cultivation until released by the commissioner (California Food and Agricultural Code Division 4, Part 2, Chapter 2 § 6401 and § 6501).

(C) For the purposes of this section, the term “tissue culture” means in vitro material introduced into culture from nodal cuttings at a particular time and from a single plant and grown in aseptic conditions to be used as a source of propagative material.

(5) Industrial hemp seed or propagative materials produced in California in accordance with the provisions of Division 24 of the Food and Agricultural Code and this chapter.

(A) The crop from which the seed or propagative materials were harvested from shall have been tested by a department-approved laboratory and found to have no more than three- tenths of one percent THC on a dry weight basis.

Note: Authority cited: Sections 407 and 81002, Food and Agricultural Code. Reference: Sections 81001 and 81002, Food and Agricultural Code

4921. Methodology and Procedure to Update the List of Approved Seed Cultivars

Attachment: California Industrial Hemp Law and Regulations (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-010; Prohibition

(a) The Secretary adopts the following methodology and procedure to add, amend or remove a seed cultivar from the list of approved seed cultivars.

(1) Upon request from the chair of the Board, or of any four members of the Board, the Department shall schedule a public hearing to consider a proposal to update the list of approved seed cultivars by adding, amending, or removing seed cultivars. A notice and text of the proposal shall be made available to the public no less than 30 days prior to the hearing.

(2) The public hearing to consider a proposal to update the list of approved seed cultivars shall be part of a regularly scheduled meeting of the Industrial Hemp Advisory board.

(3) The public hearing shall include:

(A) Presentation of the proposal to update the list of approved seed cultivars;

(B) Presentation of the purpose for the update; and

(C) Opportunity for public comment, pursuant to Section 11125.7 of the Government Code.

(4) After receiving comments from the public, the Board shall vote to accept, amend and accept, or deny a proposal for recommendation to the Secretary.

(5) Upon recommendation by the Board to adopt a proposal and approval by the Secretary, the Department shall amend the list of approved seed cultivars and shall submit the amended list to the Office of Administrative Law to be filed promptly with the Secretary of State. Pursuant to Section 81002 of the Food and Agricultural Code, the proposal shall not be subject to further review.

(6) The Department shall post the list of approved seed cultivars to its website and shall provide electronic and/or mail notification of amendments to list of approved seed cultivars to parties that have requested notification. An interested party may go to the Department's website and elect to receive automatic notifications of any changes to the list of approved seed cultivars via an electronic mail listserv.

(b) Amendment of the methodology and procedure.

(1) By motion, the Board may recommend amending the methodology and procedure in subsection (a). In consultation with the chair of the Board, the Department shall schedule a public hearing to consider the recommendation, and a notice and text of the proposed amendment shall be made available to the public no less than 30 days prior to the hearing.

Attachment: California Industrial Hemp Law and Regulations (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-010; Prohibition

(2) The public hearing to consider a proposal to amend the methodology and procedure shall be part of a regularly scheduled meeting of the Industrial Hemp Advisory Board.

(3) The public hearing shall include:

(A) Presentation of the proposal to amend the methodology and procedure;

(B) Presentation of the purpose for the amendment; and

(C) Opportunity for public comment, pursuant to Section 11125.7 of the Government Code.

(4) After receiving comments from the public, the Board shall vote to accept, amend and accept, or deny the proposal for recommendation to the Secretary.

(5) Upon recommendation by the Board to adopt the amendment and approval by the Secretary, the Department shall amend the methodology and procedure, and shall submit the amended methodology and procedure to the Office of Administrative Law to be filed promptly with the Secretary of State. Pursuant to Section 81002 of the Food and Agricultural Code, the proposal shall not be subject to further review.

(6) The Department shall provide electronic and/or mail notification of the amendment to the methodology and procedure to parties that have requested notification. An interested party may go to the Department's website and elect to receive automatic notifications of any changes to the methodology and procedure via an electronic mail listserv.

Note: Authority cited: Sections 407 and 81002, Food and Agricultural Code.
Reference: Sections 81001 and 81002, Food and Agricultural Code.

4930. Inspections of Industrial Hemp

(a) The commissioner shall conduct annual inspections of a random sample of registrants to verify registration information, confirm crop destruction, and ensure appropriate recordkeeping.

Note: Authority cited: Sections 407, 81003, 81004, and 81006, Food and Agricultural Code
Reference: Sections 81006, Food and Agricultural Code

4935. Planting Report for Industrial Hemp

Attachment: California Industrial Hemp Law and Regulations (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-010; Prohibition

(a) In order to confirm that industrial hemp was planted at a registered cultivation site, registrants shall submit a signed planting report to the commissioner within 72 hours following the completion of the planting. A separate planting report shall be completed for each planting. The planting report shall include the:

(1) registrant's registration number,

(2) name and contact information of the registrant,

(3) planting date(s),

(4) name(s) of the cultivar(s) and the quantity planted,

(5) physical address, Global Positioning System coordinates, general description of the planting location, and total acreage or square footage of the planting, and

(6) planned growing period for the planting.

(b) The Department shall make a template of a planting report form available on the Department's website.

(c) The commissioner may confirm the planting of the crop by conducting field inspections. The commissioner shall be provided with complete and unrestricted access during business hours to all hemp and other cannabis plants, whether growing or harvested, and all land, buildings, and other structures used for the cultivation, handling, and storage of all hemp and other cannabis plants, and all locations registered as a cultivation site.

(d) Except for established agricultural research institutions, growers of industrial hemp and hemp breeders shall report on all hemp production in the state and any changes to where hemp will be produced to the Farm Service Agency of the United States Department of Agriculture and shall provide, at minimum, all of the following information:

(1) registrant's registration number,

(2) physical address, Global Positioning System coordinates, general description of the planting location, and

(3) acreage dedicated to the production of hemp, or greenhouse or indoor square footage.

Note: Authority cited: Sections 407, 81003, 81004, and 81006, Food and Agricultural Code

Reference: Sections 81006, Food and Agricultural Code

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4940. Sampling Timeframe and Pre-Harvest Notification for Industrial Hemp

(a) Sampling Timeframe.

(1) Samples shall be collected no more than six calendar days prior to the anticipated harvest start date listed on the pre-harvest report.

(2) Any changes to the harvest date that result in harvest activities to occur more than 15 calendar days after the sample collection date shall require additional sampling for THC concentration prior to harvest.

(b) Sampling Request and Pre-Harvest Report.

(1) In order to request sampling, registrants shall submit a signed pre-harvest report to the commissioner at least 20 calendar days before the anticipated harvest start date to initiate the sampling process.

(2) A separate pre-harvest report shall be completed for each planting to be harvested. The pre-harvest report shall include the:

(A) registrant's registration number,

(B) name and contact information of the registrant,

(C) anticipated harvest start date,

(D) name(s) of the cultivar(s) to be harvested,

(E) physical address, Global Positioning System coordinates, general description of the planting location, and total acreage or square footage of the planting to be harvested, and

(F) name and contact information of the laboratory to conduct the testing for THC concentration.

(3) The pre-harvest report shall be accompanied by a sample analysis request form for each composite sample to be taken. The sample analysis request form shall be used to record the:

(A) name, contact information, and signature of the sample analysis requester,

(B) registration number,

(C) name and contact information of the commissioner

(D) physical address, general description of the planting location, and total acreage or square footage of the planting sampled,

(E) lot identification number as provided by U.S. Department of Agriculture Farm Service Agency,

(F) name of the cultivar sampled,

(G) description of the planting to be sampled including estimated average height, appearance, approximate density, homogeneity, condition of the plants, and degree of maturity of flowering material,

(H) unique sample identification number for the composite sample,

(I) number of the samples taken,

(J) date and time of the sample collection,

(K) name and signature of the sampler,

(L) name and contact information of the approved laboratory conducting the THC testing,

(M) name and signature of the person testing the sample,

(N) date and time of the sample testing,

(O) testing instrumentation used to analyze the sample for THC concentration,

(P) laboratory determination of THC concentration in accordance with Section 4942(c) and limit of detection (LOD), and

(Q) chain of custody information including the name and signature of the person who received and delivered the sample, and the date, time, and location of each possession or transfer of the sample.

(4) The Department shall make a template of a pre-harvest report and sample analysis request form available on the Department's website.

(5) The sampler, as described in Section 4941(a)(1), shall schedule a sampling date.

(6) Registrants shall notify the commissioner of any changes to the above information no less than two calendar days prior to the scheduled sampling date.

Note: Authority cited: Sections 407 and 81006, Food and Agricultural Code

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Reference: Section 81006, Food and Agricultural Code

4941. Sampling Procedures for Testing Industrial Hemp for THC Concentration

(a) Collection of Samples.

(1) Samples for THC testing shall be collected by the commissioner, an USDA-approved sampling agent, or a federal, state, or tribal law enforcement agent authorized by USDA to collect samples.

(2) Prior to the collection of the samples, the sampler as described in Section 4941(a)(1) shall verify that the planting to be sampled corresponds to the registered cultivation site using the physical address, Global Positioning System coordinates, general description, and total acreage or square footage provided on the pre-harvest report and registration application.

(3) The registrant shall be present to observe the collection of samples and allow the sampler as described in Section 4941(a)(1), complete and unrestricted access during business hours to all hemp and other cannabis plants, whether growing or harvested, and all land, buildings, and other structures used for the cultivation, handling, and storage of all hemp and other cannabis plants, and all locations registered as a cultivation site.

(b) Sample Volume and Composition.

(1) Each sample shall be collected from different plants. Each sample shall consist of the terminal eight inches from the top of the plant. If the plant is less than eight inches tall, the whole plant above ground shall be taken.

(2) A composite sample shall consist of the following:

(A) six samples for plantings that are less than or equal to six acres.

(B) one sample from each acre for plantings that are greater than six acres but less than 10 acres.

(C) for plantings equal to or greater than 10 acres, the number of samples shall be calculated using the following formula where n is the number of plants to be selected and N is the planting acreage:

$$n = 299 / (1 + (298 / N))$$

(3) A separate composite sample shall be taken for:

(A) Each cultivar within each contiguous planting, and

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(B) Indoor and outdoor growing areas shall be treated as separate plantings.

(c) Handling of Samples.

(1) All plant material collected for a composite sample shall be placed together in a permeable bag, and kept in a manner not conducive to mold growth. Each composite sample shall be stored in separate bags.

(2) The bag containing the composite sample shall be sealed and labeled in a manner to detect tampering and ensure chain of custody. Sample labels shall be signed by both the registrant and the sampler as described in Section 4941(a)(1).

(3) Samples shall be labeled with a unique sample identification number as assigned on the sample analysis request form and accompanied by the following documentation:

(A) registrant's proof of registration,

(B) pre-harvest report,

(C) sample analysis request form containing information outlined in Sections 4940(b)(3)(B) through 4940(b)(3)(L) provided by the commissioner and Section 4940(b)(3)(A) provided by the registrant.

(4) Samples shall be delivered to the testing laboratory within 24 hours of collection.

Note: Authority cited: Sections 407 and 81006, Food and Agricultural Code
Reference: Section81006, Food and Agricultural Code

4942. Approved Testing Method for Testing Industrial Hemp for THC Concentration

(a) Sample Preparation.

(1) The laboratory shall maintain chain of custody upon receiving the samples by documenting the chain of custody information on the sample analysis request form. The laboratory shall provide the information outlined in Sections 4940(b)(3)(M) through 4940(b)(3)(Q) on the sample analysis request form.

(2) The laboratory shall check the sample for any signs of tampering. The laboratory shall immediately notify the commissioner and not test the sample if there is evidence of tampering. New samples shall be collected and submitted to the laboratory for testing in accordance with the procedures outlined in Section 4941.

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(3) Each composite sample shall be maintained and tested separately for THC concentration.

(4) All plant material included in the composite sample shall be processed and tested as a single sample.

(5) All plant material included in the composite sample shall be dried until the weight of the composite sample remains constant after drying intervals. Drying temperature shall not exceed 90 degrees Celsius.

(6) All of the dried plant material included in the composite sample shall be manicured through a wire screen no larger than 1.5 mm x 1.5 mm to remove all mature seeds and larger twigs and stems and milled to a homogenous powder-like consistency and combined before analysis.

(b) Suitable analytical instrumentation used to determine THC concentration in industrial hemp includes the following:

(1) Gas chromatography with flame ionization detector,

(2) Gas chromatography coupled with mass spectrometry,

(3) Liquid chromatography coupled with mass spectrometry, or

(4) Liquid chromatography coupled with diode-array or variable wavelength detector.

(c) “THC concentration” or “percentage concentration of THC” means the post-decarboxylated value of the percentage of delta-9 THC on a dry weight basis to the nearest thousandth, or three decimal places. The percentage concentration of THC may be measured by using either:

(1) a suitable analytical instrumentation described in Section 4942(b) that results in the decarboxylation of THC-acid to delta-9 THC, or

(2) a calculated value using a conversion formula of the percentage concentration of delta-9 THC plus eighty-seven and seven tenths (87.7) percent of the percentage concentration of THC-acid when a suitable analytical instrumentation described in Section 4942(b) does not result in the decarboxylation of THC-acid to delta-9 THC.

(d) “Acceptable hemp THC level” means a THC concentration that falls within the distribution or range that includes three-tenths of one percent or less that is produced when the measurement of uncertainty is applied to the reported THC concentration. For example, if the reported THC concentration of a sample is 0.35% and the measurement of uncertainty is ± 0.06%, the measured THC concentration

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would range from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the acceptable hemp THC level.

(e) Sample Retention and Disposal.

(1) If the laboratory test report indicates a percentage concentration of THC that is equal to or less than the acceptable hemp THC level, the laboratory shall retain the sample for a minimum of 30 calendar days from the testing date.

(2) If the laboratory test report indicates a percentage concentration of THC that is exceeds the acceptable hemp THC level, the laboratory shall retain the sample for a minimum of 60 calendar days from the testing date. The laboratory shall destroy the samples in a manner compliant with Section 297B of the Code of Federal Regulations Section 10113 of the federal Agricultural Improvement Act of 2018 (December 20, 2018) (Public Law 115-334) which is hereby incorporated by reference.

Note: Authority cited: Sections 407 and 81006, Food and Agricultural Code
Reference: Section 81006, Food and Agricultural Code

4943. Approved Laboratory for Testing Industrial Hemp for THC Concentration

(a) Testing of industrial hemp for THC concentration shall be conducted by a laboratory with International Organization for Standardization (ISO) / International Electrotechnical Commission (IEC) 17025 accreditation using a validated method in accordance with Sections 4942, 4944, and 4945 for THC analysis on plant material from an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement.

(1) Laboratories testing industrial hemp for THC concentration shall meet all laboratory registration requirements outlined in Part 990.3 in Title 7 of the Code of Federal Regulations (October 31, 2019) and corresponding guidance which is hereby incorporated by reference.

(b) A laboratory shall obtain written approval from the Department in order to test industrial hemp for THC concentration. A laboratory shall submit a signed laboratory approval application with the following information to the Department for review and approval:

(1) name and contact information of the applicant,

(2) name and physical address of the testing laboratory,

(3) a copy of the testing laboratory's DEA registration certificate, if applicable,

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(4) a copy of the testing laboratory's ISO/IEC 17025 certificate of accreditation,

(5) a copy of the testing laboratory's ISO/IEC 17025 scope of accreditation, and

(6) a copy of the testing laboratory's standard operating procedures for THC testing.

(c) If the Department determines that the requirements outlined in this section are met and the laboratory's standard operating procedures for THC testing comply with the requirements outlined in Sections 4942, 4944, and 4945, the Department shall approve the laboratory to conduct THC testing on industrial hemp by issuing a proof of approval, and adding the testing laboratory to the list of approved testing laboratories. When the laboratory is not approved, the Department will notify the laboratory in writing of any deficiencies in the application.

(d) Laboratory approval shall be valid for one year from date of approval by the Department, after which the laboratory shall renew the approval.

(e) Laboratories shall request renewal of Department approval in accordance with the procedures outlined in Section 4943(b). Renewed approval shall be valid for one year from date of renewal by the Department.

(f) Any changes to the approved laboratory's standard operating procedures shall be submitted to the Department for review and approval prior to implementation. Once the Department has determined that the requirements outlined in this section are met and the laboratory's standard operating procedures comply with testing requirements outlined in Sections 4942, 4944, and 4945, the Department shall notify the laboratory that testing may be completed under the revised standard operating procedures.

(g) The Department shall make a template of a laboratory application and the list of approved testing laboratories available on the Department's website.

Note: Authority cited: Sections 407 and 81006, Food and Agricultural Code
Reference: Section 81006, Food and Agricultural Code

4944. Notification of Laboratory Test Report

(a) Laboratories shall issue a separate laboratory test report for each composite sample.

(b) The laboratory test report shall include the:

(1) registration number,

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(2) unique sample identification number as assigned on the sample analysis request form,

(3) name and contact information of the registrant,

(4) name of the sampler,

(5) dates and times of the sample collection, testing, and test report,

(6) name of the cultivar tested,

(7) physical address, Global Positioning System coordinates, general description of the planting location, and total acreage or square footage of the planting sampled,

(8) name and contact information of the laboratory,

(9) name of approved analytical instrumentation used and the limit of detection (LOD),

(10) name of the person who received the sample,

(11) name of the person who tested the sample

(12) DEA registration number of the laboratory, if applicable,

(13) identification of a retest, if applicable,

(14) percentage concentration of THC in accordance with Section 4942,

(15) measurement of uncertainty as a ± percentage value to the nearest thousandth, or three decimal places, at 95% confidence level,

(16) the words “OFFICIAL CALIFORNIA REGULATORY SAMPLE”,

(17) and words “PASSED AS CALIFORNIA INDUSTRIAL HEMP” or “FAILED AS CALIFORNIA INDUSTRIAL HEMP” at or near the top of page.

(A) If the laboratory test report indicates a percentage concentration of THC that is within the acceptable hemp THC level, the words “PASSED AS CALIFORNIA INDUSTRIAL HEMP” shall appear.

(B) If the laboratory test report indicates a percentage concentration of THC that is greater than the acceptable hemp THC level, the words “FAILED AS CALIFORNIA INDUSTRIAL HEMP” shall appear.

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(c) Laboratories shall provide an electronic copy of the laboratory test report to the registrant and commissioner concurrently within five calendar days of the collection of samples.

(d) Following the electronic notification of the laboratory test report, the laboratory shall:

(1) report the test results for all samples tested to USDA.

(2) provide the registrant no fewer than ten original paper copies with wet signatures of a passing laboratory test report, signed by an employee authorized to sign by the laboratory.

(3) provide the registrant one or more paper copies of a failed laboratory test report, signed by an employee authorized to sign by the laboratory.

(e) Upon request from the commissioner, the laboratory shall provide a copy of the completed sample analysis request form.

(f) The laboratory shall retain one or more original copies of each laboratory test report and the completed sample analysis request form for a minimum of three years from the date of sampling.

Note: Authority cited: Sections 407 and 81006, Food and Agricultural Code
Reference: Section 81006, Food and Agricultural Code

4945. Approved Testing Method for Retesting of Industrial Hemp for THC Concentration

(a) Additional samples for retesting shall be collected in accordance with the sampling procedures outlined in Section 4941 and tested in accordance with the testing procedures outlined in Sections 4942 through 4944.

Note: Authority cited: Sections 407 and 81006, Food and Agricultural Code
Reference: Section 81006, Food and Agricultural Code

4946. Final Disposition for Registered Industrial Hemp Crops

(a) Registrants may harvest the sampled crop upon receipt of an electronic copy of a passing laboratory test report.

(1) Registrants shall submit a harvest report to the commissioner within 72 hours following the completion of the harvest. The harvest report shall include the:

(A) registration number,

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(B) name and contact information of the registrant,

(C) harvest timeframe including start and end dates,

(D) name(s) of the cultivar(s),

(E) unique sample identification number(s) as assigned on the sample analysis request form and the percentage concentration of THC for each cultivar as reported on the laboratory test report,

(F) physical address, Global Positioning System coordinates, general description of the planting location, and total acreage or square footage of the harvested planting, and

(G) description and quantity of the material harvested.

(2) The Department shall make a template of a harvest report form available on the Department's website.

(3) Harvest shall be completed within 15 calendar days from the sampling date.

(A) Registrants may request additional sampling and testing in accordance with the procedures outlined in Section 4940 to extend the harvest timeframe.

1. The most recent laboratory test report electronically received by the commissioner in compliance with Sections 4940 through 4945 shall be considered the effective THC concentration for determining whether the planting may be harvested and determining compliance with Division 24 of the Food and Agricultural Code.

2. All previous laboratory test reports received for the same planting shall be invalid upon the commissioner's receipt of an electronic copy of the most recent laboratory test report. If the most recent laboratory test report indicates a percentage concentration of THC that is greater than the acceptable hemp THC level but does not exceed one percent, the registrant may request one additional retest in accordance with Section 4945.

(4) The commissioner may confirm the completion of the harvest by conducting field inspections. The commissioner shall be provided with complete and unrestricted access during business hours to all hemp and other cannabis plants, whether growing or harvested, and all land, buildings, and other structures used for the cultivation, handling, and storage of all hemp and other cannabis plants, and all locations registered as a cultivation site.

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(b) Registrants shall not harvest the sampled crop that received a failed laboratory test report.

(1) If the initial laboratory test report indicates a percentage concentration of THC that is greater than the acceptable hemp THC level but does not exceed one percent, the registrant may request one additional retest in accordance with Section 4945.

(c) Registrants shall destroy a crop that receives a failed laboratory test report within the following timeframes:

(1) If a laboratory test report indicates the percentage concentration of THC exceeds one percent, the destruction shall begin within 48 hours, and be completed within seven calendar days, after the registrant's receipt of an electronic copy of the laboratory test report.

(2) If a second laboratory test report from retesting indicates the percentage concentration of THC exceeds the acceptable hemp THC level but is less than one percent, the destruction shall take place as soon as practicable, but no later than 45 calendar days after the registrant's receipt of an electronic copy of the second laboratory test report.

Note: Authority cited: Sections 407 and 81006, Food and Agricultural Code
Reference: Section 81006, Food and Agricultural Code

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Abatement and Enforcement of Industrial Hemp Crops

The following sections are extracts from the California Code of Regulations. They have been prepared by the Nursery, Seed, and Cotton Program, Pest Exclusion Branch, California Department of Food and Agriculture. These extracts are provided for information purposes only. For the official text, the user should consult the California Code of Regulations published by Barclays Law Publishers.

California Code of Regulations
Title 3. Food and Agriculture
Division 4. Plant Industry
Chapter 8. Industrial Hemp Cultivation
Article 3. Abatement and Enforcement

4950. Destruction of Non-Compliant Industrial Hemp Crops

(a) Except for industrial hemp crop grown by established agricultural research institutions, any industrial hemp crop that does not meet the requirements of Division 24 of the Food and Agricultural Code and this chapter shall be destroyed in a manner compliant with Section 297B of the federal Agricultural Marketing Act of 1946 (added by Section 10113 of the federal Agriculture Improvement Act of 2018 (December 20, 2018) (Public Law 115-334), implementing regulations, and guidance which is hereby incorporated by reference.

(1) Unless otherwise specified in 4946 (c)(1), any non-compliant industrial hemp crop shall be destroyed as soon as practical, but destruction must be completed no later than 45 calendar days after the cultivator's receipt of notification of abatement from the commissioner.

(b) The cultivator of the industrial hemp crop shall submit a signed destruction plan to the commissioner at least 24 hours prior to the start of the destruction, unless a shorter timeframe is allowed by the commissioner. The destruction plan shall include the:

(1) registration number, if applicable,

(2) name and contact information of the cultivator,

(3) anticipated destruction date(s) of the crop to be destroyed,

(4) name(s) of the cultivar(s) to be destroyed,

(5) unique sample identification number(s) as assigned on the sample analysis request form and percentage concentration of THC for each cultivar as reported on the laboratory test report, if applicable,

(6) physical address, Global Positioning System coordinates, general description of the planting location, and total acreage or square footage of the crop to be destroyed, and

(7) destruction method compliant with Section 297B of the federal Agricultural Marketing Act of 1946 (added by Section 10113 of the federal Agriculture Improvement Act of 2018 (December 20, 2018) (Public Law 115-334), implementing regulations, and guidance which is hereby incorporated by reference.

(c) The destruction plan shall be approved by the commissioner prior to the start of the destruction.

(d) The cultivator shall submit a signed destruction report to the commissioner within 72 hours following the completion of the destruction. The destruction report shall include the:

(1) registration number, if applicable,

(2) name and contact information of the cultivator,

(3) date(s) and time(s) of destruction,

(4) name(s) of the cultivar(s) destroyed,

(5) unique sample identification number(s) and percentage concentration of THC for each cultivar as reported on the laboratory test report, if applicable,

(6) physical address, Global Positioning System coordinates, general description of the planting location, and total square footage or acreage of the destroyed planting, and

(7) description and quantity of the material destroyed.

(e) The commissioner shall confirm the destruction of the crop by conducting field inspections. The commissioner shall be provided with complete and unrestricted access during business hours to all hemp and other cannabis plants, whether growing or harvested, and all land, buildings, and other structures used for the cultivation, handling, and storage of all hemp and other cannabis plants, and all locations registered as a cultivation site.

(f) The Department shall make a template of a destruction plan and destruction report available on the Department's website.

(g) The Department shall promptly notify USDA by certified mail or electronically of any occurrence of non-compliant plants or plant material and provide a disposal record

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for those plants and materials in accordance with the procedure outlined in Part 990.70(b) in Title 7 of the Code of Federal Regulations.

Note: Authority cited: Sections 407, 81003, 81004, and 81006, Food and Agricultural Code

Reference: Section 81006, Food and Agricultural Code

4950.1 Voluntary Destruction of Industrial Hemp Crops

(a) Except for established agricultural research institutions, any industrial hemp cultivator that wishes to voluntarily destroy a crop shall destroy the crop in a manner compliant with Section 297B of the federal Agricultural Marketing Act of 1946 (added by Section 10113 of the federal Agriculture Improvement Act of 2018 (December 20, 2018) (Public Law 115- 334), implementing regulations, and guidance which is hereby incorporated by reference.

(b) The cultivator shall report destruction of the crop to the commissioner in accordance with procedures outlined in Section 4950(b) through (e).

Note: Authority cited: Sections 407, 81003, 81004, and 81006, Food and Agricultural Code

Reference: Section 81006, Food and Agricultural Code

Attachment: California Industrial Hemp Law and Regulations (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-010; Prohibition

Zoning Amendment No. 2021-010
Hemp Cultivation Prohibition

Board of Supervisors Public Hearing

February 9, 2021

Attachment: PowerPoint Presentation (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-

Summary

- Board - previously tabled ZO amendments (County Project No. 2019-071) which included development standards for hemp cultivation, until such time as Federal and State regulations are finalized to ensure that the amendments are not in conflict.
- As of February 2, 2021, USDA website shows that California's plan is still "under review".
- Based on:
  - current status of the state regulations,
  - Boards' previous direction, and
  - pending expiration of urgency ordinance prohibiting industrial hemp cultivation

  the proposed amendments to list hemp cultivation as a prohibited use in all zones has been developed.
- Amendments **continue the Board's direction** to table amendments in County Project No. 2019-071 until such time as the federal and state regulations are finalized.

Attachment: PowerPoint Presentation (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-

Background

- 2013 - California enacted the California Industrial Hemp Farming Act:
  - Authorized commercial production of hemp
  - Remained inoperative until authorized by Federal law
- 2016 - Prop 64 passed:
  - Removed the requirement that hemp be authorized by Federal law
  - California Industrial Hemp Farming Act became operative.
- 2018 - SB 1409:
  - provided for refined requirements of the California Industrial Hemp Farming Act
- 2018 - Farm Bill (Federal Agriculture Improvement Act)
  - removed hemp from Schedule 1 status under the Controlled Substances Act

Attachment: PowerPoint Presentation (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-

Background

- April 3, 2019 - was (prior) anticipated effective date for the California Department of Food and Agriculture (CDFA) regulations allowing registration would become effective
- March 26, 2019 - Temporary moratorium adopted by the Board
  - until issues and impacts associated with hemp could be fully evaluated, and a permanent ordinance developed
- April 9, 2019 - Board discussed and directed staff to begin preparation of a permanent ordinance to establish regulations:
  - Allowing limited hemp cultivation
  - On larger parcels in Mariposa County
  - Regulations to minimize off-site impacts

Attachment: PowerPoint Presentation (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-

Background

- April 25, 2019 - Registration regulations effective
- June 10, 2019 - Regulations for testing of hemp effective
- Staff started working on a permanent ordinance draft (Zoning Amendment No. 2019-071) based on direction received from the Board of Supervisors, through Resolution 2019-188, which initiated the amendments to County Code to regulate hemp cultivation.

Attachment: PowerPoint Presentation (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-

Background

- October 11, 2019 - Planning Commission recommended tabling the zoning amendment
- October 31, 2019 - USDA published interim regulations establishing the US Domestic Hemp Production Program
  - Established requirements for submittal and approval of state plans, should a state want primary regulatory authority.
  - There were differences between California's program at the time and the federal regulations.

Attachment: PowerPoint Presentation (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-

Background

- November 26, 2019 - Board reviewed draft ordinance (Zoning Amendment No. 2019-071) and directed staff to table project until such time as state and federal regulations were finalized to ensure the County's ordinance was consistent with them
- Staff has continued monitoring the status of the regulations
- February 2, 2021 - California's program was still under USDA review
- March 26, 2021 - temporary moratorium (Urgency Ordinance) expires, which would leave County without any hemp cultivation regulations

Attachment: PowerPoint Presentation (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-

Hemp

- Hemp and cannabis (marijuana) both derive from different strains of *cannabis sativa* species.
  - Cannabis can also derive from *cannabis indica*.
- Physical appearance of cannabis and hemp are virtually the same.
  - Only way to distinguish is to test for tetrahydrocannabinol (THC) content.
- Hemp cannot contain more than 0.3% THC.

Attachment: PowerPoint Presentation (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-

Hemp

- Agriculture is allowed in the rural zones of Mariposa County.
- Based on the adoption of CDFA hemp regulations, hemp could be permitted as agricultural use, without any review or limitations (had temporary moratorium not been adopted).

Attachment: PowerPoint Presentation (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-

Hemp

- Based on similarity, there was previously BOS / public / staff concern about:
  - Illegal cannabis grown under the guise of hemp
  - Nuisance issues such as odors. Hemp cultivation creates similar pungent seasonal odors as cannabis cultivation.
  - Significant grading needed to prepare ground for cultivation
  - Off-site impacts especially if grow is on smaller parcels and/or near residential uses

Attachment: PowerPoint Presentation (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-

Previous DRAFT Ordinance

(NOT BEING CONSIDERED TODAY)

- Previous DRAFT ordinance - based on the direction provided by Board of Supervisors in Resolution No. 2019-188.
- Board adopted this resolution to initiate the *processing* of amendments to Title 17 to regulate (conditionally allow) the cultivation of hemp in Mariposa County.

Attachment: PowerPoint Presentation (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-

Previous DRAFT Ordinance

(NOT BEING CONSIDERED TODAY)

- Would have permitted the cultivation of hemp through Administrative Use Permit:
  - Agriculture Exclusive Zone
  - General Forest Zone
  - Mountain Preserve Zone
  - Industrial Mining Zone
- Would have prohibited cultivation of hemp in all other zones.
- Would have prohibited cultivation of hemp by established agricultural research institutions.

Attachment: PowerPoint Presentation (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-

Previous DRAFT Ordinance

(NOT BEING CONSIDERED TODAY)

- Would have established hemp cultivation standards – applied through Administrative Use Permit:
  - Minimum parcel size on which cultivation could occur shall be 160 acres.
  - Growing can only occur within a permitted structure, under an occupancy that allows cultivation.
  - Air scrubbers are required to be installed to contain all odors.

Attachment: PowerPoint Presentation (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-

Previous DRAFT Ordinance

(NOT BEING CONSIDERED TODAY)

- Minimum setbacks from property lines for cultivation of 100 feet if adjacent to parcel 160 acres in size or greater, or 500 feet if adjacent property is less than 160 acres.
- Testing requirements for THC content to ensure levels are below 0.3%.
- All costs for destroying a non-compliant cultivation are the responsibility of the cultivator.
- All registration and site signage required by state law shall be maintained for the life of the cultivation.

Attachment: PowerPoint Presentation (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-

Previous DRAFT Ordinance

(NOT BEING CONSIDERED TODAY)

- Testing may be required for arsenic and other heavy metals by the Health and Human Services Agency, as hemp extracts heavy metals from soils.
- A bond or similar financial assurance will be required to ensure site reclamation should the operation be abandoned or is not in compliance with any State or local requirements.

Attachment: PowerPoint Presentation (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-

State and Federal Regulations

- October 31, 2019 - Interim Final Rule was released by the USDA to establish and regulate production of hemp
- If states want to establish hemp cultivation programs under 2018 Farm Bill, they were required to submit and obtain approval of a State plan from USDA
- May 2020 - Anticipated timeframe for California to submit a plan for USDA review.
- September 2020 - California submitted a plan to USDA for review.

Attachment: PowerPoint Presentation (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-

State and Federal Regulations

- State plans must meet all requirements of the USDA regulations.
- February 2, 2021- California's plan is still under review.
- January 19, 2021 - USDA released a Final Rule, which becomes effective on March 22, 2021.

Attachment: PowerPoint Presentation (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-

Agricultural Commissioner

- Mariposa County - previously under contract to have Merced County Ag Commissioner's Office provide Ag Commissioner services to Mariposa County
- Merced County is no longer providing those services and Mariposa County now has an interim Ag Commissioner
- If County approves hemp in future, many statutory responsibilities fall to the Ag Commissioner's Office:
  - Registration
  - Providing registration information to CDFA
  - Annual inspections of random sampling of registrants
  - Review of planting, pre-harvest, and harvest reports
  - Collection of samples, review of lab results
  - Verifying destruction of non-compliant crops

Attachment: PowerPoint Presentation (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-

Proposed Ordinance

- Staff has prepared ordinance that would extend current moratorium on (prohibition of) hemp throughout County
- Processing will be through normal ordinance process
- Due to:
  - the non-finalized regulations,
  - previous PC and Board direction,
  - potential off-site impacts from unregulated hemp cultivation,
  - expiration of temporary moratorium

Implements and continues prior Board direction

Attachment: PowerPoint Presentation (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-

Options

- BOS could direct staff to continue processing the previous ordinance establishing regulations to allow limited hemp cultivation in Mariposa County.
  - Staff recommends proceeding with this ordinance banning hemp cultivation in the meantime to prevent a situation where hemp cultivation would be unregulated in the county.
  - The proposed ordinance could be rescinded in future as part of the processing of an ordinance regulating hemp cultivation.
- Not processing the ordinance (prohibition) would be inconsistent with Board direction on November 26, 2019.
  - Upon expiration of the urgency ordinance moratorium on March 26, 2021, hemp cultivation would be allowed in Mariposa County with no regulations to address impacts of the use.

Attachment: PowerPoint Presentation (2021-ORD-1161 : County Project (Zoning Amendment) No. 2021-

Staff Recommendation

- Waive the first reading and introduce an ordinance amending the Zoning Ordinance pursuant to Zoning Amendment No. 2021-010 prohibiting the cultivation of hemp and the cultivation of hemp by established agricultural research institutions in the County of Mariposa

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