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Contract Number
24-248

SAP Number

Department of Aging and Adult Services

Department Contract Representative	<u>Julie West</u>
Telephone Number	<u>(909) 387-2462</u>
Contractor	<u>In-Home Supportive Service-Public Authority</u>
Contractor Representative	<u>Myette Christian</u>
Telephone Number	<u>(909) 891-9108</u>
Contract Term	<u>July 1, 2024 through June 30, 2027</u>
Original Contract Amount	<u>\$4,292,000</u>
Amendment Amount	<u>N/A</u>
Total Contract Amount	<u>\$4,292,000</u>
Cost Center	<u>4980002240 and 5011821000</u>

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the San Bernardino County Department of Aging and Adult Services-Public Guardian, hereinafter referred to as "DAAS-PG," desires to enter into a Memoranda of Understanding (MOU) with San Bernardino County In-Home Supportive Services Public Authority, hereinafter referred to as "IHSS PA" to administer and support the In-Home Supportive Services (IHSS) Provider Hiring and Employment Process.

WHEREAS, IHSS PA also desires to provide coordinated services for IHSS providers.

WHEREAS, DAAS-PG desires IHSS PA to perform these services in accordance with the Terms and Conditions (T&Cs) attached hereto and incorporated herein by this reference. The T&Cs specify the responsibilities of DAAS-PG and IHSS PA.

NOW, THEREFORE, DAAS-PG and IHSS PA do hereby covenant and agree that IHSS PA shall provide said services in accordance with the terms and conditions contained herein of this MOU.

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I. DEFINITIONS

- A. Advance pay – An option available to some IHSS recipients that allows them to receive an advanced payment for monthly IHSS services to pay their IHSS providers directly for their services.
- B. BOUNDS – BOUNDS is an online program for completion of the enrollment process and orientation for In Home Supportive Services Providers.
- C. Case Management Information and Payrolling System II (CMIPS II) – CMIPS II is the case management and payroll system for the IHSS program.
- D. County Overtime Violations Queue – A work queue in CMIPS II, which includes timesheet violations when more hours are claimed than authorized for the week and/or travel time.
- E. Department of Aging and Adult Services -Public Guardian (DAAS-PG) – The County department that administers the IHSS program.
- F. Electronic Timesheet System (ETS) – ETS is an optional service for an IHSS provider to submit his/her timesheet online via a mobile device or personal computer.
- G. Employment Verification – Verification of IHSS provider employment and income so that an IHSS provider can apply for unemployment benefits, disability benefits, financial transactions, or continuance of benefits under Transitional Assistance Department (TAD) programs.
- H. Enrollment Packet – Enrollment packets must be completed by a prospective IHSS provider for each recipient the provider works for as a part of the provider enrollment process.
- I. Fair Labor Standards Act (FLSA) – FLSA is a federal law which establishes minimum wage and overtime pay eligibility.
- J. In-Home Supportive Services (IHSS) – The IHSS Program is a federal, state and locally funded program designed to help pay for services provided to seniors and persons with disabilities so they can remain safely in their own home. To be eligible, the person must be 65 years of age or older, disabled, or blind.
- K. IHSS Provider – An IHSS provider is an individual who has completed all of the IHSS provider enrollment requirements and is now employed by an IHSS recipient to provide assistance with activities of daily living and personal care.
- L. IHSS Public Authority (IHSS PA) – The Public Authority (PA) is an entity established by the Board of Supervisors (BOS) by ordinance, separate from the County to administer certain aspects of the IHSS program as a result of Assembly Bill 1682 that required each county to establish an “Employer of Record” for individual providers of IHSS.
- M. IHSS Recipient – A person receiving IHSS.
- N. Local Written Guidelines – Guidelines developed for each entity with specific responsibilities for carrying out their operations, which are found in each entity’s respective Handbooks and the CMIPS II User Guide, DAAS Forms Catalog and DAAS Flyer Catalog.
- O. Memorandum of Understanding (MOU) – A formal agreement between two (2) or more parties.
- P. No Time Sheet Activity for 12 Months Report – The term used to refer to the CMIPS II generated Dis-enrolled Provider No Timesheet Activity report which identifies providers that have been terminated or made ineligible due to no timesheet activity for one (1) year.
- Q. Orientation – An orientation offered to IHSS prospective providers, which is a requirement for becoming enrolled and hired as an IHSS Provider.
- R. Supplemental Timesheet – A timesheet issued when a provider does not claim all of the hours worked on his/her original timesheet.
- S. Timesheet – A record of days and hours worked by an IHSS provider.

- T. Timesheet Eligibility Errors Work Queue – One of the Timesheet Work Queues in CMIPS II, which includes timesheets rejected by the Timesheet Processing Facility (TPF) due to issue with provider or recipient eligibility.
- U. Timesheet Errors Work Queue – One of the Timesheet Work Queues in CMIPS II, which includes timesheets rejected by the TPF due to various reasons e.g. missing signature, timesheet not readable etc., and must be processed by the County.
- V. Timesheets On Hold Work Queue – One of the Timesheet Work Queues in CMIPS II, which includes timesheets that have been flagged or selected for random review.
- W. Timesheets Over 70% Work Queue – One of the timesheet Work Queues in CMIPS II, which includes timesheets where the hours claimed for the first pay period exceed the expected percentage of the recipient's total authorized hours.
- X. Timesheet Work Queues – There are four (4) timesheet work queues in CMIPS II that are used to manage and resolve timesheet exception tasks. These include the Timesheet Errors, timesheet Eligibility Errors, Timesheets on Hold, and Timesheets Over 70% work queues.

II. REFERENCES

Welfare and Institutions Code sections §§ 12300.4, 12301.24, 12302.2, 12302.21, and 12304.

III. BACKGROUND

- A. DAAS-PG works to ensure seniors and adults with disabilities have the right to age in place, in the least restrictive environment. DAAS-PG administers the IHSS program for the County's at risk elderly and dependent adult populations. The IHSS program helps eligible low-income seniors and persons with disabilities to remain independent by making funding available for them to employ an IHSS provider to provide eligible home care services and avoid institutionalization.
- B. IHSS PA is a governmental entity established by state law to work in conjunction with San Bernardino County's IHSS program. The role of the IHSS PA is to:
 - 1. Establish a Care Provider Registry and Referral system,
 - 2. Serve as the employer of record for IHSS providers for the purpose of collective bargaining,
 - 3. Provide referral and information regarding IHSS and related services,
 - 4. Provide access to training, and
 - 5. Investigate background and qualifications of potential providers.
- C. DAAS-PG and IHSS PA work collaboratively to operate the IHSS program in San Bernardino County and carry out mandated responsibilities.

IV. PROGRAM RESPONSIBILITIES

- A. **IHSS PA shall:**
 - 1. Review criminal background investigations for prospective Registry and non-Registry IHSS providers.
 - 2. Administer the Paycheck Customer Service call center.
 - 3. Process enrollment packets for existing and new IHSS providers as defined in local written guidelines.
 - 4. Process employment verifications for IHSS providers.
 - 5. Initiate IHSS provider workers' compensation claims.
 - 6. Participate in the provider enrollment process via the BOUNDS system as defined in local written guidelines.

7. Provide training to IHSS providers on various topics as needed.
8. Assist providers with timesheet errors, for example, process tasks from the CMIPS II timesheet error work queue.
9. Process the "No Timesheet Activity for 12 Months: CMIPS II report."
10. Conduct IHSS Provider Orientation meetings via the BOUNDS system, or face-to-face.

B. DAAS-PG shall:

1. Conduct IHSS Provider Orientations via the BOUNDS system, or face-to-face, when necessary, on a back-up basis to IHSS PA.
2. Process IHSS forms received separately from the IHSS enrollment packet unless otherwise stated herein.
3. Void, reissue, and stop erroneous provider payments as well as resolve problems with cashed warrants and forged endorsements.
4. Process IHSS overpayments and recoveries.
5. Process enrollment packets for IHSS providers as defined in local written guidelines.
6. Address issues with advance pay.
7. Assist providers with timesheet errors, e.g., process tasks from the CMIPS II timesheet eligibility errors, timesheets on hold, and timesheets over 70% work queues.
8. Process the County Overtime Violations Queue.
9. Be the primary administrator of and maintaining the BOUNDS system.
10. Participate in the provider enrollment process via the BOUNDS system as defined in local written guidelines.

C. IHSS PA and DAAS-PG shall:

1. Conduct IHSS Provider Orientations via the BOUNDS system, or face-to-face.
2. Provide reception assistance to IHSS providers and assist with timesheet questions as defined in local written guidelines.
3. Make IHSS forms available to IHSS providers as defined in local written guidelines.
4. Process enrollment packets for IHSS providers as defined in local written guidelines.
5. Process change of address forms for IHSS providers and/or recipients as defined in local written guidelines.
6. Issue replacement and supplemental timesheets to IHSS providers as defined in local written guidelines.
7. Work collaboratively to complete tasks associated with the implementation of Fair Labor Standards Act and other new IHSS regulations and initiatives as defined in local written guidelines.
8. Provide ETS assistance for IHSS providers and recipients as specified in local written guidelines.
9. Participate in the provider enrollment process via the BOUNDS system as defined in local written guidelines.
10. Participate in regularly scheduled quarterly process status meetings.

V. FISCAL PROVISIONS

- A. The IHSS PA is funded by state, federal, and county monies based on the statutorily established IHSS cost sharing ratios. All payments to IHSS providers for hourly IHSS services will be issued by the State of California directly to the providers, and all workers' compensation coverage for IHSS providers shall be provided through the State of California. DAAS-PG will be billed by the State of California for DAAS-PG's share of IHSS services according to the cost sharing ratios.
- B. The IHSS PA special revenue fund, established by the San Bernardino County Board of Supervisors, shall be the source of funding payment of expenses incurred by the IHSS PA. This fund will be maintained by monthly reimbursements of expenses by DAAS-PG and required County share.
- C. DAAS-PG shall compensate IHSS PA monthly for services and staff provided by IHSS PA under this MOU based on actual costs, the County allocated cost plan, or in accordance with Federal A-87 Guidelines, whichever method is ordinarily used by DAAS-PG to charge County departments. Notwithstanding the foregoing, DAAS-PG upon written notification to IHSS PA, may alter the methodology utilized to charge IHSS PA for DAAS-PG services so long as the rate charged does not exceed the costs of providing similar services to County departments and the total cost for the agreed upon level of services does not exceed the appropriation reflected in the approved County budget.

The breakdown of costs over the period of the MOU is as follows:

FISCAL YEAR	COSTS/MAXIMUM BUDGET
2024-2025	\$1,333,000
2025-2026	\$1,443,000
2026-2027	\$1,516,000
Total	\$4,292,000

The Departments must consider a reduction in positions, which may impact workload, if costs exceed the projected not to exceed yearly amounts listed above.

- D. IHSS PA shall not exceed the maximum budget amount for any fiscal year nor authorize hours/work outside of the budget without DAAS-PG approval in advance. IHSS PA shall notify DAAS-PG when 75% of maximum budget in any given year is reached.
- E. Yearly budget and number of positions may be renegotiated if option(s) to extend MOU term is exercised as referenced in VI. TERM.

VI. TERM

This MOU is effective from July 1, 2024 through June 30, 2027. The MOU term may be extended by mutual agreement of the parties for two (2) additional one (1) year periods.

VII. GENERAL

- A. This MOU may be amended at any time by written and mutual consent of all parties.
- B. Termination without cause: This MOU may be terminated by either party without cause following thirty (30) days written notice to the other party.
- C. Termination with cause: This MOU may be terminated immediately by either party if the terms of this MOU are violated.

VIII. INDEMNIFICATION AND INSURANCE

- A. The County and IHSS PA are an authorized self-insured entity for purposes of Professional Liability, General Liability, Automobile Liability, and Workers' Compensation and warrants that

through its program of self-insurance, DAAS-PG and IHSS PA have adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this MOU.

- B. The County agrees to indemnify, defend, and hold harmless the IHSS PA and its authorized officers, employees, interns and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this MOU including the acts, errors or omissions of any person and for any costs or expenses incurred by the IHSS PA on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. County's indemnification obligation applies to the IHSS PA's "active" as well as "passive" negligence but does not apply to the IHSS PA's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.
- C. IHSS PA agrees to and shall comply with the following indemnification and insurance requirements:
 - 1. Indemnification – IHSS PA agrees to indemnify, defend and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this MOU including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. IHSS PA's indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782. In the event that the County and/or IHSS PA are determined to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under this MOU, the County and/or IHSS PA shall indemnify the other to the extent of its comparative fault.
 - 2. Additional Insured – All policies, except for the Workers' Compensation, Errors and Omissions, and Professional Liability policies, shall contain endorsements naming the County and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder.
 - 3. Waiver of Subrogation Rights – IHSS PA shall require the carriers of Worker's Compensation coverage, Commercial General Liability coverage, and Commercial Auto Coverage to waive all rights of subrogation against the County, its officers, and employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the IHSS PA and IHSS PA's employees or agents from waiving the right of subrogation prior to a loss or claim. IHSS PA hereby waives all rights of subrogation against the County.

IX. INDEPENDENT PARTIES

It is understood and agreed that the parties are independent contractors and that no relationship of employer-employee exists between the parties hereto. One party's employees shall not be entitled to any benefits payable to employees of the other party, including, but not limited to, Workers Compensation benefits. The parties shall not be required to make any deductions for employees of the other party from the compensation payable under the provision of this MOU or any such forthcoming agreement.

As independent contractors, the parties hereby hold each other harmless from any and all claims that may be made against the other based upon any contention by any third party that an employer-employee relationship exists by reason of the MOU. As part of the foregoing indemnity, the parties agree to protect and defend at its own expense, including attorney's fees, the other party, its officers, agents and employees in any legal action based upon any such alleged existence of an employer-employee relationship by reason of this MOU.

IHSS PA is, for all purposes arising out of this MOU, an independent contractor and neither IHSS PA, nor the IHSS providers, nor staff members, shall be deemed County employees.

X. CONCLUSION

- A. This MOU, consisting of eight (8) pages is the full and complete document describing services to be rendered IHSS PA including all covenants, conditions and benefits.
- B. The signatures of the Parties affixed to this MOU affirm that they are duly authorized to commit and bind their respective entities to the terms and conditions set forth in this document.
- C. This Contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Contract. The parties shall be entitled to sign and transmit an electronic signature of this Contract (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Contract upon request.
- D. IN WITNESS WHEREOF, the Board of Directors of IHSS PA has caused this MOU to be subscribed to by the Clerk thereof, and Contractor has caused this MOU to be subscribed in its behalf by its duly authorized officers, the day, month and year written.

SAN BERNARDINO COUNTY

▶ *Dawn Rowe*
 Dawn Rowe, Chair, Board of Supervisors

Dated: MAR 26 2024
 SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

By *Jennifer Monell*
 Lynna Monell
 Clerk of the Board of Supervisors
 San Bernardino County
 Deputy




SAN BERNARDINO COUNTY IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY

▶ *Dawn Rowe*
 Dawn Rowe, Chair, Board of Directors

Dated: MAR 26 2024
 SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

By *Jennifer Monell*
 Lynna Monell, Secretary
 Deputy



Approved by Legal Form
Jacqueline Carey-Wilson
 Jacqueline Carey-Wilson, Deputy County Counsel
 Date March 14, 2024

Reviewed for Contract Compliance
Patty Steven
 Patty Steven, Contracts Manager
 Date March 19, 2024

Reviewed/Approved by Department
Glenda Jackson
 Glenda Jackson, Assistant Director for
 Sharon Nevins, Director
 Date March 15, 2024