



# Judicial Council of California

## Administrative Office of the Courts

Trial Court Financial Policies and Procedures

Policy No.  
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**FIN 7.02**  
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### **MEMORANDUMS OF UNDERSTANDING (MOUs), INTERAGENCY AGREEMENTS (IAs), and INTRA-BRANCH AGREEMENTS (IBAs)**

**POLICY NUMBER: AOC FIN 7.02**

Original Release Date:

April 1, 2001

Effective Date:

September 1, 2010

Revision Date:

February 10, 2009



## Memorandums of Understanding (MOUs), Interagency Agreements (IAs), and Intra-Branch Agreements (IBAs)

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(Revised 9/10)

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### **2.0 Purpose**

(Revised 9/10)

The purpose of this policy is to establish uniform guidelines for the trial court to follow in preparing, reviewing, negotiating, and entering into interagency agreements (IAs) and memorandums of understanding (MOUs) between itself and other government entities as well as intra-branch agreements (IBAs) between the trial court and the AOC or another court.

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### **3.0 Policy Statement** (Revised 9/10)

Other than agreements utilizing funds from a grantor, a transaction between the court and another judicial branch entity should be memorialized in an IBA. A transaction between the court and any other government entity should be memorialized in an MOU. IBAs and MOUs are contracts, but they are usually simpler and contain fewer terms than contracts between the court and private entities. It is the responsibility of the PJ and every court employee authorized to commit trial court resources to apply contract principles and procedures that protect the interests of the court in entering into agreements with other government entities.

### **4.0 Application** (Revised 9/10)

This policy applies to all trial court officials and employees who are involved in developing and implementing MOUs, IAs and IBAs between the trial court and other government entities. This policy does not apply to facilities-related MOUs entered into with the AOC pursuant to Government Code section 86085(a).

### **5.0 Definitions** (Revised 9/10)

Refer to the Glossary for the following key terms used in this policy.

**Interagency Agreements (IAs)**  
**Intra-branch Agreements (IBAs)**  
**Memorandum of Understanding (MOU)**  
**Negotiate**  
**Rule 10.810**

## **6.0 Text**

(Revised 9/10)

1. MOUs, IAs and IBAs (“MOU/IA/IBA”) are written statements that specify the terms of an agreement or transaction. An MOU/IA/IBA contains the basic elements of a contract in that it discloses the parties, the nature and substance of the agreement, and the consideration. A MOU/IA/IBA must be signed by the parties to the agreement.
2. MOUs are often used to document agreements between government entities either as a precursor to a contract or as a contract itself. Because of the historical relationship between the trial court and counties, MOUs are commonly used to establish agreements between the two.
3. IBAs are agreements between the trial court and either the AOC or another trial court and don’t include provisions such as indemnification or insurance as both entities are part of the same branch of government.

### **6.1 MOU/IA/IBA Elements**

(Revised 9/10)

1. Every MOU/IA/IBA must contain at least the four major elements of a contract: cost or other consideration, schedule, scope of work, and terms and conditions. Each major element must be clearly defined in every MOU/IA/IBA so that:
  - a. the court’s needs are met, and
  - b. MOU/IA/IBA parties clearly understand their obligations.
2. Cost. The cost that the trial court will pay or receive for services under a MOU/IA/IBA must be clearly stated. The cost may be expressed as a lump sum (i.e., one-time payment), firm fixed price, unit price, labor rate, basis for allocating costs, or other specific cost basis. If the court is contracting for labor, a schedule listing the hourly, daily, weekly, or monthly cost for each person or job classification must be incorporated into the MOU/IA/IBA. Lump sum

and firm fixed price agreements should also include billing rates schedules where the schedule may be used as the basis for establishing the cost of additional work authorized under the contract. If costs are allocated to the court based on a specific methodology, the supporting documentation for the allocation basis, as well as the total costs being allocated must be provided.

3. **Schedule.** Time is usually a critical element in every agreement. The schedule of when work must start and be completed must be included in the MOU/IA/IBA. When applicable, estimated dates for the completion of non-critical tasks or milestones of the MOU/IA/IBA should also be stated. The term of the MOU/IA/IBA must be clearly stated.
4. **Scope of Work.** The MOU/IA/IBA must specifically describe the services to be performed, deliverables to be completed or other contract obligations. Any inclusions or exclusions should be listed. Details such as supervision, labor, equipment or materials that are to be supplied by either party should also be specified. Additional descriptive information may be attached to the MOU/IA/IBA as an exhibit to help define the scope of work.
5. **Terms and Conditions.** MOU/IA/IBA terms and conditions can be somewhat flexible to suit the needs of the court and the specific circumstances of the agreement. It is the responsibility of the PJ and the authorized trial court employees to assure that terms and conditions are appropriate to the work of the MOU/IA/IBA that is being negotiated. Additional language may be necessary to incorporate “special” conditions and protect the court’s interests. Examples of terms and conditions that may be included are:
  - a. Contract schedule, specifications, and quantities.
  - b. Delivery, milestone or completion dates.
  - c. Contract type (e.g., lump sum, firm fixed price, cost plus fixed fee, time and materials, etc.).

- d. Payment terms and frequency.
- e. Withholding of payments (i.e., retention).
- f. Warranty.
- g. Allowable vs. unallowable costs (e.g., profit or markups on materials and subcontracts).
- h. Audit rights.
- i. Remedies.
- j. Inspection requirements.
- k. Labor documentation (e.g., timesheets).
- l. Cost documentation.
- m. Termination clauses.
- n. Contract changes clauses.
- o. Dispute resolution.
- p. Options.
- q. Escalation or increases in rates.
- r. Indemnification (for MOUs or IAs but not for IBAs)
- s. Insurance requirements (for MOUs or IAs, but not for IBAs)
- t. Waiver of per capita risk allocation (as set forth in Government Code section 895.6).<sup>1</sup>

## **6.1 MOU/IA/IBA Negotiation**

(Revised 9/10)

1. Only the PJ or court employees who are authorized to commit the court with respect to the subject matter and financial obligations of an

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<sup>1</sup> The following is a sample waiver: "The parties waive the per capita risk allocation set forth in Government Code section 895.6. Instead, they agree if one of them is held liable upon any judgment for damages caused by a negligent or wrongful act or omission occurring in the performance of this [MOU], the parties' respective pro rata shares in satisfaction of the judgment will be determined by applying principles of comparative fault."

MOU/IA/IBA shall conduct the negotiation of the prospective agreement.

2. Prior to beginning negotiations, the trial court shall develop a negotiation strategy that addresses the critical points of the MOU/IA/IBA.
3. At the conclusion of negotiations, a memorandum shall be prepared summarizing the results of the negotiations and the final agreements on cost, scope of work, schedule, and terms and conditions. The memorandum will serve as the record of negotiations for the MOU/IA/IBA file.

## **6.2 Risk Evaluation**

(Original 8/01)

1. The trial court shall conduct its business in a way that minimizes financial risk and avoids unnecessary liability.
2. There may be instances when prospective MOU/IA/IBA parties insist on contract terms, payment schedules, work schedules, restrictive scopes of work or other conditions that are unacceptable to the court. After examination of all the issues, the trial court may elect to terminate negotiation of the MOU/IA/IBA or limit the scope of the MOU/IA/IBA to the specific areas in which the other party's conditions are acceptable and beneficial to the court.
3. Prior to execution, an authorized and knowledgeable employee shall review each MOU/IA/IBA for conformance with the court's requirements and any negotiations that have occurred. The scope, schedule, cost, terms and conditions, and items that may affect the liability exposure or insurance must be reviewed and approved before the MOU/IA/IBA is executed.

### **6.3 MOU/IA/IBA Execution**

(Revised 9/10)

1. MOU/IA/IBAs must be executed only by the PJ or authorized court employees acting within the scope and authorization level (e.g., dollar amount) of their official duties.
2. Services covered under the scope of work of a MOU/IA/IBA shall not be provided until the MOU/IA/IBA has been fully executed (signed by both parties).
3. The trial court's files shall contain an **original, fully executed copy of every** MOU/IA/IBA it enters into.
4. MOU/IA/IBA files shall be retained according to the requirements established for contracts in Policy No. FIN 12.01 Record Retention.

### **6.5 MOUs for County-Provided Services**

(Revised 10/03)

#### **6.5.1 Requirements**

1. GC 77212 requires the trial court to enter into a contract with the county to define the services the court desires to receive from the county and the services the county agrees to provide to the court. An MOU may serve as the contract between the county and trial court.
2. The requirement for a contract between the trial court and the county became effective with the beginning of fiscal year 1999 – 2000 and continues thereafter [GC 77212 (d)(2)].
3. The trial court's MOU with the county must *"identify the scope of service, method of service delivery, term of agreement, anticipated service outcomes, and the cost of the service"* [GC 77212 (d)(1)]. AB 1935 also states that county services *"shall be provided to the*

*court at a rate that shall not exceed the costs of providing similar services to county departments or special districts.”*

(Revised 9/10)

4. Services provided to the court may be discontinued by either party giving written notice to the other no later than 90 days before the end of the fiscal year (i.e., prior to April 1); some MOUs may require earlier notice. Service discontinuation only becomes effective at the beginning of the new fiscal year (July 1) [GC 77212 (b) and (c)].
5. Under California Rule of Court 10.805, if the trial court receives or issues a notice regarding the discontinuation of county-provided services under GC 77212, a copy of the notice must be provided to the AOC Director of Finance within 10 days of the notice issue or receipt date.

### **6.5.2 Key Elements of MOUs for County-Provided Services**

(Revised 10/03)

1. At a minimum, all MOUs must include the basic contract elements and must meet the requirements provided by GC 77212. In addition, the trial court should also consider the following important issues in negotiating MOUs with the county:
  - a. **Rule 10.810 of the California Rules of Court** – This rule defines the division of responsibility between the state and county for funding the trial court. In negotiating MOU agreements and reviewing and approving payments to the county, the court should review the Rule 10.810 list of allowable and unallowable costs with respect to items that the county may charge the court. The table at the end of this section lists the types of costs that are allowable and unallowable under Rule 10.810.

2. **Trial Court Audit Rights** – Under GC 77212 (a), the county must provide agreed upon services to the court at rates that do not exceed those charged to county departments or special districts for similar services. The trial court should verify that:
  - a. Charges for direct and indirect services are appropriately based on the cost computation method known as the Office of Management and Budget (OMB) A-87 Cost Allocation Plan. The Cost Allocation Plan details the actual expenditures of departments that provide indirect services to county departments, and identifies the specific cost allocation methods that are used to distribute those costs. The trial court should be permitted to review the specific charges in the Cost Allocation Plan including the data elements provided by each county department that were used to complete the plan.
  - b. For MOUs entered into after January 1, 2002, GC 77212 (d) provides that the amount of any indirect or overhead costs shall be individually stated together with the method of calculation of the indirect or overhead costs. This amount shall not contain items that are not otherwise allowable court operations. The Judicial Council may audit the county figures to ensure compliance with this requirement and determine the reasonableness of the indirect or overhead costs charged to the trial court.
3. County loans to cover temporary cash flow shortages – On occasion, the trial court may experience cash flow shortages. The trial court may arrange with the county for short-term loans to cover temporary cash flow needs so that it may meet its financial obligations in a timely manner.

(Revised 09/10)

4. The trial court may seek a loan from the county only after receiving prior approval from the Judicial Council.

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### **6.5.3 Comprehensive vs. Separate Agreements** (Original 8/01)

MOU agreements for county services entered into by the trial court may be either comprehensive or limited in scope. The trial court may elect to enter into one comprehensive agreement that covers all the services it will receive from the county. Alternatively, the court may decide to enter into separate agreements with the county, with each agreement addressing a specific service or group of related services.

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**7.0 Associated Documents**  
(Revised 9/10)

**Summary of Rule 10.810 Allowable and Costs not Reported in a Given Function**

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## Summary of Rule 10.810 Allowable and Costs not Reported<sup>2</sup>

Allowable Costs	Costs not Reported in this Function Include:
<b>Judicial Officers (Function 1)</b>	
<ol style="list-style-type: none"> <li>1. Salaries and state benefits of Judges</li> <li>2. Full- or part-time court commissioners</li> <li>3. Full- or part-time court referees</li> <li>4. Assigned judges' in-county travel expense</li> </ol>	<ol style="list-style-type: none"> <li>1. County benefits of judicial officers (Function 10)</li> <li>2. Juvenile traffic hearing officers (Function 10)</li> <li>3. Mental health hearing officers (Function 10)</li> <li>4. Pro tem hearing officers (Function 10)</li> <li>5. Commissioner and referee positions specifically excluded by statute from state trial court funding (unallowable)</li> <li>6. Related data processing (Function 9)</li> <li>7. Any other related services, supplies, and equipment (Function 10)</li> </ol>
<b>Jury Services (Function 2)</b>	
<ol style="list-style-type: none"> <li>1. Juror expenses of per diem fees and mileage</li> <li>2. Meals and lodging for sequestered jurors</li> <li>3. Salaries, wages, and benefits of jury commissioner and jury services staff (including selection of grand jury)</li> <li>4. Contractual jury services</li> <li>5. Jury-related office expenses (other than information technology)</li> <li>6. Jury-related communications, including "on call" services</li> </ol>	<ol style="list-style-type: none"> <li>1. Juror parking</li> <li>2. Civil and criminal grand jury costs</li> <li>3. Jury-related information systems (Function 9)</li> </ol>

<sup>2</sup> Source: [http://www.courtinfo.ca.gov/rules/index.cfm?title=ten&linkid=rule10\\_810](http://www.courtinfo.ca.gov/rules/index.cfm?title=ten&linkid=rule10_810)

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### Summary of Rule 10.810 Allowable and Costs not Reported

Allowable Costs	Costs not Reported in this Function Include:
<b>Verbatim Reporting (Function 3)</b>	
<ol style="list-style-type: none"> <li>1. Salaries, wages, and benefits of court reporters who are court employees</li> <li>2. Salaries, wages, and benefits of electronic monitors and support staff</li> <li>3. Salaries, wages, and benefits of verbatim reporting coordinators and clerical support staff</li> <li>4. Contractual court reporters and monitors</li> <li>5. Transcripts for use by appellate or trial courts, or as otherwise required by law</li> <li>6. Related office expenses and equipment (purchased, leased, or rented) used to record court proceedings, except as specified in Government Code §68073, e.g., notepaper, pens, and pencils, ER equipment and supplies</li> </ol>	<ol style="list-style-type: none"> <li>1. Office expenses and equipment for use by reporters to prepare transcripts (unallowable)</li> <li>2. Expenses specified in Government Code §68073</li> <li>3. Space use charges for court reporters</li> </ol>
<b>Interpreter Services (Function 4)</b>	
<ol style="list-style-type: none"> <li>1. Salaries, wages, and benefits of courtroom interpreters and interpreter coordinators</li> <li>2. Per diem and contractual courtroom interpreters, including contractual transportation and travel allowances</li> </ol>	<ol style="list-style-type: none"> <li>1. Related data processing (Function 9)</li> <li>2. Any other related services, supplies, and equipment (Function 10)</li> </ol>

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### Summary of Rule 10.810 Allowable and Costs not Reported

Allowable Costs	Costs not Reported in this Function Include:
<b>Collections Enhancement (Function 5)</b>	
<ol style="list-style-type: none"> <li>1. Salaries, wages, and benefits of collection employees of the court (e.g., financial hearing officers, evaluation officers collection staff)</li> <li>2. Contract collections costs</li> <li>3. County charges for collection services provided to the court by county agencies</li> <li>4. Related services, supplies, and equipment (except data processing, Function 9)</li> </ol>	<ol style="list-style-type: none"> <li>1. Staff whose principal involvement is in collecting "forthwith" payments (e.g., counter clerks, cashiers, Function 10)</li> </ol>
<b>Dispute Resolution Programs (Function 6)</b>	
<ol style="list-style-type: none"> <li>1. Arbitrators' fees in mandatory judicial arbitration programs</li> <li>2. Salaries, wages, and benefits of court staff providing child custody and visitation mediation and related investigation services, e.g., Director of Family Court Services mediators, conciliators, investigators, clerical support staff</li> <li>3. Contract mediators providing child custody and visitation mediation services</li> <li>4. Salaries, wages, benefits, fees, and contract costs for other arbitration and mediation programs (programs not mandated by statute), such as arbitration administrators, clerical support staff, arbitrators' fees and expenses</li> </ol>	<ol style="list-style-type: none"> <li>1. Related data processing (Function 9)</li> <li>2. Any other related services, supplies, and equipment (Function 10)</li> </ol>

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**Summary of Rule 10.810 Allowable and Costs not Reported**

Allowable Costs	Costs not Reported in this Function Include:
Court-Appointed Counsel - Noncriminal (Function 7)	

1. Expenses for court-appointed counsel as specified in Government Code §77003	
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**Court Security (Function 8)**

As of January 1, 2003, Function 8 has been replaced by the Superior Court Law Enforcement Act of 2002, Government Code 69920 - 69927. See Policy No. FIN 7.04, Court Security, for more information regarding allowable and unallowable costs and other court security requirements.

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### Summary of Rule 810 Allowable and Costs not Reported

Allowable Costs	Costs not Reported in this Function Include:
<b>Information Technology (Function 9)</b>	
<ol style="list-style-type: none"> <li>1. Salaries, wages, and benefits of court employees who plan, implement, and maintain court data processing and information technologies, e.g., programmers analysts</li> <li>2. Contract and consulting services associated with court information/data processing needs and systems</li> <li>3. County Information Systems/Data Processing Department charges made to court for court systems, e.g., jury-related systems court and case management, including courts' share of a criminal justice information system accounts receivable/collections systems</li> <li>4. Related services, supplies, and equipment, e.g., software purchases and leases maintenance of automation equipment training associated with data processing systems' development</li> </ol>	<ol style="list-style-type: none"> <li>1. Information technology services not provided directly to the courts (i.e., services used by other budget units)</li> <li>2. Data processing for county general services, e.g., payroll, accounts payable (Function 11)</li> </ol>
<b>All Other Court Operations (Function 10)</b>	
<ol style="list-style-type: none"> <li>1. Salaries, wages, and benefits (including any pay differentials and overtime) of court staff <ol style="list-style-type: none"> <li>(a) Not reported in Functions 2-9 above, or</li> <li>(b) Whose time cannot be allocated to Functions 2-9 in increments of at least 25 percent time (.25 FTE)</li> </ol> </li> <li>2. Judicial benefits, county-paid</li> </ol>	<ol style="list-style-type: none"> <li>1. Any of the staff listed in column 1 not employed by the court</li> <li>2. Service and supply costs not reported include: <ol style="list-style-type: none"> <li>a. Civic association dues</li> <li>b. Facility damages insurance</li> <li>c. County central service department charges not appropriated in the court budget</li> </ol> </li> </ol>

**Summary of Rule 810 Allowable and Costs not Reported**

Allowable Costs	Costs not Reported in this Function Include:
All Other Court Operations (Function 10) (continued)	
<p>3. Allowable costs not reported in Functions 2-9 above</p> <p>4. (Nonjudicial staff) Cost items may include, for example, juvenile traffic hearing officer, mental health hearing officer, court-appointed hearing officer (pro tem), executive officer, court administrator, clerk of the court, administrative assistant, personnel staff, legal research personnel; staff attorney; planning and research staff, secretary, courtroom clerk, clerical support staff, calendar clerk, deputy clerk, accountant, cashier, counter clerk, microfilming staff, management analyst, probate conservatorship and guardianship investigators, probate examiner, training staff employed by the court</p> <p>5. Cost items may include, for example, office supplies, printing, postage, communications, publications and legal notices by the court, miscellaneous departmental expenses, books, publications, training fees, and materials for court personnel (judicial and nonjudicial), travel and transportation (judicial and nonjudicial), professional dues, memberships and subscriptions, statutory multidistrict judges' association expenses, research, planning, and program coordination expenses, small claims advisor program costs, court-appointed expert witness fees (for the court's needs), court-ordered forensic evaluations and other professional services (for the court's own use), pro tem judge's expenses, micrographics</p>	

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**Summary of Rule 810 Allowable and Costs not Reported**

Allowable Costs	Costs not Reported in this Function Include:
<b>All Other Court Operations (Function 10) (continued)</b>	
<p>expenses, public information services, vehicle use, including automobile insurance, equipment (leased, rented, or purchased) and furnishings, including interior painting, replacement/ maintenance of flooring, and furniture repair, maintenance of office equipment, janitorial services, legal services for allowable court operations (County Counsel and contractual), fidelity and faithful performance insurance (bonding and personal liability insurance on judges and court employees), insurance on cash money and securities (hold-up and burglary), general liability/comprehensive insurance for other than faulty maintenance or design of facility (e.g., "slip and fall", other injury, theft and damage of court equipment, slander, discrimination), risk management services related to allowable insurance, space rental for court records, county records retention/destruction services, county messenger/mail service, court audits mandated under Government Code 7183</p>	
<b>County General Services - "Indirect Costs" (Function 11)</b>	
<p>1. Cost items within the meaning of Rule 810(a)(7) and the county departments often performing the service may include, for example:</p> <p><b>County Administrator:</b> Budget development and administration, interdepartmental budget unit administration and operations, personnel (labor) relations and administration</p>	<p>1. Unallowable court-related costs are those:</p> <ul style="list-style-type: none"> <li>a. In support of county operations</li> <li>b. Expressly prohibited by statute</li> <li>c. Facility-related</li> </ul>

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**Summary of Rule 810 Allowable and Costs not Reported**

Allowable Costs	Costs not Reported in this Function Include:
County General Services - "Indirect Costs" (Function 11) (continued)	
<p><b>Auditor-Controller:</b> Payroll, financial audits, warrant processing, fixed asset accounting, departmental accounting for courts (e.g., fines, fees, forfeitures, restitutions, penalties, and assessments); accounting for the Trial Court Special Revenue Fund, accounts payable, grant accounting, management reporting, banking</p> <p><b>Personnel:</b> Recruitment and examination of applicants, maintenance and certification of eligible lists, position classification, salary surveys, leave accounting, employment physicals, handling of appeals</p> <p><b>Treasurer/Tax Collector:</b> Warrant processing, bank reconciliation, retirement system administration, receiving, safeguarding, investing, and disbursing court funds</p> <p><b>Purchasing Agent:</b> Process departmental requisitions, issue and analyze bids, make contracts and agreements for the purchase or rental of personal property, store surplus property and facilitate public auctions</p>	<p>d. Exceptions of the nature referenced in Functions 1-11</p> <p>2. Unallowable cost items, including any related data processing costs, are not reported in Functions 1-11 and may include, for example:</p> <p><b>Communications:</b> Central communication control and maintenance for county emergency and general government radio equipment)</p> <p><b>Central Collections:</b> Processing accounts receivable for county departments (not courts)</p> <p><b>County Administrator:</b> Legislative analysis and activities, preparation and operation of general directives and operating procedures responses to questions from the Board, outside agencies, and the public</p> <p><b>Executive Functions:</b> Board of Supervisors, county advisory councils</p> <p><b>Treasurer/Tax Collector:</b> Property tax determination, collection, etc.</p> <p><b>General Services:</b> Rental and utilities support, coordinate county's emergency services</p>

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**Summary of Rule 810 Allowable and Costs not Reported**

Allowable Costs	Costs not Reported in this Function Include:
<b>County General Services - "Indirect Costs" (Function 11) (continued)</b>	
	<p><b>Property Management:</b> Negotiations for the acquisition, sale, or lease of property, except for space rented for storage of court records, making appraisals negotiating utility relocations assisting County Counsel in condemnation actions, preparing deeds, leases, licenses, easements, collecting rents, building lease management services (except for storage of court records)</p> <p><b>Facility-Related:</b> Construction services, right-of-way and easement services, purchase of land and buildings, construction, depreciation of buildings/use allowance, space rental/building rent (except for storage of court records), building maintenance and repairs (except interior painting and to replace/repair flooring), purchase, installation, and maintenance of H/V/A/C equipment, maintenance and repair of utilities, utility use charges (e.g., heat, light, water), elevator purchase and maintenance, alterations/ remodeling, landscaping and grounds maintenance services, exterior lighting and security, insurance on building damages (e.g., fire, juror parking earthquake, flood, boiler and machinery), grounds' liability insurance, parking lot or facility maintenance, juror parking</p>