

## **Memorandum of Understanding**

**Between**  
**The San Benito County In-Home Supportive Services**  
**Public Authority**  
**And**  
**SEIU ULTCW Local 6434**

THIS MEMORANDUM OF UNDERSTANDING, referred to below as “MOU,” is entered into by and between the San Benito County In-Home Supportive Services Public Authority, hereafter designated as the “Public Authority”, and Service Employees International Union, United Long Term Care Workers, Local 6434, hereafter designated as the “Union” for the term January 1, 2010 to and including December 31, 2011.

### **SECTION 1. PREAMBLE**

This MOU formalizes the unique employer-employee relationship defined in law between the Public Authority and the Union and, as such, includes ideas not usually addressed in such MOU’s. The Public Authority does not employ or manage the IHSS provider workforce in the role of a traditional employer.

### **SECTION 2. RECOGNITION**

The Public Authority recognizes the Union as the exclusive representative of IHSS Individual Providers in San Benito County, referred to below as “Providers.” This MOU does not apply to the administrative and operational staff of the Public Authority.

### **SECTION 3. NON-DISCRIMINATION**

Neither the Public Authority nor the Union shall discriminate with respect to enrollment on the registry by reason of race, creed, color, national origin, sex, sexual orientation, age or legitimate union activities. To the extent prohibited by applicable state and federal law, there shall be no discrimination against any disabled person solely because of such disability unless that disability prevents the person from adequately performing the essential duties of the position.

## **SECTION 4. CONSUMER RIGHTS**

### **4.1 Consumer**

Consumers have the sole and undisputed right to hire and remove any Provider without cause.

Consumers direct the services rendered by a Provider as set for the in the Welfare and Institutions Code.

### **4.2 Consumer's Confidentiality-Right to Privacy:**

The Union shall neither seek nor receive information regarding the name, address, or telephone number, or any other personal information, about Consumers. Any information received pertaining to Consumers by the Union shall be handled with strict standards of confidentiality.

## **SECTION 5. PUBLIC AUTHORITY RIGHTS**

Unless otherwise expressly specified in this agreement, the Public Authority retains exclusive right to determine the methods, means, and personnel by which its operations are to be conducted; to determine the mission of its governing body, committees, and other related works groups; to add or delete names of Providers to and from the registry; and to take all necessary actions to carry out its mission in emergencies.

## **SECTION 6. UNION RIGHTS**

### **6.1 Representation:**

The Union has the right to represent Providers in the bargaining unit as specified by state law and pursuant to the Public Authority Employer Employee Relations Ordinance. The Union will notify the Public Authority and maintain such notice during the term of this Agreement of the staff assigned to represent Providers.

The Union may select up to three (3) Providers, in addition to its staff members, to participate in the meet and confer process for a new MOU during the life of this agreement. The Public Authority will provide up to 48 hours of lost time wages during the life of this agreement to be shared by these Providers. To qualify, a Provider must provide evidence that the hours spent in the meet and confer process are hours that she/he normally works as a IHSS Provider.

## **6.2 List and Information:**

At such time as the information is made available to the Public Authority, the Public Authority shall arrange for delivery or provide the Union a list of all current Providers, including name, and if available, hours worked in a designated payroll period. The list shall be provided on floppy disks in an agreed upon format. The Public Authority will update this list to the Union on a monthly basis upon request.

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 IHSS provider names, social security numbers, addresses and phone numbers. 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.

## **6.3 Bulletin Boards**

The Public Authority will furnish for the Union, a bulletin board at the Public Authority office. The bulletin board space shall be used only for the following subjects:

1. Union recreational, social and related news bulletins; Scheduled meetings;
2. Information concerning Union elections or the results thereof;
3. Reports of official business of the Union including reports of committees of the Union's Board of Directors.

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.

At such time as the Public Authority has in place a digital web site, the parties will meet and discuss what, if any, space or links may be appropriate and any associated costs.

#### **6.4 Union Access – Home Visits**

Except as provided below, Union Representatives shall not conduct Union business, including business related to enforcement of this agreement, at the home of the Consumer.

In those instances when a Provider and a Consumer live in the same residence and the Union Representative and the Provider wish to meet at that residence the Union Representative shall enter the residence only upon permission of both the Consumer and Provider. The time spent in any such meeting shall not be counted as work time.

#### **6.5 Advance Notice**

Except in cases of emergency as provided below in this subsection, the Union, if affected, shall be given advanced written notice of any ordinance, resolution, rules or regulations directly relating to matters within the scope of representation proposed to be adopted by the Public Authority and shall be given the opportunity to meet with appropriate management representatives prior to adoption. The Public Authority will provide up to three (3) Board packets to addresses provided by the Union.

In case of emergency, when the foregoing procedure is not practical, or in the best public interest, the Public Authority may adopt, or put into practice immediately, such measures as are required. At the earliest practicable date thereafter, the Union shall be provided with the notice described in the preceding paragraph and be given an opportunity to meet with the appropriate management representatives to discuss the change.

### **SECTION 7. UNION SECURITY**

Providers must either become and remain members of the Union in good standing or pay an agency fee to the Union. Membership in good standing shall mean that the provider pays the regular periodic dues as a condition of acquiring or retaining membership. Agency fee is the regular periodic required of non-members as their fair share of the costs of representation. Subject to the limitations and protections of applicable law, such dues or fees shall, as a condition of continued employment, be deducted from the Provider's paycheck on a monthly basis following completion of twenty five (25) or more hours of employment.

## **7.1 IMPLEMENTATION – EXISTING PROVIDERS**

No later than thirty (30) days after the effective date of this MOU, the Public Authority shall mail to each provider subject to this MOU a notice advising providers that there is an Agency Shop agreement with the Union and that all providers subject to the MOU must either join the Union, pay a service fee to the Union or execute a written declaration claiming a religious exemption from this requirement. Such notice shall include a form for the Provider's signature authorizing payroll deduction for either Union dues, service fee or charitable contribution. For Providers employed as of the date of ratification of this MOU, the obligation to pay Union dues or service fees shall commence with the first payroll period following final adoption of this MOU, subject to the provisions in Section 7 of this MOU.

The Public Authority will provide information to the State of California to implement deductions for Union dues, service fee or charitable fee, as appropriate.

The State shall deduct, in accordance with the Union's dues and service fee schedule, dues, service fees, or payments to charities in lieu of service fees from the wages of all Providers who are members of the bargaining unit. The Union shall provide that schedule on an annual basis to the Public Authority and State of California.

## **7.2 NEW IHSS PROVIDERS COVERED BY THE AGREEMENT**

All providers in this bargaining unit who become covered by this MOU, on or after the effective date of the MOU, shall within thirty (30) days of meeting or exceeding the minimum hourly requirements set forth in Section 7 of this MOU, execute an authorization for payroll deduction of one of the following: 1) union dues, 2) service fee, or 3) if she/he qualifies, a charity fee equal to the agency fee to one of the negotiated funds that is exempt from taxation under Section 501 (c) (3) on the Internal Revenue Code.

## **7.3 CHARITY FEE DEDUCTION**

To qualify for deduction of the charity fee, the provider must certify to the Union and the Public Authority that she/he is a member of a bona fide religion, body or sect which has historically held conscientious objection to joining or financially supporting public

Employee organizations. Such exempt unit member will be required to submit to the Union and the Public Authority a notarized letter signed by an official of the bona fide religion, body or sect certifying that person's membership. The deduction shall not be forwarded to the charity until the Union has approved of the exemption. The Union will receive from the Public Authority quarterly proof of payment of an amount equivalent to such representation fee to one of the negotiated funds or organizations agreed to for alternative payment.

#### **7.4 INVOLUNTARY DEDUCTION**

If any provider fails to authorize one of the deductions noted in the above sections, upon written notice from the Union, the Public Authority shall arrange with the State for involuntary deduction of the agency fee from the provider's paycheck within thirty (30) calendar days.

#### **7.5 HOLD HARMLESS PROVISION**

The Union shall defend, indemnify, and hold harmless the Public Authority, its Board, directors, officers and providers from any all claims, demands, suits or any other action arising from this Article, including from the Public Authority's compliance with any Union requests made pursuant to its efforts to collect dues and/or fees, and this duty shall survive the expiration of the MOU.

At any time the State Controller or the Department of Social Services makes any changes to the dues deduction or IHSS payroll systems that directly impact this system, the Public Authority shall meet and confer regarding the impact of the changes.

### **SECTION 8. 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, or refusal to perform customary duties. The IHSS Authority agrees not to lock out members during the term of this MOU.

## **SECTION 9. REGISTRY**

Consumers have the right to seek IHSS Providers from any source including, but not limited to, referrals from the registry. The Public Authority reserves the right to recruit IHSS Providers for the registry from any source. The Public Authority reserves the right to preclude an applicant from being listed on the registry if the applicant does not comply with the registry application requirements and/or the registry application process/procedure, or who has a past criminal record or work history that the Public Authority determines would make him/her inappropriate for the registry. The Public Authority has the discretion not to include IHSS Providers on the registry. The Public Authority does not have the power to preclude IHSS Providers from IHSS employment.

Registry referrals shall be handled in the following manner:

1. Should the consumer request a specific Provider who is listed on the registry, only that individual's name will be referred.
2. Only names that meet the consumer's needs/criteria will be referred.  
registered at the Public Authority registry.
3. For registry referrals, seniority shall be defined as the most recent date of being registered at the Public Authority registry.
4. If the registry is utilized, and if the consumer does not request an individual by name from the registry, the registry will first be screened to identify providers who meet the consumer's needs/criteria. Referral lists shall have a minimum of three (3) and a maximum of six (6) names, except in cases where fewer than three (3) individuals on the registry needs/criteria will be referred. Only names that meet the consumer's needs/criteria will be referred. If there are more than six (6) Providers on the registry list who meet the consumer's needs/criteria, only the six (6) most senior names, as defined above, will be referred
5. Registry services will also include a relief and emergency service to assist in providing temporary respite replacement for providers whose consumers have authorized personal care needs. The Public Authority will publicize once each year the availability of relief and emergency services.

## **SECTION 10. APPEAL OF REMOVAL FROM REGISTRY**

### **10.1 Registry Appeal Review Board**

Only a removal from the registry may be appealed to the Registry Appeals Review Board. If the Public Authority receives a written appeal of a removal from the registry within ten (10) calendar days from the date of the mailing of the notice of removal, a review hearing by the Registry Appeals Review Board will be scheduled within fourteen (14) days of the appeal unless extended by mutual agreement of the parties. Should the

cause of removal require an investigation by a third party, the appeal shall be held within ten (10) days of the findings of that investigation.

The registry Appeals Review Board shall consist of a three-member panel. One (1) member shall be selected by the Public Authority, one (1) member shall be selected by the Union and the third member shall be selected by mutual agreement of the parties.

The Union and the Public Authority will agree to a neutral third member of the Registry Appeals Review Board for the life of this MOU: Should the designated neutral third member be unavailable, the parties will select another neutral party by agreement.

Each party will pay any costs associated with their Registry Appeals Review Board designee. The Union and the Public Authority shall equally share any cost associated with the neutral third party.

There shall be no transcripts or written record of the hearing other than that provided by the members of the Registry Appeals Review Board. The Registry Appeals Review Board may elect to establish its own standards and procedures for its hearings.

Immediately at the completion of the hearing, the Registry Appeals Review Boards shall provide a written decision that shall reflect the findings of the majority of the Registry Appeals Review Board. The decision shall be limited to the following options:

1. Uphold the removal of the Provider from the registry
2. Immediate reinstatement of the Provider to the registry

An appeal of removal from the registry may only be made by a Provider that has been on the registry for more than four (4) consecutive months.

A Provider removed from the registry may re-apply after a period of two (2) years from the date of the removal except that providers removed for major offenses will not be eligible to reapply.

Because of the unique character of the IHSS program, it is agreed that there can be no right or calculation or award of lost hours for a Provider.

The decision of the Registry Appeals Review Board shall be final and binding.

## **10.2 Minor Offenses**

Should a provider disagree with a first minor offense complaint, the provider may, within ten (10) days of receipt of the complaint, file a written response, which will be attached to the complaint in the provider's file.

## **SECTION 11. GRIEVANCE PROCEDURE AND ARBITRATION**

A grievance is any complaint concerning the interpretation or application of this Agreement, except that appeals for removal from the registry shall only be allowed as provided in Section 10. All grievances shall be taken up in the following manner: Prior to filing a grievance, the Public Authority and the Union will attempt whenever possible

to resolve problems informally and not resort to the grievance procedure. Because the grievance procedure will also apply to policies, rules, and procedures of the Registry that are yet to be incorporated in the Agreement, the following procedures may be changed with agreement from both parties.

STEP 1. (Required) The employee and/or the Union representative (filed representative or union steward) may confer with the designated Public Authority representative and attempt to settle the matter.

STEP 2. (Required) If the grievance is not settled at STEP 1, it shall be set forth in writing by the Union and submitted to the Public Authority within forty-five (45) days of the alleged violation. The Authority shall meet with the grievant and his/her Union representative and provide written response to the Union within ten (10) days of its receipt of the written grievance.

STEP 3. (Optional) If the matter is not settled at STEP 2, the parties by mutual agreement may submit it to mediation to attempt to resolve the issue within thirty (30) working days. A mediator will be selected by the representatives of the Public Authority and the Union.

STEP 4. If the grievance is not settled in STEP 2 or 3, it may be referred by the Union to arbitration. The Arbitrator shall be mutually agreed upon by the parties or upon failure to agree upon an arbitrator after fifteen (15) days of the Union's request for arbitration, shall be selected from a panel submitted by the California State Mediation and Conciliation Service. The award of the Arbitrator shall be final and binding on the parties. The parties shall each pay one half of the costs of arbitration, including the fees of the Arbitrator and the proceeding itself, but not including compensation of costs of representation, advocacy, or witnesses for either party. Unless agreed to by the parties, the cost of the court reporter shall be borne by the party desiring such service. The Arbitrator shall have no power to add to, subtract from, or change any of the terms or provisions of this Agreement.

## **SECTION 12. TRAINING AND EDUCATION**

The Union and the Public Authority agree to mutual efforts to provide training programs that enrich the skills base of the IHSS provider population. The Authority shall seek and give full consideration to the Union's input for the purpose of developing and implementing training programs for Providers. Within six (6) months of the signing of this Agreement, the parties shall establish a Joint Committee on Training and Education. The Committee shall meet as needed to determine the training needs and priorities of Home Care Providers and best available means of meeting these needs. Funding decisions shall be at the sole discretion of the Public Authority.

## SECTION 13. **HEALTH AND SAFETY**

The Union and the Public Authority recognize the importance of a safe and healthy working environment for Providers. Providers should not work in a situation, which could threaten his/her health and safety. The Provider should report any unsafe or hazardous conditions immediately to the Public Authority.

If a Provider is injured on the job and reports the injury, the Public Authority will assist the provider in completing and processing the appropriate forms.

## SECTION 14. **WAGES**

A. During the term of this Agreement, wages shall be maintained at \$10.50 per hour for the period of time that the Federal Appeals Court injunction on wage reduction remains. If during the term of the Agreement, the Court find in favor of the State and the State contribution is reduced, then the following will apply:

At such time that the State participation level is decreased, the PA shall continue to pay \$10.50 per hour for three months following the State's decrease effective date. This wage protection shall not extend beyond December 31, 2010. Thereafter, wages would be reduced to \$9.85 per hour for the remainder of the term of this Agreement.

B. If, during the term of this Agreement, either state or federal participation levels are reduced, or either the state or federal sharing formula is modified in any manner, relative to the baseline numbers described below, that would result in an increased cost to the County and/or the Public Authority to maintain the wage level described in this MOU, wages will be reduced by the Authority in an amount necessary to keep the total cost to the County and/or the Public Authority the same as such cost existed on the day prior to the effective date of such reduction or modification.

The County's cost shall be capped at \$1.84 per hour. Such reduction shall be subject only to post-reduction "impact" negotiations.

1. The following shall serve as the baseline cost sharing ratios applicable to Section 14.A, B, C and D of this MOU.

a. Throughout the term of this MOU, as provided in WIC 12306, the state and federal governments shall share in costs of wages in the following manner:

- 1) The state will pay 65 percent of the non-federal share of wage costs and the County will pay 35 percent of the non-federal share of wage costs.
- 2) The federal government shall pay a minimum of 50 percent of the costs of wages for each Personal Care Services Program (PCSP) service hour.

C. The Public Authority shall provide to the Union a detailed written description of any adjustments to be made pursuant to Section 14.B. above, at least thirty (30) days prior to the effective date of such adjustments.

1. 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, but in no case shall the Public Authority be required to increase its funding contribution toward wages.
2. Increases or decreases in the total caseload for the IHSS program, shall not be a cause for any reduction or increases in wages.

D. If, during the term of the MOU, state or federal cost sharing ratios increase without requiring an increased County match, or the County hourly share of total wage costs decreases, the parties will re-open negotiations on the earliest mutually agreeable date regarding the subject of wages only.

**Agreement expiration date will be December 31, 2011**

## **SECTION 15. INSURANCE**

**15.1. General:** A health plan shall be offered to Providers through a trust fund established by the Union (“the Trust Fund”). Effective upon approval by the State of California, the Public Authority shall pay \$0.60 for each hour worked by all IHSS providers covered by this agreement to the Trust Fund established to cover eligible providers. The Public Authority shall pay the total amount owed every pay period to the Trust Fund.

**15.2. Eligibility:** It is the intent of the Trust Fund to provide coverage to all providers, but shall commit to providing coverage to a minimum of 70% of the eligible providers. The eligibility requirements are that providers have worked 80 or more hours for two consecutive months prior to an open enrollment period. The Trust Fund cannot guarantee that all eligible workers will participate in the Trust Fund.

**15.3.** Once the Homecare Workers has met the eligibility requirement of having worked 80 or more hours for two consecutive months, the Health Benefit Trust shall mail an enrollment packet to the Homecare Worker consistent with Section 15.4.

**15.4. Notice:** The Trust Fund shall send a letter to Providers informing them that (1) the health plan is offered through the Trust Fund, (2) the procedure for enrollment in the health plan, (3) the benefits available under the health plan and (4) the premiums, deductibles and co-payment rates paid by Providers.

**15.5. Funding:** For each Provider, the Public Authority shall pay \$.60 per authorized hour to the Trust Fund.

### **15.6. Health Care Provider(s) and Benefits:**

- a. The Trust Fund shall select the health care provider(s) and determine the benefits to be provided and co-payments rates. See appendix of Schedule of Benefits dated 12/1/06 for initial benefits.

- b. Medical services decisions, quality of care and services provided, and all related matters shall be determined solely by the health care provider(s), subject to applicable law. Any disputes concerning such matters shall be handled and determined solely by the health care provider(s) pursuant to the procedures of the provider(s) and applicable law. Provided, however, that this does not restrict the right of the Public Authority, the Union and the Trust Fund, at their discretion, to provide advice, assistance or representation to Providers with regard to such matters.

**15.7. Premiums:** The Trust Fund shall determine the amount of the monthly premiums paid by Providers, if any.

**15.8. Administration:**

- a. The health plan shall be administered by the Trust Fund.
- b. The Trust Fund shall be responsible for determining eligibility, processing enrollment, and administering the health plan.

**15.9. Reports:** The Trust Fund shall provide the Public Authority with a semi-annual report, including the number of participants in the health care plan, the name and location of provider(s), the benefits provided, and premium and co-payment rates.

**15.10. Changes to Trust Fund:** Upon written request by the Public Authority the parties agree to reopen the Health and Welfare section of the MOU should the Trust Fund make any changes that over all reduce worker's eligibility, coverage and/or service received.

**15.11. Participation Agreement:** The Public Authority of San Benito County agrees to sign the participation agreement.

**SECTION 16. MAILINGS**

The Public Authority will consider requests by the Union for inclusion of official Union notices in Public Authority mailings to Providers. A copy of the Union notice requested for inclusion must be provided at least three (3) days in advance. The Public Authority shall determine if the requested inclusion is compatible with the Public Authority's mailing. The Union shall reimburse the Public Authority for any costs associated with the inclusion of the Union notices.

The Public Authority will honor any timely request from the Union to request that the State Controller's office print a Union memo on the 120 character line on Homecare Providers' pay stubs.

**SECTION 17. OTHER SUPPORT SERVICES**

The Public Authority and Union are committed to developing other support service for IHSS Providers, including:

Housing Assistance – Explore the development of suitable and affordable transitional housing for the immediate relocation of live-in IHSS Providers who lose

their housing when their jobs end or to help IHSS Providers who are homeless. Additionally, the Public Authority will cooperate with the Union's efforts to seek funds to provide relocation expenses for IHSS Providers.

Transit Passes – in collaboration with the Union, the Public Authority will explore funding for Transit Passes for IHSS Providers with more than one (1) client.

Labor Management Committee-In order to encourage open communication, promote harmonious relations and resolve matters of mutual concern, the parties shall establish a Labor-Management Committee. The Public Authority and the Union shall each appoint up to three (3) members of the Labor-Management Committee, and they shall serve at the pleasure of the respective appointing organizations. The Committee shall meet within thirty (30) days of Union request of said meeting, and said meetings would be limited to one (1) hour and be held on a quarterly basis. The person serving as Chair of the Labor-Management Committee shall rotate from meeting to meeting between the Public Authority and Union. The Labor-Management Committee shall be limited in attendance to the Committee members. The topics for the Labor-Management Committee meetings shall be limited to mutual respect matters of mutual concern, training and education. The Labor-Management Committee shall not have the authority to modify the terms of the agreement. Any changes recommended by the Labor-Management Committee that would have the effect of modifying provisions of this Agreement shall be addressed during the next negotiations period between the parties.

The parties will agree to reopen this agreement should the State and Federal Government make available specific additional funding earmarked for a benefit/s area not covered by the current MOU.

## **SECTION 18. SCOPE/SEVERABILITY**

### **18.1 Scope of Agreement**

Except as otherwise specifically provided herein, this MOU fully and completely incorporates the understanding of the parties hereto and constitutes the sole and entire agreement between the Parties in any and all matters subject to meet and confer. Neither party shall, during the term of this MOU demand any change herein, provided that nothing herein shall prohibit the parties from changing the terms of this MOU by mutual agreement.

### **18.2 Separability of Provisions**

Should any section, clause or provision of this MOU be declared illegal, unlawful or unenforceable by final judgment of a court of competent jurisdiction, such invalidation of such section, clause or provision shall not invalidate the remaining portions hereof, and such remaining portions shall remain in full force and effect for the duration of this MOU.

(SIGNATURE PAGE TO FOLLOW)

<b>The San Benito County In-Home Supportive Services Public Authority</b>	<b>SEIU ULTCW Local 6434</b>
Reb Monaco, Chairman, Public Authority Board	José Martínez, Designated Representative, SEIU ULTCW Local 6434
Linzie Daniel, Chief Negotiator Public Authority	Felicitas Corona Negotiating Team SEIU ULTCW Local 6434
Gifford Swanson, Public Authority Manager	Irma Rodriguez Negotiating Team SEIU ULTCW Local 6434
Jacki Credico, Management Analyst Internal Services	Esperanza Torres Negotiating Team SEIU ULTCW Local 6434
	Guadalupe Martínez Negotiating Team SEIU ULTCW Local 6434