

# **MEMORANDUM OF UNDERSTANDING**

**between the**

**SANTA BARBARA COUNTY  
IN-HOME SUPPORTIVE SERVICES  
(IHSS) PUBLIC AUTHORITY**

**and the**

**UNITED DOMESTIC WORKERS OF AMERICA  
AFSCME LOCAL 3930, AFL-CIO**

**July 1, 2013 – June 30, 2016**

## **TABLE OF CONTENTS**

<b>ARTICLE 1.</b>	<b>RECOGNITION.....</b>	<b>1</b>
<b>ARTICLE 2.</b>	<b>UNION RIGHTS.....</b>	<b>1</b>
	Section 1. Union Representatives and Stewards.....	1
	Section 2. Bulletin Boards.....	1
	Section 3. Access Rights.....	1
<b>ARTICLE 3.</b>	<b>AGENCY SHOP.....</b>	<b>2</b>
	Section 1. Agency Shop.....	2
<b>ARTICLE 4.</b>	<b>PUBLIC AUTHORITY RIGHTS.....</b>	<b>4</b>
	Section 1. Retained Rights.....	4
	Section 2. Liability of Public Authority.....	4
<b>ARTICLE 5.</b>	<b>PAYROLL PROCESS.....</b>	<b>5</b>
<b>ARTICLE 6.</b>	<b>DIRECT DEPOSIT.....</b>	<b>5</b>
<b>ARTICLE 7.</b>	<b>CONSUMERS RIGHTS AND CONFIDENTIALITY.....</b>	<b>5</b>
	Section 1. Consumer Rights.....	5
	Section 2. Information Regarding Consumers.....	5
	Section 3. Union Access/Home Visits.....	5
<b>ARTICLE 8.</b>	<b>WAGES.....</b>	<b>6</b>
	Section 1. Salaries.....	6
	Section 2. Replacement Caregiver Stipend.....	6
	Section 3. Wage and Benefits Contingency.....	6
<b>ARTICLE 9.</b>	<b>HEALTHCARE BENEFITS.....</b>	<b>7</b>
<b>ARTICLE 10.</b>	<b>GRIEVANCE PROCEDURE.....</b>	<b>7</b>
<b>ARTICLE 11.</b>	<b>REGISTRY.....</b>	<b>11</b>
<b>ARTICLE 12.</b>	<b>LABOR-MANAGEMENT COMMITTEE.....</b>	<b>11</b>
<b>ARTICLE 13.</b>	<b>TRAINING AND DEVELOPMENT.....</b>	<b>12</b>
<b>ARTICLE 14.</b>	<b>GENERAL PROVISIONS.....</b>	<b>12</b>
	Section 1. Modification.....	12
	Section 2. Waiver.....	12
	Section 3. Savings Clause.....	13
	Section 4. No Strike Provision.....	13
	Section 5. Non-Discrimination.....	13
	Section 6. Conclusiveness of Agreement.....	14
	Section 7. Term of Agreement.....	14

## **ARTICLE 1: RECOGNITION**

The Santa Barbara County IHSS Public Authority recognizes the United Domestic Workers of America, AFSCME Local 3930, AFL-CIO, as the exclusive representative of the In-Home Supportive Services Independent Provider Home Care Providers covered by this agreement.

## **ARTICLE 2: UNION RIGHTS**

### **SECTION 1. UNION REPRESENTATIVES AND STEWARDS**

The Union shall notify the Director of the Public Authority of the names of its paid staff representatives and shop stewards at the beginning of each fiscal year. If there are any changes to the list of representatives/stewards, the Union will notify the Director within 30 calendar days of the change.

Any time spent by stewards performing union business shall not be considered as being within a consumer's allotted service hours, and shall not be paid by the IHSS program.

### **SECTION 2. BULLETIN BOARDS**

The Public Authority will furnish for use of the Union, a bulletin board at the Public Authority's offices in Santa Barbara County. The bulletin board space shall be used only for the following subjects:

- A. Information concerning Union elections or the results thereof;
- B. Reports of official business of the Union, including reports of committees of the Union's Board of Directors;
- C. Union recreational, social and related news bulletins, scheduled meetings.

All material shall clearly state that it is prepared and authorized by the Union. The Union agrees that material posted on the bulletin board shall not contain anything that may reasonably be construed as maligning the Public Authority, its staff, representatives or the Board of Directors. The Public Authority reserves the right to remove any material posted in violation of this Section.

### **SECTION 3. ACCESS RIGHTS OF AUTHORIZED UNION REPRESENTATIVES**

The Public Authority agrees to admit to its Santa Barbara County office(s), the authorized Union representative(s) for purposes of adjusting grievances and conducting other legitimate, appropriate Union business related to enforcing and monitoring this agreement, provided that the Union representative has first contacted an official of the Public Authority and secured his/her approval to enter the office. The Union shall notify

the Public Authority of the names of its authorized representatives and access shall be limited.

### **ARTICLE 3: AGENCY SHOP**

#### **SECTION 1. AGENCY SHOP**

- A. Agency shop as used in this Article means an organizational security arrangement as defined in Government Code Section 3502.5 and applicable law.
- B. Unless the Provider qualifies for an exemption under Section H below commencing within thirty days of the State Mediation and Conciliation Service's certification of approval of the agency shop election results each Provider shall be required to either become and remain a member of the Union and pay Union dues, or pay an agency fee to the Union in an amount that does not exceed that which may be lawfully collected.
- C. Union dues or fees shall be deducted from the Provider's paycheck on a monthly basis starting the first day of the month following completion of thirty (30) days of employment, subject to the limitations and practices of the State Controller's payroll system.
- D. As to non-members objecting to the Union spending their agency fee on matters unrelated to collective bargaining and contract administration, the amount of the agency fee charged shall not reflect expenditures which the courts have determined to be non-chargeable, including political contributions to candidates and parties, members only benefits, charitable contributions and ideological expenditures and, to the extent prohibited by law, shall not reflect expenditures for certain aspects of lobbying, ballot measures, publications, organizing and litigation.
- E. The Union shall comply with applicable law regarding disclosure and allocation of its expenses, notice to Providers of their right to object, provision for agency fee payers to challenge the Union's determinations of amounts chargeable to the objecting non-members, and appropriate escrow provisions to hold contested amounts while the challenges are underway.
- F. The Union shall make available, at its expense, an expeditious administrative appeals procedure to unit members who object to the payment of any portion of the representation service fee. Such procedure shall provide for a prompt decision to be made by an impartial decision-maker jointly selected by the Union and the objecting Provider(s). A copy of such procedure shall be made available upon request by the Union to non-Union member Providers and the Public Authority.

- G. The foregoing description of permissible agency fee charges and related procedures is included herein for informational purposes and is not intended to change applicable law.
- H. Exemption from Agency Fee Obligations
1. Religious/Conscientious Objections – a Provider who is a member of a bona fide religion, body, or sect that has historically held conscientious objections to joining or financially supporting public employee organizations shall not be required to join or financially support any public employee organization as a condition of employment. The Provider must present a written declaration to the Union with a copy to the Public Authority, that he/she qualifies for this exemption. The Provider will be required to pay agency shop fees to a nonreligious, non-labor charitable fund exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, as designated by the Provider from a list designated by the parties.
- I. Leave Without Pay/Insufficient Earnings – The Provider's earning must be sufficient, after required deductions are made, to cover the full amount of the dues or agency shop service fees. Therefore, when a Provider is in a non-pay status for an entire pay period, no withholding will be made to pay for agency fees. In the case of a Provider who is in a non-pay status during only part of the pay period, and the salary is not sufficient to cover the full withholding, no deduction shall be made. In this connection, all required deductions have priority over Union dues and agency shop fees.
- J. Rescission of Agency Shop – an agency shop provision may be rescinded pursuant to the procedures contained in Government Code Section 3502.5(d). Rescission elections shall be conducted by the SCMS using the same procedures utilized for the implementation election.
- K. Union Indemnification – the Union shall indemnify, defend, and hold the Public Authority harmless against any and all claims, demands, suits, orders, or judgments, or any other form of liability that arise out of or by reason of this article, or action taken or not taken by the Public Authority under this article. This includes, but is not limited to the Public Authority's attorney fees and costs.

## **ARTICLE 4: PUBLIC AUTHORITY RIGHTS**

### **SECTION 1. RETAINED RIGHTS**

The Public Authority, on its own behalf, hereby retains and reserves unto itself all powers, rights, authority, duties, and responsibilities conferred upon and vested in it by the laws of the State of California and of the United States, including, but not limited to, the following:

- A. To determine the merits, necessity or organization of any service or activity and to determine the methods, means and personnel by which its operations are to be conducted.
- B. To determine its mission and that of any constituent subsections, committees, and other related work groups.
- C. To build, move, or modify facilities; establish budget priorities, procedures, and allocations; to determine the methods of raising revenue.
- D. To add or delete names of IHSS individual Providers to and from the registry subject to the provisions of Article 10.
- E. To take such action as the Authority deems appropriate in the event of an emergency. For purposes of this agreement "emergency" shall mean an unforeseen event caused by forces beyond the control of the Public Authority, involving a reasonable likelihood that harm would be experienced unless prompt action is taken.

The exercise of the foregoing powers, rights, authority, duties and responsibilities by the Public Authority, the adoption of policies, rules, regulations and practices in furtherance thereof, and the use of judgment and discretion in connection therewith shall be limited only by the specific and express terms hereof are in conformance with the Constitution and laws of the State of California and the Constitution and laws of the United States.

### **SECTION 2. LIABILITY OF THE PUBLIC AUTHORITY**

The Public Authority is an independent legal entity, separate and apart from the County of Santa Barbara. The Public Authority has no power to bind the County to any contractual or legal obligations nor may the obliges of the Public Authority seeks recourse against the County of Santa Barbara for any financial or legal obligation of the Public Authority.

## **ARTICLE 5: PAYROLL PROCESS**

The Union and the Public Authority recognize that the payroll process is administered by the State of California, and not by the County of Santa Barbara or the Public Authority. The parties, however, agree to work together to encourage the State of California to implement a system of regular pay periods, to expedite the processing of corrections to inaccurate payroll checks and to replace lost payroll checks.

The parties understand the importance of timely paychecks. In order to achieve that it shall be the responsibility of the Provider to complete their time sheets correctly, and to accurately record hours worked, and to submit them on the dates timesheets are due.

## **ARTICLE 6: DIRECT DEPOSIT**

The Public Authority and the Union agree that the direct deposit of Provider paychecks to the financial institution of the Provider's choice on a voluntary basis is in the interest of the Provider, the Public Authority and the Union. In no case shall the Public Authority incur additional cost to issue alternate payment methods.

## **ARTICLE 7: CONSUMER RIGHTS & CONFIDENTIALITY**

### **SECTION 1. CONSUMER RIGHTS**

Consumers shall have the right to recruit, hire, reject, train, and supervise the work of any Provider and to terminate any Provider without cause and without notice. Consumers shall retain their right to direct services rendered by the Provider as set forth in the Welfare and Institutions Code.

### **SECTION 2. INFORMATION REGARDING CONSUMERS**

The Union shall neither seek nor receive information from the Public Authority regarding the name, address, phone number, or any other personal information regarding consumers. Union representatives and Providers shall maintain strict standards of confidentiality regarding consumers and shall not disclose personal information pertaining to consumers obtained from any source unless the disclosure is compelled by the legal process or otherwise prescribed by law.

### **SECTION 3. UNION ACCESS/HOME VISITS**

Union representatives shall not seek to conduct union business, including business related to enforcement of this Agreement, at the home of the consumer. However, Union representatives have the right to contact Providers at the addresses provided to them. In certain instances, the Union representatives may inadvertently visit a consumer's home, having been given the consumer's address as that of the Home Care

Provider. Under such circumstances, the Union representative may speak with the Provider only after explaining the purpose of the visit and after having received permission from both the consumer and the Provider either (1) to make an appointment for a meeting at another location and/or time; or (2) to continue with the meeting. The time spent in any such meeting shall not be counted as work time.

## **ARTICLE 8: WAGES**

### **SECTION 1. SALARIES**

- A. The wage for Home Care Workers will be increased to \$10.50 per hour on the first month following approval by the Board of Supervisors as Governing Body of the Public Authority, and State approval of the Public Authority rate and completion of required State programming of Case Management Information and Payroll System (CMIPS or CMIPS II).
- B. Effective July 1, 2015 wages shall be increased by \$0.25 per hour.

### **SECTION 2. REPLACEMENT CAREGIVER STIPEND**

Effective upon ratification of this MOU, a Replacement Registry Provider will receive a stipend of \$25, in addition to the usual wage, each time he/she agrees to a request by the Registry to be in a recipient's home, and reports for work, within two hours of being called by the Registry.

### **SECTION 3. WAGE AND BENEFITS CONTINGENCY**

If, during the term of this Agreement either State or federal participation levels are reduced, State realignment funding is reduced, the State caps their funding participation in a Provider wage lower than wages paid under this agreement, or, either the State or federal sharing formula is modified in any manner that would result in an increased cost to the County to maintain the wage and/or benefit level described in this Agreement, the affected benefit and/or wages, will be reduced by an amount necessary to keep the total cost to the County the same as such supported by the new federal and/or State share or funding participation cap.

The Public Authority shall provide to the Union a written description of any adjustments to be made pursuant to this section at least thirty (30) days prior to the effective date of such adjustments. Upon receipt of a written request from the Union to do so, the Public Authority will meet and confer regarding the impact of the above-described loss of funding or funding participation wage cap. In no case will the County be required to increase its contribution toward the affected benefit and/or wages, as applicable.



In conjunction with any written description of an adjustment to be made under this section, the Public Authority will provide the Union with documentation, including any quantitative analyses, relied on by the Public Authority as a basis for the adjustment.

## **ARTICLE 9: HEALTHCARE BENEFITS**

Upon appropriate 90 day notice to the current healthcare and dental care providers, the Public Authority will terminate healthcare and dental care benefits. This 90 day notice will be provided to the healthcare and dental care providers upon Board of Supervisors approval of the MOU. Upon State approval of the MOU and on the first day of the month following the termination of healthcare and dental benefits and completion of required State programming of Case Management Information and Payroll System (CMIPS II), the Public Authority will redirect the \$.60 per hour healthcare payment to wages for Home Care Workers as follows: wages will be increased by \$.55 per hour and \$.05 per hour will be directed to pay employer payroll tax.

This provision shall become null and void should the State of California at any point challenge this arrangement and contend that this increase results in an increase in the County's Maintenance of Effort (MOE) and/or there is a judicial or legislative determination that the Public Authority must provide Health Care Coverage.

## **ARTICLE 10: GRIEVANCE PROCEDURE**

### **A. Definition**

1. A grievance is defined as an allegation by a Provider, a group of Providers or the Union representing a named grievant or grievants, that the Provider(s) has been adversely affected by a violation of a specific provision of this Agreement. Matters for which a specific method of review is provided by law (e.g., unlawful discrimination complaints) are not within the scope of this procedure.

The Grievance Procedure shall not apply to matters concerning the relationship between the IHSS Consumer and the IHSS Provider, including matters regarding consumer rights, and any matter over which the Public Authority has no jurisdiction.

### **B. General Provisions**

1. This procedure shall be applied in resolving grievances filed by Providers covered by this Agreement during the term of this Agreement.

2. Participation in the grievance procedure in any capacity shall be solely on the Provider's own time, and shall not be treated as within any IHSS consumer's allocated service hours, or as paid time.
3. A grievance shall be void unless filed in writing within thirty (30) calendar days from the date upon which the Public Authority is alleged to have violated the Agreement, or within thirty (30) calendar days from the time the Provider became aware of the alleged violation, whichever is later.
4. Since it is important that grievances be processed as rapidly as possible, the time limits specified at each level should be considered to be maximums and every effort should be made to expedite the process. Grievant's failure to comply with the timelines shall result in the withdrawal of the grievance. Time limits may, however, be extended by mutual agreement.
5. Nothing contained herein shall be construed as limiting the right of any Provider to process a grievance or have the grievance adjusted without the intervention by the Union, provided that the adjustment is not inconsistent with the terms of this Agreement and the Union has been given an opportunity to state its position regarding the proposed adjustment of the grievance.
6. Until final disposition of a grievance takes place, the grievant is required to conform to the original direction of his/her supervisor.
7. The grievant may terminate the grievance at any time by giving written notice to the Public Authority. Failure to comply with the time limits, to attend scheduled meetings to discuss or hear the grievance, or to provide requested information at the grievant's disposal relating to the subject matter of the grievance shall be deemed a termination of the grievance by the Provider.
8. The grievant has the right to have a representative present at any step of the grievance procedure.

**C. Grievance Procedure Steps**

All grievances shall be processed in the following manner:

1. **Informal** – Prior to filing a grievance in writing the Provider and a representative of the Public Authority will attempt to resolve the problem informally.
2. **Formal** – All grievances must be set forth in writing on a grievance form supplied by the Public Authority citing the alleged violation of the

Agreement, and identifying the specific article and section of the Agreement that the Public Authority is alleged to have violated and shall specify the remedy sought.

**a. STEP ONE: Program Manager**

If the grievance is not settled informally between the Provider/grievant and the representative of the Public Authority, it shall be reduced to writing and submitted to the Program Manager of the Public Authority or his/her designee.

The Program Manager or designee shall respond in writing to the grievance within ten (10) calendar days from receipt of the written grievance.

**b. STEP TWO: Director**

If the grievance is not settled at Step 1, the grievant may submit the grievance within ten (10) calendar days of receipt of the decision at Step 1 to the Director of the Public Authority.

If the grievant requests a meeting with the Director, such meeting with the Director or his/her designee, shall take place within ten (10) calendar days after receipt of the Step 2 written response by the Public Authority, or at a time mutually agreed to be the parties.

The Director or his/her designee shall respond to the grievance within ten (10) calendar days of the receipt of the written grievance or from the date of the meeting with the grievant, whichever is later.

**c. STEP THREE: Mediation**

If the grievance is not settled at Step 2, the parties shall utilize mediation to attempt to resolve the dispute at issue. The parties shall request an impartial mediator from the State Mediation and Conciliation Service to meet with the parties to attempt to resolve the grievance within twenty (20) calendar days after completion of Step 2 or at a time mutually agreed to by the parties. The costs of mediation, if any, shall be shared equally by the parties.

**d. STEP FOUR: Arbitration**

In the event that the grievance is not resolved by mediation, the grievance may be submitted to arbitration.

The grievant may request that the grievance be referred to an impartial arbitrator by submitting a request to the Union that it take the matter to arbitration. The request to proceed to arbitration must be filed in writing by the Union within fifteen (15) calendar days upon completion of Step Three of this grievance procedure.

**e. Selection of the Arbitrator**

The parties may mutually agree to an arbitrator or may request a list of seven (7) arbitrators from the State Mediation and Conciliation Service. The parties shall alternatively strike names from the list until one (1) arbitrator name remains.

If an arbitrator selected declines appointment or is otherwise unavailable, a new list shall be requested, and the selection shall be made as above, unless an arbitrator is mutually agreed upon by the parties.

**f. Duty of Arbitrator**

It shall be the duty of the arbitrator to hear and consider evidence submitted by the parties and to thereafter make written findings of fact and a disposition of the grievance, which shall be advisory to the Governing Body. The decision of the arbitrator shall be based solely on the interpretation of the appropriate provisions of the Agreement applicable to the grievance. The arbitrator shall have no authority to add to, subtract from, modify or disregard any of the terms and conditions of this Agreement. The arbitrator shall limit his/her decision to the application and interpretation of the provisions of this Agreement.

If the Public Authority raises the question of arbitrability concerning a grievance, the arbitrator shall render a decision on the question of arbitrability prior to hearing the merits of the grievance.

**g. Costs of Arbitration**

The cost for the services of the arbitrator will be borne by the losing party. All other costs of arbitration will be borne by the party incurring such costs.

**h. Governing Body's Final Decision**

The arbitrator's decision and award provided for in the arbitration process (described above) shall be submitted to the Governing Body for its review and decision. The Board may adopt, reject or modify the arbitrator's advisory decision as it deems appropriate.

## **ARTICLE 11: REGISTRY**

- A. It is recognized that one of the primary mandates of the Public Authority is assuring a registry service to facilitate the referral of Providers to Consumers. The Union respects the unique role of the IHSS Public Authority Registry.
- B. The Public Authority retains the exclusive right to list, refer, suspend, or remove an individual Provider from the Registry.

If the Public Authority decides to suspend or remove an individual from the registry the Provider will receive written notice of the action. The Provider may file a written appeal of the suspension or removal from the registry with the Director within ten (10) calendar days after receipt of the notice. The Director, upon request, will meet with the individual and his/her representatives to consider the appeal. The Director will issue a written decision within fifteen (15) calendar days of the submission of the appeal or the meeting, whichever is later. A copy of the director's decision will be sent to the individual.

The director's decision is final and binding and is not subject to the grievance procedure contained in this MOU.

## **ARTICLE 12: LABOR-MANAGEMENT RELATIONS COMMITTEE**

### **SECTION 1.**

The Public Authority and the Union shall establish a Labor-Management Relations Committee. The role of the committee will be to consider matters affecting the relations between the parties. The committee will be advisory in nature. The committee will have no authority to delete from, add to or modify this MOU. Committee meetings will not serve as a substitute for nor will they satisfy the parties' obligation to meet and confer in good faith regarding matters within the scope of bargaining.

- A. Each party shall select their own participants for the committee. However, either party may request the removal of a participant from the other group if that participant becomes too disruptive to the work of the committee.
- B. The committee shall be composed of up to three (3) Union representatives (two Providers and one UDWA staff representative) and up to three (3) Public Authority representatives.

- C. The committee will be co-chaired by one of the Union representatives and one of the Public Authority representatives.
- D. The committee may meet as frequently as agreed to by the parties, but shall convene no less than quarterly.
- E. Minutes will be prepared by the Public Authority and the Union, with alternating responsibility, within (30) days of each meeting.
- F. The Public Authority and the Union will address each recommended item within a reasonable amount of time or as agreed by the parties.

Provider Committee members serve on a voluntary basis and will receive no remuneration from the Public Authority for their participation.

### **ARTICLE 13: TRAINING AND DEVELOPMENT**

Pursuant to Welfare and Institutions Code section 12301.6 the Public Authority shall provide for training for Providers. If the Public Authority receives funding from the State or federal government or other approved source to pay Providers to attend this training these Providers will receive a stipend to attend the training, to the extent of such federal/state funding. The Union may provide input into the development of the training program. All new Providers who wish to be on the registry will be required to attend orientation training at which time they will receive their orientation packet as provided by law. Union shall have the right to make a brief presentation at the conclusion of orientation sessions regarding the Union's representational services.

The Union shall receive notification of group training opportunities. Because of space and cost issues non-Provider union representatives may not attend without prior approval from the Director or Program Manager.

### **ARTICLE 14: GENERAL PROVISIONS**

#### **SECTION 1. MODIFICATION**

No provision or terms of this agreement may be amended, modified, altered or waived except by written agreement between the parties hereto.

#### **SECTION 2. WAIVER**

The waiver of any breach or condition of this Agreement by either party shall not constitute a precedent regarding the enforcement of the terms and conditions of this Agreement.

### **SECTION 3. SAVINGS CLAUSE**

If any part or provision of this Memorandum of Understanding is in conflict with applicable provisions of Federal or State laws, or is otherwise held to be invalid or unenforceable by any tribunal of competent jurisdiction, such part or provision shall be suspended and superceded by such applicable laws and the remainder of the memorandum of understanding shall not be affected thereby.

### **SECTION 4. NO STRIKE PROVISION**

1. It is agreed and understood that there will be no strike, work stoppage, slow-down, or refusal or failure to fully and faithfully perform job functions and responsibilities, or other interference with the operations of the Public Authority by the Union or by its officers, agents, or unit members during the term of this Agreement, including compliance with the request of other labor organizations to engage in such activity.
2. In the event of a violation of this agreement, the Union agrees to take all necessary steps to cause those persons violating this provision to cease such action. Such steps shall include, but not limited to, contacting the offending persons, notifying them that they are in violation of the agreement, and that their actions are not supported by the Union.
3. Union members who violate this provision shall be subject to removal from the Registry by the Public Authority without recourse to any appeals procedure except as to the question of whether the Provider participated in the prohibited activity.
4. This Article shall remain in effect until agreement is reached between the parties on a successor contract or the parties in good faith exhaust the statutory impasse procedures, as provided under the M.M.B.A., whichever occurs first.

### **SECTION 5. NON-DISCRIMINATION**

Neither the Public Authority nor the Union shall unlawfully discriminate against qualified applicants or Providers with regard to race, religious creed, color, national origin, ancestry, sex, age, marital status, sexual orientation, physical or mental disability, medical condition, union activity, or any other reason considered unlawful by federal, state, or local law.

The provisions of this Section shall not be subject to the grievance procedure.

## **SECTION 6. CONCLUSIVENESS OF AGREEMENT**

This agreement concludes all collective bargaining between the parties and constitutes the sole and entire agreement between the parties and supercedes any prior agreements or understandings, oral or written, or practices by the Public Authority with regard to this bargaining unit.

The parties acknowledge that during the negotiations that resulted in this agreement, each had the unlimited right and opportunity to submit proposals with respect to any subject matter not otherwise prohibited by law and that the agreement reached by the parties following the exercise of that right and opportunity is set forth in this Agreement.

## **SECTION 7. TERM OF AGREEMENT**

Agreement shall be in full force and effect July 1, 2013 through June 30, 2016. After June 30, 2016, this Agreement shall continue in effect from year to year unless one of the parties notifies the other party by April 1, 2016, of its intent to modify this Agreement.

FOR THE IHSS PUBLIC AUTHORITY

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Salud Carbajal  
Chair of Board of Supervisors and  
Public Authority Board of Directors

FOR THE UNITED DOMESTIC WORKERS OF AMERICA, AFSCME LOCAL 3930,  
AFL-CIO

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Doug Moore  
UDW Executive Director

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Editha Adams  
UDW President

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Matthew A. Maldonado  
Chief Negotiator

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Elva Munoz  
UDW IHSS Provider

---

Rodolfo Sanchez  
UDW IHSS Provider

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Sarah Illenstine  
UDW IHSS Provider