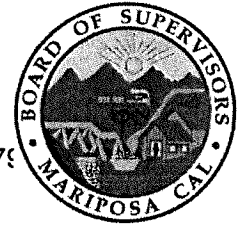




# MARIPOSA COUNTY

Human Resources/Risk Management • (209) 742-1378



## RESOLUTION - ACTION REQUESTED 2015-312

MEETING: June 23, 2015  
TO: The Board of Supervisors  
FROM: Steve Johnson, Human Resources Director - Risk Manager  
RE: In-Home Supportive Services Memorandum of Understanding

---

### RECOMMENDATION

### AND

### JUSTIFICATION:

Approve a 24 month Memorandum of Understanding ("MOU") with the California United Homecare Workers ("CUHW") Union and the Mariposa County In-Home Supportive Services ("IHSS") Public Authority ("PA"), and Authorize the Board of Supervisors Chairperson to sign the MOU. The parties have met and conferred, and have agreed to enter into this MOU.

County designated bargaining representatives met with CUHW representatives to meet and confer over the existing MOU between the PA and CUHW for the represented IHSS providers in Mariposa County which is expiring on June 30, 2015.

Based on the results of these meetings, and a discussion in Closed Session with the Board of Supervisors, the proposed MOU includes the following significant provisions:

- A wage increase from \$10.10 per hour to \$10.61 per hour in year one, and from \$10.61 per hour to \$11.14 per hour in year two, effective in both years with the first full pay period after July 1<sup>st</sup>.
- A continuing safeguard that ensures that, if State/Federal participation/allocation levels are reduced in the second year of the MOU, the hourly wage can be adjusted back to the first year level, which is \$10.61 per hour.
- A two year term, that expires on June 30, 2017.
- An increased Orientation time period from 15 to 30 minutes, as required by the State of California.

CUHW requested that the PA, through administrative fiat, adopt a bargaining unit change that would result in AFSCME/UDW serving as the exclusive bargaining unit representative of the IHSS providers in Mariposa County. Based on advice from the County's labor law Legal Counsel, Liebert, Cassidy & Whitmore, the County declined this request and instead recommended that CUHW pursue a change in representation through the California Public Employment Relations Board ("PERB"), which is a quasi-

## Resolution - Action Requested 2015-312

judicial administrative agency charged with administering the collective bargaining statutes covering counties and employees covered by the In-Home Supportive Services Employer-Employee Relations Act, among others. As the desire by CUHW to change representation to AFSCME/UDW is a statewide effort, staff believes that PERB would be the prudent venue for this decision.

Human Resources/Risk Management staff worked in conjunction with the Director of the County's Human Services Director Chevon Kothari and her staff on the draft MOU language and financial impacts.

IHSS providers in Mariposa County have now ratified this proposed MOU. Human Resources/Risk Management staff are requesting authority from the PA to finalize and adopt this proposed MOU.

### **BACKGROUND AND HISTORY OF BOARD ACTIONS:**

The Mariposa County Board of Supervisors adopted Resolution 2014-139 on April 1, 2014, approving a 24-month MOU with the CUHW, which in turn expires on June 30, 2015.

### **ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:**

Do not approve the MOU as presented, with suggested alternatives-however, such action would require additional meet and confer between both parties.

### **FINANCIAL IMPACT:**

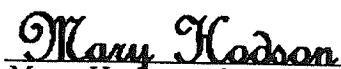
**An increase over two years of \$33,450 to the IHSS Maintenance of Effort ("MOE") as follows-year one: \$16,317; year two: \$17,133. Sufficient funding is available for this increase with the use of Social Services Realignment Funds. The increase to the MOE will be calculated by the State Department of Social Services and will be charged to the County Social Services division, as is currently being done**

### **ATTACHMENTS:**

#IHSS MOU July 2015 - June 2017 (DOC)

### **CAO RECOMMENDATION**

Requested Action Recommended



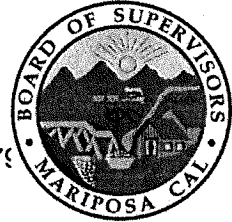
Mary Hoatson, CAO

6/17/2015



# MARIPOSA COUNTY

Human Resources/Risk Management • (209) 742-1375



## RESOLUTION - ACTION REQUESTED 2015-312

**RESULT:** ADOPTED [UNANIMOUS]  
**MOVER:** Kevin Cann, District IV Supervisor  
**SECONDER:** John Carrier, District V Supervisor  
**AYES:** Smallcombe, Jones, Long, Cann, Carrier

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**MARIPOSA COUNTY IN-HOME SUPPORTIVE  
SERVICES PUBLIC AUTHORITY**

**AND**

**CALIFORNIA UNITED HOMECARE WORKERS UNION**

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## **PREAMBLE**

This MEMORANDUM OF UNDERSTANDING (MOU) is entered into by the Mariposa County IHSS Public Authority (hereinafter referred to as “Public Authority”) and the California United Homecare Workers (CUHW), (hereinafter referred to as “Union”). The Union and the Public Authority acknowledge that the relationship between the Public Authority and the employees in this unit, who are individual providers, is governed by state law, specifically Welfare and Institutions Code Section 12301.6, that this relationship is unique, and that the Public Authority does not employ or manage the IHSS Independent Provider workforce in the role of a traditional employer. The parties also acknowledge that the IHSS recipients (Consumers) remain the employers for the purposes of hiring, firing, and supervising the work of any independent provider providing services to them.

The Public Authority and the Union recognize that, due to the nature of the relationship between them and the role of that relationship in the IHSS program, the implementation of various provisions of this MOU will require the assistance and cooperation of agencies that are not party to this MOU. The Public Authority and the Union agree to work together in good faith in order to secure the assistance of the appropriate entities when required by the provisions of this MOU. Similarly, the Union commits itself in this MOU to some goals that not only benefit this workforce but are also intended to benefit consumers of IHSS services. The Public Authority and the Union agree that all workers and administrators involved in the IHSS program, regardless of position, profession, or rank, will treat each other with courtesy, dignity and respect.

The Public Authority is an independent legal entity, separate, and apart from the County of Mariposa (hereinafter referred to as “County”). The Public Authority has no power to bind the County to any contractual or legal obligations. Nor may the obligees of the Public Authority seek recourse against the County for any financial or legal obligation to the Public Authority.

**SECTION 1**  
**UNION RECOGNITION**

The Public Authority recognizes the Union as the exclusive representative of IHSS Independent Providers (Providers) in the County of Mariposa and this MOU applies only to those IHSS independent providers.

**SECTION 2**  
**NON-DISCRIMINATION**

The parties affirm their respective policies of non-discrimination in the treatment of any Provider because of race, color, national origin, gender, age, religion, marital status, sexual orientation, disability, or union activity.



**SECTION 3**  
**CONSUMER RIGHTS AND CONFIDENTIALITY**

The parties reaffirm that under the State statute and County ordinance establishing the Public Authority, IHSS consumers have the sole and undisputed right to:

1. Hire Providers of their choice;
2. Terminate Providers from their service at will;
3. Determine in advance and under all circumstances who can and cannot enter their home; and
4. Supervise and direct the work of Providers providing services to them within the scope of authorized services.

The Union will neither seek nor receive information 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 obtained, from whatever source, pertaining to consumers, unless disclosure is compelled by legal process or otherwise authorized by law.

## **SECTION 4**

### **PUBLIC AUTHORITY RIGHTS**

Except as otherwise specifically provided in this agreement, the Public Authority has and retains the sole and exclusive rights and functions of management 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 except for those created by statute or this MOU.
- c) To add or delete names of IHSS individual providers to and from the registry consistent with existing statute or terms of this MOU.
- d) To take all necessary actions to carry out its mission in emergencies.

## **SECTION 5 UNION RIGHTS**

### **Section 5.1 Lists and Information**

The Public Authority shall provide the Union a list of the current Providers. Such list shall include the names, addresses, telephone numbers, social security numbers, hours authorized, and hours paid in the previous month. The list shall be provided on a monthly basis and in an agreed upon computer format.

The Union shall defend, indemnify, save, protect and hold harmless the Public Authority, its Board, directors, officers and providers from any and all claims, costs and liabilities for any damages and/or injury arising from disclosure to the Union of Provider personal information. The Public Authority's right to be defended, indemnified, saved, protected and held harmless hereunder shall be unaffected by the concurrent negligence of the Public Authority or any other person, and this right shall survive the expiration date of this MOU.

### **Section 5.2 Communications**

The Public Authority will furnish for the use of the Union, a bulletin board at the appropriate Human Services office.

All materials shall clearly state that it is prepared and authorized by the Union. The Union agrees that notices posted on the bulletin board shall not contain anything which may reasonably be construed as maligning the Public Authority, its staff, representatives, or Board.

### **Section 5.3 Official Representatives, Stewards**

a. The Union shall provide a current Official Representatives List to the Public Authority Director. The Union shall notify the Public Authority Director of any changes to the List.

b. The Public Authority will recognize and cooperate with Union stewards in the course of their duties. The rights of stewards include but are not limited to: 1) having a role in orientations to inform applicants about the Union; 2) representing Providers who have grievances or problems; and 3) posting information on the Public Authority bulletin board provided for the Union.

#### **Section 5.4 New Provider Orientations**

a. Whenever the Public Authority conducts or sponsors orientation services for Providers, the Public Authority shall provide the Union with at least one (1) week's notice of the date, time, and location of the orientation. Upon the Union's request, the Public Authority shall provide the Union during the orientation with at least thirty (30) minutes to make a presentation and distribute written information to the Providers. If the Union is unable to attend, the Public Authority shall distribute to the Providers written information provided by the Union.

b. Nothing in this section is intended to abrogate the Public Authority's right to provide orientations on a drop-in basis. The Public Authority agrees to distribute a sealed packet of Union information to each provider attending a drop-in orientation. The Union will provide information packets for this purpose. The Union likewise agrees to make materials provided by the Public Authority available at Union events.

#### **Section 5.5 Agency Shop**

a. Agency Shop Election

1. To determine whether Providers in the unit wish to be covered by an agency shop provision, the Union shall conduct an election simultaneously with the contract ratification. This election will be conducted under the auspices of the California State Mediation and Conciliation Service (SMCS) using a mail ballot. The ballot will include the standard agency shop language approved by the SMCS. Providers eligible to vote in this election shall be all providers on the payroll for the most recent month for which data is available. Determination of the election shall be made by a majority vote of all those voting. The cost of this election shall be borne by the Union.

2. If a majority of those voting in the election vote to be covered by an agency shop provision, the following sections shall become operative.

b. Unit Representation

The Union agrees that it has a duty to provide fair and non-discriminatory representation to all Providers in the unit regardless of whether they are members of the Union.

c. Agency Shop

On or after the effective date of this Agreement and continuing until the termination of this Agreement, all Providers shall, as a condition of employment, either:

1. Become and remain a member in good standing of the Union; or
2. Pay to the Union, an agency shop fee in an amount that does not exceed an amount that may be lawfully collected under applicable laws. It shall be the sole responsibility of the Union to determine an agency shop fee which meets the above criteria; or
3. Do both of the following:
  - a. Execute a written declaration that the employee is a member of a bona fide religion, body or sect which has historically held a conscientious objection to joining or financially supporting labor unions, and
  - b. Pay a sum equal to the agency shop fee described above to an appropriate charitable organization. For purposes of this section, charitable deduction means a contribution to any other non-religious, non-labor charitable organization exempt from taxation under section 501 (c ) (3) of the Internal Revenue Code of the Provider's choice.

d. Initial Implementation

Within thirty (30) days of Union ratification and Public Authority approval of the Agreement, the Union shall mail to each Provider subject to this Agreement, a notice of agency shop and a dues deduction authorization form. The agency shop requirement provides that all Providers must either become a member of the Union, pay an agency shop fee to the Union, or, if eligible, pay an equal sum to an appropriate charitable organization.

Providers who wish to become members of the Union shall complete and return the dues deduction authorization form to the Union. Providers who do not return said form or who indicate that they do not wish to become members of the Union will be enrolled for payroll deduction of agency shop fees or charitable contributions.

e. Ongoing Implementation

Within thirty (30) days of the date the Union receives notification that a Provider has begun work, the Union shall mail to each new Provider a notice of agency shop and a dues

deduction authorization form. The agency shop requirement provides that all Providers must either become a member of the Union, pay an agency shop fee to the Union, or, if eligible, pay an equal sum to an appropriate charitable organization.

Providers who wish to become members of the Union shall complete and return the dues deduction authorization form to the Union. Providers who do not return said form or who indicate that they do not wish to become members of the Union will be enrolled for payroll deduction of agency shop fees or charitable contributions. Payroll deductions for Union dues, agency shop fees or charitable contributions will be effective as soon as possible after final approval of this Agreement subject to the limitations and practices of the State payroll system.

The Provider's earnings must be sufficient after required deductions are made to cover the full amount of the dues, agency shop fees or charitable contributions. Therefore, when a provider is in a non-pay status for an entire pay period, no withholding will be made to cover the pay period from future earnings. 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 amount of Union dues or other applicable fees, no deduction shall be made. In this situation, all required deductions have priority over Union dues, agency shop fees, and charitable contributions.

The Union shall provide the Public Authority with a copy of the Union's dues schedule, agency shop fee procedure and payment schedule, and each revision thereof, and shall provide notice of said schedules and procedures to bargaining unit members as required by all applicable laws.

The Union shall indemnify, defend, and hold harmless the County, the Public Authority Board of Directors, and the Public Authority against any and all claims that arise out of or in connection with these agency shop provisions.

### **Section 5.6 Provider Rights**

Providers have the right to decline or terminate employment at anytime and for any reason.

**Section 5.7 Workers' Compensation**

The Public Authority will give all current Providers information in writing citing the State law relative to their rights to Workers' Compensation. Thereafter, each new Provider, upon their enrollment in the IHSS program, will be provided with this information. The Public Authority will also present this information in the course of all orientation sessions it may provide.

**SECTION 6**  
**GRIEVANCE PROCEDURE AND ARBITRATION**

**Section 6.1 Definition and Procedural Steps**

A grievance is any dispute, which involves the interpretation or application of any provision of this MOU excluding, however, the Public Authority Rights section and those provisions of this MOU which specifically provide that the decision of any Public Authority official or consumer shall be final, the interpretation or application of those provisions not being subject to the grievance procedure. The Union may represent the grievant at any stage of the process.

Grievances must be filed within thirty (30) days of the incident or occurrence about which the grievant claims to have a grievance and shall be processed in the following manner:

**Step 1.** Any Provider, or the Union on the grievant's behalf, who believes that a provision of this MOU has been misinterpreted or misapplied to his or her detriment shall discuss the complaint with a staff member of the Public Authority.

**Step 2.** If a grievance is not satisfactorily resolved in Step 1 above, the grievant, or the Union on the grievant's behalf, may submit the grievance in writing within twenty (20) days of the action taken in step 1 above to the designated hearing officer of Public Authority. The grievance shall state which provision of the MOU has been misinterpreted or misapplied, how misapplication or misinterpretation has affected the grievant to the grievant's detriment, and the resolution he or she seeks. The hearing officer of the Public Authority shall have twenty (20) days from receipt of the written grievance in which to respond to the grievance in writing.

**Step 3.** No grievance may be processed under this section which has not first been submitted and investigated in accordance with Step 2, except by mutual agreement of both parties. If the parties are unable to reach a mutually satisfactory accord on any grievance which arises and is presented during the term of this MOU under step 2, either the grievant, or the Union on the grievant's behalf, may submit the grievance to the Human Services Director. The Human Services Director or his/her designee shall have twenty-one (21) days from receipt of the written grievance in which to investigate the issue(s), meet with the grievant, attempt to reach a satisfactory resolution of the problem, and respond to the grievance in writing.



**Step 4.** No grievance may be processed under this section, which has not first been submitted and investigated in accordance with Step 3. If the parties are unable to reach a mutually satisfactory accord on any grievance which arises and is presented during the term of this MOU, either the grievant, or the Union on the grievant's behalf, or the Public Authority may require that the grievance be referred to an impartial arbitrator who shall be designated by mutual agreement between the grievant and the Director of Human Services. The failure to appeal a grievance to arbitration in accordance with this section within ten (10) working days after receipt of the written answer of the Human Services Director or his/her designee at Step 3 of the grievance procedure shall constitute a waiver of the Union's right to appeal to arbitration, and the written answer of the Human Services Director or his/her designee at Step 3 of the grievance procedure shall be final and binding on the aggrieved Provider, the Public Authority, and the Union.

Within ten (10) days of the request for arbitration, the parties shall mutually select an arbitrator who shall render a decision within thirty (30) days from the date of final submission of the grievance including receipt of the Court Reporter's transcript and post hearing briefs if any. The fees and expenses of the arbitrator and of the Court Reporter shall be shared equally by the grievant or the Union on the grievant's behalf, and the Public Authority. Each party, however, shall bear the costs of its own presentation, including preparation and post-hearing briefs, if any. A grievant shall not proceed to Step 4 without approval by the Union in writing.

#### **Section 6.2 Scope of Arbitration Decisions**

a. Decisions of arbitrators on matters properly before them shall be final and binding on the parties hereto.

b. No arbitrator shall entertain, hear, decide or make recommendations on any dispute unless such dispute involves a position in a unit represented by the Union which has been certified as the recognized employee organization for such unit and under such dispute falls within the definition of a grievance as set forth above.

c. Proposals to add to or change this MOU or to change written agreements supplementary hereto shall not be arbitrable and no proposal to modify, amend, or terminate this MOU, nor any matter or subject arising out of or in connection with such proposals, may be referred to arbitration under this Section. No arbitrator shall have the power to amend or modify this MOU

or written agreements supplementary hereto or to establish any new terms or conditions of employment.

d. No change in this MOU or interpretations thereof (except interpretations resulting from arbitration proceedings hereunder) will be recognized unless agreed to by the Public Authority and the Union.

### **Section Time 6.3 Time Limits**

The time limits specified above may be waived in writing by mutual agreement of the parties to the grievance. If a grievant fails to meet the time limits specified above, the grievance will be deemed to have been settled and withdrawn. For purposes of this section, the term “day” shall mean a calendar day. Unless the Public Authority and the Union have mutually agreed in writing to the contrary, the filing and processing of a grievance shall not delay or interfere with any Public Authority action.

## **SECTION 7 COMPENSATION**

### **Section 7.1 Wages**

The Public Authority will increase the wage to \$10.61 per hour effective the first pay period as soon as it can be practically implemented following adoption of this MOU, acceptance by the State and Case Management, Information and Payrolling System (CMIPS) programming (usually 30-days from State approval). The Public Authority will submit the appropriate request for the new rate within ten (10) days of member ratification of this agreement and approval by the Public Authority. The Public Authority will increase the wage to \$11.14 per hour effective July 1, 2016 or as soon as it can be practically implemented. The uncertainty of the levels and continuation of State and Federal funding for the IHSS program requires that the Public Authority and County protect their other programs and services from sudden revenue shifts. Contract commitments to the IHSS program could result in unacceptable unfunded liability if the levels of State and Federal participations change. (Note: the terms “wage, wages, or wages cost” as used hereafter includes wages, employment taxes, and administrative costs.)

If during the term of this agreement, the Public Authority determines that State or Federal participation/allocation levels are reduced in any way that would result in an increased cost to the County and/or the Public Authority to maintain the wage level described in the MOU, compensation will be reduced by an amount necessary to keep the total cost to the County and/or the Public Authority the same as such cost that existed on the day prior to the effective date of such reduction or modification. The wage adjustment will be effective on the date the reduction or modification is effective. Notwithstanding the above, the parties agree that the wage will not be adjusted below \$10.61 per hour during the life of this MOU.

### **Section 7.2 Payroll**

The Public Authority and the Union shall work together to identify causes and solutions to problems resulting in late, lost or inaccurate paychecks and similar issues. When the causes of problems are outside the Public Authority's direct control, the Public Authority and the Union shall work cooperatively to share information, bring the problems to the attention of the responsible agencies and create solutions.

## **SECTION 8**

### **LABOR-MANAGEMENT COMMITTEE**

#### **Section 8.1 General**

In order to encourage open communication, promote harmonious relations and resolve matters of mutual concern, the parties shall establish a Labor-Management Committee.

#### **Section 8.2 Appointment**

The Public Authority and the Union shall each appoint no more than three (3) members to the Committee and the members shall serve at the pleasure of their respective appointing organizations.

#### **Section 8.3 Meetings**

The Committee shall meet on an as needed basis following reasonable notice to both parties.

#### **Section 8.4 Chair**

The person serving as Chair of the Committee shall rotate from meeting to meeting between the Public Authority and the Union.

#### **Section 8.5 Attendance**

The Committee meetings shall be limited in attendance to the members and one or two guests/advisors of either party, unless the parties agree to additional attendees.

#### **Section 8.6 Topics**

The topics for Committee meetings shall include, without limitation, mutual respect, training and education, payroll problems, and registry processes.

#### **Section 8.7 Authority**

The Committee shall not have the authority to modify the terms of this Agreement. Any changes recommended by the Committee that would have the effect of modifying provisions of this Agreement shall be addressed during the next negotiation period between the parties unless the parties mutually agree to reopen this Agreement to address a specific issue.

## **SECTION 9 TRAINING**

### **Section 9.1 General**

The Public Authority and the Union recognize that the future of IHSS largely depends upon the availability of skilled Providers. The Public Authority and the Union also recognize that providing access to training for Providers is an important goal and a significant component of the IHSS program. Accordingly, the Public Authority makes available voluntary training for providers on approximately a monthly basis.

### **Section 9.2 Union Training Programs**

The Public Authority shall make available through the Department's website to Registry participants, written material submitted by the Union enabling Provider participation in any training programs sponsored by the Union. The Public Authority will additionally provide such written materials submitted by the Union to those participants engaged in County trainings or orientations.

**SECTION 10**  
**NO STRIKE/NO LOCKOUT**

During the term of this MOU, the Union, its members and representatives, agree not to engage in, authorize, sanction or support any strike, slowdown, stoppage of work, curtailment of production, or refusal to perform customary duties. The Public Authority agrees not to lockout members during the term of this MOU.

**SECTION 11**  
**MODIFICATION AND WAIVER**

**Section 11.1 Modification**

Neither party shall, during the term of this MOU, demand any change to the provisions of this MOU, provided, however, that nothing herein shall prohibit the parties from changing the terms of this MOU by mutual agreement. Any such agreement, alteration, understanding, variation waiver, or modification of any of the provisions contained herein shall not be binding upon the parties hereto unless it is made and executed in writing by all parties hereto and approved by the governing body of the Public Authority.

**Section 11.2 Waiver**

The waiver of any breach, term or condition of this MOU by either party shall not constitute a precedent in the future enforcement of all its terms and provisions.

**SECTION 12**  
**SEPARABILITY OF PROVISIONS/SAVINGS CLAUSE**

If any section, subsection, sentence, clause, or phrase of this MOU is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portions of this agreement.



## **SECTION 13**

### **TERM**

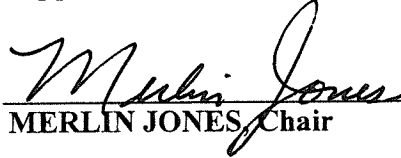
The term of this Agreement shall commence upon its approval by the governing board of the Public Authority and shall remain in full force and effect for twenty-four months from July 1, 2015, through and including June 30, 2017, and shall be automatically renewed from year-to-year thereafter, unless either party serves upon the other forty-five (45) days prior to its expiration, written notice of desire to modify this MOU.

In the event that the State takes control of collective bargaining responsibility prior to the expiration of this MOU, the Public Authority and CUHW agree to transition this MOU in accordance with Senate Bill 1036.

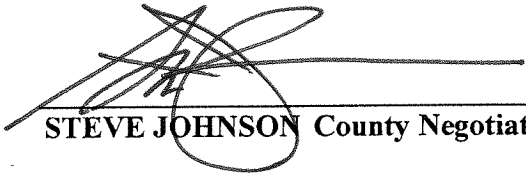
Approved  
Public Authority.

by the Mariposa County In-Home Supportive Services

**Mariposa County In-Home  
Supportive Services Public Authority**

  
MERLIN JONES, Chair

Date: 7-6-15


  
STEVE JOHNSON, County Negotiator

**California United Homecare Workers Union**

  
WILL HIRST, Chief Negotiator

Date: 6/23/2015

  
RONALD SCHMIDT  
Negotiation Team Member

  
PAUL PERRY  
Negotiation Team Member

Approved as to Form:

  
STEVEN W. DAHLEM, County Counsel